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## Appeal Decision

Site visit made on 20 March 2018

**by Katie McDonald MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: Friday 20<sup>th</sup> April 2018.**

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**Appeal Ref: APP/F1040/W/17/3191604**

**Askew Lodge, Milton Road, Repton, Derby DE65 6FZ**

- 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 Mr R Kirkland (Maplevale Developments Limited) against the decision of South Derbyshire District Council.
  - The application Ref 9/2017/0194, dated 23 February 2017, was refused by notice dated 26 July 2017.
  - The development proposed is the erection of up to 13 no. dwellings and associated works (including the demolition of Askew Lodge).
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 13 no. dwellings and associated works (including the demolition of Askew Lodge) at Askew Lodge, Milton Road, Repton, Derby DE65 6FZ in accordance with the terms of the application, Ref 9/2017/0194, dated 23 February 2017, subject to the following conditions set out in the attached schedule.

### Procedural Matters

2. This is an outline application with all matters reserved except for means of access and I have dealt with the appeal on that basis. Drawing No 1402/10 Revision G - Proposed Site Layout presents the proposed point of access and shows indicative locations for the dwellings and access road.
3. Since the planning application was determined, the South Derbyshire Local Plan Part 2 has been adopted (November 2017) (LP2). As such, the policies referred to in the reason for refusal as 'submitted' are now adopted and the saved policies of the Local Plan 1998 has been superseded. I have considered the appeal accordingly.
4. The Parish of Repton Neighbourhood Development Plan 2016 – 2028 Submission Draft (NP) has been presented by the Council and Parish Council. As it is at the concluding stages of being made, I am able to attach considerable weight to its policies.
5. A Unilateral Undertaking (UU) has been received (dated 27 February 2018). The Council has raised no comments to the document and I have had regard to it in my assessment.

## Main Issues

6. These are whether the proposal would be in an appropriate location for housing having regard to the Development Plan, and the effect of the proposal upon the protected trees.

## Reasons

7. The site comprises of a residential dwelling and substantial gardens, surrounded by well-established trees protected by a tree preservation order (TPO). The proposal is for up to 13 dwellings. The application form indicates that these will be market housing.

### *Appropriateness of the location*

8. The settlement of Repton lies to the west and south of the appeal site, and it is not disputed by either main party that the proposal is outside but adjacent to the settlement boundary. Although the NP is not yet made, nonetheless it is a material consideration and it too confirms the settlement boundary.
9. Policy SDT1 of the LP2 sets out that settlement boundaries define the built limits of a settlement. Development outside of settlement boundaries is considered to be in the countryside and Policy BNE5 is engaged. This seeks to restrict development, unless, among other things, it is allowed for by Policy H1 of the South Derbyshire Local Plan Part 1 (June 2016) (LP1).
10. Policy H1 of the LP1 designates Repton as a Key Service Village, setting out that development would be acceptable on sites adjacent to settlement boundaries as an exceptions or cross subsidy site as long as not greater than 25 dwellings.
11. The Council's statement details that the definition of a 'cross subsidy exceptions site' is set out in the glossary of LP1, which states that '*sites that would not normally secure planning permission, however development of the site is granted for both affordable and some private housing to allow the site to be viable*'. Policy H1 has an 'or' between exceptions and cross subsidy sites. As the definition in the glossary combines the terms, it is ambiguous and confusing.
12. Nonetheless, the specific wording of Policy H1 is that if the proposal is adjacent to the settlement boundary, development would be considered appropriate if it is an exception. The exception being that the development is for not greater than 25 dwellings. Accordingly, as the proposal is for up to 13 dwellings and adjacent to the settlement boundary, the location of development would be acceptable with regard to the development plan.
13. Whilst the Council express that exception sites are widely understood to be linked to the provision of affordable housing to support rural communities and address a particular need, this is not what the policy states.
14. The appellant has presented a previous Inspector's decision<sup>1</sup> on the matter of the interpretation of this policy. From my findings above, I agree with the previous Inspector. It is my duty to interpret development plan policies objectively in accordance with the language used, read as always in its proper context.
15. The Council has presented the Affordable Housing Supplementary Planning Document (SPD) (November 2017), asserting that it provides further clarification

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<sup>1</sup> APP/F1040/W/17/3171029

of Policy H1. The SPD does not purport to interpret Policy H1, but simply provides a summary of how the policy can facilitate the delivery of affordable housing within the district.

16. Consequently, the location of the proposal would be appropriate and in compliance with development plan Policies H1, S1 and S4 of LP1 and Policies BNE5 and SDT1 of LP2. These policies seek to promote sustainable growth and development to a scale appropriate to the size and role of the settlement.

### *Trees*

17. During my site visit, I noted that a significant amount of vegetation clearance had taken place, removing most hedgerows, trees and other landscaping not subject to the TPO. The remaining protected trees offer a significant contribution to the character and appearance of the area, and are of a high value within the street scene and wider landscape. Of particular note are the Lime trees that are sited to the east of the site. These are detailed as being high quality category A in the Arboricultural Impact Assessment<sup>2</sup>. They are located outside the boundary of the site, forming part of a 2 row avenue to either side of the driveway leading to Askew House. They are tall, prominent and offer high amenity value in the street and the approach to Askew House. Their crown spread overhangs the site by between 4m and 5m.
18. The potential proximity of the dwellings to the protected trees could have an effect upon the root protection areas and lead to a pressure to fell the trees due to them restricting light to dwellings and private garden areas. Furthermore, Lime tree leaves dropping into gardens, on roofs and cars can be particularly frustrating for residents of nearby dwellings as they have a sticky, sap like surface.
19. Based on the information presented, it is not disputed by either main party that the scale of dwellings proposed could be constructed without there being an adverse effect upon the root protection system of the trees.
20. Whilst the location of windows is not before me, I am satisfied that the reserved matters could be designed to ensure principle windows of dwellings closest to the Lime trees are not located in the east facing elevations. Furthermore, I am also satisfied that the outdoor living conditions could be designed to take account of the trees. Thus the effect of the development is unlikely to lead to a pressure to fell the trees.
21. Moreover, although leaves would be likely to drop on the roofs, cars and in the gardens of the proposed dwellings; to my mind, seasonal leaf picking and regular cleaning alone would not amount to such special circumstances to warrant works or removal of these trees, particularly as they lie outside the site boundary.
22. I accept that the Council is concerned about other infrastructure, such as roads and paving. However, this detail is not yet presented for approval and methods of construction such as anti-compaction surfacing could be proposed as part of the reserved matters. Additionally, matters relating to shading or window interface distances are not before me at this outline stage.

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<sup>2</sup> Prepared by Ben Bennett Tree and Woodland Consultancy, dated April 2017.

23. I have noted the various appeal decisions presented by the Council with regard to trees, yet I find the individual circumstances of the appeal before me are different and I have assessed this proposal upon its own merits.
24. Based on the outline nature of the proposal and information before me, the development would not have an adverse effect upon protected trees and is unlikely to harmfully affect the living conditions of future occupants. Accordingly, I find compliance with BNE4 of the LP1 and Policy BNE7 of the LP2, which seek to ensure the protection and/or retention of trees and hedgerows and that development would not suffer from undue shading either now or in the future.

## **Other Matters**

### *Unilateral Undertaking*

25. The UU sets out provision for a built facilities contribution towards an extension or improvement to Repton Village Hall; a healthcare contribution to increase the capacity of Willington Surgery to accommodate additional patients; an open space contribution towards improvements to Broomfields Playing Fields; an outdoor sports facilities contribution towards improvements to outdoor recreation facilities at Broomfields Playing Fields; a primary education contribution towards the provision of 3 primary places at Repton Primary School; and a secondary education contribution towards the provision of 2 secondary places and 1 post-16 place at John Port School.
26. Based on the evidence before me, these contributions would be necessary to make the development acceptable and may allay a number of third party concerns. As many of the UU's provisions are designed to mitigate the impact of the proposal, these elements therefore do not provide benefits in favour of the proposal. However other matters, most notably the contribution towards an extension or improvement to Repton Village Hall, weigh in favour of the appeal.
27. Having regard to the comments provided by the South Derbyshire Clinical Commissioning Group and Derbyshire County Council, no more than 5 obligations for the projects have been entered into, and thus pooling of contributions has not occurred.
28. Therefore, I am satisfied that the need for a planning obligation would meet the tests set out in paragraph 204 of the National Planning Policy Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

### *Other considerations*

29. Although not raised in the reasons for refusal, the Council raised concerns in their statement with regard to the effect of the proposal upon the character and appearance of the area following the shrub and tree removal. The area is residential in character and the adjacent site has planning permission for housing development. Furthermore, to the rear of the site is Askew House. Thus, in this context, whilst the site may be more prominent in the street following the vegetation removal, I do not consider that the effect of a residential development on this site would be harmful to the character and appearance of the area.
30. The Council have directed me to Policy OS2 of the NP, which requires the visual impact of new development on views from the countryside must be minimised. Views from the countryside into the site would be noticeable from the rear of the site, and partially from the east. However, there is a hedgerow to the rear that

would screen the development. To the east, the extensive tree cover would obscure views. Furthermore, built development on approach to the village is established and the proposal would not have a negative visual impact.

31. Various matters have been raised by local residents. I have no evidence that the development before me would lead to an unacceptable effect upon water mains or flooding. Lack of a bus service would not indicate that the development is poorly located; indeed it is on the edge of the village, opposite the local primary school and is within walking distance of the village centre.
32. The existing house is not protected by any national or local designations and no harm has been raised by the Council in relation to its demolition.
33. No harm has been demonstrated in relation to highway safety, and no objections have been raised by the local highway authority subject to the imposition of conditions. The County Council's Archaeologist also recommended that there would be no requirement for archaeological work on this site.

### **Conditions**

34. The drawing numbers are listed for certainty. A condition for protective fencing is required to protect the retained trees and hedgerows during construction. Conditions relating to construction access, construction management on site, access specifications, wheel cleaning, frontage footway widening and the access gradient are required in the interest of highway and pedestrian safety.
35. Conditions 5, 6, 7 and 8 are required to be pre-commencement conditions as it is fundamental to have the details approved prior to the development commencing on site.
36. As the site is adjacent to former engineering works, a precautionary condition regarding unexpected contamination is required in this instance to protect future occupants. A condition regarding the timing of site clearance is necessary in order to protect nesting birds. The bat enhancement measures shall also be implemented to enhance biodiversity, which includes the provision of 3 bat boxes and low wattage lighting.
37. I have not included conditions relating to boundary treatments, floor levels, parking and manoeuvring spaces, surface water drainage and landscaping. These are matters that would be subject to the reserved matters application and it is unnecessary to impose conditions at this time.
38. I have not removed permitted development rights as no exceptional circumstances have been presented. Indeed, as the proposal is outline only with all matters reserved, the design of the dwellings has not been presented and it would be unreasonable to remove such rights at this stage.

### **Conclusion**

39. For the reasons set out above, the appeal succeeds.

*Katie McDonald*

INSPECTOR

## Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (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.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 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 approved plan 1402/06 Revision B and approved plan 1402/10 revision G in so far as it relates to access.
- 5) All the trees and hedges shown on the plan 1402/10 revision G as "to be retained" and any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority in compliance with shall comply with BS 5837:2012. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, the ground levels within those areas shall not be altered, no materials or waste shall be burnt within 20 metres of any retained tree or hedgerow, nor shall any excavation be made, without the prior written consent of the local planning authority.
- 6) Prior to commencement of the development hereby approved, details of a temporary access for construction purposes shall be submitted to and approved in writing by the local planning authority. The access shall be formed to Milton Road and provided with 2.4m x 43m visibility splays in either direction clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level. The temporary access shall be laid out and constructed in accordance with the approved details and retained during the period of construction.
- 7) Prior to commencement of the development hereby approved, a scheme detailing storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles within the site curtilage shall be submitted to and approved in writing by the local planning authority. The scheme shall be laid out and constructed in accordance with the approved details and retained during the period of construction.
- 8) Prior to commencement of the development hereby approved, a scheme to increase the width of the footway fronting the site to a minimum of 1.8m shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to occupation of the first dwelling on site and retained in perpetuity.



- 9) Prior to commencement of any dwelling hereby approved, a new vehicular access shall be laid out and constructed. The access shall have a minimum width of 4.8m, 6m radii and 2m x 43m visibility splays in both directions, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.
- 10) Throughout the construction period, vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.
- 11) The proposed access road onto Milton Road shall be no steeper than 1:30 for the first 10 m from the nearside carriageway channel and 1:20 thereafter into the site.
- 12) In the event that ground contamination is found at any time when carrying out the approved development, it must be immediately reported in writing to the local planning authority. An investigation and risk assessment must be undertaken, and submitted to and approved in writing by the local planning authority. If remediation of the ground is necessary, a remediation scheme shall be prepared and approved in writing by the local planning authority. The remediation measures shall be implemented and prior to occupation of the first dwelling; a verification report shall be submitted to and approved in writing by the local planning authority.
- 13) All site clearance work shall be undertaken outside the bird-breeding season (March - September inclusive). If clearance works are to be carried out during this time, prior to the commencement of any development, a scheme regarding the method and specification of clearance shall be submitted and approved in writing by the local planning authority. Clearance works shall be carried out in accordance with the approved scheme.
- 14) The bat enhancement measures as detailed in the Bat and Bird Survey Report dated 26 June 2017 shall be implemented in full and maintained for the life of the development.

**\*\*\*End of conditions\*\*\***