



## Appeal Decision

Site visit made on 27 February 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> March 2024

Appeal Ref: APP/P3040/W/23/3330938

Land at Main Street, Flintham, Nottinghamshire, NG23 5LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline and full planning permission.
- The appeal is made by Mr G Dawson against the decision of Rushcliffe Borough Council.
- The application Ref 22/02257/HYBRID, dated 2 December 2022 was refused by notice dated 4 October 2023.
- **The development proposed is described as** "A rural exception development of No. 14 affordable dwellings including No. 6 discount market sales dwellings with associated provision of car parking, open space, landscape and infrastructure works and No. 3 enabling self-build dwelling plots."

### Decision

1. The appeal is dismissed.

### Applications for costs

2. A partial application for costs was made by Mr G Dawson against Rushcliffe Borough Council. Because this application was received after the deadline for final comments, it will be dealt with separately in due course.

### Preliminary Matters

3. The description of development in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording, matching that on the Decision Notice has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
4. The description of development used by the Council did however make clear the hybrid status of the application, with full planning permission being sought for the 14 affordable dwellings, but outline planning permission, with only details of access provided, for three self-build dwellings to enable the provision of the affordable housing.
5. Following their decision on the appeal proposal the Council and appellant have agreed that the fifth reason for refusal, relating to the absence of information to deal with potential archaeological remains, can be properly dealt with by way of condition. Similarly, following the submission of a Preliminary Roost Assessment and subject to the imposition of conditions, the eighth reason for refusal, relating to protected species has been satisfactorily addressed.

6. Having carefully considered the decision, the evidence of each party and the proposed conditions, I agree with this approach and these issues are no longer main issues in this appeal.
7. An executed planning obligation by way of unilateral undertaking under section 106 of the Act has been submitted to secure various contributions, including amongst other things, the amount and tenure of affordable housing, bus stops, open space, biodiversity gain and the self-build element of the proposal.

#### Main Issues

8. The main issues are therefore:
  - whether or not the site is a suitable location for the development proposed having regard to its location and the need for it,
  - the effect of the proposal on the character of the area,
  - the effect of the proposal on the historic environment, and
  - the effect of the proposal on protected trees, and
  - whether or not the site is of an appropriate scale for a rural exception site.

#### Reasons

##### *Location and need*

9. The spatial strategy of the Rushcliffe Local Plan Part 1: Core Strategy, adopted December 2014 (the Part 1 Plan) establishes a hierarchy of settlements and seeks to deliver a strategy of urban concentration with regeneration. In settlements such as Flintham, development is limited to meet local needs, through small scale infill or on exception sites. Policy 8 of the Part 1 Plan allows rural exception sites for affordable housing within or adjacent to rural settlements, where an established need is demonstrated through robust evidence.
10. The wording of the policy is such that this robust evidence can include an up-to-date Housing Needs Survey (HNS) but is not limited to that. The Council has criticised the HNS carried out by the appellant for the currency and accuracy of the data on which it bases its recommendations as well as elements of the methodology which have been used to generate its outputs. The appellant does acknowledge some of these shortcomings, including the size and range of the data used to inform it, but considers that it is nevertheless a robust basis to support the proposal.
11. Despite this, I have serious concerns about the HNS, including the age of the data, the failure to update it to reflect the 2021 census, the return rate for the survey and the approach taken to the applicability of data taken from the housing register through an FOI request rather than through more normal methods of interrogation. I note the response of the appellant to these. On the census data in particular, the rebuttal on the HNS evidence suggests that comparable census data would not be available until January 2023, yet that was some time before the submission of the appeal.

12. **Given the Council's role in this process**, I consider that they are ultimately in the best position to understand their own evidence and data on housing need, and affordable housing need. This seems particularly the case here, where there appears to be a very clear, systemic reason (notably around preferences) for some of the data which the appellant has presented as demonstrative of a specific local need not in fact doing so. As such, I do not consider that the evidence before me is a robust demonstration of local need, sufficient to justify the development of the site as a rural exception.
13. Even if I had found that the evidence before me was sufficiently robust evidence of local need, I would then need to be satisfied that the site was within or adjacent to Flintham. Turning now to that second part of the Part 2 Plan Policy 8 test it is not in dispute that Flintham is a rural settlement for the purposes of the policy. Nor is it disputed that the site is land otherwise designated as countryside, which the plan seeks to protect, in Policy 22 of the Rushcliffe Borough Local Plan Part 2: Land and Planning Policies (the Part 2 Plan) for, amongst other things, its intrinsic character and beauty. The development plan does not define settlement boundaries.
14. The site is within both the 30 mile per hour speed limit and within the village gateway signs. There are houses on the opposite side of Main Street to the appeal site, and sporadic houses to the west towards the centre of the village. There are also a small number of buildings to the east. If one takes the location of the pub, community shop and junction of Main Street with Spring Lane as being the centre of the village, then travelling towards the site along Main Street, there is, to my mind a very different character to the appeal site and its immediate context, than to the rest of the village. Much of Main Street is made up of relatively dense, tightly-knit buildings, generally built close to the footway, giving an enclosed character typical of an agricultural, rural village. As one then reaches the dog-leg bend in Main Street approaching the site, the character distinctly changes. Buildings are set further apart from each-other, further back from the road and the road takes on a much more rural, open-countryside character. This is reinforced by the lack of continuous footways to the site, and the ending of the streetlighting. The area around the site has a much lower density, lending it a rural transition zone feeling.
15. I acknowledge the dwellings next to and opposite the site. However, despite them, I do not consider that the appeal site could properly be described as within or adjacent to the village as envisaged by the policy. When either walking or driving along Main Street, eastwards or westwards, the site has a strongly rural and out-of-settlement character. This is itself reinforced by the public right of way through it, its partly-planted, partly-open appearance and the views through and across the site to the open countryside beyond. The strong hedgerow boundaries to Main Street around the site also add to this.
16. Although there are buses serving the village, and I accept that rural exception sites, are, by their nature exceptional, given the lack of continuous footways between the site and the existing bus stops, and the distance to other settlements with a greater range of facilities and services, I consider that the location of the site, neither within nor adjacent to the village, would be likely to lead to a reliance on the private car for day-to-day activities. In this, I note the intention to provide an additional bus stop in the unilateral undertaking, but this does not alter my conclusion on this point.

17. As such, I find that the appeal site is neither within nor adjacent to a rural settlement, and even had I considered that robust evidence of local need had been provided, it would not comply with the requirements of Policy 8.
18. Overall, I therefore find that having regard to its location, the appeal site is not a suitable location for the development proposed. In this regard, the proposal does therefore conflict with Policies 3 and 8 of the Part 1 Plan and Policies 13 and 22 of the Part 2 Plan, which seek, amongst other things to ensure that development reflects the spatial strategy set out in that plan and is located appropriately.

*Character of the area*

19. Much of my reasoning above on the location of the site applies to the effect of the proposal on the character of the area. As I have found that the proposal is neither within nor adjacent to the village or its built-up-area, I cannot consider that the layout, form and scale of the proposal is appropriate for the rural, open character of the site and its surroundings.
20. The appeal site is open on its eastern part, but with a substantial, reasonably well-established orchard on its western part, as well as strong boundaries all around. Despite that, there are long, rural views available from and across the site, which reinforce its rural and open character. These would be lost to the proposal.
21. Turning specifically to the proposed layout of the site, but for a single gateway dwelling, the substantial part of built form would be clustered in the eastern corner, with three other dwellings on the northern boundary. Much of the rest of the site, including that closest to Main Street would remain open. I acknowledge the attempt to mimic the broad style of historic development in the village, with built form extending backwards from strong frontage development. However, I do not consider that the proposal successfully mimics this. To my mind it has a very different layout and relationship to the road and the public domain, with the parking and turning areas, and inward facing, faceted terraces giving the proposal an urban character, atypical of the rest of the village.
22. I am also concerned that the detailed design and appearance of the proposed dwellings, in spite of the brickwork details set out, is atypical for the area, and would appear so markedly different as to be harmful to its established character. In particular, the central courtyard, with parking to the front of the dwellings, other parking areas and a large central turning area are quite different to the rest of the village. The existence of former agricultural farmyards and courtyards in the village does not alter this conclusion, as to my mind they have a very different character and appearance, including in terms of the scale of the buildings which relate to them and their visibility from the public domain. In addition, they are experienced in the context of other tightly-packed frontage development, with an overall strong sense of enclosure to Main Street. The appeal development would not replicate that character.

23. The loss of trees across the site, as well as the need to improve the access and vision splays, and the creation of the surfaced path, play area and parking area through what trees remain would, in my opinion, further harm the rural and open character of the site and the area around it. The entire site would be subject to change as a result of the proposal. I do not consider that the proposed retained or replacement planting would reduce this harmful, urbanising effect, which would not be confined to the location of the dwellings, their accesses or parking areas.
24. Taking all of this together, I find that the proposal would have a harmful effect on the character of the area. As such, it conflicts with Policy 10 of the Part 1 Plan, and Policies 1 and 22 of the Part 2 Plan. These seek, amongst other things, to ensure that development makes a positive contribution to the area, reinforces local characteristics, respects the local, established character and appearance and settlement pattern. The proposal would also conflict with national policy in the National Planning Policy Framework (the Framework) which seeks to conserve and enhance the natural environment.

#### *Historic environment*

25. The site lies within the Flintham Conservation Area (the CA). The Flintham Conservation Area Appraisal and Management Plan, January 2009 (the CAA) and the Townscape Appraisal clearly set out the features which contribute to the significance of the CA as a heritage asset. These include the strong rural approaches, hedges and open views, as well as the enclosed, built-up feeling of Main Street in particular. The CAA also highlights the network of small fields and paddocks around the village, and the Townscape Appraisal shows an important vista crossing the site, which is itself identified as a positive open space.
26. On the basis of my reasoning and findings above, it is clear therefore that the appeal site makes a strongly positive contribution to the significance of the CA as a heritage asset. In this, I note the relative youth of the orchard, but this does not alter the positive contribution which it makes to the CA.
27. Notwithstanding the proposed retention of an element of the tree planting within the site, and the distribution of the housing to the northern and eastern parts of the site, the proposal would lead to a wholesale change in the character and appearance of the site. As noted, almost the whole of the site would be subject to change, with built development in some areas, and active intervention in others. This would fundamentally reduce the positive contribution the site makes to the significance of the CA as a heritage asset.
28. The harm I have found is less than substantial, consistent with both the Council and the appellant. As such, this should be weighed against the public benefits of the proposal. The delivery of affordable housing and an element of market housing is a public benefit. When taken together with the CA harm I have found, and my other reasoning set out in this decision, I do not consider that the less than substantial harm I have found is outweighed by those public benefits. As a result, giving great weight to the conservation of the CA as a heritage asset, I find that the proposal would neither preserve nor enhance the character or appearance of the CA.

29. As such, the proposal would conflict with Policy 11 of the Part 1 Plan and Policy 28 of the Part 2 Plan, which seek, amongst other things to protect, manage conserve and enhance heritage assets. It would also conflict with national policy set out in the Framework.

#### *Trees*

30. The appeal site is covered by a Tree Protection Order which relates to the trees in the orchard as a group as well as a number of specific trees around the boundary. The Council highlights the amenity value of the existing trees on the site, irrespective of their maturity and condition, in terms of their contribution to views, the setting of the public right of way and the overall setting of the area as being a key reason for their protection.
31. Trees protected by the Order would be lost in the proposal, as listed in the Arboricultural Report and shown on the plans. Whilst the Arboricultural Report does include mitigation measures and tree protection schedules, the proposal would nevertheless lead to the removal of a substantial number of trees which, as part of the orchard as a whole, make a significant positive contribution to the character and appearance of the area as set out above.
32. Although replacement planting is proposed, I do not consider that such new planting would have sufficient amenity value either at implementation or for a great many years sufficient to outweigh the harm caused by the loss of the existing trees on the site.
33. As such, I find that the removal of the protected trees, particularly visible from the front of the site, visible from the public domain and the public right of way would have an unacceptable effect on the character of the area. It would therefore be contrary to Policies 34 and 37 of the Part 2 Plan, which seek, amongst other things to ensure that green infrastructure is protected from development and that adverse impacts on trees and woodlands are avoided.

#### *Scale*

34. It is agreed between the parties that neither the development plan nor the **Framework define "small sites" for the purposes of considering rural exception sites**. The appellant has sought to demonstrate that their proposal meets the needs of the local community, would address historic suppressed demand and highlights that only 40% of the appeal site would be developed. Nevertheless, the appeal site itself is large, and although 60% would remain free of built-form, the character of the entire site would change, with development activity (tree felling, tree and landscape planting, path works, access works, a play area, parking area and domestic gardens) across all of it. Coupled with this, the distribution of the built-form would in my opinion, make the overall development appear significantly larger than a simple function of the number of dwellings and their area set against the size of the site and the village as a whole. The visualisations in the Design and Access Statement clearly show this site-wide change to the established character.



35. Conscious therefore of the overarching spatial strategy, set out in Policy 3 of the Part 1 Plan, and the Framework definition of rural exception sites, as well as my conclusions on the apparent scale of the proposal above, when compared to the size of the existing village, I do not consider that the appeal proposal would be a small site, such that it would benefit from the policy support of the Framework. I therefore find that having regard to its context, it is not of an appropriate scale for a rural exception site. In this, I acknowledge the viability matters set out by the appellant, but do not consider that they are of such weight to change my conclusion on this matter.

#### Other matters

36. The proposal includes three market-housing self-build plots, and viability evidence which seeks to justify their number relative to the amount of affordable housing proposed as a rural exception site. The delivery of self-build plots, and indeed, any market housing, does weigh positively in favour of the proposal and clearly finds support in national policy within the Framework. However, the type of this part of the proposal, and indeed, the enabling development element of its relationship to the affordable housing element does not outweigh my reasoning and conclusions above. Simply, the proposal would cause harm irrespective of the type and tenure of the housing proposed.
37. As noted, the provision of affordable housing, in an area in which there appears to be a need is of benefit which weighs in favour of the proposal. However, the inability of the evidence before me to give certainty on the amount of that need limits the weight I can give it. The evidence is certainly not as robust as required by the policy. Allied to that, I do not consider that the harm I have found is such that it can properly be set aside in order to provide affordable housing on a rural exception site, even accepting that normal considerations do not all necessarily apply to such sites as they are, by definition, exceptional.
38. The other benefits to the proposal, including access to open space, planting, and construction-related economic benefits also weigh in favour of the proposal, but are not so great, nor available only through this proposal on this site that they would outweigh the harm I have found above.
39. I note the appeal decisions and caselaw to which the appellant has directed me. Consistency in the planning process is important and like cases should be decided in a like manner. However, it is also important that each case is determined on its own merits and on the basis of the evidence, particularly in relation to the main issues I have identified in this appeal. As a result, I find nothing in the decisions presented to me which alters my conclusions.

#### Conclusion

40. For the reasons given above and the substantial harm I have found in respect of all of the main issues, I therefore conclude that the proposal conflicts with the development plan and there are no material considerations which indicate that a decision be taken other than in accordance with it.
41. The appeal should therefore be dismissed.

*S Dean*

INSPECTOR