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## Appeal Decision

Site visit made on 7 August 2017

by **Zoe Raygen Dip URP MRTPI**

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

Decision date: 15 September 2017

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**Appeal Ref: APP/Y2430/W/17/3170551**

**Land West of Princes Road, Queensway, Old Dalby**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Family Housing Ltd against Melton Borough Council.
  - The application Ref 16/00374/OUT, is dated 27 May 2016.
  - The development proposed is application of outline planning permission for residential development of up to fifty-five dwellings (all matters reserved).
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### Decision

1. The appeal is dismissed and planning permission is refused.

### Procedural matter

2. The application was made in outline with all matters reserved for subsequent approval. I shall determine the appeal on that basis.
3. Within its statement the Council gives two reasons refusal which the Planning Committee at its meeting on 27 July 2017 resolved should form the basis of the Council's case. These include grounds in respect of the appeal site being in an unsustainable location and lack of adequate compensation for the effect on the biodiversity of the appeal site.
4. A completed S106 agreement was submitted during the course of the appeal. The agreement, which is a material consideration, includes financial contributions towards primary education (£24,198.02), libraries (£15.09 per each one bedroom dwelling and £30.18 per each two bedroom and above dwelling), highways (£52.85 per travel pack, £720.00 per dwelling for bus passes, £7704.00 towards bus stop improvement), civic amenity (£4546.00). There is also an obligation relating to the provision of 40% of the total number of dwellings to be constructed on the appeal site as affordable housing, along with a requirement for the approval of an Affordable Housing Scheme. I have had regard to the Section 106 Agreement in my consideration of the appeal.

### Main Issues

5. The main issues are:
  - Whether or not the site represents a suitable site for housing with particular regard to its accessibility
  - The effect of the proposal on ecology

## Reasons

### Accessibility

6. The appeal site is in the countryside outside of the village envelope shown on the Proposals Map in the Melton Local Plan 1999 (LP). Saved Policy OS2 of the LP states that permission will not be granted for development outside the town and village envelopes except for a number of specified exceptions. There is no dispute between the parties that the proposed fifty five dwellings would not meet any of the exceptions. As a result the proposal conflicts with the requirements of Policy OS2.
7. The appellant argues that Policy OS2 is cannot be considered up to date as the end date of the LP is 2006 and therefore there is Policy silence on housing provision and distribution for 2017 and beyond. However, the test of 'out-of-datedness' of development plan policies is set out in the National Planning Policy Framework (the Framework) paragraph 215. This is clear that:

*"...due weight should be given to relevant policies in existing plans according to their degree of consistency with **this framework** [my emphasis]..."*
8. Irrespective of the end date of the plan, settlement boundaries are long established planning tools, perfectly consistent with the Framework's objectives of achieving sustainable development by, among other things, supporting patterns of development that facilitate the use of sustainable modes of transport; taking account of the different roles and character of different areas; and avoiding new isolated homes in the countryside. I am satisfied therefore that Policy OS2 has broad accordance with the Framework in these respects and therefore attracts weight.
9. Paragraph 55 of the Framework seeks to promote sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities and avoid isolated dwellings in the open countryside unless there are special circumstances.
10. The appeal site is located to the west of an area of former Ministry of Defence housing within Queensway. To the south of the site outline planning permission has been granted on appeal for the erection of up to 39 dwellings (APP/Y2430/W/15/3135191 – the 2015 appeal). As a result the appeal site would be viewed within the context of built development and therefore would not be physically isolated relative to Queensway.
11. I saw that Queensway has very few local facilities restricted to a community hall including a pub, although nearby business parks present the opportunity for local employment. My attention has not been drawn to any local convenience shop or health services. Furthermore, only a primary school, pre school and public house are located in Old Dalby which is a significant distance to the east. While there is a footway from the appeal site to Old Dalby the road, is mainly unlit and this, together with the distance involved, means it is unlikely to provide an attractive or realistic alternative for those with restricted mobility or those accompanied by children particularly in winter months or inclement weather.
12. As a result future occupiers would have to travel further distances to surrounding villages and towns to access day to day services. I have not been

- advised of the nearest settlement with a good range of services and facilities but I saw on my site visit that Queensway is located in a rural area some distance from nearby villages.
13. There are bus stops within walking distance of the appeal site. However the submitted details within the appellant's Transport Statement 2016 (TS) shows a limited, infrequent service to Melton Mowbray and Nether Broughton, which does not operate in the evenings. Therefore I am not persuaded that it would conveniently serve the needs of people accessing services or commuting to work. A further bus stop at Nether Broughton providing access to Nottingham and Oakham is over a kilometre away and would not therefore be in reasonable or convenient walking distance.
  14. Furthermore, the Parish Council advise that the bus service along the A606 providing access to Melton or Nottingham is to be reduced from hourly to one every two hours. As a result, future occupiers would be likely to have a high dependence on the use of motor vehicles to access the local services which would be contrary to one of the core planning principles of paragraph 17 of the Framework to make the fullest use of public transport, walking and cycling. Moreover, the proposal would conflict with one of the aims of paragraph 7 of the Framework to move towards a low carbon economy.
  15. At the time of his consideration of the 2015 appeal the Inspector found that the proposal would conflict with one of the Framework's core principles to actively manage growth by making the fullest possible use of public transport and focussing significant development in locations which are or can be made sustainable. However, he also considered that paragraph 20 of the Framework lent support to the proposal as it acknowledges that opportunities to maximise transport solutions will vary from urban to rural areas. In reaching his conclusions he referred to the Council's village audit assessment which was updated in 2011 (VAA) in which Queensway was identified as a sustainable village.
  16. However, the previous appeal related only to 39 dwellings. The current proposal is for 55 dwellings. Even if I were to accept the appellants offer to restrict the development to 39 dwellings, via a condition, the proposal would double the provision of new dwellings within Queensway, with its potential commensurate implications. Just because 39 dwellings have been found to be acceptable does not mean that there is an automatic case that additional dwellings would be equally appropriate. Taken to its logical conclusion, such an argument could result in the unconstrained development of any given area.
  17. I recognise that there is generally a greater reliance on the private car in more remote rural areas. However, it remains the case that there would be a lack of sustainable transport choices available to enable future residents to conveniently access services and facilities. There would be a lack of relationship between the site and the nearest settlements able to provide basic services and in this respect the dwellings would be functionally isolated.
  18. Leading on from this I do not consider there to be special circumstances to justify the erection of isolated dwellings, including those cited in the Framework namely that they would be essential for a rural worker; would secure the future of a heritage asset; would re-use a redundant or disused building or would be of exceptional quality or design.

19. The Inspector concluded on the 2015 appeal that the proposal would be reasonably compliant with the advice in Paragraph 55 of the Framework which refers to development in small villages potentially supporting services either in the immediate environment, or in a village nearby. However, there are limited services in the immediate environment. Furthermore, I have seen no evidence to suggest that the location of the appeal site is well placed by way of public transport connectivity, to available facilities in surrounding settlements.
20. Moreover, there is no evidence before me that the vitality of Queensway, or other nearby settlements, is under threat such that it requires either enhancement or maintenance from new dwellings. Indeed, the Parish Council, which it is reasonable to consider would be well placed to comment on such matters, objects to the appeal proposal. As a result, the proposal is unlikely to significantly enhance or maintain the vitality of the surrounding rural communities.
21. The Council has, since the 2015 appeal, updated the VAA and has adopted the Melton Local Plan Settlement Roles, Relationships and Opportunities 2015 report (SRO) which is part of the evidence base for preparation of the new Local Plan. Each rural settlement has been scored against the type of services and employment it has access to together with access to a choice of transport modes other than the private car. A draft pre-submission Local Plan (DLP) was published in November 2016 and is subject to consultation on focussed changes to 23 August 2017. In accordance with paragraph 216 of the Framework, therefore, given its early stage of preparation I give limited weight to the policies within the DLP.
22. Nevertheless, Queensway scores poorly within the SRO when assessed against a total range of available facilities and services. While its total score places it within the rural supporter category of settlement, it mainly attracts points for its proximity to the nearby business parks rather than for access to a range of services that would support significant development. It also attracts points for a regular bus service but, based on the evidence before me, I have not found this to be the case. While the SRO would not in itself be determinative due to the limited weight the draft local plan attracts, it reinforces my view that the appeal site would not be an accessible location in accordance with the requirements of the Framework.
23. The appellant refers to the Melton Borough Council Core Strategy (CS) which was withdrawn in 2013. Policy CS3 of the CS identified that both Queensway and Old Dalby were sustainable villages. However, as the CS has been withdrawn I give it very limited weight.
24. I have given some consideration as to whether measures contained within the S106 legal agreement in the form of travel packs and bus passes would mitigate the future occupiers likely reliance on the car. However, while the initiatives are welcomed, I have already found that such modes of transport are unlikely to be attractive to future residents to access their day to day services and facilities due to the infrequency of the available services. Furthermore bus passes would be for a temporary period only whereas the houses would be permanent.
25. For the reasons above therefore I conclude that the proposal would not provide a suitable site for housing with particular regard to its location. It would

therefore be contrary to paragraphs 7, 17 and 55, of the Framework and saved Policy OS2 of the LP.

## Ecology

26. The proposals for the 39 houses, the subject of the 2015 appeal, to the south of the current appeal site included a Biodiversity Enhancement Scheme submitted which outlined how the 4 hectares of land to the north of the site would be managed to compensate for the loss of existing habitat on the appeal site. The Inspector considered that this would ensure that there would be no harmful effect on the areas ecology and imposed a condition requiring a Conservation management Plan for the land in question.
27. The area of land which is to be managed to compensate for the loss of land to housing under the 2015 appeal is the subject of the appeal before me now. The appeal is accompanied by an Ecological Study 2016 (ES) which proposes that land to the north and west of the appeal site be used for a Biodiversity Enhancement Scheme 2016 (BES) to compensate for both the loss of the land in respect of the appeal site and the site the subject of the 2015 appeal.
28. The ES identifies that some of the land on the appeal site and to the north of the appeal site meets the Leicestershire and Rutland Local Wildlife Criteria (LWS) for neutral/mesotrophic grasslands. This is confirmed by Leicestershire County Council's Ecological Advisor (EA) who also states that LWS are by definition of county-wide value for wildlife and are the priority local Biodiversity Action Plan habitats for conservation. It is therefore of high nature conservation value in a local context.
29. Paragraph 109 of the Framework requires that development minimises the impacts on biodiversity. Paragraph 118 of the Framework states that if significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for then planning permission should be refused. The proposal would result in the loss of a significant level of coverage of the appeal site to built development and associated areas of hardstanding and residential gardens. However, the removal of this habitat would, to some degree, be compensated for by the proposed measures set out within the BES by providing an area, within the appellant's ownership, of roughly about the same scale as that which would be lost to be improved.
30. However, the Council's EA states that their survey indicated that the area to be proposed to be used to the west does not meet LWS criteria and is unlikely to do so even if the management regime was changed. I observed myself while on site and from photographs in the ES that the western pasture is of a different character to the appeal site and the area to the north of it, appearing more improved. I note in this respect that the BES confirms that the western pasture, particularly the northern sector is very improved and species poor.
31. Nevertheless, the BES proposes transplanting the most diverse areas of turf from the appeal site and the land to the south of it to the western and northern proposed compensation areas together with appropriate management to ensure its establishment. The Council's EA comments on the improvement of the western area are restricted to management and no reference is made to the proposed translocation of turf. In the absence of any evidence to suggest



that the transplant and establishment of the turf could not be achieved, then it seems to me the BES would provide adequate compensation for the loss of the priority BAP habitat on the appeal site and land to the south.

32. Concern has been raised regarding the ability of the appellant to adequately maintain the western compensation area due to the potential difficulty of accessing the land due to land ownership. However, I have seen no substantive evidence to suggest that the appellant, does not own the land or would have difficulty in maintaining it as required.
33. In summary the proposal would have a harmful effect on the ecology of the appeal site and lead to the loss of the area provided for ecological compensation for the area of land to the south of the appeal site. Nevertheless, subject to the imposition of conditions regarding the implementation of the recommendations in the BES then a suitable area of land would be provided to compensate for the loss of habitat on both sites. As a result the proposal would not conflict with paragraphs 109 and 118 of the Framework.

#### **Other matters**

34. The appellants suggest that they would be happy to accept a condition restricting the number of units to 39 primarily to allow land to be retained for its amenity and ecological merit. However, as I have found that the proposed compensatory arrangements would be acceptable in this respect such a condition would not be necessary.

#### **Planning Balance and Conclusion**

35. I have found that the proposal would be contrary to Policy OS2 of the LP. However, there is dispute between the parties as to whether the Council is able to demonstrate a five year housing land supply. If I were to accept the appellant's position that the Council is unable to demonstrate a five year housing land supply and therefore the relevant policies for the supply of housing land cannot be considered up-to-date, then paragraph 14 of the Framework advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specified policies in the Framework indicate that development should be restricted.
36. In that instance then I would give limited weight to Policy OS2 of the LP and thus, the provision of 55 houses would contribute towards helping address the alleged undersupply of housing. However, I have found that Queensway would not be an accessible location to accommodate the proposed scale of development. As a result, the proposal would not accord with the social and environmental roles of planning and I give this considerable weight in my decision.
37. The proposal would provide 22 affordable homes, which would meet a need for such homes within the district. However, as they would be located in a largely inaccessible location by means other than the car I have given this benefit only modest weight.
38. There would be economic benefits of the scheme both while the houses were being constructed and resulting from future residents using the limited local

facilities, including the business parks, contributing to the local economy. However, given that the economic benefits related to construction would be temporary and that I have found that it is likely that residents would be largely reliant on the car to access services outwith the village, it is likely that many of the economic benefits would be received outside of Queensway and the immediate local economy. Furthermore, it is unlikely that new housing would need regular maintenance at such a level to lead to significant economic benefits.

39. While there would be enhancement to the biodiversity on surrounding land this is merely compensation for the loss of habitat on the appeal site. Its provision therefore remains neutral in the planning balance. The ES states that there is likely to be little potential for new habitat creation or enhancement within the proposed development itself, though a new section of native species hedgerow or belt of native trees could be planted along the northern boundary to act as a buffer between the development and the retained grassland to the north. Therefore I give this environmental benefit limited weight.
40. All in all, even if I were to accept the appellants assertion that the Council has a lack of five year housing land supply, I consider that the totality of the harm that would be a consequence of the significant adverse impact I have identified would significantly and demonstrably outweigh the limited to modest benefits referred to above when assessed against the policies in the Framework when taken as a whole. Therefore, the proposal does not constitute sustainable development for which the Framework carries a presumption in favour. For this reason, and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Zoe Raygen*

INSPECTOR