



Appeal Decision

Site visit made on 20 December 2018

by **D Guiver LLB (Hons) Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 28 January 2019

Appeal Ref: APP/R1010/W/18/3211091

Bakestone Moor, Whitwell, Derbyshire S80 4QJ

- 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 Hunt against the decision of Bolsover District Council.
 - The application Ref 17/00580/OUT, dated 14 November 2017, was refused by notice dated 28 March 2018.
 - The development proposed is residential development with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline with all matters save access reserved for future consideration. Drawings submitted with the application showing site layout are described as indicative but referred to in evidence as illustrative save for access and I have determined this appeal accordingly.
3. The appellant has provided a Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 to secure contributions to education, highway improvements and open space provision. I will address these issues below.
4. The Council's decision notice refers to an emerging Local Plan (the Emerging Plan) but does not refer to any specific policies. Paragraph 48 of the Framework provides that weight may be given to relevant policies in emerging local plans according to the stage of preparation of the emerging plan and the degree of consistency of the relevant policies with the Framework. The Emerging Plan was published in May 2018 and submitted for examination in public in August 2018, and is therefore at an early stage towards adoption. I cannot be confident that the Emerging Plan would be adopted in its current form and I therefore give it little weight.
5. Since the date of the Council's decision, the National Planning Policy Framework 2018 (the Framework) has been published and has effect. The parties have had the opportunity to make representations on the effect of the Framework on the application and I have taken all comments into consideration in this decision.

Main Issues

6. The main issues are the effect of the proposed development on:
 - a) the character and appearance of the area with particular regard to the settlement boundary;
 - b) biodiversity; and
 - c) highway safety.

Reasons

Character and Appearance

7. The appeal site is a relatively large wall-enclosed field located east of a shallow bend in the road known as Bakestone Moor on a southern approach to the village of Whitwell. The existing properties at 131 Bakestone Moor and a large stone outbuilding on the opposite side of the road provide a definitive gateway into the village that separates the built form from the open countryside to the south. The rear elevations of properties on New Street are clearly part of the village and angle away from the road.
8. The appeal site and the fields opposite form an important part of the delineation between settlement and countryside. The existing wall forming the boundary between the site and Bakestone Moor is an important characteristic and reflects the predominant boundary treatment in the vicinity but outside the built form of the village. To the south of the site is a field containing a number of allotments. It is common ground that the site is in a prominent position adjacent to but outside the settlement framework boundary for Whitwell and is therefore in the open countryside.
9. The proposal is in outline for the construction of 20 or so detached, semi-detached and terraced dwellings mostly likely to front a short road running east from Bakestone Moor. Although, site layout is a reserved matter, the illustrative plans show three properties fronting Bakestone Moor. The angle of the road would allow for properties to be located at this point fronting onto the estate road, but this might result in fewer plots than shown on the plans.
10. The scheme would introduce a significant built form into the countryside and would alter the current shape of the village. The extension southwards on one side of the road would eliminate the existing definitive gateway into the settlement and create a harmful, uneven and irregular visual relationship between the built form and the wider countryside.
11. The location of the access to the site would require the removal of some of the existing boundary wall fronting the highway. The requirement for visibility splays could result in the complete removal or reduction in height of this wall which would have a significant detrimental impact on the character and appearance of the area. While landscaping is a reserved matter, it is unlikely that a scheme could prevent a significant visual intrusion into the countryside. While the allotments would prevent further encroachment, this would not prevent significant harm arising from the scheme.
12. Therefore the proposed development would not accord with Saved Policies GEN2, GEN8, GEN11 and ENV3 of the Bolsover District Local Plan 2000 (the Local Plan), which seek to ensure that developments do not materially harm

the local environment, including the visual appearance in relation to its setting in the general landscape. The Policies also seek to ensure that developments outside settlement framework boundaries result in significant improvement in the rural environment.

Biodiversity

13. The appellant provided an Extended Phase 1 Habitat Survey dated 2 December 2016 (the Habitat Survey) and revised Reptile Survey Reports dated 9 September 2017 and 5 January 2018 (the Surveys). The Habitat Survey includes a desktop analysis that identified some reptile species within two kilometres of the site but none recorded within 500 metres. Initial assessment of the site for the Habitat Survey from November 2016 concludes that there is a lack of suitable basking sites and therefore the potential for reptiles being present is low.
14. The Derbyshire Wildlife Trust (the Wildlife Trust) and the Council consider the Habitat Survey to be inadequate as the assessment of the site was undertaken outside the optimal time. The Surveys later appear to accept this point and identify the optimum time as April to May and September. The Wildlife Trust also considers the site and surrounding area, taken together, to provide an optimal habitat for reptiles that would be irrevocably lost to the proposed development.
15. The Surveys are based on site visits between 21 July and 1 September 2017, with the initial visit being to lay out mats and all but the final visit occurring in August. The Surveys did not find evidence of a reptile presence on site. The Surveys accept that the times of the visits were not ideal. Although visits were undertaken in the early morning 'before temperatures rose too high' the Surveys also acknowledge that temperatures were above those recommended in the guidelines. Other than one day when the temperature was recorded at 16° C the temperature was between 19° and 24° C with four out of seven visits recording temperatures of 20° C or higher.
16. The final revision to the Surveys also recommended an additional mitigation measure relating to removing the scrub on the site and reducing the height of the grass, by sheep grazing or regular mowing, and retention of the existing walls. No compelling evidence has been provided to show that the measures to reduce the height of the grass were adopted. The boundary wall remains in place.
17. While the Habitat Survey and the Surveys did not find evidence of reptile presence, I take a precautionary approach. Given the dates of the site visits and the recorded temperatures are all outside the optimal conditions for a site survey, I do not consider these results to be conclusive on the potential for reptile presence.
18. Therefore the proposed development would not accord with Saved Policies GEN2, GEN8 and ENV3 of the Local Plan, which seek to ensure that developments do not materially harm the local environment or have an adverse effect on the nature conservation interests of the area and, if outside settlement framework boundaries, would result in significant improvement in the rural environment.

Highway Safety

19. The proposed access would be located close to the north-eastern corner of the plot at a point where the road runs in a straight line from the village in front of the site. The appellant relies on two speed surveys undertaken on 19 June 2014 and 22 February 2017 to calculate the required visibility distances for safe access to the site. The data obtained in these surveys differs significantly from a survey undertaken by the Council in 2005 which recorded higher 85th percentile speeds and therefore calculated a greater visibility splay requirement.
20. The appellant points to road markings and rumble strips in the carriageway that do not appear to have been present in 2005 to explain the apparent discrepancy. However, the evidence also shows that the 60/30mph changeover was south of its current location requiring drivers to slow down earlier when approaching the village. The reason for the difference in the measured speeds is therefore unclear.
21. Subject to other considerations, the visibility distances required for the latterly measured speeds appear to be marginally achievable whereas the distances that would be required from the Council's earlier survey would not be achievable without alterations to land not in the appellant's control. The appellant's visibility assessments are based on the lower speeds measured in the later surveys. Visibility to the south would require removal or a significant lowering of the existing boundary wall along Bakestone Moor.
22. The visibility distances are calculated for the middle of the carriageway for northbound traffic and one metre from the edge of the carriageway for southbound traffic leaving the village. At the time of my site visit there were a few cars within the village parked on the southbound side of the carriageway. It is unclear what account has been taken of these given that there is no apparent off-street parking available for the nearest houses and cars are likely to be parked for at least part of the day.
23. The appellant states that safe distances are achievable if the existing 60/30mph changeover is relocated to the south of the site but that this is not absolutely necessary. However, the distances measured are based on an assumption that northbound traffic would not cross the centre line, which is more likely given the bend in the road. To counter this, the appellant proposes a traffic island and pedestrian refuge which would inhibit overtaking and require vehicles to remain within lane.
24. The County Council as highway authority states that there is no identified need or public benefit to the proposed traffic island other than to make the development feasible. While the island would provide a pedestrian refuge there does not appear to be anywhere on the western side of the carriageway for pedestrians to visit. The County Council states that the island is unacceptable because it would impose an ongoing maintenance cost on the public purse.
25. The appellant states that the maintenance costs would be covered by a commuted sum secured through an agreement made under Section 278 of the Highways Act 1980. Such an agreement would normally require an identifiable public benefit and when attached to a planning permission would normally also be secured by way of a planning obligation. Even if the County Council could identify a public benefit, there is no planning obligation or Section 278 Agreement before me dealing with the ongoing maintenance costs. Moreover,

the appellant only mentions maintenance and does not address the costs of the initial construction.

26. In the absence of a planning obligation, a Section 278 Agreement and an identifiable public benefit I cannot be satisfied that the traffic island would be constructed and therefore the potential danger of vehicles crossing the centre line and reducing visibility for traffic egressing the appeal site would remain. In such circumstances the appellant has not shown that a safe access can be provided at the site.
27. While relocation of 60/30mph changeover might or might not be necessary it would be desirable in achieving a reduction in speed. It is common ground that such relocation could not be guaranteed and would not be authorised merely by the granting of planning permission. The visibility splay could also only be achieved by the detrimental removal or alteration of the existing boundary wall and the effect this would have on the character and appearance of the area and removal would be contrary to the recommendation in the Surveys.
28. Therefore the proposed development would not accord with Saved Policy GEN1 of the Local Plan, which seeks to ensure that developments provide safe access for pedestrians, cycles and vehicles entering and leaving the site.

Planning Obligation

29. Planning obligations should only be sought where they meet the tests in paragraph 56 of the Framework. Saved Policy HOU5 of the Local Plan provides that developments of 20 or more dwellings should make provision for local public open space and recreation facilities unless adequate provision already exists. Where such provision is necessary it should be secured by way of a planning obligation. The appellant has not demonstrated that alternative provision already exists and therefore the Policy requires provision to be made. As the appellant makes the proposal for development it is not appropriate to impose a burden on the Council to demonstrate that there is no alternative available.
30. The Policy sets out the requirements but the appeal site is too narrow for an on-site provision and the appellant has not identified any alternative site for open space. In the absence of a clear on- or off-site facility, the required open space can be delivered by way of a commuted sum to the Council for it to make the required provision. The proposed figure calculated by reference to the Policy is £18,680, which equates to £934.00 per dwelling.
31. The County Council is the highway authority and the education authority. Highway alterations for the purposes of private development should not be delivered at public expense and the request to move the 60/30mph changeover would require a Traffic Regulation Order (TRO). The costs of the TRO have been estimated at £5,000.
32. The County Council's Education Department has identified a likely pressure on existing primary school places. It is reasonable to assume that the proposed development would yield additional requirements for school places for the children of future occupiers. The Education Department seeks a commuted sum of £45,596 to fund the provision of four places at Whitwell Primary School through its Project B: Creation of multipurpose teaching space.

33. The contributions sought all directly relate to the proposal and are fairly and reasonably related in scale and kind to the development. I consider that the contributions would be necessary to make the development acceptable in planning terms. The sums identified are all provided for in the appellant's UU.
34. There is no evidence before me that the pooling restrictions have been reached in respect of the provision of open space, educational provision or improvements to Bakestone Moor. However, while I consider that the sums would be necessary to make the development acceptable in planning terms, the UU would not overcome the harm to the character and appearance of the area, biodiversity and highway safety that would arise from the scheme.

Other Matters

35. The Council's decision notice refers to Saved Policy ENV2 of the Local Plan, which seeks to restrict development on the best and most versatile agricultural land. There is no assessment of the quality of the appeal site, which comprises overgrown grassland and scrub, nor does the Council refer to its agricultural potential. I therefore conclude that Saved Policy ENV2 is not relevant to the main issues in the appeal before me.
36. The Framework states that major developments should be expected to make at least ten percent of homes available for affordable home ownership. The Council accepts that the Local Plan only requires an affordable housing contribution from developments delivering 25 or more dwellings and the scheme does not make for any provision of affordable housing. It is common ground that the Council is able to demonstrate a five-year supply of deliverable housing sites and while the scheme might be aimed at lower-cost housing, the proposal is for purely market dwellings.
37. The proposed development would provide additional housing. However, there is no discernible public benefit in terms of the provision of affordable housing that might amount to a material consideration sufficient to indicate that the development should be approved notwithstanding the clear conflict with the Local Plan. Even if the scheme did provide for some affordable housing it would not overcome the significant harm to the character and appearance of the area, biodiversity and highway safety.
38. The Council accepts that the proposal would generate economic benefits from construction and in supporting the services in the village. It also appears to be common ground that scheme would satisfy a general social need for housing. However, these benefits should be considered minimum requirements for sustainable development and could be delivered by development within the settlement framework boundary. I therefore attach limited weight to these arguments.
39. The appellant refers to paragraph 49 of the Framework and appears to assert that the Council's refusal is in part reliant on the assertion that the proposal is premature, given the identification of a need for growth in Whitwell. Given the scheme's conflict with Policy, I give little weight to this argument. However, even if the Council's refusal was not in accordance with the advice in paragraph 49, this would not overcome the conclusions on the main issues identified above.

40. Interested persons have objected to the proposed development on a number of grounds, some of which reflect those upon which the Council made its decision. In addition, interested persons raised issues relating to drainage, the impact of the scheme on the privacy of neighbouring residential occupiers and whether the highway works proposed would encroach upon private land. No compelling evidence has been provided to show that drainage is a problem or that flooding risk is present and that existing foul and surface water sewers would be unable to cope with an additional pressure from the development. I also note that there was no objection from the Council, the County Council as Lead Local Flood Authority or statutory undertakers in terms of flooding and drainage.
41. The illustrative layout does show the house and garden to plot 4 in very close proximity to the rear windows of habitable rooms of 131 Bakestone Moor but site layout and boundary treatments are reserved matters and the impact on the living conditions of neighbouring occupiers would be addressed when considering those details.
42. It is not clear that the proposed highway works would encroach upon any land not already within the highway boundary or within the appeal site. However, given my conclusions on the main issue relating to highway safety, it is unnecessary to make a determination on this matter.

Conclusion

43. For the reasons given and taking account of all other material considerations, I conclude that the appeal should be dismissed.

D Guiver

INSPECTOR