



Appeal Decision

Site visit made on 22 January 2018

by **Zoe Raygen Dip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 February 2018

Appeal Ref: APP/A3010/W/17/3183650

**Land at St Johns College Farm and adjacent to Lexington Gardens,
Tuxford, Newark NG22 0LN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Capla Developments Ltd against the decision of Bassetlaw District Council.
 - The application Ref 17/00285/FUL, dated 23 February 2017, was refused by notice dated 3 August 2017.
 - The development is described as the construction of 71 dwellings, associated garages, driveways, roadways and sewers.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. During the course of the application the number of dwellings was reduced from 71 to 70. I have determined the appeal on that basis.
3. A planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted as part of the appeal. The S106 agreement is a material consideration and I return later to consider its specific provisions in more detail.
4. The appellant has clarified that the house type B3 would be a two storey house as shown on plan ref 7A/49/2015, despite it being described as a three storey house on the key on plan ref 20L/49/2015.

Main Issues

5. The main issues are:
 - Whether or not the proposal makes acceptable provision for infrastructure with particular regard to education and affordable housing.
 - The effect of the proposal on the living conditions of the occupiers of neighbouring residential properties
 - Whether the proposal would provide acceptable living conditions for future residents

- whether the development would be consistent with local and national policies relating to its countryside location
- whether or not the proposal would provide an acceptable mix of housing
- The effect of the proposal on the character and appearance of the area, including whether the proposal would preserve or enhance the character or appearance of the Tuxford Conservation Area

Reasons

Infrastructure

6. Policy DM11 of the Core Strategy states that all applications will be expected to demonstrate that the necessary infrastructure (social, physical and green) will be in place in advance of, or can be provided in tandem with, new development.
7. Nottinghamshire County Council has submitted evidence that the proposal would lead to a requirement for an additional 15 primary school places and there is no capacity at the local school, Tuxford Primary Academy to accommodate the places. As a result, it requests a contribution of £171,825 towards primary school places. This is a reduction of £11,455 from a previously requested figure of £183,280 following the decrease in the number of houses proposed on the site.
8. The submitted S106 agreement contains an obligation requiring the payment of a contribution of £171,825 towards primary school places. Nottinghamshire County Council has confirmed that the contribution would be made to Tuxford Primary Academy and that no other contributions have been secured. I am satisfied therefore that the obligation meets the requirements of Regulations 122 (2) and 123 of the Community Infrastructure Levy Regulations 123. The proposal would therefore make acceptable provision for education infrastructure.
9. Policy CS6 of the Core Strategy requires that all housing development resulting in a net gain of one or more units will be required to contribute towards the achievement of an affordable housing target of at least 35% for Tuxford. This will be either through on-site provision (where appropriate) or through a financial contribution to the delivery or improvement of affordable housing elsewhere within Tuxford or in surrounding Rural Service Centres. This policy requirement would equate to the provision of 25 affordable units on the appeal site.
10. Paragraph 50 of the Framework, which is a material consideration, requires that affordable housing should be provided on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified. In this instance, I have not been supplied with any indication of what the financial contribution broadly equivalent to the provision of 25 dwellings may be. Furthermore, taking on board the wording of Policy CS6 and the Framework I have been provided with no evidence which demonstrates that the provision of affordable housing on site would not be appropriate in this instance.
11. The appellants have submitted a Viability Report 2017 (VR) which demonstrates that the appeal site would only have a surplus of £264,457.15 which would be available for planning contributions. There is though, no discussion of the relative merits of providing affordable housing on site or off site and the viability implications of each scenario. Taking into account the £171,825 contribution

towards primary school places this would leave a £92, 632.15 contribution available towards off-site affordable housing.

12. Although the Council state the VR has not been independently assessed as required by Policy DM11 of the Core Strategy, it has had opportunity to carry out such an exercise, both as part of the application process and the subsequent appeal, but none has been carried out. As a result, the Council has not brought to my attention any specific issues within the VR which they disagree with. Therefore, on the evidence before me I have to accept the findings of the VR.
13. Nonetheless the submitted S106 Agreement only includes a contribution of £81,177.15 towards affordable housing. While this is the figure contained within the Council's committee report when the planning application was being considered, this was on the basis of a higher level of contribution towards primary education than has been subsequently agreed. At the time of the Committee report the surplus identified within the VR was split between the education and affordable housing provision. There has been no explanation as to why the affordable housing contribution has not increased to take account of the lower education contribution, given the findings of the VR report.
14. I appreciate that paragraph 205 of the Framework requires that decision makers should be flexible and take account of changes in market conditions to prevent planned development from being stalled. However, for the reasons above I am unable to conclude that the proposal makes acceptable provision for affordable housing. As a result the proposal is in conflict with Policies CS6 and DM11 of the Core Strategy and paragraph 50 of the Framework.
15. The appellant refers to planning application 15/00690/OUT which was granted planning permission for 86 dwellings at Ashvale Road in Tuxford. The application was considered with a viability report which resulted in a reduction in the number of affordable dwellings on the site and was not the subject of an independent assessment. However, I do not have full details of the application, and cannot be sure it is comparable to the proposals before me, particularly in relation to whether the affordable housing would be provided on site or via a contribution and whether justification was submitted in this respect. In any case, I have determined the appeal based on its own merits.

Living conditions

16. Although not a reason for refusal made by the Council, a number of neighbouring residents, chiefly on Lexington Gardens, objected to the appeal scheme on the basis of impact upon living conditions. From the letters submitted and my observations on site these relate to light, outlook and privacy. My site visit included visits to 13 and 22 Lexington Gardens. The appellant has had a copy of the letters submitted, and has had the opportunity to comment on the contents.
17. No 13 Lexington Gardens was originally a dormer bungalow with a detached garage. However, it has had a two storey side extension which has brought the side elevation of the property closer to the boundary with the appeal site than shown on the submitted site plan. Furthermore, the property has two clear glazed windows at ground floor which serve a kitchen and utility room and a large window to a bedroom at first floor with a Juliette balcony.

18. Plot 1 on the submitted site layout would be adjacent to No 13, and there would be a three storey semi-detached property located on the plot, set forward of No 13. Given the siting of the proposed house, the windows on the side elevation of No 13 would retain a good outlook, with only oblique views of the property available. Furthermore, there would be no material reduction in light received by the windows at No 13.
19. However, the proximity of No 13 to the boundary of plot 1 would mean that there would be opportunity for overlooking from the windows of No 13 into the garden of plot 1. While overlooking from ground floor windows in No 13 could be mitigated through the provision of boundary fencing between the properties, this would not sufficiently address the potential for overlooking from the large first floor bedroom window. Furthermore, users of the garden of plot 1 would have a direct view into the bedroom of No 13 leading to a harmful loss of privacy for the occupiers of No 13, and unacceptable living conditions for the future occupiers of plot 1.
20. No 22 Lexington Gardens is a chalet bungalow with a modest garden that would back onto the appeal site. Currently, the rear windows and garden has an open outlook over the appeal site. The appellant has confirmed that the dwelling on plot 9 of the proposed layout would have two storeys rather than the three storeys indicated on plan 20L/49/2015. Nevertheless, it would extend across the whole of the width of the garden of No 22. From my observations on site the side elevation of the proposed dwelling would be close enough to dominate the outlook from the rear windows of No 22 and from much of the rear garden. Because of its height and width, it would have an unpleasantly enclosing and overbearing effect on the garden and on the outlook from the ground floor windows of No 22. Given the orientation of the properties it is also likely that there would be material harm to the level of light received in the garden of No 22.
21. From my observations on site and the submitted plans, I am satisfied that the juxtaposition of the remainder of the proposed and existing houses, and the intervening distances between them are sufficient to ensure that there would not be material harm to residents living conditions.
22. I have also had regard to the relationship between the existing farm and the proposed houses. Houses on the western boundary of the proposal would be close to agricultural sheds and grazing land for cattle. During calving time, it may be that activity around the sheds would be more intense and ongoing through the night. I accept that noise and odours may be different close to the farm and throughout the year. However, I have seen no substantive evidence to suggest that the living conditions of future residents would be materially harmed, or that the construction process would place a level of stress on the cattle that would be considered unacceptably harmful.
23. For the reasons above, I conclude that the proposal would be harmful to the living conditions of the occupiers of 13 and 22 Lexington Gardens and would not provide an acceptable level of living conditions for the future occupiers of plot 1 of the proposal with particular regard to privacy (no 13 and plot 1), outlook and light (No 22). It would therefore be in conflict with Policy DM4 of the Core Strategy and paragraph 17 of the Framework which require, amongst other things that development does not have a detrimental effect on the residential

amenity of nearby residents and that planning should always seek to secure a good standard of amenity for all future occupants of buildings.

Housing mix

24. Objective 2 of the TNP, referred to in the Council's reasons for refusal, requires that future housing growth within Tuxford meets the needs of the local community whilst minimising the impact on the natural and built environment. I return to the impact on the natural and built environment below. However, the TNP provides evidence from the Strategic Housing Market Assessment 2014(SHMA) that states that 38% of households within the district will be over 65 by 2031.
25. Statistics within the TNP show that Tuxford has a higher percentage of 15-64 year olds than Bassetlaw as a whole. It is likely therefore that Tuxford would have a similar if not greater number of households over 65 by 2031 as predicted in the SHMA. Furthermore, between 2001 and 2011 there was a 19% increase in the number of people over 65, together with a 5% increase in the population of Tuxford as a whole. Therefore, based on the evidence it is expected, within the TNP, that the focus of new market housing provision would be two or three bedroom properties. In this context, Policy 5 of the TNP expects that where possible housing development should provide a housing mix that reflects local need. This should include smaller market dwellings to suit older people and for starter homes.
26. The Council within its statement provide evidence from the up to date North Derbyshire and Bassetlaw SHMA-Objectively Assessed Need 2017. The study gives two assessments for Bassetlaw of the estimated size mix of market dwellings, one using the CLG household projections and the other an economic led growth scenario. There is little difference in the requirements within both sets of figure, but what is apparent is that there is a greater requirement for two and three bedroom accommodation (78-80%) rather than houses with four and above bedrooms (18-21%).
27. The appeal proposal would, according to the Council deliver 54% two and three bedroom properties and 46% four plus bedroom properties. The appellant does not dispute these figures, but makes the point that the proposal would go some way to meeting housing need across the district. Furthermore, even taking into account the lowest predictions, if the appeal scheme were allowed there would still be a requirement for 98% of the predicted four bedroom houses required across the district. While this may be the case, in this instance, based on the evidence before me, the proportion of two and three bedroom properties within the appeal proposal would be substantially below the predicted requirement for Bassetlaw and would not be in accordance with the local need identified in the TNP.
28. For the reasons above the proposal would not provide an acceptable mix of housing. It would therefore be contrary to Policy DM5 of the Core Strategy and Policy 5 and objective 2 of the TNP. As well as the requirements outlined above, these require that proposals for new housing development delivers housing of a size appropriate to the site and locality.

Location

29. Policy CS1 of the Bassetlaw District Local Development Framework Core Strategy and Development Management Policies Development Plan Document 2011 (Core Strategy) sets out the spatial strategy for the sustainable development of Bassetlaw, which supports a policy of settlement hierarchy to ensure that the scale of new development is appropriate in relation to the size, function and regeneration opportunities of each tier.
30. There is no dispute between the parties that Tuxford is a Local Service Centre which, in accordance with Policy CS1 should accommodate new dwellings within the defined Development Boundaries. There is also no disagreement between the parties that the appeal site lies beyond, but adjacent to the defined Development Boundary for Tuxford and in this respect would not meet the requirements of Policy CS1.
31. However, in this instance the parties agree that the Council is unable to demonstrate a five year housing land supply. As a result, paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up to date.
32. Consequently, the so-called tilted balance referred to in paragraph 14 of the Framework is engaged. In such circumstances the presumption in favour of sustainable development means that permission should be granted unless consequent adverse impacts of the scheme significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole or specific policies in the Framework indicate that development should be restricted. This is also reflected in Policy CS1 which states that additional permissions may be granted where the Council are satisfied that the proposal will be of a benefit in addressing the Council's five year housing land supply. This part of the Policy therefore attracts weight, but needs to be considered in the context of the Framework as a whole.
33. Paragraph 55 of the Framework seeks to promote sustainable development in rural areas by the location of housing where it will enhance or maintain the vitality of rural communities and avoid isolated dwellings in the open countryside. The appeal site is located adjacent to a row of houses on Lexington Gardens. As a result, it would be viewed within the context of built development within Tuxford and would not therefore be physically isolated.
34. Local Service Centres are defined within Policy CS1 as being settlements with smaller regeneration opportunities and the services, facilities and development opportunities available to support moderate levels of growth. The explanatory text to Policy CS6 states that Tuxford is well placed, and has the right mix of services, facilities and employment provision, to expand its role as a key Local Service Centre and become a sustainable town providing local employment opportunities and services and facilities to a wider rural area. To this end, greenfield extensions to the town will be required to deliver the levels of housing proposed.
35. I saw at my site visit that Tuxford has a wide range of services, some of which would be within a reasonable walking distance to the appeal site. As a result, future occupiers of the proposed houses would be able to conveniently use local facilities, adding to the vitality of the local community and helping to sustain local services. Furthermore, the proximity of the appeal site to the available

facilities, means that the potential reliance of future occupiers on using the motor car would be reduced. As a result the aims of paragraph 17 of the Framework to make the fullest possible use of public transport, walking and cycling and focusing significant development in sustainable locations would be met. I am satisfied therefore that even though outside of the Development Boundary for Tuxford, the proposed housing would be in an accessible location that would not be functionally or physically isolated from day to day services.

36. For the reasons above I conclude that even though there would be some conflict with Policy CS1 with regard to the appeal site being beyond the development boundary there would be no conflict with paragraphs 17 and 55 of the Framework. The development would therefore be consistent with national policies relating to its countryside location.
37. The Council also refer to Policy DM3 of the Core Strategy within its reason for refusal. However, the Policy refers only to the replacement of buildings, the reuse of previously developed land in rural areas and the provision of agricultural/forestry buildings and domestic equine facilities within the open countryside. I have not taken it to be determinative in this appeal regarding open market dwellings.

Character and appearance

38. To the north of the appeal site are Lexington Gardens and Lexington Court, which are modern additions to the town and have a fairly uniform layout of a mix of dormer bungalows and two storey houses. This area is defined within the Tuxford Neighbourhood Plan 2016 (TNP) as New Suburbia.
39. Newcastle Street to the east of the appeal site is characterised by a mix of older, traditionally designed cottages and farmsteads interspersed with modern infill properties. Some are set back from the road giving opportunity for planting in front gardens adding a verdant quality to the area. At the southern end of the road adjacent to the appeal site there is a farm with agricultural land. As the appeal site is approached from the centre of Tuxford the area becomes more rural in nature. The Tuxford Conservation Area covers Newcastle Street and the adjacent agricultural land, including the appeal site.
40. The appeal site itself is a large area of undeveloped land on the edge of the built up part of Tuxford. At the time of my site visit, machinery and equipment was being stored on the western most part of the site. The eastern part is formed from rough grass and enclosed by hedgerows. It therefore contributes positively to the rural character of this part of Tuxford. The significance of the site to the value of the conservation area is that it reflects and provides an understanding of the agricultural history and setting of Tuxford.
41. Policy DM4 of the Core Strategy requires that major development is of a scale appropriate to the existing settlement and surrounding area in line with the levels of proposed growth for that settlement. Policy CS6 states that up to 4% (301 houses) of the District's housing requirement will be delivered at Tuxford through existing permissions and allocations in the Site Allocations DPD for the plan period 2010-2028. This will include greenfield extensions to the settlement. I have been provided with limited details of another development which has received planning permission in the area (planning permission 15/00690/OUT which was granted for 86 dwellings at Ashvale Road), but even taking this into account the proposed 70 dwellings would sit comfortably within the proposed

- scale of growth for Tuxford. Local residents refer to another site for 244 dwellings on Lodge Lane. However I understand this does not have planning permission.
42. The proposal for 70 dwellings would include a range of house sizes up to six bedroom. Therefore, some of the dwellings would be larger than those on Lexington Gardens and Court. However, this does not necessarily equate to harm. The larger dwellings would be mainly located to the east of the site and be sited in relatively spacious plots. Accordingly, the edge of the development in this area would be reasonably open, with garden space predominating over the built form. A condition could be attached, should the appeal be allowed, to ensure the retention of the hedgerows, marking the historic field boundaries.
43. To the west of the site the layout would be more dense. However, the housing closest to the historic area of Tuxford would be two storey with materials reflecting the local vernacular of the area. In addition the properties would be sited at fairly regular intervals, giving some rhythm to the built form as per the existing housing on Lexington Gardens. Therefore, even though some of the properties would be terraced there would still be sufficient space between the individual blocks to give a spacious character to the edge of the development together with views through to existing properties.
44. The TNP highlights that connectivity around the appeal site is relatively low. However, I am satisfied that the two proposed access points into the appeal site would adequately provide connections between the proposed and the existing housing within Tuxford.
45. I acknowledge that some of the proposed houses would have three storeys. As shown on the plans submitted these would have two storeys with rooms in the roof. As a consequence, they would not be significantly higher than the two storey properties on the adjacent new suburbia character area. In addition, the number of proposed three storey properties on the edge of the proposal would be limited, so that an overly urban townscape would be avoided in this rural location. Furthermore, I saw other three storey properties on Newcastle Street, integrated in the streetscene. Those on the appeal site would not therefore be untypical or unique within Tuxford.
46. As a result, while the character of the area would change, views into the site when approaching Tuxford from the south along Egmonton Road would not be materially harmful to the rural character and appearance of the area. There would still be a large amount of agricultural land to the south, some of which is covered by the conservation area designation so that the agricultural setting and significance of the southern approach to Tuxford would not be materially harmed. Accordingly, I am satisfied that the proposed development would not appear incongruous or out of keeping with the character and appearance of Tuxford and would represent an appropriate extension to the village. As a result, the character and appearance of the CA would be preserved.
47. The Council in its Committee report states that the site is within the Bassetlaw Landscape Character Assessment area MN PZ 11. The overall landscape condition in the area is described as good, which is visually coherent with a strong functional integrity. The aim is to conserve and reinforce the landscape character of the area. In terms of built features, the aim is to retain the open rural character of the landscape by concentrating new development around existing settlements, including Tuxford, and reinforcing the local vernacular in

new development. This reinforces my view that the proposal would not be materially harmful.

48. For the reasons above, I conclude that the proposal would not be harmful to the character and appearance of the area and would preserve the character and appearance of the Conservation Area. There would therefore be no conflict with Policies DM4 and DM8 of the Core Strategy and Policy 3 and Objective 3 of the Tuxford Neighbourhood Plan (TNP). These require that development is of good design that complements and enhances the character of the built, historic and natural environment, new housing is integrated with the existing settlement pattern and the historic environment is protected.

Other matters

49. The appeal site is close to former farmstead buildings at 91 Newcastle Street, which are listed buildings grade II. The Council considers that the proposal would not have a harmful impact on the setting of these listed buildings. Given the degree of separation between the buildings and the appeal site in combination with the sensitive design of those houses closest to the listed buildings, and the use of vernacular materials then I have no reason to disagree with the findings of the Council.
50. The appellant queries the Council's reason for refusal regarding the provision of affordable housing, and other infrastructure given that this is not reflected in the minutes of the relevant Planning Committee. The Council comment that the application was referred to the Planning Consultation Group to agree the reasons for refusal, which is normal practice. However, I have, as required, determined the appeal based on all the evidence in front of me.
51. The Council refer to Policy 6 of the TNP within one of its reasons for refusal. However, this Policy relates to Infill Development. Although the TNP does not include a definition of infill development the explanatory text refers to sites within the existing town for infill or redevelopment. I am not persuaded that this description includes the appeal site and therefore Policy 6 has not been determinative in the assessment of this appeal.

Planning Balance and Conclusion

52. The agreed lack of five year housing land supply means that the relevant policies for the supply of housing land cannot be considered up-to-date. This does not though, render all of the Policies in the development plan out of date. In these circumstances, and in relation to decision taking, 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.
53. Therefore I give any conflict with Policy CS1 limited weight. The provision of 70 houses on the appeal site, in what I have found to be an accessible location would therefore help address the undersupply of housing. However, I have found that the mix of housing would not meet the local, long term need in the area. Furthermore, I cannot be sure that the provision made for affordable housing is acceptable. The social benefits of the housing are therefore limited by

these shortcomings, and therefore I only give the social benefits of the new houses moderate weight.

54. There would be economic benefits of the scheme both while the houses were being constructed and resulting from future residents using the local facilities contributing to the local economy. However, the economic benefits through construction would be temporary and given the number of houses proposed I attach moderate weight to the other economic benefits highlighted.
55. I have found that the proposal would not provide an acceptable mix of housing which would be appropriate for Tuxford. Furthermore, I cannot be sure, based on the evidence before me that the proposal would provide an acceptable level of affordable housing. Moreover, the proposal would be harmful to and would not provide a good level of resident's living conditions. As a result, the proposal would not accord with the social role of planning in these respects, and I give this significant weight in my decision.
56. All in all, I consider that the totality of the harm that would be a consequence of the significant adverse impacts I have identified would significantly and demonstrably outweigh the 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.
57. Therefore, in the circumstances of this appeal, there are no material considerations to justify making a decision other than in accordance with the development plan. For this reason, and having regard to all other matters raised I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR