
Appeal Decision

Hearing held on 15 April 2014

Site visit made on 15 April 2014

by B Hellier BA(Hons) MRTPI

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

Decision date: 1 May 2014

Appeal Ref: APP/Q3060/A/13/2210650

Glenwood Avenue/Bramcote Lane, Wollaton, Nottingham, NG8 2GA

- 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 Nottingham RC Diocesan Trustees and the Radleigh Group against the decision of the City of Nottingham Council.
 - The application Ref 13/01515/PFUL3, dated 21 June 2013, was refused by notice dated 20 September 2013.
 - The development proposed is the demolition of the existing Roman Catholic church and associated presbytery and the erection of a new Roman Catholic church together with 18 dwellings and associated roads and sewers.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was accompanied by a unilateral undertaking which, if planning permission were to be granted, would provide a financial contribution towards the funding of off site open space provision, the provision of additional school places at the local infant and junior schools and training and employment benefits for local people. I am satisfied that these contributions meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations and accord with Policy 19 in the emerging Core Strategy¹. I have accordingly taken them into account in my decision.
3. At the Hearing an application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Main issues

4. The appeal site is in a sustainable location within the built up area of the city with good access to local services and facilities and close to regular bus services to the city centre. The principle of housing development is accepted. The main issues in dispute are:
 - The effect of the proposed development on badgers.
 - The effect of the proposed new church on the character and appearance of the surrounding area.

¹ Proposed Minor Changes and Main Modifications to the Broxtowe Borough, Gedling Borough and Nottingham City Aligned Core Strategies: Publication Version March 2014

Reasons

Effect on badgers

The setting

5. The appeal site is about 1ha in size and consists of two linked rectangular blocks of land. One block has frontages onto Glenwood Avenue and Bramcote Lane. It is occupied by the existing church with an adjoining large grassed area and, on higher land, the presbytery which has a good sized but overgrown garden which abuts the closed Bramcote Lane cemetery.
6. The other block is to the rear of the church. It is maintained as mown meadow and used occasionally by the church for outdoor events. It is surrounded on three sides by the backs of residential properties on Glenwood Avenue, Burnbreck Gardens and Arlesdon Drive, and on the other by the rear of the cemetery. There is an open, somewhat overgrown watercourse, flowing within the site, alongside its boundary with the rear gardens of Arlesdon Drive.

Protection for badgers

7. Badgers are protected by the Protection of Badgers Act 1992 which makes it illegal to kill, injure or take badgers or to interfere with a badger sett. The intention of this legislation is to prevent persecution of badgers. The legislation allows for a licence to be granted for interference with a badger sett for the purposes of development, where there is suitable justification.
8. Badgers are not a rare or endangered species, nonetheless, they are a protected species. Natural England provides standing advice to local planning authorities¹. With any development proposal the objective should be to avoid adverse impacts on badgers. If there are unavoidable impacts then mitigation should be designed to reduce those impacts. If, following this, there are still unacceptable impacts on the species then compensation measures will need to be designed to offset the impacts. In determining planning applications it is necessary to consider whether there are any satisfactory alternatives to the proposed scheme which would have less of an impact on protected species.

Planning policy

9. The National Planning Policy Framework² (NPPF) states that if significant harm to biodiversity cannot be avoided, mitigated or compensated for then planning permission should be refused.
10. Local Plan³ Policy NE3 does not permit development which would adversely impact on species or habitats protected by law, or of special importance, unless there is an overriding need for the development. However I give little weight to this policy because it fails to acknowledge the test set out in the NPPF.
11. I give greater weight to revised Policy 17 in the emerging Core Strategy which indicates that where harm to biodiversity is unavoidable, and it has been demonstrated that no alternative sites or scheme designs are suitable, development should as a minimum firstly mitigate or, if this is not possible, compensate, at a level equivalent to the biodiversity value of the habitat lost.

¹ Standing Advice Species Sheet: Eurasian Badger (Badger). Natural England

² National Planning Policy Framework. DCLG March 2012. Paragraph 118

³ Nottingham Local Plan. Adopted by Nottingham City Council November 2005

This is very much in line with the NPPF and the approach recommended by Natural England.

The main badger sett

12. The main sett is a coalescence of two substantial setts located within the presbytery grounds concentrated along the line of the cemetery boundary hedge and in places overflowing into the cemetery. It is likely that the two setts are interconnected. Sett 1 has 21 entrances of which 17 are active/partially active and 5 have appeared over the last year. Sett 2 has 13 entrances of which 9 are active and 4 of which are recent. The site is slightly elevated and the sandy soil is conducive to tunnelling. On a number of occasions the Council, which owns the cemetery, has had to obtain a licence to deal with damage to graves and there have been unsuccessful attempts to block extensions to the sett in the direction of the presbytery. There is clearly a thriving urban badger community here which appears to be growing in size and which causes a particular conflict with the adjacent cemetery use.
13. It is proposed to demolish the presbytery and replace it with two detached houses fronting onto Bramcote Lane (Plots 1 and 2). The footprint of Plot 1 would extend into Sett 1. The existing gap of some 16 metres between the presbytery and the cemetery would be reduced to about 7 metres. During construction it is proposed that Setts 1 and 2 would be temporarily closed. An alternative multi chambered artificial sett would be constructed on an adjacent area to be retained as open space within the overall scheme. On completion of the development 12 entrances to Sett 1 and one to Sett 2 would remain permanently closed.
14. Whilst the works would be undertaken outside the breeding season they would cause considerable disturbance and distress to the badgers. In the longer term the setts would be reduced in size and there would be an engineered barrier to prevent excavation into the development site. The only direction the sett could expand would be into the cemetery, thus exacerbating an already unsatisfactory situation.
15. Setting aside the disturbance caused to the badgers I accept that the artificial sett would physically compensate for the loss of the existing sett. However it is also necessary to consider whether the proposed development could be changed so as to reduce disturbance. In the present case if the presbytery were to be retained and Plots 1 and 2 excluded from the development there would be no need to close any part of the main sett on either a temporary or permanent basis and, apart from the construction of the church car park, building activity associated with the remaining 16 dwellings and the new church would be a reasonable distance away from the main sett.
16. The appellants are reluctant to amend the proposal in this way. The land value generated by the housing development would be used to fund the construction of the new church. They have not carried out a financial appraisal for a reduced scheme but there is already a shortfall and in their view any increase in this would make the overall development unviable. It was also pointed out that the Bramcote Lane frontage was perhaps the most marketable part of the site.
17. The viability argument only holds good if the specification and cost of the new church are taken as fixed. Yet it seems to me that the aspirations of the

church must be tempered by the site constraints and the housing market. I am not persuaded that the net loss of a plot would be fatal to the scheme. Indeed the appellants accepted that they had previously put this forward in negotiations with the Council as a possibility they would be prepared to consider.

18. I find therefore that the proposed arrangements for full temporary closure and partial permanent closure of the main sett would cause significant harm to the resident badgers. This could be avoided by excluding the Bramcote Lane frontage development from the scheme and retaining the presbytery. Furthermore, there is an ongoing need to find a management solution to the activity of the badgers in the cemetery. The current proposal would increase pressure on the cemetery and make this task considerably harder.

Other setts

19. There are three or four small setts within the site which show signs of occasional use and which would be permanently closed as a consequence of the development. They are outliers to the main sett. Their closure might lead to increased sett activity elsewhere either in the ecological buffer zones within the layout, which would be preferred, or in gardens. I consider that the loss of these setts would be likely to have little impact on the badger group and the potential for only limited harm to surrounding gardens.

Badger foraging

20. Badgers are omnivorous and typically eat worms, insects, grain and fruit. The proposal would result in the loss of much of the meadow and of the amenity grassland around the church. Unlike the main sett the meadow is underlain by clay and is often waterlogged. It is crossed by badger trails leading to back gardens or to subsidiary setts on the stream bank but surveys for the appellants have shown it to be little used for foraging. On the other hand the Council and the Nottinghamshire Wildlife Trust (NWT) consider it provides a valuable fallback at times when other food is scarce. This must be the case to some degree because at the time of my visit recent badger feeding snuffle marks were apparent on some of the drier parts of the meadow.
21. However, there was agreement between the parties that surrounding gardens are a readily accessible and important source of food. This was confirmed by residents and I was shown a badger trail through front gardens on Glenwood Avenue. The NWT has carried out a very recent survey of occupiers of nearby properties which indicates that the majority have badgers visiting their gardens and that, in the main, they were positive about these visits.
22. To the south of the appeal site on the other side of Bramcote Lane are the very substantial grounds of Wollaton Park where woodland and parkland constitutes good badger territory. It already supports a badger population and residents report an increasing incidence of foraging in gardens on the periphery of the park. Although there is no evidence that the badgers on the appeal site forage here it is reasonably close to the main sett. It would involve badgers crossing Bramcote Lane but traffic calming keeps speeds down and after dusk badgers are already regular road users.
23. The proposed layout incorporates ecological buffer areas to allow continued access to adjacent gardens and to the stream and some limited foraging.

Additional planting is proposed in these areas with fruit bearing shrubs to give an additional food supply in the autumn.

24. The reduction in the grassland foraging area would have an adverse effect on the badger group. However access to gardens would be retained and there would be the possibility of some foraging activity transferring to Wollaton Park. The proposal would be unlikely to materially increase pressure on gardens since these appear already to be the preferred food source. Consequently I find that the loss of the grassland would cause only limited disturbance to the badger population and to residential gardens.

Conclusion on the effect on badgers

25. I conclude that the loss of foraging habitat and the closure of the small outlier setts would have an adverse effect on the resident badgers. Taking into account the proposed ecological buffer and planting which would help to mitigate this effect then I do not consider the harm would be significant.
26. However the excavation and permanent closure of part of the main sett and its total closure during construction would cause significant disturbance to the badgers and increase the likelihood in the future of sett activity extending into the cemetery. The provision of a compensatory artificial sett should only be considered as a last resort. I am not satisfied that the possibility of an alternative scheme which retains the sett has been adequately explored and as a result I am not convinced that a scheme requiring compensatory measures is necessary.
27. I conclude therefore that the proposal would have a significant adverse effect on the badgers occupying the site and that practical and realistic changes to the development which would provide mitigation have not been adopted. The proposal is therefore contrary to the approach in the NPPF and the objectives of Policy 17 of the emerging Core Strategy.

Character and appearance

28. The Council considers that it had insufficient information on which to judge the impact of the proposed church on its setting. In its validation checklist for applications for major development the Council requires photographs and photomontages¹. In this case these were not requested at the application stage and were not submitted by the appellants.
29. However the application was accompanied by a site survey, by detailed plans and elevations and by a street elevation in which levels in relation to existing and proposed development were clearly shown. Furthermore the Council did not produce any evidence that the development would be harmful in its setting. Quite the contrary. In the report to Committee the advice from officers was that the design of the church was acceptable. I agree. There is no merit in this ground of refusal.

Other matters

30. The site is close to the linked grounds of Fernwood Infant and Junior Schools in Arlesdon Drive and to a local academy, Fernwood School, which is within easy walking distance. At school starting and finishing times the surrounding roads

¹ In its evidence the Council refers to this requirement as being for computer generated images

are seriously congested by the vehicles of parents and carers. The appeal development would be served by a new cul-de-sac onto Glenwood Avenue which is one of the roads affected by school traffic. Vehicles generated by the new development during these times would add marginally to the congestion. However the real issue is the school run. Children living on the appeal site would walk to school and if anything would reduce the number of vehicles used for school journeys so that I am not persuaded that the proposal would have a significant effect on the prevailing road conditions.

31. The schools concerned are popular and, because there are always pupils wanting to travel to them from outside their catchment, they are normally at capacity. It was suggested that the proposed development would put further pressure on these schools when they are already full. However the unilateral undertaking accompanying the application makes provision for funding new school places. It is also considerably to the advantage of the proposal that both primary and secondary schools would be accessible on foot.
32. Residents raised further concerns in relation to shallow coal workings and to potential flooding associated with an increase in surface water run off. However these matters have been investigated and I am satisfied they could be addressed by a conditional approval.
33. An occupier of property on the south side of Bramcote Lane would prefer bungalows rather than houses to be built opposite him. However the existing presbytery and nearby development are two storey and the properties on the south side of the road are in an elevated position. I consider houses, as proposed, would be more in keeping with this setting.
34. I have had regard to the contribution the proposal would make to housing supply but this benefit does not outweigh the harm identified to badgers particularly since there is potential for the scheme to be amended to significantly reduce the harm.

Conclusion

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

Bern Hellier

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ian McHugh	IMcH Planning and Development Consultancy
Mr Martyn Pask	Radleigh Group Limited
Dr Suzanne Mansfield	FPCR Environment and Design Limited
Mr Kurt Goodman	FPCR Environment and Design Limited

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Bassett	Senior Principal Planning Officer
Mrs Felicity Atkin	Biodiversity and Greenspace Policy Officer
Mrs Gaynor Jones-Jenkins	Nottinghamshire Wildlife Trust
Mr Benjamin Driver	Nottinghamshire Wildlife Trust

INTERESTED PERSONS:

Councillor Eileen Morley	Ward Councillor
Councillor Georgina Culley	Ward Councillor
Councillor Steve Battlemuch	Ward Councillor
Mr Chris Downes	Local resident
Miss Alex Chapple-Hyam	Local resident
Mr Roger Alton	Local resident
Mr Anthony Cordes	Deacon of the Church
Ms Erika Szyszczak	Local resident
Mr David Clarke	Local resident

DOCUMENTS

- 1 Summary of responses to NWT badger survey Glenwood Avenue area: April 2014
- 2 Draft conditions. Revised 11 April 2014
- 3 Proposed Minor Changes and Main Modifications to the Broxtowe Borough, Gedling Borough and Nottingham City Aligned Core Strategies: Publication Version March 2014
- 4 Letter from Miss C A Paton (local resident) dated 13 April 2014