



Appeal Decision

Site visit made on 2 August 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2022

Appeal Ref: APP/A3010/W/21/3287260

**Canal Turn, Welham Road, Retford, Nottinghamshire, DN22 6UG,
471604, 381775**

- 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 Rippon Homes Ltd against the decision of Bassetlaw District Council.
 - The application Ref 20/01700/FUL, dated 11 December 2020, was refused by notice dated 18 August 2021.
 - The development proposed is the "Demolition of Existing Bungalow and Ancillary Buildings and Erection of Residential Development of 38 Dwellings (Resubmission of 20/00730/FUL)".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal was amended during its consideration by the Council. As originally submitted, it proposed 42 dwellings. In response to consultation, the proposal was reduced to 38 dwellings. The was consulted upon, and it is plain from the evidence, including the Officer Report and the Decision Notice that the Council considered this 38-dwelling proposal in reaching their decision.
3. On the day the Council issued its decision, the appellant submitted further amendments to the proposal, seeking to address the updated consultation comments. These amendments reduced the proposal to 35 dwellings. The Council has confirmed that these amendments were not consulted upon, and they were not considered by the Council.
4. The Procedural Guide: Planning appeals – England is clear that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. It is also clear from the evidence that there was a significant degree of public interest in the application and a clear expectation of consultation on amendments, as well as an obvious need for updates to the responses by statutory and technical consultees.
5. Despite this, the appellant has chosen to submit their appeal on the basis of the 35-dwelling version of the proposal. I am satisfied that it is clear from the content and date of the Decision Notice, the contents of the Officer Report, the dates of submission of their final amendment as well as the content of their appeal submissions that the appellant is aware that the Council did not make its decision on the 35-dwelling version of the proposal.

6. I have had regard to the Procedural Guide, the Wheatcroft Principles, the degree of engagement of all parties with the proposals and in the interests of fairness. I have therefore determined the appeal on the basis of the plans that were before the Council when it made its decision and on which parties were consulted, that is, the 38-dwelling proposal. Whilst the appellant's submissions relate to the 35-dwelling proposal, and it is unfortunate that they have chosen to do so despite the clear advice in the Procedural Guide, I am satisfied that no prejudice has arisen, for the reasons set out above.
7. Despite all of the above, Part E of the appeal form states that the description of development has not changed but wording matching that used on the Decision Notice has been entered. I have used this wording in my banner heading above, consistent with my reasoning in this Decision.

Main Issues

8. The main issues are;
 - the effect of the proposal on the character and appearance of the area,
 - whether or not the ecological impact of the development has been properly assessed,
 - the effect of the proposal on highway safety for all users, and
 - the suitability of the site for the development proposed having regard to flood risk.

Reasons

Character and appearance

9. The appeal site lies within designated open countryside, and but for the existing dwelling, is largely open and undeveloped, albeit with some stands of trees within it. The sides of the site not adjoining existing residential development are bounded by dense trees and hedging which themselves limit views into and across the site. The canal, running along the edge of the site forms an obvious visual break between the site and what appears as wider, open countryside beyond. Similarly, to the north-east, the substantial belt of trees and vegetation, coupled with the public right of way separates the site from the open countryside and landscape beyond.
10. These bands of trees, hedges and vegetation play a significant, strong and positive role in the character and appearance of the area in my opinion, and their value in this is reinforced by their proximity to, and visual effect on the well-used public rights of way around the site, including the canal.
11. The Council suggests that the site has a transitional role, marking the shift from built form to the open countryside. Whilst I agree that this transition appears on-plan, given the relative density of the housing to the west, the existing site and the open countryside to the east, I do not find that this role persists on-site. To my mind, the boundaries of the site, combined with the obvious visual effect of the canal, and indeed, the location of built-form to the south of the road, all reduce any visual transitional effect. Similarly, I find that the size of the site, in comparison to the other fields around it, and in particular the open fields and landscape to the north also limit such a transitional character.

12. Given the existing site boundaries as well as the distinct differences I have found between the site and the wider, open countryside to which local value is ascribed in the Council's assessment, third-party comments and the Bassetlaw Character Assessment, I find that development of the site would not necessarily have a detrimental effect on the character and appearance of the area. This is however, clearly subject to the delivery of suitable boundary treatments in the proposal, retaining, protecting and reinforcing those important boundary features as appropriate.
13. However, the density of the proposal appears substantially greater than that of surrounding residential areas. In particular, the canal frontage proposals are dense and tall, distinct from the established pattern of residential development in the surrounding area. Coupled with the detail of the site layout, including the amount and layout of internal roads and parking, the pumping station and the proportion of detached to attached housing within the site, I do not consider that the layout and design of the site is consistent with, or appropriate to the character of the area.
14. I note the comments of the appellant with regard to tree coverage on the site, including the tree survey, tree constraints plan and proposed landscaping layout. Whilst the tree constraints plan and proposed site layout appear consistent, in terms of retaining category A and B trees, the proposed landscaping layout is not, nor does it show the layout of the site finally considered by the Council.
15. Whilst I accept that an element of tree coverage on the site would be lost to enable development to take place, I am concerned at the inconsistencies between the drawings in the submission.
16. In addition, I note the comments from consultees and third parties around landscaping and tree coverage. In these, I note there are particular concerns, which I share, over the relationship of the proposals to the existing trees and the potential for amenity issues for future occupiers as a result, which may lead to future pressure for removal. Such a close relationship, and any associated future pressure would also, in my opinion, adversely affect the amenity of users of the public rights of way around the site.
17. Given the importance I have found of tree coverage to the character of the site and the wider area, I am not satisfied that the inconsistencies I have found, lack of proposed detail and potential conflicts and associated future pressures could be properly addressed through the imposition of a condition.
18. In conclusion, whilst I have found that development of the site could be acceptable in terms of its effect on the wider landscape, the detailed effects of the proposal before me are unclear. Given the sensitivity of the site and its immediate surroundings, and the importance of such details to the landscape effects of any development of the site, I therefore conclude that the proposal would lead to unacceptable harm to the character and appearance of the area through its design, density, layout, and likely effect on trees, vegetation, users of the public rights of way, the canal and the immediate area. I also note that despite my conclusion on potential landscape effects, the site does still lie within designated open countryside.

19. As such, I find that the proposal would be contrary to Policies DM4 and DM9 of the Bassetlaw District Local Development Framework – Core Strategy & Development Management Policies DPD, adopted December 2011 (the Core Strategy). These policies seek, amongst other things, to ensure that development is of high-quality design which respects the character and appearance of the area, its landscape setting and architectural style. The proposal would also conflict with guidance in the National Planning Policy Framework (the Framework) which seeks to achieve the same aims.

Ecological impact

20. The submitted 2020 Preliminary Ecological Appraisal (PEA) for the site identifies ecological features of the site, including habitats and species protected under various legislation and policy. In particular, it notes the requirement for additional survey work to understand the importance of the site for bats and great crested newts, as well as to detail avoidance, mitigation, compensation/enhancement measures and to detail any residual impacts of the proposal on them. I note that the appellant intended to carry out this survey work and had apparently agreed a timetable to do so with the Council.
21. Despite that, I have not been presented with any such survey results, and as such, cannot know the likely effects of the proposal on bats or great crested newts, nor can I know if any avoidance, mitigation or compensation proposals are appropriate or whether or not any residual impacts would be acceptable.
22. In addition, there is a clear conflict between the PEA and the evidence around drainage (particularly for surface water), which raises further doubt as to the likely ecological effects of the proposal. Given both the uncertainty and the conflict between the PEA and the drainage evidence, I do not consider it would be appropriate or possible to address this matter by condition.
23. As such I find that the ecological impact of the proposal has not been properly assessed, and I cannot know, to the level of satisfaction required by the relevant legislation, Policy DM9 of the Core Strategy, or the guidance in the Framework, whether or not the proposal would adversely affect features, habitats or species of recognised biodiversity importance.

Highway safety

24. I note from the Officer Report that the highway authority has no concerns over the capacity of the wider highway network to absorb the effects of this proposal, despite a number of third-party objections on that basis. On the evidence before me, I see no reason to disagree with that position.
25. However (notwithstanding the late submission of the amended scheme, which I have addressed in my Procedural Matters above) the highway authority has significant outstanding concerns on detailed elements of the proposal regarding the width of the access road, the suitability of the turning head, visibility splays, driveway width, driveway visibility, bin collection points, pumping station access, and overall levels of parking. These are unresolved. As such concerns are so fundamental to the proposal as to require a substantial redesign to address, and as they were the subject of significant third-party comment, I do not consider it would be appropriate to attempt to resolve them through the imposition of conditions.

26. Given this, I find that the proposal would not deliver safe and suitable access for all, could give rise to conflict between pedestrians, cyclists and vehicles, and may not be suitably laid out for access, servicing and provision of parking. As a result of all of which, the proposal would fail to accord with local design policies, contrary to Policy DM13 of the Core Strategy and guidance in the Framework.

Flooding

27. The Framework requires a sequential, risk-based approach to the location of development, taking into account all sources of flood risk. The sequential test aims to steer new development to areas with the lowest risk of flooding. This has not been carried out in this case.
28. I am mindful of the guidance in the Planning Practice Guidance (the PPG) that it is for local planning authorities, taking advice from the Environment Agency (EA) as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case.
29. Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere.
30. Despite the evidence from the appellant, including the site-specific Flood Risk Assessment (FRA) and the suggestion that some elements of EA flood mapping is to be updated, it is clear that the Council, informed by its technical consultees, has not ignored the FRA, but is not yet satisfied in that regard, and that they consider there to be insufficient evidence to determine if the proposal could be accommodated on land with a lower probability of flooding. I agree with this conclusion and find it appropriate to share their cautious approach.
31. The use of the canal for surface water drainage is under discussion with the Canal and River Trust, but I do not have evidence that final agreement has been reached. I also note the conflicts between that surface water drainage strategy and the conclusions of the PEA, discussed above. This conflict adds to my conclusion that a cautious approach to drainage and flooding is appropriate.
32. As a result, I find that it has not been satisfactorily demonstrated that there are no sequentially preferable sites available, that the proposal would be safe from flood risk or that it would not increase flood risk elsewhere. It would therefore be contrary to Policy DM12 of the Core Strategy and government guidance in both the Framework and the PPG.

Other matters

33. During the course of the appeal I sought, but was ultimately not provided with, a list of conditions to be imposed should planning permission be granted. Despite this, in my reasoning above, I have considered whether or not certain issues could be addressed, as suggested by the appellant through suitably worded conditions, and found that they could not. As a result, I do not consider that any prejudice has arisen as a result of the failure of the Council to provide suggested conditions.

Planning balance

34. I note that the Core Strategy is several years old, and that it pre-dates the Framework. However, as noted in the Framework itself, this does not automatically render the Core Strategy policies out-of-date, and due weight should be given to them according to their degree of consistency with the Framework.
35. In terms of the policies referred to in the Decision Notice, and my reasoning above, I find that the Core Strategy is consistent with the Framework insofar as it seeks to protect the character and appearance of the area, conserve and enhance the natural environment, promote sustainable transport and meet the challenge of flooding.
36. I accept that the Core Strategy does not, and given its age, cannot, meet the specific aim of the Framework to significantly boost the supply of homes. However, I find that the Core Strategy does meet, and indeed has met, the overarching aim of the Framework to deliver a sufficient supply of homes, as there is no dispute between the parties that the area has a substantial supply of land for housing. Whilst I accept that a high level of supply is not in itself a reason to dismiss other proposals for housing, it does reinforce my conclusions that the overall approach in the area is effective at delivering housing and is consistent with the Framework.
37. In addition, given my conclusions above on the issues of flood risk at the site and ecological impacts of the proposal, the Framework provides clear reasons for refusing the development proposed.
38. Even had I reached different conclusions on flood risk and ecological impacts, in light of my reasoning above, I find that granting planning permission, would have serious adverse impacts on character and appearance, biodiversity and highway safety. Added to this, I note that the Council requires an agreement under section 106 to deliver affordable housing on the site, as well as contributions towards play facilities, public transport infrastructure, financial mitigation towards the recreational effect of the proposal on the canal, management and maintenance of the drainage. No such agreement was provided in line with the advice in the Procedural Guidance.
39. I find that all of these, taken together, would represent adverse impacts which would significantly and demonstrably outweigh the benefits of 38 dwellings, in an area of undisputed, substantial housing land supply.

Conclusion

40. For the reasons given above I conclude that the proposal conflicts with the development plan. Further, it does not benefit from the presumption in favour of sustainable development set out in the Framework. I find that there are no other material considerations which indicate that a decision be taken other than in accordance with the development plan.
41. The appeal should therefore be dismissed.

S Dean

INSPECTOR