



Appeal Decision

Site visit made on 23 November 2015

by **I Radcliffe BSc(Hons) MCIEH DMS**

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

Decision date: **11/01/2016**

Appeal Ref: APP/M1005/W/15/3133233

Land off High Street, Riddings, Alfreton, Derbyshire DE55 4BJ

- 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 Riddings Developments Limited against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2014/0553, dated 17 June 2014, was refused by notice dated 13 April 2015.
 - The development proposed is the development of 97 two storey residential dwellings with access and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the development of 93 two storey residential dwellings with access and car parking on land off High Street, Riddings, Alfreton, Derbyshire DE55 4BJ in accordance with the terms of the application, Ref AVA/2014/0553, dated 17 June 2014, subject to the conditions in the schedule at the end of this decision.

Procedural matters

2. Following the submission of the application the description of development was altered to *'the development of 93 two storey residential dwellings with access and car parking from High Street, Riddings'*. This amended description appears on the decision notice and appeal form. I am content that it adequately describes the proposed development and I shall use it in the determination of the appeal.
3. An undertaking made under section 106 of the Act was submitted which I have considered as part of the appeal. On 6 April 2015, Regulation 123(3) of the Community Infrastructure Levy Regulations also came into force. It permits only limited pooled contributions towards infrastructure that could be funded by a Community Infrastructure Levy. The Council was invited to comment on the agreement and the Regulation. The appellant was copied into this correspondence. I have taken the comments received into account in coming to my decision.

Main Issues

4. The main issues in this appeal are;
 - the effect of the proposed development on woodland and its contribution to the character and appearance of the area; and,

- whether there are other material considerations, such as the supply of housing land and the sustainability of the proposed development which would outweigh any harm caused and conflict with the development plan

Reasons

5. The appeal site is located within the built framework of Riddings on land where residential development in principle is supported by policy H3 of the Amber Valley Borough Local Plan 2006 ('Local Plan'), subject to good design.

Woodland

6. Of the various policies referred to I consider policies EN8 and EN9 of the Local Plan to be the most relevant to this issue. These policies seek to prevent development that would result in the loss of significant trees or damage to woodland. A woodland protected by a Tree Preservation Order forms the southern margin to the appeal site. It is clear from their height and density that when in leaf the deciduous trees, of which the woodland is composed, form a verdant backdrop to High Street. As such the trees, collectively, are of high amenity value.
7. The vehicular access to the site would be created through the woodland. In order to create the access, five trees would need to be felled. Although two of the trees are categorised under the British Standard¹ as category C (low value) trees, the other three are category B trees (medium value) trees. Furthermore, the proposed access road would encroach within a significant proportion of the root protection areas of five further trees; four category B (medium value) trees and one category A (high value) tree. The retention of category A and B trees is desirable and the Tree Survey estimated that with good management the affected trees have a significant lifespan.
8. A 'no dig' cellular form of construction for the access road has been proposed to protect the trees which would be retained. However, I note that the guidance provided on the Terram Geocell system advises that it should not be used as a permanent surface finish for vehicle access routes. In the absence of a detailed engineering solution demonstrating therefore that a no dig form of construction could provide a suitable permanent access road for the proposed development, I am unable to conclude that damage to the roots and rooting areas of trees by the access road would not occur. As a consequence, there is a significant risk that, in addition to the five felled trees, a further five trees would decline and die. Collectively these trees make a positive contribution to the amenity value of the woodland. Replacement tree planting would take a significant amount of time to become as established and tall as the trees that would be lost. As a result, such planting would not adequately mitigate the adverse effects caused to the woodland.
9. As a proportion of the whole woodland the affected trees constitute a relatively small part. Nevertheless, this consideration does not alter my overall assessment that the proposed development would cause some harm to the woodland and the contribution it makes to the character and appearance of the area. This harm would be contrary to the objectives of policies EN8 and EN9 of the Local Plan.

Other material considerations

Housing land supply

¹ British Standard 5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations'

10. Paragraph 47 of the Framework advises that Local Planning Authorities should have sufficient deliverable sites to provide five years of housing against their housing requirements. The Council's most up to date housing land supply figures date from the end of March 2013 when it had a 3.1 year supply. On the basis of this information, and in the absence of evidence to the contrary, I therefore find that the Council does not have a five year housing land supply.

Highway safety

11. The proposed access onto High Street would provide the only vehicular route onto and off the site. It was clear from the site visit that the necessary visibility splays to the access could be provided. As a result, vehicles turning into and out of the proposed development would be able to safely do so.
12. The existing car park on High Street is used by nearby residents who do not have off road parking. As part of the proposed scheme a car park would continue to be provided, albeit with 8 spaces rather than the current 16 to 17 spaces. The Highway Authority would like to see 2 additional parallel parking bays provided alongside 106 High Street to increase the total number of parking spaces to 10. However, I agree with the appellant that with the limited space available this would be impractical and that the associated reversing manoeuvres would create danger. On the basis of the available evidence, I find, on balance, that an adequate level of off road parking would continue to be provided if the proposed car park was constructed.
13. On School Croft, where one of the proposed pedestrian / cycle routes serving the development would join the highway, the footway terminates before the access is reached. However, as this is a low speed residential environment this would not result in pedestrians or cyclists coming into hazardous conflict with vehicles. As a result, highway safety would not be harmed.
14. Whilst concerns have been expressed regarding the timing and duration of the traffic survey that formed part of the Transport Assessment the Council has accepted the assessment. The Council has no objection on highway grounds subject to certain conditions and a contribution to allow a traffic management scheme to be devised for the B6016, which includes High Street. On the basis of what I have read and seen I have no reason to disagree with those conclusions.

Community safety

15. Providing two combined pedestrian cycle routes on different sides of the site to the vehicular access would connect the site to the rest of the settlement and promote ease of movement. Such a feature represents good urban design. As these routes would be wide and largely overseen by houses I agree with the Council that community safety would not be adversely affected by the proposal.

Sustainable development

16. The National Planning Policy Framework ('the Framework') is an important material consideration. Paragraph 49 of the Framework advises that housing applications should be considered in the context of the presumption in favour of sustainable development. The policies of the Framework as a whole constitute the Government's view of what sustainable development means in practice. The Framework states that there are three dimensions to sustainable development: environmental, economic and social.

17. In contrast to the Framework's definition of sustainable development, policy LS1 of the Local Plan, which predates the publication of the Framework by several years, only takes into account environmental considerations when considering whether a proposal would be sustainable. However, as paragraph 215 of the Framework makes clear, where there is more than a limited degree of conflict between the Framework and the approach of the development plan, greater weight should be given to the Framework. In assessing the sustainability of a proposed scheme economic and social issues, as well as environmental issues, should therefore be taken into account.
18. In terms of the environmental role, the application site is some distance from Alfreton town centre and Somercotes local centre. However, via the three points of pedestrian access that would be provided a range of local amenities and facilities, including a local shop, school, public open space and employment opportunities are accessible on foot. Bus stops are also present on both sides of High Street close to the main site access. Regular services from these stops give access to Alfreton, Ripley, Eastwood, Sutton and Kirby. As a result, future occupiers would not be unduly reliant on a private car.
19. The ecological value of the site relates to its hedgerows and trees. The vast majority of these features would be retained. The site is not at risk from flooding and a sustainable drainage scheme would ensure that the rate of flow of surface water off the site did not increase. As a result, the risk of flooding elsewhere would not be heightened. Development of this private site would also provide public access to the woodland. An open area of land visible from surrounding houses and a school would be developed. However, given that the site is bounded on three sides by housing, with a school field on the remaining side, it would appear as a natural infill development.
20. It is clear from the position of the housing within the site, and the narrow width of the proposed access road as it passes through the trees, that regard has been had to the distinctive woodland landscape feature in the design of the scheme. Therefore whilst some harm through the loss of woodland would be caused to the character and appearance of the area and the natural environment, which the Framework seeks to protect, this harm would be limited. In support of this view, I note that the Council does not object to the design of other aspects of the proposed development. Given the layout, scale and appearance of the houses proposed, subject to a condition requiring further details on landscaping, an attractively designed scheme would be delivered. For these reasons, the proposal would also not adversely affect views into or out of the Riddings Conservation Area² which abuts the northern boundary of the site, or harm its setting. Taking all these matters into account, I therefore find that the proposal would comply with policy H12 of the Local Plan which seeks good quality residential design.
21. Turning to the economic aspects of sustainability, the construction and fitting out of the houses proposed would generate employment. Post completion the spending of the additional households living in the proposed development would benefit the economy of the area.
22. In terms of the social aspect of sustainability, the 93 dwellings proposed would help address housing need, including the need for affordable housing, in an area that has an inadequate supply of housing land. As described in the following section, the effect of the proposal on local schools and public open

² The significance of the Conservation Area is historical.

space would be addressed by the scheme financing additional school places and providing money to provide new or enhanced open spaces. An increase in population would also help social vitality and support a strong community.

23. Taking all these factors into account, I conclude, based upon the overall balance of considerations, that the proposal would therefore be a sustainable development within the meaning of the Framework.

Other matters

Affordable housing and local infrastructure

24. Policy LS5 of the Local Plan supports the negotiation of section 106 agreements with developers to mitigate the effect of development on local infrastructure such as schools. The submitted section 106 agreement has been properly completed. It includes provision for affordable housing and contributions towards education, public open space and the transport network. I have therefore assessed its provisions against the tests in paragraph 204 of the Framework and the requirements of Regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended).
25. In relation to affordable housing, there is shortage in the Borough and in accordance with policy H10 of the Local Plan the proposed scheme needs to make provision for such housing. In terms of education, the County Council have advised that given the capacity of local infant, junior and secondary schools the proposed development would generate the need for additional places. Such provision is supported by policy LS5 of the Local Plan. In terms of public open space, following the results of a Borough wide open space assessment, policies LC1 and LC2 of the Local Plan seek in new housing schemes the provision of outdoor playing space and play areas for children. The recently adopted supplementary planning document '*Development and Recreational Open Space*' provides further advice in this regard. In lieu of on site provision, a contribution towards off site provision is sought. In relation to the transport network, in order to devise traffic management measures on the B6016 to address the increase in vehicle movements that would occur as a result of the proposal a contribution is sought in accordance with policy TP1 of the Local Plan.
26. In relation to all the areas of infrastructure mentioned there is evidence that it is either at capacity, insufficient to meet current demand or that improvements are needed. Contributions are therefore necessary to mitigate the effect of the development and make it acceptable in planning terms. The calculations are based upon the additional demands the development is likely to generate and the cost of providing the additional infrastructure or improvements necessary. The ability of the scheme to pay such costs whilst still remaining viable has also been taken into account. This has resulted in a reduction in the sums originally sought. I therefore find that the contributions provided for in the submitted agreement are reasonably related in scale and kind to the proposed development. In relation to all these matters it is also clear that the sums sought would be spent on local infrastructure provision. As a consequence, all the contributions sought satisfy the tests in the Framework and accord with Regulation 122.
27. Regulation 123(3) came into force on 6 April 2015. Other than in relation to certain exemptions, such as the affordable housing, it prevents the pooling of more than five planning obligations made since 6 April 2010 towards a specific infrastructure project, or particular type of infrastructure. The Council states

that in relation to each type of infrastructure the contributions sought would be spent on projects where less than five contributions have been made. As a result, their view is that the obligations are compliant with this Regulation. The appellant agrees with the Council's position. On the basis of the evidence submitted, I agree. I therefore find that the contributions sought in relation to education, public open space and the transport network comply with Regulation 123(3).

28. For all of these reasons, I have therefore taken into account all of the provisions of the submitted section 106 agreement.

Overall Conclusions: The Planning Balance

29. As the proposed development would be well designed in compliance with policy H12 of the Local Plan it would also comply with the objectives of policy H3 of the same plan which governs residential development within Riddings. The Framework states that housing proposals should be considered in the context of the presumption in favour of sustainable development. I have found that the proposal would constitute such development in a location where local services and facilities are accessible on foot and there are reasonable public transport links. The proposal would also help address the undersupply of housing in the Borough and the need for affordable housing. Collectively these factors are of significant weight in favour of allowing the appeal.
30. On the other side of the balance, the proposed development would result in the loss directly or indirectly of a number of trees within the woodland in order to create a vehicular access to the site. This would result in some harm to the character and appearance of this landscape feature contrary to policies EN8 and EN9 of the Local Plan. This is a factor of some weight in favour of dismissing the appeal.
31. Having regard to all the matters raised, my overall conclusion is that the considerations in favour of the appeal comfortably outweigh the harm that would be caused by tree loss. The appeal should therefore succeed.
32. There is no doubt that there is strong local feeling about this proposal, as reflected by the volume of objections received at every stage. I recognise that this decision will be disappointing for local residents and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local residents and local councillors, very important though they are, must be balanced against other considerations. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan and the Framework. For the reasons set out above, that balance of the various considerations leads me to conclude that the appeal should be allowed.

Conditions

33. For the avoidance of doubt and in the interests of proper planning, otherwise than as set out in this decision and conditions, the development needs to be carried out in accordance with the approved plans.
34. In order to ensure that the development complements its surroundings further details of external materials, boundary treatments and landscaping are required. For the same reason, existing trees need to be protected from damage during construction and during the laying of the sewer serving the

- development. To ensure that any new planting becomes well established it needs to be well maintained.
35. To minimise the risk of flooding elsewhere further details on sustainable surface water drainage are necessary. A sustainable surface water drainage scheme has been proposed as part of the Flood Risk Assessment carried out by THDA Limited Consulting Engineers. However, as each page of the submitted report is marked 'draft' it is not clear that the scheme as described forms part of the final report. Furthermore, there is an absence of comment from the Council as to whether the submitted scheme is acceptable. Full details of such a scheme together with arrangements for its future management and maintenance are therefore necessary. In the interests of public health, provision for the disposal of foul water needs to be made.
36. To ensure adequate tree protection occurs across the whole of the site further details on the protective measures to be taken are required. To ensure that the trees along the route of the access are protected the measures in the submitted method statement dated 19/08/15 need to be followed. Given the Coal Authorities comments on the submitted Trial Pit and Mining Risk Assessment a site investigation, together with any necessary mitigation is required. To protect and enhance the natural habitats that are to be retained a management strategy is necessary.
37. In the interests of highway safety, a construction method statement, new access road, internal estate streets, parking areas serving the new dwellings and access to plots needs to be laid out. To ensure that the parking area for local residents next to High Street is provided in a timely manner, and that spaces are allocated and managed appropriately, further details are required. In the interests of promoting sustainable methods of transport a travel plan is necessary.
38. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within Planning Practice Guidance.
39. A condition requiring an amended scheme regarding the estate streets, footpaths and plot access / parking arrangements was suggested. However, in the absence of any adverse comment regarding this aspect of the proposal's design there is no good reason for this condition. As a result, it is unnecessary.

Ian Radcliffe

Inspector

Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1407 01C, 1407 02B, 1407 03A, 1407 04A, 1407 05A, 1407 06A, 1407 07A, 1407 08A, 1407 09A, 1407 10A, 13-660-1
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local

- planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
 - 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
 - 6) Prior to the commencement of development a Management Strategy for all retained habitats outside the domestic curtilage of the properties shall be submitted to and approved in writing by the local planning authority. The approved Strategy shall be implemented in full.
 - 7) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) construction access
 - ii) site accommodation
 - iii) the parking and turning of vehicles of site operatives and visitors
 - iv) loading and unloading of plant and materials
 - v) storage of plant and materials used in constructing the development
 - vi) wheel washing facilities
 - vii) the routing of construction traffic
 - 8) Prior to the commencement of development, intrusive site investigation works shall be carried out in order to establish the exact situation regarding the coal mining legacy issues on site. The scheme of intrusive site investigations shall be submitted to and approved in writing by the local planning authority. In the event that the site investigations identify the need for mitigation measures, details of the measures required shall be submitted to and agreed in writing by the local planning authority. Any agreed measures shall be implemented prior to the commencement of development.
 - 9) No development shall take place until details regarding the design and timing of the construction of the parking area fronting High Street, and the allocation and management of parking spaces within it, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details

and the area so laid out shall not thereafter be used for any other purpose other than parking.

- 10) No development shall take place until an arboricultural impact assessment has been submitted to and approved in writing by the local planning authority. The arboricultural impact assessment shall follow the format of BS5837:2012 'Trees in relation to design, demolition and construction – Recommendations' and include an arboricultural impact assessment, tree protection plans and appropriate method statements (as per sections 5 and 6 of BS5837:2012) if any works are proposed within tree protection areas. The approved assessment shall be adhered to throughout the construction period. These should include details of:
- Trees clearly identified as either retained or removed (including trees on land adjacent to the site with canopies or root protection areas (RPAs) which encroach into the site)
 - Clear specifications (to BS3998:2010) for all proposed management works to retained trees.
 - A realistic assessment of the probable impacts between the trees and development (as per BS5837:2012 section 5.3.4).
 - Root protection areas and construction exclusion zones.
 - Exclusion zone protective barriers (giving precise locations and specification).
 - The position of all new underground services in relation to RPAs.
 - Detailed specification and installation method statement for any proposed new structure, hardstanding, underground service or work access into RPAs
 - Method statements for all other construction operations which could impact on trees.
 - Measures for on-site arboricultural supervision to be carried out by the developer's arboriculturist, including details of the frequency of visits and procedure for notifying the local planning authority of the findings.
 - Positions and specification (following BS8546:2014 'Trees: from nursery to independence in the landscape – Recommendations as appropriate) for all new tree planting.
 - Reinstatement and ground preparation for new tree planting and areas of soft landscaping.
- 11) The development hereby permitted shall not commence until drainage plans for the disposal of foul water have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 12) No development shall take place until a surface water drainage scheme for the site, based upon sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the

surface water run-off generated to and including the 1 in 100 + climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. It shall also provide a management and maintenance plan for the scheme for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. The approved scheme shall be fully implemented before the development is first occupied.

- 13) Before any other operations are commenced, a new estate street access shall be formed to High Street in accordance with the application drawings, laid out and constructed and provided with 2.4m x 45m visibility splays in either direction.
- 14) Prior to first occupation of each dwelling hereby permitted the new estate street shall have been laid out and constructed to base level, drained and lit in accordance with the approved scheme from that dwelling to the existing public highway.
- 15) Prior to first occupation of each dwelling hereby permitted the plot access and off street parking serving that dwelling shall have been laid out and constructed in accordance with the approved scheme and the areas so laid out shall not thereafter be used for any other purpose. The area in advance of any visibility sightlines shall be maintained clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjacent nearside carriageway channel level.
- 16) Prior to first occupation of any dwelling, a Travel Plan, including a timetable for its implementation and monitoring and review mechanisms, shall be submitted to and approved in writing by the local planning authority. The approved plan shall thereafter be implemented in accordance with the approved details.
- 17) Prior to occupation of the 75th dwelling the surface of the estate streets shall be finished and retained as such thereafter.
- 18) For construction of the access and installation of the foul drain, construction specifications and methods of working shall be fully in accordance with the detail in the submitted 'Arboricultural Implications and Method Statement' by Cotswolds Wildlife Surveys, dated 19 August 2015.