
Appeal Decision

Site visit made on 21 May 2024

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19th June 2024

Appeal Ref: APP/M2840/W/23/3329336

31 The Drove, Collyweston, Northamptonshire, PE9 3PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr J Tusting of Burghley House Preservation Trust against North Northamptonshire Council.
 - The application Ref is NE/22/01236/OUT.
 - The development proposed is demolition of two existing dwellings and the erection of up to 11 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline form with all matters except for means of access reserved for subsequent approval. An indicative layout (Drawing No.211001_001_Proposed Site and Location Plan Option 2 Revision I) was submitted with the application and I have taken this into account in so far as it relates to the means of access to the proposed development, and in establishing whether it would be possible, in principle, to erect up to 11 dwellings on the site.
3. The appellant requested a slight amendment to the wording of the description of the development from 11 detached dwellings to up to 11 dwellings. I have agreed to this as no party would be prejudiced by the minor alteration, which would not increase the maximum number of dwellings permitted but would provide flexibility to enable a lower number of dwellings and a mix of house types other than detached to be included at the reserved matters stage.
4. Since the appeal was submitted the East Northamptonshire Local Plan (Part 2) has been adopted (December 2023). This replaces former saved policies from the East Northamptonshire District Wide Local Plan (1996) and the Rural North, Oundle and Thrapston Local Plan (2011).
5. The Council failed to determine the application within the prescribed timescale and has confirmed it does not wish to defend the appeal. Given the Council's position, there are no putative reasons for refusal for me to consider. However, there have been a substantial number of representations made by interested parties raising several concerns, particularly about highway safety and biodiversity.

Main Issues

6. Having regard to the above, the main issues are:

- whether the site is a suitable location for residential development;
- the effect of the development on highway safety with particular regard to its means of access; and
- the effect of the development on biodiversity.

Reasons

Location

7. Policy 11 of the North Northamptonshire Joint Core Strategy 2011-2031 (July 2016) (CS) and Policies EN1 and EN2 of the East Northamptonshire Local Plan Part 2 (December 2023) (LP2) are supportive of small-scale infill development on suitable sites within villages that help to maintain and strengthen local services. The supporting text to these policies defines small scale infill development as being the development of vacant and under-developed land within the main built-up areas of the village on land which is bounded by existing built curtilages on at least two sides, such as the filling in of a small gap in an otherwise substantially built-up frontage.
8. Policy EN1 of the LP2 defines Collyweston as a small freestanding village. I have not been referred to any definition of small scale in the development plan and whilst the National Planning Policy Framework (the Framework) defines housing development where 10 or more homes will be provided, or where the site has an area of 0.5 hectares or more, as major development, the main parties are agreed that in this case, despite the site area, the increase of a maximum of 9 dwellings could reasonably be considered small scale. I have no reason to reach a different view on this matter.
9. Although the site is not a small gap in a built-up frontage, the L shaped site comprises two detached dwellings (31 The Drove and 89 Main Street) and their domestic curtilages, which are divided by an undeveloped area of overgrown grassland and woodland. It is bound on two sides by residential development and on a third side by a public house with associated beer garden and car park. The remaining side is bound by agricultural grassland that lies beyond a low drystone wall.
10. The development would not extend beyond the drystone wall boundary that defines the curtilage of 89 Main Street and which aligns with the rear garden boundaries of the adjacent modern residential development, Collyns Way. As such it would be well related to the built form of the settlement and clearly distinct from the surrounding countryside. The layout of the site, together with the scale, type, mix and appearance of the dwellings, and the landscaping of the site, would be the subject of a further planning application, which interested parties would have an opportunity to comment upon. In respect of housing mix, I note that Policy EN27 of the LP2 requires the provision of some housing for older people to be delivered on developments of more than 5 dwellings in villages.
11. Notwithstanding the loss of trees and wildlife habitat, which I shall address separately, there is nothing before me to suggest that a suitable scheme could

not be designed and accommodated within the site that takes account of its topography and without causing harm to the character and form of the village or that of the surrounding countryside.

12. I acknowledge concerns raised by interested parties regarding the lack of infrastructure in the area. I have limited information before me regarding the services and facilities available either within Collyweston itself, within other villages nearby, or that are easily accessible by public transport. However, I note that within the village there is a public house, a small shop, a church, a play area and a playing field. Pedestrian and cycle access from the site to the public house would be retained, which would also provide a short direct route to the local shop and church. I also noted that there is a public right of way from Collyns Way leading to the park and playing field. This appears to adjoin the northeast corner of the site and could potentially provide future occupiers of the development with a short, safe, direct link to these facilities, in accordance with Policy 8 of the CS, which seeks to ensure connectivity.
13. The development would support the retention and enhancement of existing facilities in the village. Given the size of the site, there is scope for providing public open space within it, which could include the retention of some mature trees and woodland habitat areas. The submitted legal agreement would also secure financial contributions towards the provision of affordable housing and the provision or enhancement of healthcare facilities in the local area. The net increase of no more than 9 dwellings would not therefore be disproportionate to the size of the settlement or the range of facilities available.
14. I therefore conclude that the site is, in principle, a suitable location for new residential development having had regard to the relevant policies referred to above.

Access

15. The means of access before me for consideration at this stage is limited to the point of access from the existing public highway. The layout of the site is reserved for future consideration. Likewise parking requirements will need to reflect the size and type of houses submitted at the reserved matters stage.
16. The proposed development would be served by a single new access from The Drove. The vehicular accesses to the existing two dwellings from The Drove and via the public house car park would be permanently closed off, albeit pedestrian and cycle access to the public house car park would be retained.
17. The Drove is a single carriageway two-way residential street, which is subject to a 30mph speed limit, is street lit and has footways present along either side. The access has been designed in accordance with the North Northamptonshire Sustainable Design SPD with a 4.8m wide carriageway, 6m radius kerbs and 2 x 1.5m service strips. Visibility splays for the new access would be 2.4m x 43m in line with the Manual for Streets standard for a 30mph road.
18. I have been provided with multiple comments that were made by the Local Highway Authority in respect of the application. The latest comments I have been provided with, dated 5 May 2023, raise no objections or concerns.
19. Although there is another junction (Westonville) on the opposite side of The Drove that would be approximately 12m from the proposed new junction, a swept path analysis and road safety audit have been submitted, which

demonstrate that there would be no conflict between vehicles simultaneously using these junctions and as such this would be acceptable in terms of highway safety.

20. The traffic generated by a maximum of 9 additional homes would not be significant in this area, which is served by an established road network. The evidence before me confirms that there have been no recorded accidents in the vicinity of the new access point in recent years and that the trip generation of the proposed development would be negligible and would not have a noticeable effect on the local highway network.
21. Interested parties have significant highway safety concerns and have advised that there are existing problems on The Drove due to class 1 vehicles using the road, the volume and speed of traffic using the road, particularly when the A1 is closed, and incorrect use of the roundabout. Given the width and alignment of The Drove and my own observations of a large vehicle passing me at speed during the course of my visit, I have no reason to doubt this. However, these are existing problems that are clearly not caused by the proposed development. If there is existing evidence of speeding and an existing need for traffic calming in the area this should be taken up separately with the relevant authorities.
22. Whilst I appreciate that local people may be concerned that any increase in traffic will exacerbate the existing situation, there is no evidence before me that that would be the case. Future occupiers of the development will become local residents and will be equally concerned about road safety. Except for during A1 closures, there is no evidence before me that traffic volumes are high, and this was not the case at the time of my visit. Moreover, cars entering and leaving an additional junction would be likely to slow down traffic travelling along The Drove.
23. I therefore conclude that the proposed means of access to the site would be acceptable to serve the proposed development and would not be detrimental to highway safety. Consequently, it would accord with Policy 8 of the CS, which amongst other things requires satisfactory means of access.

Biodiversity

24. Interested parties have raised significant concerns regarding the harm to and loss of trees, wildlife habitat and wildlife. The application was accompanied by an Arboricultural Survey, a Preliminary Ecological Appraisal (PEA), a Bat Survey, and a Biodiversity Net Gain (BNG) Assessment.
25. The submitted reports confirm that the site comprises amenity grassland, tall ruderal herb, coniferous plantation woodland, broadleaved semi-natural woodland and buildings. The Bat Survey confirmed that although bats do not appear to be roosting in any of the existing buildings that are to be demolished, they were observed actively foraging around the garden area surrounding the house. The small pond onsite is unsuitable for Great Crested Newts and no amphibians were observed during the survey.
26. Although local residents have seen Badgers on the site, I have not been advised how long ago this was, how many Badgers were seen, how often they have been seen or where abouts on the site any suspected sett maybe. In the absence of any substantive evidence to the contrary, I have no reason to doubt

- the findings of the PEA, which found no setts within the site or within 30m of its perimeter and no field signs that could be attributed to Badgers on site. Even if Badgers are present, these would be protected by other legislation.
27. The PEA did identify nesting birds, including some red and amber listed species, and active nests with eggs in. There was evidence of red foxes, rabbits, hedgehogs and moles being present on the site. Stoats, weasels, deer, grey squirrels, mice, voles and shrews probably also use the habitat on site.
28. The BNG Assessment was undertaken using Biodiversity Metric version 3.1 developed by Natural England. It reveals a 68.63% loss of on-site habitat units, which is quite a significant proportion. To compensate for this loss and to generate a net gain, off site provision of the same broad habitat or higher distinctiveness habitat is required to be provided off-site in the local area. The assessment identifies a parcel of improved grassland, within the appellant's ownership, which is approximately 350m from the site. It is proposed that this land would be used to provide enhancements to compensate for the loss of habitat on the appeal site. However, despite correspondence between the parties agreeing this should be secured by a legal agreement, I have not been provided with any mechanism to secure the offsite enhancements, or with any justification as to why this recommendation has not been followed.
29. Although a condition has been suggested for a 30-year habitat management plan, I am not convinced that this would be capable of delivering its objective. The Planning Practice Guidance (PPG) sets out specific circumstances where conditions should not be used, one instance is a positively worded condition requiring the payment of money or other consideration. The PPG also advises that a positively worded condition, which requires an applicant to enter into a planning obligation is unlikely to be enforceable. Based upon the details before me, a planning obligation would be required to secure details of off-site enhancements, funding over a 30-year period, provisions for monitoring and reporting data to the Local Planning Authority and guaranteeing landowner participation, amongst other matters.
30. With regard to trees, the submitted Arboricultural Survey categorises 41 individual trees, 16 groups of trees and 1 hedge. Many of the trees are of moderate and good quality, which means they are suitable for retention and justify protection. The tree groups and hedge are all category C, low quality, except for group 2. Group 2 is mainly large, unprotected conifers within the domestic curtilage of 31 The Drove, which could be removed without consent. There are 2 category A trees, Sycamore tree (T41) on the boundary of 89 Main Street and the public house, which I understand is protected by a Tree Preservation Order (TPO) and another Sycamore tree (T29), which is adjacent to the rear garden boundary of existing houses on The Drove. There are also 5 category B trees. I am advised by interested parties that there is also a Walnut tree sapling that is covered by a TPO, but the Council has not provided me with any TPO records. As I am dismissing the appeal anyway, I have not sought further clarification on this matter.
31. Despite the Arboricultural Survey produced on behalf of the appellant identifying which trees on the site are worthy of protection and identifying root protection areas for these, and despite the ecological reports recommending the retention of the drystone boundary wall and as much broadleaved woodland as possible, the indicative layout has not been amended to reflect

these recommendations. However, given the very low density of the proposal, the layout and mix of house types could be altered at the reserved matters stage to better accommodate these professional recommendations made by the appellant's own team of experts. It would also be necessary to have regard to, and to protect, any boundary trees that fall outside of the appellant's ownership.

32. A condition to protect trees during construction has been suggested. However, clearly some trees will need to be removed to facilitate the development and without knowing precisely which trees are proposed to be removed and which are to be retained and protected, the suggested condition would not be enforceable.
33. In the absence of a reliable mechanism to ensure a BNG is delivered as outlined in the supporting information submitted, and in the absence of any evidence to confirm which trees categorised as worthy of retention would be retained and protected, I consider that the appeal scheme would result in unacceptable harm to and an unnecessary loss of trees and biodiversity, which would not be adequately compensated for. Consequently, the proposed development would fail to accord with Policy 4 of the CS and paragraph 186 of the framework which seek to ensure net gains in biodiversity and to resist development proposals where significant harm to existing biodiversity assets cannot be avoided, mitigated or compensated.

Other Matters

34. During the course of the appeal a planning obligation was submitted which had been signed by both parties. The planning obligation requires financial contributions towards the provision or improvement of affordable housing within a 20 mile radius of the site and the provision or improvement of primary healthcare facilities in the vicinity of the development to be paid to the Council prior to commencement of the development. The sums provided in the agreement are fixed fees, as opposed to being based upon the increase in dwellings or the increase in internal floor area to be provided on the site, both of which will be subject to the details to be agreed at the Reserved Matters stage.
35. Given that the site area is greater than 0.5ha and the internal floor area of the dwellings is likely to exceed 1,000sqm on a site in a village, it is likely that planning obligations would be necessary having regard to Policy 30 of the CS and Policy EN10 of LP2. However, I have not been provided with any evidence from either party explaining how the affordable housing contribution was calculated and the health contribution appears to be based upon an increase of 11 rather than 9 dwellings. Based upon the information before me I cannot therefore be satisfied that the sums requested relate fairly and reasonably to the development.
36. I have had regard to other concerns that have been raised in relation to drainage, changes in land levels, disturbance during construction, external lighting, loss of light, privacy and outlook, and security concerns. These are all matters that can be addressed by suitable conditions or at the reserved matters stage. It has also been suggested that the site could be archaeologically sensitive. There is nothing before me from the main parties regarding this issue. If there was any evidence to suggest archaeology was likely to be affected, a suitable condition could be imposed to address this.

Conclusion

37. The site is in a suitable location, in principle, for new small scale residential development and the proposed means of access to it would not be detrimental to highway safety. However, it has not been demonstrated how the highest quality trees would be retained and protected or how the significant loss of habitat would be compensated for to ensure the delivery of a biodiversity net gain.
38. For the reasons given above, I conclude that the proposal conflicts with the development plan as a whole and there are no material considerations before me that would outweigh that conflict. The proposal also conflicts with the Framework. Accordingly, the appeal is dismissed.

R Bartlett

INSPECTOR

Richborough