
Appeal Decision

Site visit made on 6 October 2014

by I Radcliffe BSc(Hons) MCIEH DMS

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

Decision date: 28 October 2014

Appeal Ref: APP/W3005/A/14/2221907

**Land at Stoneyford Road adjacent to Fisher Close, Stoneyford Road,
Sutton-in-Ashfield, Nottinghamshire (Easting: 448820 Northing: 360310)**

- 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 Sam Deakin against the decision of Ashfield District Council.
 - The application Ref V/2014/0108, dated 3 March 2014, was refused by notice dated 3 June 2014.
 - The development proposed is a maximum of 14 dwellings, point of access on to Stoneyford Road is not reserved.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on that basis and I have taken the illustrative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development on the appeal site. The National Planning Policy Framework (the Framework) and Planning Practice Guidance are material considerations in this case. I have taken both into account.

Main Issues

3. The main issues in this appeal are;
 - whether the housing proposal would comply with the development plan in terms of its location and its effect on the character and appearance of the area;
 - the effect of the proposed development on highway safety;
 - the effect of the development on local infrastructure and services; and,
 - whether there are other material considerations, such as the sustainability of the proposed development and the supply of housing land, which would outweigh any conflict with the development plan and harm caused.

Reasons

Location

4. The development plan consists of the Ashfield Local Plan Review 2002. The appeal site lies within the open countryside where policy EV2 strictly controls new development in order to protect its character. Such an approach is

consistent with a core planning principle of the Framework. Housing does not fall within the policies definition of appropriate development in the countryside. The location of the proposed development would therefore be contrary to the development plan.

Character and appearance

5. The application form states that the appeal site is used for the stabling and grazing of horses. Open grassed land predominates and its appearance is that of a typical paddock. In the nineteenth century, and into the twentieth century, the site had a small quarry and limekilns. However, these have long since disappeared. More recently there have been unauthorised uses on the site and there is difficulty in growing grass on part of it. As a consequence, part of the site has not been able to be used for grazing. The appellant's Environmental Screening report considers the site to be brownfield land. Nevertheless, his more recent Desk Study Report considers that since the quarry and limekilns closed it has remained undeveloped. Taking these considerations into account, and based upon the Framework's definition of previously developed land (pdl), I find that the appeal site has returned to nature and that as a matter of fact and degree it does not constitute previously developed land.
6. The site and the countryside that surrounds it on three sides forms part of the narrowest point of the open gap that separates the settlements of Sutton-in-Ashfield and Stanton Hill. Given that it is close to Stoneyford Road the contribution of this open, green and undeveloped site in separating the two settlements and establishing their rural setting is an important feature of the character and appearance of the area.
7. A Landscape and Visual Impact Assessment (LVIA) has been carried out of the proposed development. Its assessment is that users of Stoneyford Road which links Stanton Hill with Sutton-in-Ashfield are visual receptors of medium sensitivity. From this view point the LVIA states that residential development of the site would have moderate long term and non-reversible effects. However, it considers that a buffer zone by the stream, the use of hedgerows along boundaries and the planting of native trees and shrubs is likely to make the development acceptable in landscape and visual terms. Such measures would help soften the built form of the proposed houses and assist with the transition of the development into the countryside. However, it would not alter the fact that the urbanising effect of the development would result in the loss of countryside. In my assessment, the reduction of the remaining open gap between the two settlements in a visually prominent location would have an adverse effect on the character and appearance of the area.
8. Reference has been made to the Mssrs Millward, Shaw & Webster development that was allowed on appeal¹ in support of the proposal. However, it was some distance to the east and unlike this appeal site it did not form part of the prominent gap visible from Stoneyford Road separating Stanton Hill from Sutton-in-Ashfield.
9. Trees on the site and immediately adjacent to it are primarily small and located around its perimeter. As a consequence, the absence of a tree report, which formed one of the Council's reasons for refusal, is a matter that could be dealt with by condition. With the control that could be exerted at reserved matters

¹ Appeal Ref APP/W3005/A/12/2179635

stage attractive dwellings could be designed. Nevertheless, these considerations would not overcome the cogent planning objections that I have described. Taking all these matters into account, I therefore conclude that the proposed development would harm the character and appearance of the countryside and area, contrary to policy EV2 of the Local Plan. This policy seeks to protect the countryside from development. It would also be contrary to the objective of policy EV4 of the Local Plan which seeks to prevent development that would adversely affect the mature landscape area of Skegby Bottoms in which the appeal site is located. Furthermore, it would not align with the Greater Nottingham Landscape Character Assessment recommendations which seek to enhance the area.

Highway safety

10. The proposed development would make use of an existing access onto Stoneyford Road. In terms of its design the carriageway and footways on either side would be of adequate width. However, the access is 12.5m from the centre of the junction of Fisher Close with Stoneyford Road. The extant Mssrs Millward, Shaw & Webster planning permission is for a large number of houses many of which would join Stoneyford Road 33m away in the same direction as Fisher Close to the south. At the site visit I had difficulty joining the highway from the access to the appeal site due to the speed with which vehicles were travelling along Stoneyford Road. No assessment of traffic speeds along this road has been provided as part of this application. An analysis of vehicle turning movements from the appeal site, Fisher Close and the access that would serve the Mssrs Millward, Shaw & Webster development to the south has also not occurred. In the absence of such information I cannot make a reasoned assessment as to whether adequate visibility splays would be provided, or whether the intensified use of the access would avoid conflict with traffic from nearby junctions. As this matter relates to the principle of the development it could not be dealt with by condition.
11. The appellant points out that the access to the extant Mssrs Millward, Shaw & Webster permission was found to be acceptable. However, it is on the opposite side of the road away from the appeal site and has different visibility splays. As a consequence, it is materially different to the access in this appeal. Whilst I appreciate that there may be similar relationships between other junctions in the District this does not justify what may be a potentially dangerous arrangement in this location. The access to the appeal site has been in use for many years with no accidents. Nevertheless, the proposed development would considerably intensify its use and the new development on the opposite side of the road will complicate traffic movements along it. As a result, the absence of accidents in the past does not mean that incidents in the future would not occur if the development went ahead. Traffic calming on Stoneyford Road has been suggested by the appellant. However, in the absence of the further information sought it is not possible to determine if the proposal would make the highway unsafe, and if it would, whether this would be best dealt with by such measures.
12. For all of these reasons, it has not been demonstrated that the proposed development would be safe in highway terms. As a consequence, the proposed development would be contrary to policy ST1(c) of the Local Plan which seeks to prevent such harm.

Local services and infrastructure

13. The Council seeks contributions towards the provision of local services and infrastructure. No planning obligation has been submitted by the appellant. The provisions sought have been assessed having regard to the tests in paragraph 204 of the Framework and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). The undertaking has been drawn up having regard to policy HG6 of the Local Plan and the Supplementary Planning Document 'Developer Contributions to Transport Improvements' (SPD) and Nottingham County Council 'Planning Obligations Strategy'. I have taken this policy, the SPD and Strategy into account in the assessment of the provisions of the obligation.
14. The local primary school is not large enough to cater for the additional children that would live in the amount of housing that could be built on the appeal site. A financial contribution is therefore necessary to mitigate the effect of the development by expanding education provision. In the interests of encouraging more sustainable forms of transport two new bus stops would be necessary. In terms of open space, given the small size of the site, the extent of current provision and its accessibility, a financial contribution towards off site provision is required. This is in order to accord with policy HG6 of the Local Plan. However, no policy justification or planning guidance has been provided that demonstrates that the sum sought for public realm improvements in Sutton Town Centre is necessary to make the development acceptable in planning terms.
15. The contributions sought would be calculated based upon the additional demands the development would generate and the cost of providing the infrastructure and services necessary. The sums sought therefore are reasonably related in scale and kind to the proposed development. In relation to all these matters it is also clear that as the sums sought would be spent on an identified programme of local infrastructure provision they are directly related to the proposal. As a consequence, all the contributions sought, other than in relation to public realm improvements in Sutton Town Centre, satisfy the tests in the Framework and accord with the Regulation.
16. In the absence of a section 106 agreement the appellant is of the view that these matters could be dealt with by condition. However, Planning Practice Guidance (Use of Planning Conditions, paragraph 10) advises that use of a negatively worded condition limiting the development that can take place until a planning obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances. Such circumstances do not exist in this case. I therefore find that a condition should not be used to secure the contributions sought. The absence of an obligation securing these contributions would therefore result in unacceptable harm to local infrastructure and services, contrary to policy HG6 of the Local Plan, the SPD and Nottingham County Council 'Planning Obligations Strategy'.

Other material considerations

Housing land supply

17. Paragraph 47 of the Framework advises that Local Planning Authorities should have sufficient deliverable sites to provide 5 years of housing against their

housing requirements. The Council states that it has a 4.51 year supply of housing land which is less than the required amount.

Sustainable development

18. Sustainable development and the presumption in its favour are at the heart of the Framework. There are 3 dimensions to sustainable development: environment, economic and social. In terms of the environment, prominent open countryside separating two settlements at their closest point would be lost to development. For the reasons previously given this would harm the character and appearance of the area. It has also not been shown that the proposed development would be safe in highway terms. Furthermore, although the site is in a reasonably sustainable location no contribution would be secured towards supporting sustainable modes of transport by providing additional bus stops. No provision either would be made in relation to public open space provision. In terms of construction, the houses would be built to meet current building regulations and so would be energy efficient. The provision of bat and bird boxes would enhance biodiversity on the site.
19. Socially, the scheme would increase demand for primary school places but would not mitigate its impact by funding any new places. New houses would help address the shortage of dwellings in the Borough. In relation to the economy, construction and furnishing of the new houses would generate employment.
20. Taking all these matters into account, I find that the positive aspects of the scheme would not overcome the harm that would be caused by the proposal. I therefore conclude, based upon the overall balance of considerations, that the proposal would not be a sustainable development.

Overall Conclusions: The Planning Balance

21. The location of the proposal would be contrary to policy EV2 of the Local Plan. This is because the appeal site is within the countryside where development is strictly controlled. This is a consideration that normally weighs heavily against the proposal. However, the Council does not have a 5 year housing land supply. As a consequence, paragraph 49 of the Framework directs that development plan policies relating to housing land supply such as policy EV2 should not be considered up to date. This is a material consideration in this appeal.
22. The Framework states that housing proposals should be considered in the context of the presumption in favour of sustainable development. However, I have concluded in an earlier section that the proposal would not constitute such a development. Where relevant policies, as in this instance, are out of date paragraph 14 of the Framework applies. It states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. The proposal would harm the character and appearance of the area, and unacceptably harm local services and infrastructure. Furthermore, it has not been demonstrated that the development would be safe in highway terms. I have also found that the proposal would not constitute sustainable development. Collectively, these factors weigh very heavily in favour of dismissing the appeal. The proposed development would contribute towards

the supply of housing. This is a factor of significant weight in favour of allowing the appeal.

24. My overall conclusion in this case, having considered all other matters raised, is that the adverse impacts of the proposal are considerable. These impacts significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector

Richborough Estates