The Planning Inspectorate

Appeal Decision

Hearing held on 17 April 2012
Site visit made on 17 April 2012

by Alan M Wood MSc FRICS

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

Decision date: 14 May 2012

Appeal Ref: APP/K2420/A/12/2168670
The Bungalow, Barton Road, Congerstone, Nuneaton, Warwickshire, CV13 6NE

- 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 Mr Paul Chapman against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00399/FUL, dated 12 May 2011, was refused by notice dated 13 July 2011.
- The development proposed is the erection of a single, two-storey dwelling, the sub-division of an existing double garage, the creation of a new access on the site of a previously-used access and the re-alignment of an existing access.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a single, two-storey dwelling, the sub-division of an existing double garage, the creation of a new access on the site of a previously-used access and the re-alignment of an existing access at The Bungalow, Barton Road, Congerstone, Nuneaton, Warwickshire, CV13 6NE in accordance with the terms of the application, Ref 11/00399/FUL, dated 12 May 2011, subject to the conditions set out in the schedule below.

Main Issues

2. (a) The justification for the proposed dwelling in the countryside; and (b) the effect of the proposed development on public open space facilities.

Reasons

Dwelling in the Countryside

3. The appeal site is situated outside of the Congerstone village settlement boundary as indicated on the Proposals Map of the Hinckley and Bosworth Local Plan (2001) [LP]. Policy RES5 of the LP states that on unallocated residential sites, permission for housing will only be granted for sites that lie within the boundary of a rural settlement as defined on the Proposals Map. Policy NE5 of the LP stipulates that the countryside will be protected for its own sake and permission for development will only be granted in certain circumstances. None of the circumstances relate directly to the proposed development. Policy 12 of the Hinckley and Bosworth Core Strategy (2009) [CS] supports housing development which is within a settlement boundary.

4. The appeal site however is set within a cluster of existing dwellings which are situated a short distance beyond the settlement boundary. From my observations, the cluster clearly reads as a continuation of the village and the proposed development would not create an isolated home in the countryside. The Council confirmed at the hearing that it has reviewed the above policies having regard to paragraphs 214 and 215 of Annex 1 of the National Planning Policy Framework (the Framework) which was published on 27 March 2012. It has concluded that, in this particular case, the LP policies would have limited consistency with the Framework given the specific location of the site. It further acknowledged that the site is within a sustainable settlement, albeit outside of the settlement boundary. The Council also accepted that the proposal would constitute sustainable development in the context of paragraph 7 of the Framework. From the evidence before me, I agree with the Council in all of these respects.

5. In its statement, the Council referred to the *Site Allocations and Generic Development Control Policies Development Plan Document: Consultation Draft Preferred Options Report (February 2009)* [POR]. The supporting text to Policy 12 of the CS requires the development of ten further houses in the village but the appeal site has not been identified within the POR as a preferred site for any future residential development. The POR however is still at draft stage and I therefore accord it limited weight. The appeal site represents garden land and accordingly, is not previously developed land as defined in the Framework. In this case however the Council has raised no concerns in relation to the effect of the proposal on the character and appearance of the area or residential amenity. In this respect, I noted that the existing hedgerow along the boundary with No 48 would be retained. From the evidence provided to me and my observations, I also raise no concerns with regard to these issues.

6. Furthermore, the appellant has contended that the Council is not able to identify a supply of specific deliverable sites sufficient to provide five years worth of housing against its housing requirements plus an additional buffer of 5%. The Council acknowledged at the hearing that in October 2011, the housing supply figure stood at four years and seven months. The assessment is being updated but I was told that is unlikely to demonstrate that the Council is currently meeting the housing supply requirement in paragraph 47 of the Framework. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption of sustainable development. It further states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

7. Paragraph 11 of the Framework reasserts that section 38 (6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require applications for planning permission to be determined in accordance with the development plan unless material indications indicate otherwise. The Framework is a material consideration. Having regard to all of the above matters, in this particular case, I attach moderate weight to both the LP and CS policies referred to in paragraph 3. I find that the proposal, in the context of housing development in the countryside, meets the presumption in favour of sustainable development as set out in the Framework and this consideration outweighs the requirements of the LP and CS policies. The proposed development in this location is therefore justified.

Public Space Open Space Provision

8. Policy IMP1 of the LP states 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 off site facilities to serve the development commensurate with the scale and nature of the development proposed. Policy REC3 of the LP relates to the provision of outdoor play space for children. The policy stipulates that when considering planning applications for new residential development for 20 dwellings or less the level of provision to be made will be determined according to individual circumstances.

9. The Council's Supplementary Planning Document: *Play & Open Space Guide* (2008) [SPD] seeks, amongst other things, to provide guidance to developers in respect of contributions in lieu of direct provision of open space and play facilities. Access to high quality open spaces and opportunities for sport and recreation are a continuing objective of the Framework. I consider therefore that the above policies and the SPD are consistent with the Framework in this regard and I accord them significant weight.

10. As part of the appeal process, the appellant has provided a signed and dated unilateral undertaking (UU). The UU provides for a contribution of £1250.80 in lieu of the provision of open space within the development. The contribution represents £817.80 for the provision of new facilities and £433.00 for the maintenance of the existing facilities. These sums would be allocated to provide play equipment, for which a scheme has been prepared, and ongoing maintenance requirements at Church Field, Congerstone. I visited Church Field, which is a short distance from the appeal site, and comprises an area of open space with recreation and sport facilities for children and adults. Appendix 4 of the SPD sets out the methodology for calculating the level of contributions which is directly related to the number of proposed dwellings. From the evidence before me, the contribution accords with the requirements of the SPD.

11. The Community Infrastructure Levy (CIL) Regulations set out the three tests which any planning obligation must meet. The tests, which are reiterated in paragraph 204 of the Framework, require that any obligation shall be:
(i) necessary to make the development acceptable in planning terms;
(ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development. In light of the above, I find that the planning obligation meets the tests in the CIL Regulations. Accordingly the proposed development would not conflict with the Framework, Policies IMP1 and REC3, or the SPD.

Conditions

12. A condition is necessary to confirm all of the plans upon which the decision has been made for the avoidance of doubt and in the interests of proper planning. I have imposed conditions to control the external appearance of, and boundary treatments to, the development in the interests of visual amenity. I have also imposed a condition in relation to access arrangements to prevent deleterious material being deposited on the highway in the interests of residential amenity and highway safety. I have amended the wording of some of the suggested conditions in light of the advice in Circular 11/95: *The Use of Conditions in Planning Permissions* and in the interests of clarity and enforceability.

Conclusion

13. I have taken account of the views of local residents and other interested parties in reaching this decision and have considered all of the matters before me. For the reasons given above, the appeal succeeds.

Alan M Wood

Inspector

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: SMC/C256, SC/C256/LP; HMD/PD/0180/01A, 02A and 03; and HMD/SX/0180/01.

3) No development shall take place until representative samples of the types and colours of materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) Before the development hereby permitted is first occupied, the realigned existing access drive and any associated turning space as indicated on Plan HMD/PD/0180/02A shall be surfaced with tarmacadam, concrete or similar hard bound porous material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary and shall be so maintained for the life of the development.

5) Notwithstanding the details submitted, no development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the building is occupied. Development shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Stephen Clarke MRAC FRICS FAAV F.LAND.INST	Sansom Clarke

FOR THE LOCAL PLANNING AUTHORITY:

Eleanor Shaw	Planning Officer, Hinckley and Bosworth Borough Council

DOCUMENTS

Submitted by the Council:

1) Notification Letter
2) Representation on the National Planning Policy Framework
3) Site Allocations and Generic Development Control Policies Development Plan Document: Consultation Draft Preferred Options Report (February 2009)

Submitted by the Appellant:

4) Unilateral Undertaking