



Appeal Decision

Site visit made on 19 October 2021

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/W3005/W/21/3278394

Ashlands House, Beck Lane, Sutton In Ashfield NG17 3AH

- 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 Mr and Mrs C Wood against the decision of Ashfield District Council.
 - The application Ref V/2020/0420, dated 2 July 2020, was refused by notice dated 5 January 2021.
 - The development proposed is residential development (4no. dwellings and garages).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with all matters besides access reserved for future consideration. I have determined the appeal on this basis, considering the submitted layout plan as illustrative only.
3. The appellant has submitted a Highway Statement (ADC Infrastructure, Ref: ADC1522-RP-D) with their appeal which includes a plan demonstrating the provision of a 'ghost island' and associated changes to the road layout on Beck Lane adjacent the appeal site access. This was to address concerns raised by the Council's highways advisor. I have been asked to determine this appeal on the basis of this plan.
4. There is disagreement between the parties as to whether these plans were seen by the Council during the application process. However, it is clear from the consultation response from the Council's highway advisor that the Highway Statement was referenced and discussions were had as to the possibility of a ghost island, with the idea being described as 'feasible' but that it was not proposed as part of the application and therefore not considered in greater detail. The original omission of this arrangement is confirmed in the Highway Statement in paragraph 30, although the appellant does now propose to incorporate this element of the design as referenced in their appeal statement.
5. The 'Procedural Guide – Planning Appeals – England' advises that if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application (Annexe M.1.1). If an appeal is made, the appeal process should not be used to evolve a scheme and 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 (Annexe M.2.1).
6. Notwithstanding that, in deciding whether to accept these revised plans, I have given consideration to Wheatcroft¹ and whether any prejudice would occur. The judgement advises '*The main, but not the only criterion on which that judgement should be exercised, is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.*' It is unclear as to whether the Council's highways advisor was approached to comment upon this part of the scheme in advance of the appeal. However, the Highways statement submitted as part of the appeal has been seen by the Council and builds upon previous highway submissions seen by the County Council. Therefore, I am satisfied that the Council would not be prejudiced if I determined this appeal on this basis.
 7. During the course of the appeal, the revised National Planning Policy Framework (July 2021) (the Framework) was published. I note that submission documents were received after this date of publication and therefore parties have had opportunity to take account of any changes to the Framework. I have taken any subsequent comments received into account in my determination of this appeal.
 8. It is agreed between the parties that the Council cannot currently demonstrate a five-year supply of deliverable housing land. The exact figures vary in the submissions of both parties, although whether I take this to be 2.5 or 2.67 years supply the parties agree that the shortfall in housing land supply is significant and I would concur with this position. As such, and as per the Framework, the policies which are most important for determining the application are out-of-date and carry reduced weight. In this case, the 'tilted balance' of paragraph 11(d) of the Framework is engaged. As such, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The development plan in this case includes the Ashfield Local Plan Review (adopted November 2002) (the LP).
 9. My attention is drawn to two appeal decisions which form a large part of the appellant's case. One is on the same site as this appeal² (the previous appeal) for a scheme which is by all accounts the same as that before me now besides access arrangements, and the other is for outline planning permission for up to 322 dwellings on land West of Beck Lane³ (the Lovel appeal/site) which has been allowed in the period since the previous appeal was dismissed.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

² APP/W3005/W/18/3204916

³ APP/W3005/W/18/3213342

Main Issues

10. The main issues are as follows:

- whether the appeal site would be a suitable location for the proposed development;
- the effect of the proposal on the character and appearance of the area, including the proposed density of development; and
- the effect of the proposal on highway safety.

Reasons

Whether a Suitable Location

11. The appeal site is recognised by both parties as being outside of the adjacent built-up area and in the countryside for the purposes of development management. Skegby is the nearest settlement and includes a range of services and facilities including shops, a school and a post office. Evidently these are within a reasonable walking distance of the appeal site and could be accessed by the footpath lining Beck Lane before turning onto Mansfield Road. Furthermore, the 417 bus service runs through Sutton-in-Ashfield. This is accessible at the bus stop on Mansfield Road, although I understand as part of the Lovel appeal another bus stop at the entrance to that site is proposed.
12. Notwithstanding these arguments, I share the concerns of the Inspector for the previous appeal insofar as the route taken would be along Beck Lane. This road is heavily trafficked and from my observations on the site visit the initial stretch of footpath is narrow when leaving the appeal site and heading south before it widens slightly in the approach the junction. As such I agree this is unlikely to be a desirable option for future residents and would be particularly intimidating for those with small children, mobility issues or the elderly, who would in all likelihood favour private vehicles to access local services and facilities.
13. I take on board the point that the Inspector in the Lovel appeal concluded that the location of that proposal would be in a suitable location to enable future residents to walk to Skegby to access services and facilities. This is despite being further north on Beck Lane than the appeal site. However, I note they did express similar concerns regarding walking along Beck Lane. These concerns were alleviated as that proposal included the provision to widen the footpath on that side of Beck Lane to make the route acceptable while an alternative route leading from the opposite side of that site along a quiet lane was also viable.
14. Despite the increased service provision of the 417 bus route to be provided as part of the Lovel appeal and the new stop outside the Lovel site, this would still require walking along Beck Lane in the opposite direction of Skegby and Sutton-in-Ashfield to reach. Moreover, I observed on the site visit how difficult it was to cross the road without walking towards the junction and using the pedestrian crossing to the south.
15. Reference is made to the allocation of land north of the appeal site for housing in the Ashfield District Council Draft Local Plan 2020-2038 (October 2021) (DLP). However, the site itself is not allocated. In any event, the inclusion of land to the north does not mean that the Council (or an Inspector) would grant

planning permission for its development. Moreover, the DLP is at an early stage (Regulation 18) and accordingly, it has limited weight in the determination of this appeal.

16. Based on the above, regardless of whether the appeal site is classified as previously developed land, I conclude it does not represent a suitable location for the development. The proposal would therefore not accord with Policies ST4 and EV2 of the LP. However, I have concluded these are out of date due to the Council's current housing land supply position. Moreover, their restrictive approach to location lacks consistency with the Framework, which applies a more balanced and nuanced approach. As such this reduces the weight applied to the conflict with those policies. However, the proposal would be contrary to the relevant provisions of the Framework, including paragraph 104 as the location would not provide an opportunity to promote walking, cycling and public transport use.

Character and Appearance

17. The appeal site comprises the grounds of Ashlands House, which is a substantial detached property set back from Beck Lane by a long driveway. The grounds cover a significant area and have an open, tranquil and verdant character due to the landscaped lawns and the significant number of trees, particularly along its boundaries. The site is located to the north of Skegby while further north the landscape is characterised by open fields. As such, the site is in a transitional location, and its character is predominantly rural, albeit there is an established residential use.
18. While I appreciate the submitted site layout is indicative and detailed design matters such as height and materials would be assessed at reserved matters stage, the proposal for four dwellings of substantial footprint would have an urbanising effect on the attractive and rural character of the site. Moreover, 4 dwellings and their associated hardstanding's and other elements of domestication would inevitably erode openness within the site. This would not reflect the wider rural area and its prevailing character.
19. A fence has been installed along the boundary of the appeal site, which I observed on the site visit along its northern edge. I note this is in response to concerns from the Council in the previous appeal regarding visibility of that proposal. Alongside existing tree coverage and other vegetation, this has reduced long range views into the site. However, this does not alter the inherently rural character of the site and I do not consider it alleviates the harm to the character and appearance of the area I have identified.
20. I acknowledge the appellant's Landscape and Visual Impact Assessment (LVIA), which concludes there would be negligible impacts from the proposal, although it does concede that the proposals would introduce intermittent views of the development. This includes the rooflines of the houses on the northern edge in the winter months.
21. Despite retaining the boundary treatments present on site and trees and irrespective of the comments of the Council's Landscape Officer regarding the impact on landscape character, I disagree with the degree of harm identified. The intensification of residential use proposed would fundamentally change the character and appearance of the area from open and rural to considerably

- more suburban. It would not therefore integrate and preserve the existing verdant character of the area, as suggested by the appellant.
22. My attention is drawn to an application for 10 bungalows approved⁴ at Maple Tree Meadow. I have limited information on this development. However, from my observations these dwellings appear to have been constructed in a linear arrangement to the rear of houses on Skegby Lane rather than land surrounding a dwelling, such as in the case of the appeal proposal. In any event, each proposal is assessed on its own merits and that application would have had its own site-specific considerations which led to its approval.
23. While I agree that the Lovel appeal will likely change some of the character of the area, primarily by reducing openness and urbanising an agricultural area, I disagree that openness is no longer a predominant characteristic of the wider area. Notwithstanding the Lovel site, the area to the north of the appeal site is an expanse of open countryside and the loss of space and urbanising effect of the proposal within the site would not reflect this character, particularly given the location of the appeal site relative to Skegby and the countryside.
24. I am asked to consider the landscape impact of the Lovel appeal set against the proposal before me. While the Inspector in that case considered the harm to local landscape character was limited, the site-specific circumstances of that case differed to the proposal before me, such as how open that location was compared to the more verdant character of the appeal site among others. Moreover, this was also balanced against 322 dwellings which made a substantial contribution to the identified shortfall of housing. Every proposal is assessed on its own merits, which I have done in this case.
25. I note the further concerns of the Council with regards to density of development. The proposal would see four additional houses erected on the site, which has an area of 1.4ha. Policy HG3 advises acceptable densities for housing sites based on their distances from District Shopping Centres or rail stops. However, this policy is out of date and is also inconsistent with the Framework, which advises in paragraph 124 that decisions should support development that makes efficient use of land, rather than a prescribed number of units. It also takes into account the desirability of maintaining an area's prevailing character and setting (including residential gardens).
26. On that basis, a higher density than that proposed would not be appropriate given my preceding findings on the character and appearance of the area and the site-specific circumstances. The proposal would therefore accord with the Framework in this regard and offers a suitable density of development. While contrary to Policy HG, this is out of date and inconsistent with the Framework and therefore carries reduced weight.
27. Notwithstanding my findings on density, and to conclude on this main issue, the proposal would harm the character and appearance of the area and would therefore not accord with Policy EV2 of the LP, which states development must be designed so as not to adversely affect the character of the countryside. The proposal would also be contrary to the Framework, which advocates through paragraph 174 decisions should contribute to, and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

⁴ 2016/0400/ST

Highway Safety

28. Access to the appeal site would be taken from Beck Lane utilising and expanding the existing internal road of Ashlands House. On the site visit, I observed Beck Lane to be heavily trafficked even at the late morning hour. While the access is existing and already in residential use by the appellant's, the proposal for four dwellings would intensify its use. The Highway Statement gives an estimate of 8 vehicular movements per day per dwelling. As such, the additional four dwellings will generate around 32 traffic movements a day.
29. Evidently, it is common for vehicles to queue past the Ashlands House access in the southbound direction, particularly during morning and evening rush hours. Drivers wishing to turn right out of the appeal site would therefore have to wait for a gap in traffic on the southbound side of the road to approach the centre. In this scenario, they would have limited visibility to the left due to vehicles queuing at the traffic lights and would be forced to edge out onto the northbound side. I therefore have concerns that this would pose a collision risk and endanger drivers on both sides. While the number of people turning right is lower than those turning left, I disagree that 3 movements is not significant.
30. I note the suggestion to implement a ghost island in the centre of Beck Lane to allow drivers turning right out of the appeal site to safely wait in the centre of the road. The hatched area shown on the Proposed Access Junction Layout plan would discourage drivers travelling south from stopping within, but this would not provide a refuge for drivers waiting to turn right. In this scenario, they would have to edge further forward into the middle of the road to allow adequate visibility of vehicles travelling on the northbound side of the road. This would potentially clash with vehicles using the filter lane to turn right into the appeal site. Consequently, it has not been clearly demonstrated that a ghost island would alleviate the risks to highway safety of the development.
31. I understand that the speed limit on Beck Lane would be reduced through a Traffic Regulation Order as part of the Lovel appeal. However, from the Highway Statement submitted, current average speeds in the 85th percentile are 44.5mph northbound. While the reduction in speed limit may alleviate this to a degree, it is unlikely to have a substantial effect on vehicle speeds.
32. The appellant points to a lack of accidents at the access to Ashlands House over a 20-year period, with two collisions nearby caused by passing vehicles and resulting in only slight damage. However, the proposal would intensify this use of the access, while a ghost island would also cause queueing traffic to be backed up further as vehicles would be discouraged from queueing abreast. As such this lack of accidents historically does not convince me the proposal would be safe.
33. To conclude, the development would have an unacceptable impact on highway safety. As such, it would conflict with Policy ST1 of the LP, which seeks development that does not adversely affect highway safety or the capacity of the transport system, albeit this conflict is attributed reduced weight. The proposal would also be contrary to paragraph 110 of the Framework, which seeks to ensure a safe and suitable access to the site can be achieved for all users.

Other Matters

34. The site is located within the setting of Dalestorth House, a Grade II listed building located to the south of the appeal site. The significance and special interest of the property derives from its aesthetic and architectural value as well as its age and association with the development of the local area. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker to pay special attention to the desirability of preserving the setting of a Listed Building.
35. The Council has concluded that due to the distance from the appeal site and level of screening around it, the proposal would not harm the setting of the Listed Building. Based on all that I have seen and read, I see no reason to come to a different conclusion and the proposal would therefore preserve the significance and special interest of the listed building in accordance with the Act.
36. I note the concerns of the appellant with regards to the robustness of an appeal decision determined by way of a public inquiry over that of the previous appeal, which was determined by written representations. Be that as it may, the appeal form indicates the latter as a suitable means of determination. While I have considered the Lovel appeal insofar as it is a material consideration to this appeal, each proposal is assessed on its own merits regardless of the appeal procedure and this has not changed my assessment of the proposal as it was presented to me.

Planning Balance and Conclusion

37. The proposal would add four dwellings to the Council's housing stock. While every dwelling makes a contribution and is therefore of benefit, set against such a significant deficit in the Council's housing land supply the positive attributed weight of four units to this shortfall would be limited. There would be further benefits through construction jobs, the introduction of new residents into the area and the associated socio-economic benefits to local services and facilities.
38. The appellant contends that the individual plots would be attractive to self-builders. However, there is no legal mechanism before me to secure this were the scheme to progress past the outline stage and therefore it carries little weight in the determination of this appeal.
39. I have been made aware of the lack of objection to the scheme from various consultees including the Council's Environmental Health department and the Nottingham Wildlife Trust. There were also no objections from local residents. However, a lack of harm or objection to a proposal is neutral in the planning balance rather than carrying positive weight in favour.
40. The limited benefits of the scheme are outweighed by the inappropriate location of the development, including harm to the character and appearance of the area, and harm to highway safety. Accordingly, in accordance with paragraph 11(d), the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework as a whole.
41. The presumption in favour of sustainable development does not therefore apply and material considerations do not justify a decision otherwise than in

accordance with the development considered as a whole. For the reasons identified, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR