



Appeal Decision

Inquiry opened on 24 September 2013

Site visits made on 26 and 27 September 2013

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 November 2013

Appeal Ref: APP/W3710/A/13/2195900

Land to the North of Tunnel Road, Galley Common, Nuneaton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by A R Cartwright Ltd against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref.031585, dated 5 July 2012, was refused by notice dated 20 December 2012.
 - The development proposed was described as 'the erection of up to 130 dwellings, new access arrangements from Tunnel Road, with new open space, landscaping and associated physical infrastructure'.
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Preliminary Matters

1. The Inquiry opened on 24 September 2013. I carried out an accompanied visit to the site on 26 September 2013 and returned the following morning, unaccompanied, to take in views over it from the Centenary Way which runs across the appeal site and to the north, when I also observed the other section of enclosed landscape referred to at the Inquiry and views of the appeal site from the west, further along Tunnel Road. Having sat on four days, the Inquiry closed on 27 September 2013.
2. The originating application was made in outline with all matters reserved, save for access. I have dealt with the appeal on a similar basis. In the course of the application, the number of dwellings proposed was reduced from 130 to 105 and a master-plan¹ was submitted which shows one way in which those houses could be arranged on the site. Reflective of that, I have adopted the Council's description of development² that is 'residential development of up to 105 dwellings (up to 26 to be affordable), new access arrangements from Tunnel Road, with public open space, landscaping, and associated physical infrastructure (including demolition of 147 Tunnel Road and associated farm buildings). I have treated the submitted master-plan as illustrative.
3. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Decision

4. The appeal is dismissed.

¹ Drawing No.12/30 08C

² As set out in their decision notice

Main Issues

5. The Council, in their decision notice, cited four reasons for refusal. In the lead up to the Inquiry, the reasons for refusal relating to flooding and biodiversity were withdrawn on the basis that these matters could be adequately addressed through the imposition of suitably worded conditions. On that basis, the main issues to be considered are the effect of the proposal on (1) the character and appearance of the historic landscape, a non-designated heritage asset; and (2) highway safety. That analysis needs to take place in the light of other relevant matters identified, the development plan, the Framework³, and the benefits of the scheme, reflecting in particular, the Council's acceptance that it cannot demonstrate a 5 year supply of housing⁴.

Reasons

The Historic Landscape

6. The appeal site encompasses an area of land made up of a series of fields, their layout delineated by reverse 's' shaped hedgerows, and containing ridge and furrow earthworks. The resulting field pattern suggests that the area is part of an early phase of enclosure of open fields formed by earlier woodland clearance, and most probably medieval in origin.
7. The grouping has, it seems, been considered for designation as a SAM⁵ but that has never been confirmed because it has insufficient quality and completeness when considered in a national context. Nevertheless, while many users of the Centenary Way crossing the appeal site might not be aware of the nature and origins of their immediate surroundings, all parties to the Inquiry readily agree that the grouping has clear regional and/or local value.
8. The glossary to the Framework describes a heritage asset as a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. In those terms, there is no dispute that the appeal site falls to be considered as a non-designated heritage asset.
9. A set out on the illustrative master-plan, the proposal would retain the westernmost field as open space, leaving the ridge and furrow earthworks intact. The hedgerows would be kept with an estate road system integrated into the pattern using existing openings for access. There was some discussion at the Inquiry about the number of houses that might come forward⁶ but it is clear that the appellant envisages a number closer to 105 than the maximum of 20 that the Council suggested might be acceptable. Those houses would be spread amongst the remaining fields, along with other elements of the development, like the foul water pumping station, and the balancing pond.
10. However carefully designed, the erection of up to 105 houses on these fields would lead to relatively large buildings, subdividing enclosures, cultivated gardens, and hard standings, along with parked cars, and all the associated domestic paraphernalia within the areas subdivided by remaining hedgerows. The ridge and furrow earthworks within these areas would be destroyed.

³ The National Planning Policy Framework

⁴ Though the extent of under-supply is a matter in dispute

⁵ Scheduled Ancient Monument

⁶ Given that the development proposed is described as *up to* 105 dwellings.

11. In essence, the original purpose and character of these fields would all but disappear and be replaced, permanently, by a residential estate. It is fair to say that keeping the western field open and its earthworks intact, and the retention of the hedgerows, would allow something of the significance of the heritage asset to persist. The provision of an interpretation board could serve to better reveal that remaining significance and provide a flavour of what was once in place.
12. However, overall, it is my conclusion that the proposal would have an impact on the significance of the non-designated heritage asset that would stop not very far short of destruction.
13. While the existing hedgerows have some legislative protection, it is correct that the ridge and furrow earthworks do not and the landowner could simply plough them out. However, for that prospect to carry any significant weight there would need to be a realistic prospect of it coming about. There is no indication that the existing use, largely grazing for horses that, while not beneficial to the ridge and furrow earthworks, does maintain the pastoral quality of the site, would not continue if the housing scheme did not find favour.
14. Paragraph 135 of the Framework says that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. I return to that matter below.

Highway Safety

15. The Council and local residents' position on this issue has a number of facets. Tunnel Road is relatively busy and I saw for myself that as vehicles enter and leave the settlement, there is a tendency to exceed the speed limit. It is said that traffic from the proposal, emerging on to Tunnel Road, where visibility would be restricted due to parked cars, would be dangerous.
16. Furthermore, some of those existing on-street parking spaces would be lost as a consequence of the proposed access. It is felt that the replacement off-street spaces would be inferior in terms of access and utility.
17. It is correct to note, first of all, that the Highway Authority has no objection to the access proposed. Secondly, as MfS⁷ points out, junctions with less main road visibility are statistically safer than junctions with greater visibility. The likelihood is that the presence of a new junction to serve the proposal will tend to reduce traffic speeds on Tunnel Road. The gateway features, speed tables, and vehicle activated signs, proposed by the appellant, would reduce speeds further. The works proposed by the appellant could be secured by a suitably worded condition and overall, would lead to an improvement in highway safety.
18. There was some discussion at the Inquiry around whether a TRO pertaining to the works could be secured. There seems to be no good reason why that would prove difficult but even if it could not be realised, for whatever reason, that is a matter of no great significance because, in highway safety terms, the proposal would lead to an improvement in highway safety, not a detriment, with or without the TRO.

⁷ Manual for Streets 2 Page 077

19. In terms of parking provision for existing residents on Tunnel Road, the appellant proposes the provision of 8 spaces to the rear of the houses fronting Tunnel Road, to replace those that would be lost around the new junction. Concerns have been expressed about that but in my view a secure, off-street space would represent a significant improvement in highway safety terms, and in terms of convenience, over an on-street parking space, along a rather busy stretch of road that carries relatively speedy traffic. Detailed design of the parking spaces, and access to them from the rear of the houses fronting Tunnel Road, could be secured by condition.
20. The Framework says that plans and decisions should take account of whether safe and suitable access to the site can be achieved for all people. The proposal would comply with that. Furthermore, the improvement in highway safety that would result from the scheme would bring a wider benefit to residents of Galley Common, and other users of Tunnel Road.

Housing Supply

21. Paragraph 47 of the Framework sets out that to boost significantly the supply of housing, local planning authorities should, amongst other things, use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area.
22. Paragraph 159 requires local planning authorities to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. Paragraph 157 says that it is crucial for Local Plans to be based on co-operation with neighbouring authorities.
23. In simple terms, the Council's position is that in the absence of an up-to-date development plan, it has an interim target of 7,900 houses to be delivered in the next 5 years. The figure of 7,900 has been derived from a number of studies and appeal decisions, including the ONS⁸ projection figures for 2008, but most importantly, assumes that Nuneaton & Bedworth will not have to absorb any of neighbouring Coventry's housing requirement, referred to by the Council as 'overspill'. On the basis of the 7,900 figure, the Council says that, applying a 5% buffer, it can demonstrate a 3.56 year supply of housing.
24. The appellant expresses strong doubts about the Council's position for a number of reasons. It has yet to be subject to external scrutiny; reliant on ONS projections and appeal decisions that pre-date the advent of the Framework, it appears at best, questionable and at worst, unreasonably inward-looking. Most importantly, in failing to have proper regard to the RSS Panel Phase II Report, which is the latest objectively assessed evidence that relates to the housing market area, the Council disregards the clear advice set out in paragraphs 47, 159 and 157 of the Framework rehearsed above.
25. Use of the RSS Panel Phase II figure of 10,800 would mean that a 20% buffer would be required. In that light, based on the 'Sedgefield' approach to the shortfall, and applying a 10% across the board reduction to the supply figure, the appellant suggests that the Council has a supply of housing of 1.5 years.
26. Given the assumptions that underpin both the Council and the appellant's assessment of the housing supply figure, it seems very difficult to come to a definitive conclusion on the exact scale of the shortfall.

⁸ Office for National Statistics

27. However, the obvious failure of the Council to address the needs of the housing market area, rather than just its own needs, means that the true figure is very much more likely to be closer to the appellant's assessment than the Council's. In that light, the appellant's description of the prevailing situation as a 'crisis' is no great exaggeration. Given that the Council cannot, on its own admission, demonstrate a 5 year supply of deliverable housing, the weight to be attached to the benefit of up to 105 dwellings, with up to 26 of them affordable⁹, is in any event considerable. The fact that the paucity of the Council's position in housing supply terms is likely to be much worse than they are prepared to accept, further magnifies that weight.

Other Matters

28. It is clear that there are local issues with flooding. However, the evidence shows that subject to works associated with the proposal that could be secured by condition, the existing situation would be improved if the development came forward. Far from being a negative aspect of the proposal, the fact that it would bring betterment, in these terms, represents a benefit.

29. Similarly, the site has biodiversity interest but the ecological management scheme proposed by the appellant that could be secured by condition, would lead to enhancement, in these terms. Again, rather than being a reason to resist the development, the impact on biodiversity would be a benefit of it.

The Balancing Exercise

30. LP¹⁰ Policy Env2 sets out that in Areas of Restraint, like the one within which the appeal site lies, development will only be permitted where it would not adversely affect the open character or appearance of the area, taking into account any possible cumulative effects. LP Policy Env3 says that planning permission will only be granted for development in the countryside when it qualifies with one of a series of criteria and if it falls under that ambit, if it would not harm the overall character and quality of the countryside, amongst other things. Clearly, the proposal fails to accord with those policies.

31. That is not the end of the matter. In setting limits on areas where housing can come forward, LP Policies Env2 and Env3 are clearly relevant for the supply of housing. Paragraph 49 of the Framework states that policies of that sort should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. As set out above, the Council cannot. In which case, paragraph 14 of the Framework tells us that where the development plan is absent, silent, or as is the case here, out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework, taken as a whole.

32. Given the paucity of the prevailing housing supply situation both generally, and in terms of affordable housing, bringing forward up to 105 dwellings, with up to 26 of them affordable, would represent a very considerable benefit. The associated construction work would bring economic benefit as would the resulting New Homes Bonus. There would be highway safety, flooding and biodiversity improvements and other social impacts of the proposal would be mitigated through the package put forward in the completed UU.

⁹ Evidence to the Inquiry showed how acutely the lack of affordable housing in Galley Common is felt

¹⁰ The Nuneaton and Bedworth Borough Local Plan 2006

33. However, the proposal would have an impact on the significance of the non-designated heritage asset affected that would stop not very far short of destruction. In my judgement, cognisant of paragraph 135 of the Framework, this irrevocable loss of significance represents an adverse impact that would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies of the Framework, taken as a whole. The proposal does not, therefore, benefit from the presumption in favour of sustainable forms of development.

Final Conclusion

34. For the reasons given above I conclude that the appeal should be dismissed.

Paul Griffiths

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Naomi Candlin of Counsel	Instructed by Nuneaton & Bedworth BC
She called	
Anna Stocks BSc(Hons)	Planning Archaeologist, Warwickshire CC
Archaeology AIFA	
Andrew Collinson	Principal Planning Officer, Nuneaton & Bedworth
BA(Hons) BTP MRTPI	BC

FOR THE APPELLANT:

Jeremy Cahill QC	Instructed by Greg Mitchell of Framptons
He called	
Laura Bradley BA(Hons)	Managing Director, Bradley Murphy Design Ltd
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Karl Hulka PGC Arch Hist	Partner, Heritage Collective LLP
(Oxon) AIFA	
Simon Parfitt BA MSc	Director, David Tucker Associates
MCIT MILT	
Gregory Mitchell	Director, Framptons
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INTERESTED PERSONS:

Mark Hood	Local Resident
Tracy Wilson	Local Resident

DOCUMENTS

- 1 Opening Statement on behalf of the Appellant
- 2 Opening Statement on behalf of the Council
- 3 Extract from Manual for Streets (Page 077)
- 4 E-Mail exchange about withdrawn reasons for refusal
- 5 E-Mail dated 4 September 2013 from Anna Stocks to Karl Hulka
- 6 Copy of Appeal Decision: APP/W3710/A/11/2153247
- 7 Anna Stocks' Summary Proof of Evidence
- 8 Submissions by Mr Hood
- 9 Copy of Reports to Committee on Planning Application
- 10 Copy of Appeal Decision: APP/W3710/A/11/2160148
- 11 E-Mail from Simon King (King Piling) and associated plan
- 12 Submission by Miss Wilson
- 13 Copy of Committee Report relating to a Review of Development Targets
- 14 Copy of Appeal Decision: APP/G1630/A/12/2183317
- 15 Bundle of Material relating to Financial Contributions
- 16 Draft Versions of Unilateral Undertaking
- 17 Completed Unilateral Undertaking
- 18 Additional Suggested Conditions
- 19 Closing Submissions on behalf of the Council
- 20 Closing Submission on behalf of the Appellant
- 21 Costs Application on behalf of the Appellant
- 22 Response to Costs Application by the Council

PLANS

- A Drawing 12/30 06: Location Plan
- B 14075-11B: Proposed Site Access

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