



Appeal Decision

Hearing held on 7 May 2014

Site visit made on 7 May 2014

by Beverley Doward BSc BTP MRTPI

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

Decision date: 3 June 2014

Appeal Ref: APP/K2420/A/14/2214818

Land off Paddock Way, Hinckley, Leicestershire, LE10 3ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Paynes Garages Limited against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 13/00685/OUT, dated 8 August 2013, was refused by notice dated 13 November 2013.
 - The development proposed is described as "construction of 10 dwellings etc. and access and laying out of public open space".
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 10 dwellings and access and laying out of public open space at land off Paddock Way, Hinckley, Leicestershire, LE10 3ED in accordance with the terms of the application, Ref 13/00685/OUT, dated 8 August 2013, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The planning application was made in the terms detailed in the heading above. However, I have removed that element which is not an aspect of the development from my formal decision.
3. The planning application was submitted in outline with only the matter of access to be considered. A layout plan submitted with the planning application indicates 8 detached dwellings and 2 semi-detached dwellings with associated garages and parking, served by a private driveway and a turning head towards the eastern end of the site, the provision of an area of public open space at the western end of the site and the retention of 5 trees that are subject to a Tree Preservation Order (TPO). However, I have taken this plan into account as being for indicative purposes only.
4. A draft section 106 agreement in relation to affordable housing and financial contributions towards education provision, civic amenity, library and play and open space facilities was submitted with the appeal documents and the completed s106 agreement was submitted following the close of the Hearing in accordance with the agreed timetable. Accordingly, I have had regard to this agreement in my determination of this appeal.

5. A third party claims to have a right of way into the appeal site. However, this is a matter for implementation and I have made my decision solely on the planning merits of the case.

Main Issue

6. The main issue in this case is the effect of the proposal on the character and appearance of the surrounding area with regard to separation.

Reasons

7. The appeal site comprises a roughly rectangular piece of undeveloped land to the rear of houses on the southern side of Coventry Road. To the west of the site is Paddock Way, beyond which lies an extensive commercial garage premises. The remaining three sides of the site are surrounded by residential development.
8. The site is identified on the proposals map of the Hinckley and Bosworth Local Plan 2001 (LP) as open countryside. However, it is no part of the Council's case that it should be considered as countryside, given that it is now surrounded on all sides by built development. This was also the view of an Inspector who, in considering a previous appeal on the site in 2005, concluded that the site was effectively now part of the Hinckley urban area. I see no reason to take an alternative view in this respect.
9. The appeal site is heavily overgrown with self seeded scrub. It also contains a number of trees, some of which (mainly close to the southern boundary of the site) are subject to a Tree Preservation Order. The site has no public access and it is screened from Paddock Way by a high close boarded timber fence along the boundary. Therefore, other than those residents whose properties back onto the site and who have views into it from their first floor windows, there is virtually no visibility into the site from public vantage points with only the tops of the trees being visible above the fencing from Paddock Way.
10. The Council's Area of Separation Review (ASR) was undertaken in March 2012 as part of the evidence base for the emerging Site Allocations and Development Management Policies Development Plan Document (SAD DPD). It assessed the role of existing Areas of Separation (a local landscape designation within the LP) as well as a number of other areas, including the appeal site, in order to determine whether they performed a function as areas of separation. In relation to the appeal site it concluded that the overgrown vegetation and fencing prevent making a visual connection between the site and the rear gardens on Coventry Road and that it was not considered to provide an area of separation. From what I saw on my site visit I concur with this view.
11. I note that although the appeal site is identified as natural and semi natural open space in the Council's Open Space, Sport and Recreational Facilities Study (July 2011), it is not recommended to be carried forward as an open space allocation in the emerging SAD DPD due to its inaccessibility to the public. Furthermore, from the evidence before me and as I saw on my site visit, there are a number of other areas of open space within about 800m of the appeal site which serve to separate the Waterside Park development from neighbouring development and which are accessible to the public.
12. Therefore, notwithstanding the conclusion of the previous Inspector who found that the appeal site made an important contribution to the quality of the local

environment by providing a gap between the two housing areas of Coventry Road and Waterside Park, it seems to me that the context of the site and its surroundings have materially changed since the previous appeal so that it no longer performs this function. The degraded and overgrown nature of the site coupled with its enclosed nature and the lack of views into it mean that it does not provide the visual break in development or sense of spaciousness described by the previous Inspector. As such it does not function as an important gap in development and its development for housing would not materially harm the character and appearance of the surrounding area with regard to separation. Accordingly, it would comply with the objectives of policy BE1 of the LP.

Other matters

13. The Statement of Common Ground indicates that there is a residual requirement for additional dwellings within Hinckley and that the Council is not in a position to demonstrate a five year supply of deliverable housing sites. Whilst I note that the emerging SAD DPD proposes housing allocations within Hinckley that would provide 1004 units against a residual requirement at October 2013 of 818 dwellings, the plan has not yet been submitted for examination. Therefore, I afford it little weight in my consideration of this appeal and accordingly the Council's inability to demonstrate a five year supply of deliverable housing sites is a significant factor which weighs in support of the proposal.
14. Paragraph 49 of the Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development. As referred to above, the site is effectively part of the urban area of Hinckley, it is surrounded by either residential or commercial development, it is unused and publicly inaccessible and it has access to public transport and the facilities and services provided by Hinckley town centre which is approximately 2km away. These are all factors which lead me to conclude that the proposal would represent sustainable development and which therefore lend substantial weight to the proposal.
15. There is no technical evidence to suggest that the provision of an additional 10 dwellings would be likely to generate traffic on a scale that would have a materially adverse impact on highway safety. Nor is there any substantive evidence to indicate that the site could not be adequately drained. An archaeological evaluation, including trial trenching, revealed only minimal evidence of possible late prehistoric activity and there is no conclusive evidence to suggest that the site has any special historic value or significance and that the proposed development would have an adverse effect on archaeology.
16. The matters of layout, scale, appearance and landscaping are reserved matters and there is nothing in the evidence before me to suggest that the living conditions of the occupants of neighbouring properties could not be satisfactorily safeguarded.
17. I note that the consultation period on applications for the designation of a neighbourhood forum and a neighbourhood area has only recently ended, on 2 May 2014, and that the proposed West Clarendon Hinckley Neighbourhood Development Plan is at a very early stage. Therefore, I am not persuaded that there is any justification to refuse planning permission on the grounds of prematurity.

18. In coming to my conclusions on the various issues that have been raised, including concerns about the impact on wildlife habitats, trees/hedgerows, the environment and the extent of built development which has taken place in recent years within that part of Hinckley within which the appeal site is located, I have taken full account of all the representations that have been made and have balanced these against the provisions of the development plan. However, I find no harm in any of these regards.

Section 106 Agreement

19. The Framework (paragraph 203) indicates that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. It goes on to say that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 204 of the Framework sets out the tests which should be met by planning obligations. These are the same as the tests included in paragraph 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010.
20. Policy IMP1 of the LP indicates that planning permission will be granted for new residential development where the developer has made, or will make, a contribution towards the provision of necessary on-site and off-site infrastructure and facilities to serve the development commensurate with the scale and nature of the development proposed. It goes on to indicate that the granting of planning permission will be subject to conditions or to a developer entering into planning obligations to ensure the provision of appropriate contributions. The signed s106 agreement between the appellant, the Borough and County Council details payments or other arrangements to secure education provision, civic amenity, library, play and open space facilities and affordable housing.
21. The Statement of Requirements for Developer Contributions in Leicestershire was adopted by the County Council in December 2006 and reviewed in December 2007. It gives an indication of the level of contributions developers would be expected to make towards County Council services and infrastructure. It also indicates that all contributions will be assessed on a site by site basis directly related to an individual proposal. The County Council, in support of the contributions towards education provision, civic amenity and library facilities provided an analysis of capacity and requirements to justify the amounts sought and identified the specific facilities to which the contributions would be directed.
22. The sums in respect of contributions towards play and open space provision are supported by LP policies IMP1 and REC3 and the Council's Local Development Framework: Play and Open Space Guide Supplementary Planning Document 2008. The Council has indicated that the contributions would be used to enhance and maintain the existing facility on Waterside Park and to maintain the informal children's play space to be provided within the site. The affordable homes are necessary to comply with policy 15 of the Hinckley and Bosworth Core Strategy 2009 and to meet an identified need.
23. Based on the information given therefore, I am satisfied that the contributions and affordable homes secured through the s106 agreement are necessary, directly related to the development and fairly and reasonably related to its scale and kind.

Conditions

24. The Council has suggested a number of conditions that it considers would be appropriate were I minded to allow the appeal. Where necessary, I have amended or replaced some of the suggested wording for clarity, to more closely reflect the circumstances of the appeal proposal and to ensure consistency with national policy and guidance¹.
25. The application was made in outline and it is, therefore, necessary to impose conditions relating to the submission of reserved matters. It was agreed at the Hearing that some of the conditions suggested by the Council fall within the scope of these reserved matters (ie details of any shared private drive and car parking/garaging arrangements and specifications) and so it is not necessary to impose separate additional conditions covering these. In the interests of good planning it is necessary to impose a condition requiring the development to be carried out in accordance with the approved plans.
26. A condition is necessary to ensure that the development is provided with a satisfactory means of drainage as well as to prevent flooding and protect water quality. In the interests of sustainable development a condition is necessary requiring that the dwellings should be constructed to meet Code Level 4 of the Code for Sustainable Homes.
27. As discussed at the Hearing, a condition requiring the submission and approval of the precise details of the vehicular access including the relocation of the existing pedestrian crossing point and central refuge point on Paddock Way is necessary in the interests of highway safety. A condition is also necessary to ensure that the requisite visibility splays are provided at the junction of the access with Paddock Way before the first occupation of any dwelling in the interests of highway safety.
28. In addition a condition requiring that the development be implemented in accordance with the recommendations contained in section 6 of the submitted Ecological Appraisal is necessary to minimise any impacts on biodiversity.

Conclusions

29. For the reasons set out above, I conclude that the appeal should be allowed.

Beverley Doward

INSPECTOR

¹ National Planning Policy Framework (2012) paragraphs 203 and 206, and National Planning Practice Guidance (2014): Use of Planning Conditions.

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping (including hard/soft landscaping and boundary treatments), layout (including any shared private drive and car parking/garages) and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan at 1:1250 and the access point only indicated on indicative layout drawing no: EMS.2278.02A.
- 5) No development shall commence until drainage details for the disposal of surface water and foul sewerage, which shall incorporate sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling.
- 6) No development shall commence unless and until a Code for Sustainable Homes Design Stage Assessment, carried out by a qualified code assessor, demonstrating that the dwellings hereby approved can be constructed to a minimum of Code Level 4 has been provided to the local planning authority. In addition, within three months of the first occupation of each of the dwellings hereby approved, a final certificate demonstrating that the dwellings have been constructed to a minimum of Code Level 4 shall be provided to the local planning authority.
- 7) Notwithstanding Condition 4, no development hereby approved shall commence until precise details of the vehicular access including the relocation of the existing pedestrian crossing point and central refuge point on Paddock Way and surfacing arrangements have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been completed in accordance with the approved details.
- 8) Before first occupation of any dwelling hereby approved visibility splays of 2.4m by 43m shall be provided at the junction of the access with Paddock Way. These shall be provided in accordance with details to be approved in writing by the local planning authority and once provided shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6m above ground level agreed within the visibility splays.

- 9) The development hereby permitted shall be implemented in accordance with the recommendations contained in Section 6 of the submitted Ecological Appraisal compiled by Ecolocation dated 13 June 2012.

