



Appeal Decision

Site visit made on 13 September 2017

by **John Morrison BA (Hons) MSc MRTPI**

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

Decision date: 4 October 2017

Appeal Ref: APP/F2415/W/17/3174755

Land north of Tymecrosse Gardens, Market Harborough

- 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 Parkers of Leicester Limited against the decision of Harborough District Council.
 - The application Ref 16/00741/OUT, dated 27 April 2016, was refused by notice dated 8 December 2016.
 - The development proposed is 16 new dwellings with five split level houses and eleven bungalows. Details of layout, scale and means of access from the public highway.
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Decision

1. The appeal is allowed and planning permission is granted for 16 new dwellings with five split level houses and eleven bungalows. Details of layout, scale and means of access from the public highway at land north of Tymecrosse Gardens, Market Harborough in accordance with the terms of the application, Ref 16/00741/OUT, dated 27 April 2016, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Parkers of Leicester Limited against Harborough District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council's evidence sets out that, following independent advice, they are no longer seeking to defend their second reason for refusal. This stated that the proposed development had not adequately demonstrated that it would not increase the risk of flooding. This remains a concern for a number of local residents and I shall come back to this in more detail in my findings.
4. There is a completed planning obligation before me as part of the appeal documentation. The obligation seeks to provide developer contributions towards affordable housing, open space, community facilities, libraries and secondary education. The agreement is bilateral, the appellant and the council are signatories. Both parties are content with the provisions of the agreement. I have reviewed the agreement as well as the requests for contributions made by the relevant bodies. I am satisfied that they are justified and related in scale and kind to the proposed development and together they would mitigate

its effects in the relevant regards. I have therefore taken the agreement into account in my determination of this appeal.

Main Issue

5. With the above in mind, the main issue is the effect of the proposed development in the character and appearance of the area.

Reasons

6. The proposed development seeks outline planning permission for sixteen dwellings on the appeal site with matters of layout, scale and access to be considered at this stage. Remaining matters are reserved. The appeal site is an area of land that directly abuts the edge of the existing built up area of Market Harborough. It is on an incline, running uphill to the northwest. The densely developed Tymecrosse Gardens adjoins the site to the southeast from which access would be gained.
7. The site is currently overgrown, boarded by a number of mature trees and is physically demarcated from the wider and more open fields that extend into the countryside to the northwest by a post and rail fence and some trees. It is in effect a smaller and distinct rectangular parcel of land which does not appear to be managed or used for a specific rural function. In this way it appears somewhat divorced from the more 'open' countryside as it extends northwest. Be this as it may, this does not downplay the positive contribution it makes to the undeveloped character of the countryside as a whole and how it characterises the edge of the settlement at this point. As such the development of the site and encroachment of built form beyond the existing settlement limits would result in some harm. Albeit such that would be limited in the above context.
8. It is common ground between the appellant and the Council that the latter is unable to demonstrate the supply of housing sites as required by the Framework¹. This engages the presumption in favour of sustainable development asserted by paragraph 14. Specifically, that planning permission should be granted for such unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
9. As I have stated, there would be some harm from the proposed development to the character and appearance of the area which would be limited by virtue of a number of site specific factors. Layout is fixed for consideration at this stage albeit the final design is not. The latter could therefore conceivably change. I do not consider the layout to be unduly harmful despite the fact that it would not replicate the established layout of Tymecrosse Gardens. This is arguably an example of its type and age. The proposed development could be read very similar, reinforcing the concept that settlements evolve and new design/layout should not be resisted solely for the reason that it is different². In essence, the proposed development would be built up yet low density and an arrangement of closely related dwellings, reflective of the existing urban grain.
10. There is a defined edge to the settlement at the point where the appeal site abuts the back edge of Tymecrosse Gardens and there is a distinct rural feel to it. However, the proposed scheme would consume a contextually small area of

¹ The National Planning Policy Framework 2012

² Paragraph 60 of the Framework

land, creating another defined edge, at a point where the countryside becomes wider and more open in character terms. In effect, the scheme would appear to be a logical extension of the settlement at this point.

11. With this in mind, my consideration of the level of harm to the character and appearance of the area that would arise out of the proposed development has not changed. The finding of any harm would nonetheless bring the proposed development into conflict with Policies CS2 and CS17 of the Core Strategy³ which seek to, amongst other things, direct new development to within settlements and restrict it in the countryside. As policies relevant to the supply of housing however, their provisions in this respect in the context of the housing supply situation, are out of date and as such I ascribe them only limited weight. I shall come back to this matter later and how it sits with the overall balance.

Other Matters

12. There have been detailed representations from both the Council and the appellant on matters of drainage and flood risk. Local residents have been supported by surveys and opinions of a qualified specialist. The Council's stance is backed by Leicestershire County Council in their role as the Lead Local Flood Authority (LLFA).
13. The evidence shows that a considerable amount of work has gone into producing a detailed drainage strategy for the appeal site which would incorporate a number of measures in accordance with sustainable techniques to address, in the main, surface water runoff. The strategy has been drawn up and revised in accordance with dialogue with the relevant specialist authority on matters of drainage and flood risk in new development, the LLFA. These include, amongst other things, attenuation ponds and subterranean tanks. The scheme has regard to estimated run off rates and how water is discharged into water courses as well as the existing characteristics of the site and its ability to drain effectively.
14. As a scheme seeking outline planning permission, there is clearly some additional work that would be necessary with regard to this issue that the LLFA, in conjunction with the Council, have suggested be dealt with by planning conditions. Clearly once final details of design/appearance and landscaping are known (reserved matters for the purposes of the appeal scheme) the extent, type and design of this work that will form the final drainage strategy will also be known.
15. In this regard, the characteristics of the site and the scale of the proposed development, I am of the view that there is sufficient information available to be content that a final workable scheme is possible for the site. Consequently, I am satisfied that the proposed development would not increase flood risk from run off, protecting as it would the living conditions of existing and future occupiers.
16. I also note that the Council elected not to defend their second reason for refusal which concerned the matter of flood risk arising from drainage. This was following receipt of independent advice. Advice that did not come from either the Council or the LLFA.

³ Harborough District Local Development Framework: Core Strategy 2006-2028 (2011)

17. Staying with the matter of the living conditions of existing neighbouring occupiers, there has been some concern expressed over the potential for new dwellings to overlook and over shadow existing and add to noise, light and odour pollution. The root of this concern appears to be the elevated nature of the dwellings forming the appeal scheme relative to those that fall on the northwestern side of Tymecrosse Gardens.
18. Since design is a reserved matter, the final location of windows and in some cases the size and location of gardens may alter going forward. In addition, the strip of planted land forming the proposed wildlife corridor would also have a mitigating effect on any perceived overlooking along with the separation distance between existing and proposed dwellings. This separation distance would also limit any significant reduction in light as would the use of bungalows. Furthermore, the dense planting and proximity of existing raised ground levels relative to existing rear gardens already has a degree of reducing effect on light into the rear of the existing dwellings. In essence, the proposed development would not make the existing situation materially worse.
19. On the matter of noise, odour and light, the former two would be limited to a short term effect during construction, the hours for which can be restricted to be between reasonable times of specified days by planning conditions. With regard to additional light this would be from private dwellings which in itself would not be significant. Certainly no materially worse than the type and spill of light that would be experienced in a densely populated residential area.
20. There will be some additional traffic associated with the construction phase of the project and the effect of this will also be time limited. The Council have suggested conditions to deal with construction traffic access and management in response to issues raised by Leicestershire County Council as the Highways Authority. Ostensibly this would be to look at the construction access coming into the site directly off the main road to the southwest rather than going through Tymecrosse Gardens. To my mind this seems eminently sensible in the interests of minimising the effect on residents' living conditions. Any damage caused by the construction phase to third party land or property would be a civil matter and not a reason to withhold planning permission.
21. There will be additional traffic associated with journeys to and from the appeal site via what would be the new access through the hammerhead at the north eastern end of Tymecrosse Gardens. However it would not be a constant stream given it would only be to access the 16 new dwellings on a cul de sac. Dwellings that would be within easy reach of a range of services that can be accessed by means other than the private car. I accept the development of the existing hammerhead would create a right angled bend but it appears to be of sufficient width to be able to carry a two lane single carriageway estate road and footway. Further, the angle of the bend would have a reducing effect on vehicle speed which in my view is positive for highway safety.
22. Concern has been expressed over the distance the occupiers of the furthest away dwelling to the junction with Tymecrosse Gardens would have to pull a bin to be collected since it appears to be the intention of the appellant for the road to remain private. I am of the view that a condition is an appropriate method to secure areas for refuse storage and collection and I am content that the distance an occupier may be away from that area once it is agreed would be a matter to consider for the occupier whoever they may be in the future.

23. The evidence indicates that there is some archaeological interest to the site. To this end, the relevant advisors from Leicestershire County Council have suggested a series of conditions to explore and record the archaeology of the appeal site. Noting as they do the proposal to retain surface features such as an earth mound to a 19th century mill. Since there is a possibility of impacted remains on the site, I am minded to agree with the approach suggested so that any areas of interest can be recorded and dealt with accordingly.
24. From an ecological perspective, I note the investigative work that was undertaken and the relevant documents that were submitted with the planning application. The provision of a wildlife corridor at the site has the potential to improve biodiversity in local plant species terms and the retention of certain trees and hedges would assist bat habitat and feeding. A number of conditions have been suggested to secure these elements and ensure that works are undertaken outside of the bird breeding season. Through the use of such reasonable controls, I am satisfied that the proposed development would not be harmful in ecological terms.
25. In terms of whether the granting of a planning permission in respect of the proposed development would set a precedent, this can only be done in the courts. Each decision on a development proposal is a material consideration. In addition, each planning application is determined on its own merits. What this means is that a planning permission may be granted for a given development in one location and not for the same in another. This can be for reasons relating to the development itself, relevant development plan policies or matters specific to the site in question.

Conditions

26. I have had regard to the conditions suggested by the Council. I have attached the following for the reasons I have given and made some changes to wording in the interests of clarity and enforceability. To avoid unnecessary repetition, the objectives of some have been subsumed into others.
27. As well as the standard time conditions, reserved matters and date for the approval of the final reserved matter, I have set out the approved plans for certainty. I have not included suggested condition 4 since design is a reserved matter and there would be sufficient opportunity at that stage to establish parameters therefore.
28. Since landscaping is a reserved matter the agreement of a scheme by condition is not necessary. Appropriate controls over the time period for maintenance of the landscaping that is agreed at reserved matters stage can be specified as and when appropriate. The Council have set out that the hedges to the north, west and south boundaries of the site shall be retained which, in the interests of the character of the area, I feel is reasonable. I have therefore set out that this should be included in the landscaping reserved matter.
29. I note suggested condition 8 which sets out that, amongst other things, gates and barriers should be set back a minimum distance from the highway boundary. Given the proposed estate road is intended to remain private I do have doubts about how enforceable such a condition may be. Moreover, the Council have not suggested a distance from the highway in any event.

30. Suggested condition 9 states that highway design should comply with the standards set out by Leicestershire County Council's guidance on the matter and details thereof should therefore be submitted and approved. Whilst the layout of the proposed development is fixed, final design and landscaping works may alter the size, location and orientation of parking and turning spaces. As such, and in the interests of the proper functioning of the scheme, I have stated that such details should be agreed. Given the nature of this detail it would be prudent to agree it prior to the commencement of development. The detail required by suggested condition 10, given this, would seem superfluous. I consider that the objectives of suggested condition 11 can be achieved through those imposed to agree the final details of the drainage strategy for the entire site. I shall come onto this later.
31. With regard to parking provision within the development, this is shown on the proposed plans and precise details thereof will be required by another condition. I consider therefore that there are sufficient other controlling measures to negate the need for suggested condition 12. I have imposed a condition, having regard to my findings, requiring a traffic management plan for the construction phase, stipulating what I consider to be reasonable routing and operating times to which the appellant has not objected. This detail, for practical reasons, needs to be agreed prior to the commencement of any works on site. For functioning and connectivity reasons, I have imposed a condition requiring details to be agreed of the proposed footpath/cycle path link shown on the plans. The detail should be agreed prior to the commencement of development, with it being reasonable to implement it prior to first occupation.
32. Given the ecological potential of the site, and to ensure the continued protection of certain species that may be resident in and around it, I have imposed the content of suggested condition 15. Requirements relate to the wildlife corridor, a management plan for it, provision for works to take place outside of the bird breeding season and updated survey information for the site should there be a delay in commencement given the relative accuracy and 'life' of the existing survey data. It would be appropriate to agree the necessary detail for the wildlife corridor and its management prior to the commencement of development.
33. A construction method statement would be appropriate given the proximity of the works to a residential area. Such a statement will set out, amongst other things, hours of operation and methods for site operations during the construction phase. This detail, given what it seeks to achieve, needs to be agreed prior to the commencement of development. Suggested conditions 17 through 22 deal with the final design, methods and future management of the proposed drainage scheme and are thus integral parts of the proposed development for the purposes of minimising flood risk. Given that the scheme may require additional works on site, detail needs to be agreed prior to any works taking place as and where appropriate.
34. Suggested condition 23 requires a scheme to be agreed for the provision of affordable housing. However, the bi lateral agreement under section 106 of the Act⁴ that has been submitted with the appeal documentation, as a planning obligation, adequately sets out the detail of this scheme, the number of units

⁴ Town and Country Planning Act 1990

and their future management. There is therefore no need for me to carry forward this condition.

35. The aims of suggested conditions 24 through 26 have been imposed. These deal with the initial work that will be required given the archaeological interest of the appeal site. Indeed, given its nature, this work will have to be undertaken to the satisfaction of the provision of the relevant conditions prior to the commencement of development.

Conclusion

36. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise⁵. Although the proposal would fail to comply with the aforementioned policies in terms of the suitability of the appeal site as a location for housing, due to the lack of a supply of housing sites as required by the Framework, these policies are out of date as policies relevant to the supply of housing as I have set out. Similarly, I have concluded above that they carry limited weight in relation to this issue in the overall planning balance. The presumption in favour of sustainable development in paragraph 14 of the Framework is a material consideration, which, in this case, warrants a decision other than in accordance with the development plan.
37. The appeal site is on the edge of a large settlement within which there is a range of highly accessible local services available to support it and reduce the need to travel. Beneficially, the scheme would provide for sixteen dwellings which would make a positive and notable difference to the existing under supply and provide new and mixed housing for the area as well as some affordable housing. It would result in investment of a reasonable scale in construction and the support of local services beyond. When weighing the two issues, namely the scale and benefits of the development vs the level of harm to the character and appearance of the area and all of the other alleged harms, in the context of the housing supply, it is my view that the adverse effects of the proposed development would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. The appeal scheme would therefore be sustainable development.
38. It should therefore be allowed, subject to the conditions specified in the attached schedule and the provisions of the completed legal agreement

John Morrison

INSPECTOR

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004

SCHEDULE OF CONDITIONS

- 1) Details of the appearance and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved. The landscaping reserved matter shall also set out trees and hedges that are to be retained and measures for their protection during any works and storage of materials on the site.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 03-031 revision D; 03-032, 03-033 revision B; 03-034 revision A; 03-036; 03-038; 03-051 revision B; 03-052 revision B; 03-053 revision B; 03-054 revision B and 03-055 revision A.
- 5) No development shall take place until details of the individual plot accesses, parking and turning facilities, gradients, surfacing and visibility splays have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until a scheme for the storage and collection of refuse has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development (including site clearance works or deliveries) shall take place until a construction phase traffic management plan has been submitted to and approved in writing by the local planning authority. The management plan shall include the following details:
 - Construction and delivery vehicles shall use the existing gated field access onto the B6047 only and there will be no access to the site by any construction or delivery traffic via Tymecrosse Gardens;
 - Use of the construction access by light goods vehicles shall be restricted to between the hours of 09:00 and 15:30 Mondays to Fridays, 09:00 to 13:00 on Saturdays and not at all on Sundays;
 - The surfacing, length, width and turning radii for the temporary construction access;
 - A scheme for the removal of the temporary construction access at the end of the construction period and the instatement of a footpath/cycle link in accordance with condition 8.

The approved traffic management plan shall be adhered to throughout the construction period in accordance with the approved details.
- 8) No development shall take place until details of a scheme to provide for a footpath/cycle link between the site and the B6047 have been submitted

to and approved in writing by the local planning authority. Development shall be carried out in respect of the link in accordance with the approved details prior to the occupation of the first dwelling hereby approved.

- 9) No development shall take place until details of the following have been submitted to and agreed in writing by the local planning authority, development shall then be carried out in accordance with the approved details:
- The proposed planting in the wildlife corridor shown on the plans hereby permitted which should comprise locally native species and a mixture of scrub and meadow grassland (or wet grassland if associated with a drainage scheme);
 - A biodiversity management plan setting out the proposed future management of the wildlife corridor;
 - Updated ecology surveys of the site if necessary should any works, including site clearance works, commence after two years has elapsed since the last surveys were undertaken. Recommendations of surveys shall be incorporated where reasonable and necessary into the proposed wildlife corridor and biodiversity management plan.
- 10) Works on site, including site clearance work, shall take place outside of the bird breeding season March to August.
- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- The parking of vehicles of site operatives and visitors;
 - Loading and unloading of plant and materials;
 - Storage of plant and materials used in constructing the development;
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
 - Delivery and construction working hours; and
 - The technique and measures to control the hours of use for any piling works.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 12) No development shall take place until a surface water drainage scheme has been submitted to, and approved in writing by the local planning authority. The scheme shall include:
- The utilisation of holding sustainable drainage techniques with the incorporation of sufficient treatment trains to maintain or improve the existing water quality;
 - The limitation of surface water runoff to equivalent greenfield rates/QBar rates;

- The ability to accommodate surface water runoff on site up to the critical 1 in 100 year event plus 40% allowance for climate change, based upon the submission of drainage calculations;
- A maintenance schedule for the life of the development and details of by whom such maintenance will be carried out;
- Details of the condition and capacity of the existing filter drain and uphill catchment currently served; and
- Consideration of the influences from surface water uphill of the relevant site boundary and suitable boundary drainage.

The scheme shall be fully implemented and so subsequently maintained, in accordance with the timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be approved, in writing, by the local planning authority.

Full details for the drainage proposal should be supplied, including but not limited to, headwall details, pipe protection details (e.g. trash screens), long sections and full model scenario's for the 1 in 1, 1 in 30 and 1 in 100 year + 40% climate change.

Where discharging to a sewer, this should be modelled as surcharged for all events above the 1 in 30 year, to account for the design standards of the public sewers.

- 13) No development shall take place until details in relation to the management of surface water on site during the construction period of the development hereby approved have been submitted to and approved in writing by the local planning authority. Details shall include temporary attenuation, additional treatment controls, maintenance protection and any additional infiltration areas. Development shall be carried out in accordance with the approved details.
- 14) No development shall take place until details in relation to groundwater are submitted to and approved in writing by the local planning authority. Details shall include on site borehole data, taken at a minimum of six monthly intervals, including the winter groundwater peak levels, throughout a typical 12 month scenario. This data shall be used in the consideration of the design of any attenuation features approved. Development shall be carried out in accordance with the approved details.
- 15) No development shall take place until details in relation to exceedance flow routes are submitted to and approved in writing by the local planning authority. Details should include site analysis and modelling to ensure any exceedance flow is kept within the site. Routes for such should be identified and necessary protection measures put in place. Any development relevant to the provisions of this condition shall be carried out in accordance with the approved details.
- 16) No development, demolition or site clearance works (other than those expressly permitted by this condition) shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - Trial trenching;

- A programme and methodology for site investigation and recording (including the trial trenching), assessment of results and preparation of appropriate mitigation;
- A programme for post investigation assessment;
- Provision for analysis of the site investigation and recording;
- Provision for publication and dissemination of the analysis and records of site investigation;
- Provision for archive deposition of the analysis and records of the site investigation; and
- The nomination of a competent person or organisation to undertake the works set out within the written scheme of investigation.

Development shall be carried out in accordance with the approved details.

- 17) The development hereby permitted shall not be first occupied until the site investigation assessment has been completed in accordance with the programmes set out in the approved written scheme of investigation and the provision for the analysis, publication and dissemination of the results and archive deposition have been secured.

Richborough Estates