



Appeal Decision

Site visit made on 18 June 2024

by **Andrew McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 August 2024

Appeal Ref: APP/J3015/W/23/3331913

Former Lynncroft Primary School, Lynncroft, Eastwood, Nottinghamshire NG16 3FZ

- 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 Avant Homes Central against the decision of Broxtowe Borough Council.
 - The application Ref 22/00894/REM, dated 18 November 2022, was refused by notice dated 7 September 2023.
 - The development proposed is construction of 104 dwellings (reserved matters of access, landscaping, layout and scale in relation to an outline approval – Planning Ref: 20/00844/OUT).
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Decision

1. The appeal is allowed and planning permission is granted for construction of 104 dwellings (reserved matters of access, landscaping, layout and scale in relation to an outline approval – Planning Reference 20/00844/OUT) at the Former Lynncroft Primary School, Lynncroft, Eastwood, Nottinghamshire HG16 3FZ in accordance with the terms of the application Ref:22/00894/REM, dated 18 November 2022, and subject to the conditions detailed in the attached schedule.

Application for Costs

2. An application for costs was made by Avant Homes Central against Broxtowe Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The principle of development has been considered by the Council to be acceptable through the allocation of the appeal site within the Broxtowe Local Plan Part 2 (2019) (the Local Plan) for residential development and the granting of outline planning permission through application Ref: 20/00844/OUT. Consequently, the application which is the subject of this appeal is for reserved matters relating to that outline planning consent.
4. The application which is the subject of this appeal was recommended for approval with conditions by Council Officers at two separate Planning Committee Meetings held on 5 July and 6 September 2023. However, the application was deferred and then refused on those respective dates by the Planning Committee for the reason set out on the Council's Decision Notice.

Main Issue

5. The main issue in this appeal is therefore the effect of the proposed development on the living conditions of occupiers of neighbouring properties with regard to an overlooking, overbearing and overshadowing form of development.

Reasons

6. The appeal site comprises part of the former site of Lynncroft Primary School and has a significant change of ground level within it, identified as being approximately 10 metres across the site overall. The site is allocated for residential purposes in the Local Plan for up to 200 dwellings. There are residential properties to the north of the site along Garden Road which are at a lower ground level. These are mostly two-storey, semi-detached dwellings with long rear gardens which, in part, have mature trees along the boundary with the appeal site. There is a footpath that links Garden Road with Atherfield Gardens which is to the west and there are further two-storey semi-detached dwellings along Atherfield Gardens which also back onto the site. These properties are largely at the same ground level as the appeal site adjacent.
7. The principal matter of the Council's refusal relates to the impact of the proposed dwellings within the scheme layout positioned nearest to the existing properties along Garden Road and Atherfield Gardens on the northwestern part of the appeal site. The Council's concerns are compounded by the difference in ground levels between the appeal site, which is higher, and the existing adjacent properties, particularly on Garden Road.
8. The Council has no specific development plan policy or guidance regarding separation distances between properties. I note in the Council's statement that it generally uses the rule of a minimum separation distance of 21 metres 'back-to-back' for existing and proposed dwellings. From the details submitted, and observations on site during my visit, I find that the separation distances between the nearest proposed dwellings within the scheme and the existing properties on Garden Road and Atherfield Gardens are in excess of the minimum 21 metres.
9. I have also had regard to the Council's point that its application of this minimum separation measure is dependent on the topography of each individual site. In this case, the topography is such that the land within the appeal site is significantly higher than the adjacent properties on Garden Road. However, the boundary between the appeal site and the rear gardens of the Garden Road properties has significant existing vegetation and trees which provide a substantial amount of screening of the existing dwellings from the appeal site. From what I have seen, I find that the proposed scheme does not seek to remove any of this existing planting. Indeed, it is proposed to provide additional planting to strengthen and enhance the vegetation along the site boundary with the existing properties on Garden Road and Atherfield Gardens.
10. I acknowledge the Council's concern that the level of planting, both existing and proposed, would not be sufficient to prevent overlooking and an overbearing development. However, taking into account the additional work which the appellant has undertaken following the initial Planning Committee meeting, I find that the proposed development incorporating the changes in scale, height and design of the proposed dwellings relevant to the existing properties, as presented to the Planning Committee on 6 September 2023, and the combination of the existing and proposed planting and vegetation would result in sufficient mitigation to minimise the potential for the overlooking of existing dwellings. This is demonstrated further through the proposed erection of a 1.8 metre high close-boarded timber fence with additional trellis on top along the boundary of the site between the existing and proposed dwellings. Furthermore, I am satisfied that any adverse effect relating to privacy as a result of the topography of the site would be sufficiently mitigated.
11. The revised proposals would also result in a scheme which would reasonably and sufficiently limit any adverse impacts of the proposed dwellings being overbearing to the occupiers of the existing properties. This would be achieved through the combination of the separation distances proposed, the screening effect of the boundary planting in place and enhanced and by the revised scale, size and design of the proposed dwellings.

12. In relation to the proposed dwellings overshadowing existing properties on Garden Road, it is acknowledged that the daylight and sunlight studies undertaken on behalf of the appellant only consider the proposed impact of the development on the existing properties and occupiers through the months of March to September. There is no assessment presented that mitigates against the overshadowing impacts of the proposed scheme during the winter months from October to February where shading would likely be greater. As such, there is no full assessment before me.
13. Notwithstanding this, the Daylight and Sunlight Assessment (DSA) submitted indicates that all garden and amenity areas assessed meet or exceed the BRE target criteria for sunlight. This is demonstrated because at least 50% of their area receives at least two hours of direct sunlight on the nominated day of 21 March or the reduction in the area receiving sun on that day is less than 20%. As a result, I am satisfied that the report overall demonstrates that the proposed development would not result in any material changes to sunlight and daylight reaching the garden areas of the existing properties along Garden Road.
14. In addition, I note that the submitted DSA identifies that all 127 rooms assessed within properties along Garden Road would meet the target values set out within the BRE guidelines. As such, in accordance with the BRE guidance, I am satisfied that daylight levels and amenity for the occupiers of those existing properties assessed would not be adversely affected by the proposal.
15. Overall, I find that the proposed scheme, with the revisions provided to the Planning Committee on 6 September 2023 incorporated, accords with Policy 8 of the Greater Nottingham Local Plan Part 1. It provides a mix of housing and tenure types to assist in achieving sustainable development. The scheme is also in accordance with Policy 15 of the Local Plan through the required contribution of 10% of affordable housing being proposed as well as providing an appropriate mix of market and affordable housing on site that is aligned to the current need in the local area. Furthermore, the proposed development complies with Policy 17 of the Local Plan as it would provide a good standard of amenity and would not substantively adversely impact the amenity of neighbouring properties and occupiers. Moreover, I am satisfied that the proposal complies with the Framework in relation to protecting the amenity of existing and future occupiers.

Other Matters

Flood Risk and Drainage Management

16. The proposed development does not lie within Flood Zones 2 or 3. Notwithstanding this, I have had regard to the overall topography of the site and surrounding area and the comments made by interested parties regarding flooding and drainage concerns. I am also aware the proposed scheme needs to ensure it does not result in any increased risk of flood for the existing dwellings adjacent to the site and at a lower ground level to it. Sustainable Drainage provision is proposed to be incorporated into the scheme within the site layout plan and this is in line with the Key Development Requirements of Policy 6.1 of the Local Plan. Furthermore, I note the findings of the Flood Risk Assessment (FRA) and Drainage Study submitted with the outline planning application which assessed the risks from all forms of flooding to and from the proposed development. In doing so, I note also that the FRA demonstrated to the satisfaction of the Council at that time how these flood risks would be managed and mitigated.
17. Specific conditions were attached to the outline approval for the proposed development. As such, I am satisfied that the details of any surface water drainage and flood risk scheme based on the approved FRA and Drainage Strategy will be properly considered and approved as part of the formal discharge of the relevant conditions attached to the outline planning permission (ref: 20/00844/OUT).

Access

18. I have had regard to the access to the appeal site, noting that vehicle access is taken from Lynncroft, a relatively narrow, inclined highway with residential properties along its eastern side, opposite the appeal site. I also note that an application to create the highway junction at this point with associated drainage infrastructure was submitted to, and approved by, the Council in 2020. This has subsequently been completed, as I observed during my visit. As a result, I find that suitable vehicle access to the site that has been provided that is endorsed by the Council and the highway authority. I am therefore satisfied that this provides suitable and appropriate access to serve the appeal site and its development.
19. Pedestrian access into and through the site is identified on the proposed site layout plan. Primarily, this access consists of a footpath running north to south across the site from Garden Road to Walter Street. As I have seen, this pedestrian link is already in place and will provide suitable and acceptable connectivity for pedestrians across the site to the surrounding area but also provide a point of connection for pedestrians within the site.

Ecology

20. I have taken account of the findings of the various ecological appraisals and reports produced on behalf of the appellant at both the outline and reserved matters application stage. It is noted, amongst other matters, that the presence of badgers on the appeal site had been identified and that it is stated that all mitigation measures have been undertaken to prevent any negative impacts from affecting the badgers and their habitats. This includes the implementation of a 30-metre buffer from the badger sett and nearby dense areas of vegetation. This is to be ensured by condition attached to the outline consent of development at the appeal site.
21. Further supporting documents have been submitted, including an Ecological Enhancement Plan and a Hedgehog Highway Standard Detail Plan which have been produced in response to the recommendations of the Preliminary Ecological Appraisal Report, submitted to the Council on 24 April 2023. These documents set out details relating to, for example, the location of proposed bat and bird boxes throughout the appeal site as well as a schedule of maintenance for them. The submitted evidence also provides details on the location of a hedgehog highway and how hedgehogs will access it.
22. In light of the above, and all other relevant points and matters relating to ecological matters, I find that the proposed scheme addresses these ecological concerns and matters reasonably and practicably through the work that has been identified and can be ensured by planning conditions and the work proposed in future.

Other considerations

23. In addition to the above, I have had regard to all other matters raised by other interested parties, such as noise and disturbance, encroachment into a green area, increased levels of traffic in the local area and the impact of the proposed scheme on local infrastructure and services. Having assessed the evidence before me, I find that these other concerns can be appropriately and reasonably addressed through planning conditions attached to the outline consent or the conditions set out in the schedule attached to this decision.

Planning Balance

24. The proposed development would provide a wide range of size and type of housing which would contribute to the delivery of housing stock and mix within the Borough. It would also provide affordable housing to an amount consistent with local policy requirements. Moreover, it would be set within a layout which encourages the use of sustainable modes of transport with good connections to the surrounding area. Overall, in my assessment, the proposal would be consistent with the policies contained within the development plan and provide a good standard of living for future occupiers in the local area. These benefits

attract significant weight in favour of the proposal. The harms of the proposal in relation to the effect on the living conditions of neighbouring occupiers and all other harms identified have been carefully considered. However, I do not find such harms, when assessed individually and cumulatively, to be so significant as to outweigh the significant weight that I have afforded the identified benefits.

Conditions

25. In addition to the standard conditions relating to time (1) and approved plans (2), I have attached a condition regarding the confirmation of details, future management and maintenance of shared private driveways, including their associated drainage (3). This condition is reasonable and necessary for reasons of highway safety and to ensure an acceptable development that is in accord with Policy 10 of the Aligned Core Strategy 2014 and Policy 17 of the Local Plan.
26. Other conditions concern the occupation of the proposed dwellings being dependent upon the satisfactory provision of works. In the first instance, Condition 4 involves the provision of traffic calming measures throughout the site, the details of which are to be submitted to, and approved by, the local planning authority. A further condition (5) involves driveways and shared driveways being required to be surfaced in a bound material for a minimum distance of 5 metres behind the highway. These conditions are reasonable and necessary to ensure that the development proposed does not result in any significant detrimental effects in terms of flooding and drainage, is acceptable regarding highway safety and is in accordance with the relevant policies of the development plan.

Conclusion

27. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal is allowed, and planning permission is granted, subject to the conditions set out in the attached schedule.

A McCormack

Inspector

Schedule of Conditions

- 1) The development to which this approval relates shall be begun no later than the expiration of two years from the final approval of the reserved matters, or in the case of approval of different dates, the final approval of the last such matter to be approved.
- 2) The development hereby permitted shall be carried out in accordance with drawings numbered as follows:

Site Location Plan – 6200-100

House Types Floor Plans & Elevations Pack

- Askern End – Planning Sheet – Floor Plans (Dwg No: AV22/ASK/0-001 Rev B)
- Baildon End – Planning Sheet – Floor Plans (Dwg No: AV22/BAI/0-001 Rev C)
- Baildon End – Planning Sheet – Elevations (Dwg No: AV22/BAI/0-002 Rev C)
- Cadeby End – Planning Sheet – Elevations (Dwg No: AV22/CAD/0-002 Rev B)
- Cookridge End – Planning Sheet – Floor Plans (Dwg No: AV22/COO/0-001 Rev C)
- Cookridge – Planning Sheet – Elevations (Dwg No: AV22/COO/0-002 Rev B)
- Denby End – Planning Sheet – Floor Plans (Dwg No: AV22/DEN/0-001 Rev B)
- Denby End – Planning Sheet – Elevations (Dwg No: AV22/DEN/0-002 Rev B)
- Fernlee – Planning Sheet – Floor Plans (Dwg No: FER/END/0-001 Rev C)
- Horbury Det – Planning Sheet – Floor Plans (Dwg No: AV22/HOR/0-001 Rev C)
- Leyburn Det- Planning Sheet – Floor Plans (Dwg No: AV22/LEY/0-001 Rev B)
- Leyburn – Planning Sheet – Elevations (Dwg No: AV22/LEY/0-002 Rev C)
- Oakwood Semi – Planning Sheet – Floor Plans (Dwg No: AV22/OAK/0-001 Rev B)
- Ripon End – Planning Sheet – Floor Plans (Dwg No: AV22/RIP/0-001 Rev B)
- Thornton Det – Planning Sheet – Floor Plans (Dwg No: AV22/THO/0-001 Rev C)
- Wentbridge Det – Planning Sheet – Floor Plans (Dwg No: AV22/WEN/0-001 Rev B)

Single Garage Floor Plan & Elevations (Dwg No: 500/001 Rev A)

Boundary Treatments – 1.8m High Brick Pier & Panel Wall (Dwg No: SD 12-001)

Boundary Treatments – 1.2m Post & Rail (Dwg No: SD 12-010)

Boundary – 1.8m Screen Fence (Dwg No: SD 12-025)

Arboricultural Impact Assessment, Tree Impact and Tree Constraints Plan

(Above received by the Local Planning Authority 18 November 2022)

Hedgehog Highway Standard Details – SD12-045A

(Above received by the Local Planning Authority 24 March 2023)

Ecological Enhancement Plan - 6200-290B

(Above received by the Local Planning Authority 19 April 2023)

Tracking Plan – 620-295C

Lynncroft POS Levels Layout 6200-203

(Above received by the Local Planning Authority 31 May 2023)

Materials Layout – 6200-250C

(Above received by the Local Planning Authority 14 June 2023)

Askern Hipped – Dwg. No: ASK/HIP/END/0-002

Askern End – Dwg. No: ASK/LP/EMD/0-002 Rev A

Cadeby – Det – Dwg. No: CAD/LP/0-002 Rev A

Fernlee End – Dwg. No: FER/LP/END/0-002 Rev A

Horbury Detached – Dwg. No: HOR/LP/0-002 Rev A

Oakwood – Dwg. No: OAK/LP/0-002 Rev A
Ripon Hipped – Dwg. No: RIP/END/Hip/0-002 Rev A
Ripon End – Dwg. No: RIP/END/LP/0-002 Rev A
Thornton Detached – Dwg. No: THO/DET/Hip/0-002 Rev A
Wentbridge Detached – Dwg. No: WEN/LP/0-002 Rev A
Planning Layout – Dwg. No: 6200–200 Rev J
Presentation Layout – Dwg. No: 6200–200 Rev J
Site Sections (sheet 1) – Dwg. No: 6200-230-001 Rev B
Site Sections (sheet 2) – Dwg. No: 6200-230-002 Rev A
Managed Phasing Plan – Dwg. No: 6200-310.2 Rev C
Managed Areas Plan – Dwg. No: 6200-310 Rev C
Tenure Split Plan – Dwg. No: 6200-320
Landscape Masterplan – Dwg. No: R/2658/1F
Fence details: 1.8m High Fence, with 0.3m Trellis (2.1m total fence height):
Dwg.No: SD12-040

(Above received by the Local Planning Authority 4 August 2023)

- 3) No part of the development hereby permitted shall commence until details of the proposed arrangements and plan for future management and maintenance of the shared private drive including associated drainage have been submitted to, and approved in writing by, the Local Planning Authority. The shared private drive and drainage shall thereafter be maintained in accordance with the approved management and maintenance details until such time that a private Management and Maintenance Company has been established.
- 4) Occupation of the proposed dwellings shall not take place until traffic calming features have been provided in accordance with details first submitted to, and approved in writing by, the Local Planning Authority.
- 5) Occupation of the proposed dwellings shall not take place until their respective driveways / shared driveways have been surfaced in a bound material (not loose gravel) for a minimum distance of 5.0 metres behind the highway boundary, and which shall be drained to prevent the discharge of surface water from the driveways to the public highway. The bound material and the provision to prevent the discharge of surface water to the public highway shall be retained for the lifetime of the development.

End of Schedule



Costs Decision

Site visit made on 18 June 2024

by **Andrew McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 August 2024

Costs application in relation to Appeal Ref: APP/J3015/W/23/3331913

Former Lynncroft Primary School, Lynncroft, Eastwood, Nottinghamshire NG16 3FZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Avant Homes Central for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for construction of 104 dwellings (reserved matters of access, landscaping, layout and scale – Planning Ref: 20/00844/OUT).
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant claims that the Council has acted unreasonably with respect to the substance of the matter under appeal in relation to:
 - preventing or delaying development which should, in the applicant's view, clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - a failure to produce evidence to substantiate each reason for refusal on appeal; and
 - vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective assessment.
4. Planning is subjective and the Committee Members of the Council are entitled to reach a decision that is not in accord with an officer recommendation, providing that the reasons for that decision are fully justified and regard has been had to the relevant policies.
5. At the Planning Committee meeting on 5 July 2023, when the proposed development was first considered by Committee Members, the applicant was given the opportunity to alter the scheme in response to the specific views and concerns expressed by Members at that time. The determination of the application was therefore deferred to allow the applicant the opportunity for further work to be undertaken. This was a reasonable approach adopted by the Council. Whilst amendments were made, the Committee concluded that these did not fully address their concerns in relation to overlooking and impact on neighbour amenity when the application was brought before the Committee again on 6 September 2023. These are the matters which had led to the deferral of the application. As a result, the application was refused for the reason stated on the Decision Notice.

6. The applicant argues that the Council provided no detailed rebuttal to the Daylight, Sunlight and Overshadowing Assessment in providing its reason for refusal, other than the assessment did not provide a 'whole year' assessment to include the winter months. I note that the applicant has provided an explanation and reasoning in their final comments in the appeal process setting out that, in their view, further information was provided to the Committee prior to making its decision. Notwithstanding this, the Committee assessed and determined that the proposal was unacceptable based on the evidence provided.
7. The applicant also asserts that the Council failed to provide evidence to substantiate its reason for refusal throughout the appeal and has made vague, generalised and inaccurate assertions about the proposal's impact. This, it is argued, has resulted in the Council preventing and delaying development on an allocated site within an extant outline consent that should clearly be permitted.
8. It is for the applicant to provide sufficient appropriate evidence to support the proposed development. It is not for the Council to provide a fully comprehensive counter-assessment of the evidence provided in support of a proposal. Rather, it is to assess and determine an application in the context of that submitted evidence, with regard to the development plan, national policy and other material considerations. I am satisfied that the Council has done so in this case.
9. From what is before me, I find that the Council reasonably exercised planning judgement in its assessment of the proposed development presented to the Committee. This specifically relates to the Council's concerns about the proposed level of planting to provide year-round screening to successfully mitigate overlooking issues and a lack of a full year-round assessment regarding the impact on sunlight. As the amendments presented did not, in the Committee's view, address the concerns raised, I find it entirely reasonable and justified that on that basis the Council refused the application.
10. In addition to the amendments not addressing the Committee's clearly set out concerns, it is evident that the proposal attracted a significant number of objections from nearby residents. The Council is quite reasonably expected, indeed required, to consider these objections and concerns in determining the application. In this case, the Committee clearly took these into account in its assessment. In doing so, the Committee exercised its planning judgement and made a reasonable and justified decision in that context, based on the evidence available at that time.
11. In light of these matters, having provided the applicant with the opportunity to amend the proposal, the Committee carried out a fair and balanced assessment of the proposal which, in its judgement, did not address the clear concerns raised and led to the refusal of planning permission. Furthermore, the Council applied the relevant policies of the development plan, national policy, and considered other material considerations to determine the planning application and in that overall context, reasonably justified its reason for refusal.
12. For the above reasons, whilst I have allowed the appeal, I find that the actions of the Council were not unreasonable. As such, I conclude that unreasonable behaviour unduly preventing or delaying development that should otherwise be permitted, and resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Consequently, the request for a full award of costs is refused.

A McCormack

Inspector