



Appeal Decision

Hearing Held on 16 November 2017

Site visit made on 16 November 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 18th December 2017

Appeal Ref: APP/G2435/W/17/3173133

Talbot Place, Donisthorpe, Leicestershire DE12 7PU

- 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 J F & B M Gray against the decision of North West Leicestershire District Council.
 - The application Ref 16/00102/OUTM, dated 26 January 2016, was refused by notice dated 8 March 2017.
 - The development proposed is the erection of up to 30 no. dwellings and associated works (outline: access).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by J F & B M Gray against North West Leicestershire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. At the hearing the Council indicated that it intended to adopt the North West Leicestershire Local Plan 2011-2031 (2017) (LP) on 21 November 2017. Subsequent to that, the Council has confirmed that the LP was adopted at a meeting of the Council and that the new LP has superseded all policies from the North West Leicestershire Local Plan 2002.
4. The appeal proposal was originally submitted in outline with the means of access and layout being considered at the outline stage. During the course of the consideration of the application it has been confirmed that the application was to be considered on the basis of the means of access only and I have dealt with the appeal on this basis. Consequently, I have considered the appeal on the basis of the layout shown on the drawings as indicative of a possible way of developing the site.

Main Issue

5. The main issue is the effect of the development on the character and appearance of the area.

Reasons

6. The appeal site is located to the south-east of the existing residential development on Talbot Place. To the north east is an area of allotments and an area of tree planting whilst to the south west of the site is a continuation of the existing agricultural field. On the opposite side of the public right of way to the south-east are a number of agricultural buildings. The site itself is an open area of land.
7. From the evidence before me, outline planning permission¹ had been granted on land to the south-west of the Talbot Place properties fronting Acresford Road, although at the time of the hearing the reserved matters submission had yet to be determined by the Council. Notwithstanding that, some site clearance works had been undertaken and further works were underway at the time of my site visit.
8. Policy S2 of the LP sets out that a settlement hierarchy will be used when assessing the suitability of a settlement for new development. Donisthorpe is categorised as a sustainable village which has a limited range of services and facilities where a limited amount of growth will take place within the defined Limits to Development.
9. As discussed at the hearing, the appeal site is located outside of the old and new 'Limits to Development' boundary which is identified on Inset 18 of the LP map. Policy S3 of the LP states that land outside the Limits of Development is identified as countryside. As such, in planning policy terms, the appeal site is located in the countryside. The Policy then goes on to set out a range of criterion where development would be supported. It is common ground that the appeal proposal does not fall within any of the listed criterion.
10. Notwithstanding that, the Appellants assert that neither Policy S2 nor S3 explicitly prevents the development of the site as they are essentially worded in a manner that supports development either within the Limits of Development or in accordance with a set of criteria where uses will be supported (as opposed to not supporting development outside of the Limits of Development or other development not within the listed criterion).
11. To my mind, the LP policies set out a clear direction of where development should be permitted. The supporting text at paragraph 5.18 also provides some further clarity in that any further development (at Donisthorpe or other sustainable villages) *"will be restricted to either infilling or previously developed land which is well related to the settlement concerned"*.
12. Given the location of the site to the rear of the existing development on Talbot Place I consider that the proposal could not be considered to be infilling. Furthermore, the appeal site is not located within the defined Limits to Development and does not constitute previously developed land. Taking the above into account, I am firmly of the view that the proposal does not accord with the provisions of Policies S2 or S3 of the LP.
13. Turning to the effects of the development on the character and appearance of the area, it is noted that the appeal site does not lie within any special landscape designation and in the context of the National Planning Policy Framework (the Framework) is not a valued landscape.

¹ Reference 14/00802/OUTM

14. The Appellants have also drawn my attention to the Landscape and Visual Appraisal for the Acresford Road site and the Council's consideration of the effect on landscape and visual impact. Given the location of the site, there are many similarities in the landscape and visual impact of the respective developments. However, it is significant that the current proposal would extend the depth of development from Acresford Road (through Talbot Place) well beyond the existing development to the north of the site, which is in contrast to the extension of the linear development pattern of the Acresford Road scheme.
15. Given the location of the appeal site to the south-east of the Talbot Place properties, and the lack of any significant built form beyond the south-eastern boundary of the existing and proposed development, the site is more closely associated with the undeveloped rural landscape including the cluster of farm buildings to the south-east.
16. Taking all the above into account, the development would have an undesirable urbanising effect on the local landscape and would result in the permanent loss of countryside. In coming to that view, I acknowledge that the level of harm which would arise is not significant and that the development of this site for residential purposes would not be significantly worse than any other greenfield site. Nevertheless, some harm would result.
17. I have also had regard to the circumstances in that the Acresford Road site was granted planning permission by the Council. However, the Officer's report in that case was mindful of the Council's five year supply of housing and that the development plan at that time was adopted prior to 2004. It also acknowledged that, in accordance with paragraph 215 of the Framework, due weight should be given to these policies, including the Limits to Development.
18. Given the adoption of the new LP, there is now a materially different development plan context between the two schemes. I therefore give the Acresford Road decision only moderate weight. Moreover, each development should be assessed on its individual merits.
19. For the above reasons, the proposal would result in harm to the character and appearance of the area and would be contrary to Policies S2 and S3 of the LP which seek to direct development to the most appropriate locations and maintain the environmental, economic and social value of the countryside.

Other matters

20. The decision notice for the application also included a reason for refusal based upon the River Mease Special Area of Conservation (SAC). However, following an appeal decision at Normanton Road Packington² the Council withdrew this reason for refusal on 27 July 2017 subject to appropriate mitigation.
21. With that in mind, the Appellants have provided a Unilateral Undertaking that would provide for a financial sum of up to a maximum of £18,990 (index linked) which would be dependent on the number of dwellings/bedrooms in accordance with the document 'River Mease Developer Contribution Scheme Second Development Window' (River Mease DCS2).

² APP/G2435/W/17/3168722 dated 21 July 2017

22. Concern has also been raised over the drainage aspects of the development and the capacity of the Donisthorpe treatment works. Whilst some details of drainage matters have been provided by the Appellants, it is not clear whether this would provide an acceptable means of drainage for the site. Notwithstanding that, and as discussed at the hearing, I am satisfied that this could be dealt with by means of a suitably worded planning condition which would allow flexibility between a mains drainage or a non-mains drainage scheme. Given the above, the proposal would not cause significant harm to the River Mease SAC.
23. To the south-east of the site is Donisthorpe Hall which is a Grade II Listed Building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of this building. In this case, I agree with the Council that the development would not have an adverse impact on the setting of this building. Therefore, I find that the proposal would accord with the conservation aims of the Framework.
24. I have also had regard to the other concerns raised in the representations on the application and the appeal, including matters relating to increased traffic and parking (including construction traffic). However, none of the matters raised amount to a reason why planning permission should be withheld, and any adverse issue could be dealt with by suitably worded planning conditions should I be minded to allow the appeal.

Planning balance

25. It is common ground between the main parties that the Council can demonstrate a deliverable 5 year supply of housing and I have no reason to disagree. The recent adoption of the LP also means that the Development Plan for North West Leicestershire is up-to-date and therefore the second bullet point of paragraph 14 of Framework does not come into play.
26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, I have found conflict with the LP, and some harm to the character and appearance of the area.
27. I am mindful of the requirements of paragraph 47 of the Framework which seeks to significantly boost the supply of housing. The proposal would deliver much needed new housing, of which a minimum of 30% would be affordable housing, secured by the Unilateral Undertaking. The Council confirmed at the hearing that there is an unmet need for such housing and as such this weighs in favour of the development.
28. I am also conscious that the development would provide positive economic benefits to the local area, and therefore accord with the overall economic aspects of sustainable development. It is also common ground that the site is sustainably located in that there is reasonable access to sustainable transport provision and is not especially remote from services or local facilities.
29. However, the conflict with the spatial strategy of the newly adopted LP, together with the harm to the local character and appearance of the area is significant and in this case is a determinative factor. Consequently, I consider

that the positive factors of the development do not outweigh the conflict with the LP.

30. In addition to the above, I acknowledge that the Unilateral Undertaking provided for a range of other infrastructure matters. The matters contained in the agreement are designed to mitigate the effects of the development (save for affordable housing), and given my conclusions on the overall development I have not considered these matters any further.

Conclusion

31. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Timothy	CT Planning
Richard Kimblin QC	No 5 Chambers

FOR THE LOCAL PLANNING AUTHORITY:

James Mattley	Principal Planning Officer
Ian Jordan	Planning Policy
Sima Odedra	Principal Solicitor - Planning

INTERESTED PARTY:

Andrew Tyrer	Leicestershire County Council
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DOCUMENTS submitted at the Hearing

1. Inset Map 18: Moira and Donisthorpe from the newly adopted LP.
2. Copy of the publication versions of the LP (with track changes for the main and additional modifications).
3. Copy of the completed Unilateral Undertaking