



Appeal Decision

Site visit made on 28 February 2018

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19th April 2018

Appeal Ref: APP/B3030/W/17/3181015

Land to the rear of Lowfield Cottages, Bowbridge Lane, Balderton, Nottinghamshire NG24 3BY

- 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 Patrick McDonagh against the decision of Newark & Sherwood District Council.
 - The application Ref 15/01250/OUTM, dated 14 July 2015, was refused by notice dated 13 April 2017.
 - The development proposed was originally described as the development of brownfield site to construct road and 35 new houses.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Patrick McDonagh against Newark & Sherwood District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with all matters reserved. As such, I have treated plans identifying the suggested layout as indicative only.
4. The appellant has submitted a signed and dated Unilateral Undertaking (UU) which agrees to make a contribution of £31,140 toward primary school education within the catchment area of the site and measures to ensure the delivery of an area of public open space within the site. I shall return to this matter below.

Main Issues

5. The single reason for refusal given by the Council contains a number of separate clauses. In interpreting this, I consider the main issues in this case to be:
 - Whether the site is in an appropriate location for development, having regard to local policies on development in the countryside; and
 - Whether the development would make a sufficient contribution toward infrastructure provision.

Reasons

6. The appeal relates to a relatively large, open and undeveloped plot located roughly behind and to the side of a short row of terraced dwellings known as Lowfield Cottages. There are currently open fields to the north of the site, with an electricity sub-station to the west. There is some commercial development further to the south. However, even with these features, the site feels somewhat remote and poorly related to the nearest settlement. The recently built Southern Link Road is located to the north of the site. The strategic housing site known as 'Land South of Newark' (LSN) is located just to the north of this which would bring the southern edge of the settlement nearer to the site once it is built out. The parameters plan provided by the Council for that development suggests that the land directly to the north of the appeal site is intended to be used as public open space. All of the housing would be located north of the link road and thus would be disconnected from the appeal site.

Location

7. Spatial Policy 1 (SP1) of the Newark and Sherwood Core Strategy (2011)(CS) identifies the settlement hierarchy for the district. Spatial Policy 2 (SP2) establishes that the focus for development will be on supporting the sub-regional centre of Newark Urban Area, with other elements of growth being directed to Service Centres and Principal Villages. Development in 'other villages' is addressed under Spatial Policy SP3 (SP3).
8. There is no dispute that the site falls outside the defined Newark Urban Area and does not lie in any defined village or other settlement. In such circumstances, Policy SP3 states that housing will be strictly controlled and restricted to uses which require a rural setting, such as agriculture and forestry. Policy DM8 of the Allocations and Development Management Development Plan Document (ADM) (2013) also states that development outside the main built-up areas will be strictly controlled subject to a list of exceptions.
9. There is no suggestion that the development would meet any of the use exceptions and would not involve the replacement of existing dwellings. As the proposal is in outline only, there is nothing to suggest the design of the dwellings would be of an exceptional quality or would enhance the immediate setting. While the Council's reason for refusal did not refer to the effect of the development on the character and appearance of the area, I note that the officer report did make reference to the moderate harm the development would have on the landscape character of the area. While it did not conclude there would be sufficient harm to refuse permission, the scheme would nevertheless not provide any particular benefits in terms of local character or the setting of the site.
10. The site is therefore located in the open countryside and does not conform to any of the exceptions set out in policies SP3 or DM8. There is therefore a clear conflict with these policies which seek to control development in the open countryside. The Council's reason for refusal includes AMD Policy DM5. The Council's appeal statement is clear that the proposal was not refused on design grounds and thus there is no conflict with this policy.
11. I have also considered the Council's argument that the grant of planning permission in this location would set a precedent for other similar

developments in the area. Whilst each application and appeal must be treated on its individual merits, I can appreciate the Council's concern that approval of this proposal could be used in support of such similar schemes. In coming to this conclusion, I have noted the appellant's evidence on flood risk and nearby land. However, not all nearby land is subject to such restrictions.

Representations from interested parties also indicate a desire to apply for planning permission on neighbouring land should the appeal be allowed.

12. This is a strong indication that this is not a generalised fear of precedent, but a realistic and specific concern. I consider that allowing this appeal would make it more difficult to resist further planning applications for similar developments. This is particularly the case in light of the current housing land supply position which I shall address below. The cumulative effect of such development would exacerbate the harm in terms of undermining the development plan strategy and the National Planning Policy Framework's (the Framework) assertion that planning should be genuinely plan-led¹.

Provision of Infrastructure

13. There is no dispute between the parties that the development would not be viable if it were to provide the full range of contributions required by the development plan. The Council has identified these as being 1,134 m² of public open space, including children's play spaces, financial contributions to education and community facilities and 30% affordable housing.
14. The Council has indicated that since the determination of the application it has adopted a new Community Infrastructure Levy (CIL) charging schedule. Ostensibly, this would reduce the CIL burden faced by the development and consequently alter the viability assessment. The appellant has not responded to this point. I have not been provided with any detailed viability evidence, and thus cannot conclude with any certainty that the change in CIL requirement would not have allowed a larger contribution to be made. However, the figures involved do not suggest that this would have made the proposal fully viable or significantly altered the situation before me.
15. The indicative plan suggests some provision of open space that would also be secured through the UU. Although the space provided would exceed the quantitative area required by the Council, there is no indication of how it would be laid out or what facilities would be provided on the site. I am not convinced that this would fully meet the Council's requirements in terms of open space provision. However, the site is also well related to the open space associated with the LSN. Therefore, notwithstanding any potential shortfall in relation to children's play equipment, I am satisfied that future occupants of the development would have sufficient access to open space. There would therefore be no undue pressure on local infrastructure as a result of the development.
16. The Council's officer report indicates that primary schools within the area are projected to be at capacity, though no detailed evidence has been provided. Nevertheless, the appellant has not disputed this. As such, there would be some tangible pressure in relation to primary education provision that would need mitigation. I understand that secondary school education would be addressed through the CIL. The UU would provide funding commensurate with

¹ See paragraph 17 of the Framework

2 spaces instead of the normally required 7. This would therefore be insufficient to meet address the additional demand generated by the development.

17. In terms of community facilities, the Council's officer report concludes that it is unclear where or on what any contribution would be spent. This is not clarified in the appeal evidence. As such, no identifiable harm in terms of community facility provision has been demonstrated and I have given little weight to the Council's concerns over any additional pressures. Affordable housing is not being provided. This removes a potential benefit of the development, but in the context of the viability position, this would not amount to significant harm.
18. The Planning Practice Guidance (PPG) is clear that in considering applications, the viability of the scheme should be considered and local authorities should be flexible in requiring contributions. The supporting text to Policy DM3 also refers to viability and negotiations taking place over contributions. Nonetheless, there would still be conflict with ADM Policy DM3 which requires development to provide sufficient infrastructure to meet the needs generated by the development. There would be a moderate shortfall in terms of primary school places. However, aside from education provision, the Council has not conclusively demonstrated that the development would lead to unacceptable pressure on other infrastructure required by the policy. As a result, when considering the accepted viability position, the totality of harm to be considered in the planning balance carries only moderate weight against the development.

Other Matters & Planning Balance

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. This is reaffirmed in paragraph 2 of the National Planning Policy Framework (the Framework). As already noted, the first bullet point of paragraph 17 of the Framework confirms that planning should be genuinely plan-led. I have found conflict with the development plan and must now consider whether there are any matters put forward by the appellant that would outweigh this conflict.
20. At the time the application was considered, the Council concluded that it had a five year supply of housing and that the 'tilted balance' referred to in the fourth bullet point of paragraph 14 of the Framework was not triggered. Nonetheless, they argued that until the objectively assessed housing need (OAN) and target is adopted in the emerging plan, they would continue to take a 'pragmatic approach' to development that might help boost the supply of housing. The housing supply situation has moved on however. The most recent data suggests that there is a supply of around 6.2 years against an objectively assessed need figure of 454 dwellings per annum (dpa), a 20% buffer and after taking shortfall into account.
21. In an earlier appeal² (Farnsfield), the Inspector found that figure of 454 dwellings was too low and suggested that 550 dpa was more appropriate. Further work has since been carried out on this by the Council and they remain convinced that the appropriate OAN figure is 454 dpa. It is this figure that has been submitted for Examination in relation to the emerging Amended Core Strategy (ACS). This plan is at a late stage in preparation and thus carries

² APP/B3030/W/15/3006252

- some weight, albeit I acknowledge there may be unresolved objections currently being considered by the Inspector.
22. Nonetheless, the Council has also drawn my attention to another more recent appeal³ (Blidworth) where an Inspector concluded that a five year supply could be demonstrated. In that case, the Inspector accepted the use of the 454 figure, but was comforted that with a higher OAN of 500 dpa a five year supply would still exist. The Inspector in that case also concluded that with a slight adjustment to windfalls, they would also be in a position to have a five year supply with a requirement of 550 dpa. I am aware of another decision⁴ (Eakring) where the Inspector came to the same conclusion.
23. Although the final housing target will be established in the ACS following Examination, there is no substantive evidence before me which suggests I should not accept the figure of 454 dpa or the housing supply figures provided by the Council. This represents the only up-to-date and robust figure on which to assess the supply. Even if a higher requirement were identified, the supply figures before me suggest a relatively high degree of flexibility. In lieu of any substantive evidence to the contrary I am satisfied that the Council can demonstrate a five year supply of deliverable housing land. As such, the 'tilted balance' set out in the fourth bullet point of paragraph 14 of the Framework is not triggered as a result of housing land supply. In such circumstances, I do not see any reason why substantial weight should be given to the Council's earlier 'pragmatic' approach.
24. My attention has been drawn to paragraph 55 of the Framework. This states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and that isolated homes in the countryside should be avoided unless they meet one of a number of 'special circumstances'.
25. The appeal site would not be a significant distance away from the new edge of the settlement once the LSN has been built out. As such, the Council accepts that the site should not be considered isolated in the context of paragraph 55 but that this does not justify development outside the settlement in the open countryside. The Inspector in the Eakring appeal concluded that the Council's approach to development in the countryside is more restrictive than that set out in paragraph 55 of the Framework. The reason for this was primarily that while policies SP3 and DM8 strictly control development in the open countryside, the Framework limits such restrictions to 'isolated' development. This approach was advised by a recent judgement which provided some clarification on the implementation of paragraph 55. Consequently, the Inspector gave reduced weight to the conflict with the development plan. Nonetheless, he still carried out a planning balance exercise and weighed the benefits of the development against the conflict that existed.
26. The appellant has placed significant weight on the Council's assessment of the site being reasonably well related to the LNS site and the link road. These factors are not disputed. However, there are likely to be many sites outside the urban area with a similar relationship to the urban area as the site and thus there is no particular advantage of development in this location. There would be some general economic benefits associated with house building in terms of

³ APP/B3030/W/17/3168018

⁴ APP/B3030/W/17/3169590

additional expenditure in the area and, for a short period, construction. However, I have not been provided with any evidence to suggest that defined centres, services or facilities in the area are in need of additional development over and above that already committed or planned in order to address issues of vitality or viability. Paragraph 55 is also specific in its reference to supporting the vitality of rural communities. Newark is defined as a sub-regional centre in the plan and I have seen nothing which suggests the vitality of this community is likely to be dependent on windfall sites outside the settlement boundary.

27. Irrespective of the five year supply position, the development would make a positive contribution to the housing supply and thus assist in meeting the Framework's requirement to boost significantly the supply of housing. Such benefits are clearly tempered by the location of the development outside the defined settlement boundary in the open countryside. This greatly reduces the weight given to this factor. The appellant has noted that the housing supply includes provision for windfalls. However, there is nothing before me which provides any substantive evidence that the windfall allowance cannot be made up from policy compliant development.
28. The site is close to planned strategic development which would provide some provision of local facilities. However, I have been provided with little evidence relating to the timescale or phasing of this scheme and thus cannot be certain about when such facilities would be available to future occupants of the development. The facilities within Newark itself would not be a particularly long distance from the site. The development would have some benefits in terms of links to nearby cycle ways and footpaths which may help to promote more sustainable transport modes. However, this would only be achieved through development in the open countryside and thus I have given it only moderate weight.
29. The UU would, at best, provide limited mitigation for the impact of development. However, as the development would not provide the normal requirements, particularly in terms of education provision, there would be some additional harm resulting from the development. As already concluded, this does not weigh heavily against the development but nonetheless provides no support for it. I have had regard to the provision of open space, but in light of that to be provided in the LSN, this does not carry substantial benefits over and above the mitigation of the impact of development.
30. The description of development identifies the site as brownfield. The definition of previously developed land in the Framework excludes land where the remains of any structures have blended into the landscape. The Council's evidence indicates that the site has been in its current state for over 20 years. Other than one derelict building toward the edge of the site, the remainder has an open grassland appearance. There is little physical evidence to suggest the site has been previously developed and thus based on what I have before me, I consider the site to be greenfield. While this does not necessarily weigh against the development in principle, there would be no benefits associated with brownfield development either.
31. While no other harm was identified by the Council, including in terms of design, highways, biodiversity or drainage. However, a lack of harm with regard to these factors is neutral and weighs neither for nor against the development.

32. While the Inspector in the Eakring appeal concluded the benefits of development outweighed the conflict with the development plan, I am not bound by that decision. I also do not have the full details of the proposal or evidence put to the Inspector before me. However, it is clear that there were other benefits taken into account in that case that do not apply here. Indeed, in addressing the Council's concerns over precedent, the Inspector concluded that the particular environmental and occupancy benefits of that proposal were not likely to be frequently replicated. The Inspector's approach in that case does not mean that any and all development outside settlement boundaries is acceptable in principle. Neither the nature of the development nor the outcome of the planning balance in the Eakring case is entirely comparable to that before me.
33. While policies SP3 and DM8 may be more restrictive than those in the Framework to an extent, in my view they remain broadly consistent with the strategic thrust of the relevant Framework policies in terms of directing development to the most sustainable locations in the district where there is good access to services and facilities and limiting development in the open countryside. The matter of weight to be accorded to any conflict with specific development plan policies is a matter of planning judgement in each case, which must be exercised after having regard to the specific policies cited, the individual factors of the case and the representations made. In this instance, the proposal is clearly contrary to these policies. In the circumstances of the appeal and having regard to all arguments made by both parties, I consider that at most only a modest reduction in weight should be applied to any conflict with the development plan. Even if I were to apply this modest reduction in weight, I am more than satisfied that the benefits associated with the development would not outweigh the clear conflict with the development plan. As such, the appeal should be dismissed.

Conclusion

34. For the reasons given above I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR