The Planning Inspectorate

Appeal Decision

Hearing held on 11 April 2012
Site visit made on 11 April 2012

by Ian Radcliffe BSC (Hons) MCIEH DMS

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

Decision date: 22 June 2012

Appeal Ref: APP/K2420/A/11/2167650
Land at St Mary's Court, Barwell, Leicestershire LE9 8DF

- 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 Tony Morris & Sons against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00719/OUT, dated 5 September 2011, was refused by notice dated 16 November 2011.
- The development proposed is the erection of 4 dwellings.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 dwellings on land at St Mary's Court, Barwell, Leicestershire LE9 8DF in accordance with the terms of the application, Ref 11/00719/OUT, dated 5 September 2011, subject to the conditions in the schedule at the end of this decision.

Procedural matters

2. The application was submitted in outline, with only access and layout to be determined at this stage. I have dealt with the appeal on this basis and I have taken the illustrative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development on the appeal site. A planning obligation has also been submitted which I have considered as part of the appeal.

Main Issues

3. The main issues in this appeal are;

   - whether the housing proposal would comply with the development plan in terms of its location and its effect on character and appearance of the area, and if not,
   - whether the existence of a shortfall in housing land and the sustainability of the development would outweigh such non compliance.

Reasons

4. The appeal site is on the edge of Barwell and originally formed part of a large residential plot. The part of the plot that was wholly within the settlement boundary was redeveloped with new houses several years ago and faces the appeal site.

Location

5. Although the Strategic Housing Land Availability Assessment (SHLAA) identifies the appeal site as brownfield land the application form describes it as former garden land. Whilst garden land was once considered to be previously developed land this is no longer the case. I have therefore treated the appeal site as an undeveloped plot.

6. The Hinckley and Bosworth Local Plan was adopted prior to 2004. The settlement boundary for Barwell is identified on the Proposals Map which forms part of the Local Plan. It is common ground that the majority of the appeal site lies outside the settlement boundary. The appellant considers that the route of the boundary in relation to the appeal site was a drafting error and should have followed the hedge on the eastern side of the site thereby including the whole of the appeal site within the settlement boundary. However, the boundary regularly passes close to buildings to limit the outward spread of the settlement. Furthermore, it is the purpose of the development plan process rather than individual appeals to determine the boundary of settlements.

7. Of the saved policies of the Local Plan policy RES5 is relevant and advises that applications for housing on unallocated sites outside settlement boundaries will not be granted permission. The Core Strategy for the Borough was adopted in 2009. Policy CS3 of the Core Strategy supports the provision of new housing within the settlement boundary of Barwell and the allocation of land for 2,500 new homes as part of an urban extension. Piecemeal developments such as the appeal proposal are not permitted. Policy CS6 prevents the construction of new housing within the Green Wedge that separates Barwell from nearby settlements. The appeal site is located within the Green Wedge.

8. A core principle of the National Planning Policy Framework (the Framework) is that the intrinsic character and beauty of the countryside should be recognised in both plan making and decision taking. Consistent with this approach the Hinckley and Bosworth Local Plan and the Council's Core Strategy confine new housing to within settlement boundaries. Given that the appeal site is outside the settlement boundary and within the countryside the proposal would not comply with the development plan.

Character and appearance

9. The appeal site is within an area of countryside to the south of Barwell denoted as a Green Wedge in the Core Strategy. In the context of the recently published Green Wedge Review the site sits between the village and a well used network of public rights of way which provide circular routes to and from the village some distance further away to the south and east.

10. The development would protrude beyond the settlement boundary by 15m to 19m to the east. The trees and vegetation on the land beyond the appeal site create a soft edge to this part of the settlement which would not be altered by the proposal. As a consequence, the character and the contribution that this part of the Green Wedge makes to the rural setting of Barwell would not be significantly changed.

11. St Mary's Church is located approximately 100m to the north east of the site. Subject to the proposed houses being of a similar height to nearby houses the development would not harm views of the church from the countryside to the south. In terms of design, the layout of the houses with parking to the rear reflects the principle of good residential design. With the control that could be

exerted at reserved matters stage in relation to landscaping, scale and appearance, there is no reason therefore why well conceived houses that would complement the dwellings opposite could not be achieved.

12. Taking all these matters into account, I therefore conclude that the proposal would complement the character and appearance of the area. In so doing it would comply with Policy BE1 which requires the protection of the character and appearance of a locality through high quality design that respects local design features. It would also comply with part b of Policy RES5 of the Local Plan which relates to the design of new housing.

Conclusion on the first main issue

13. There is no conflict with the development plan in respect of the effect of the proposal on the character and appearance of the area, but the proposed development would conflict with the development plan because of its location outside the defined settlement boundary.

Housing Supply

14. The Framework advises that Local Planning Authorities should have sufficient deliverable sites to deliver housing over a 5 year period to meet the target contained within the development plan. For most of 2011 the authority had a housing land supply of approximately 3.5 years. It was confirmed at the hearing that the Council now has a land supply of 4.75 years. Whilst this is a significant improvement, it is still less than the 5 year target.

15. Housing supply was considered in detail at an Inquiry in June 2011 (APP/K2420/A/10/2142660). On the basis of that Inspector's analysis, and the absence of further evidence to the contrary at the hearing, on the balance of probabilities the improvement in housing land supply within the last year would appear only to be temporary.

16. The appellant confirmed at the hearing that the proposed scheme is deliverable on the basis that the appeal site is available and the development is viable. This is confirmed by the SHLAA assessment of the site. As a consequence, the 4 houses proposed would contribute to addressing the shortfall in housing land supply in the Borough.

Sustainable development

17. The appeal site is located within easy walking distance of the centre of Barwell and the shops, services and facilities that it has to offer. In terms of public transport buses service the settlement. As a consequence, it is in a relatively sustainable location for development. Additional housing would also support economic growth and the community. Although an area of countryside would be lost to development it would be small and there would be minimal harm to wildlife. Taking all these factors into account, I conclude, based upon the overall balance of considerations, that the proposal would be a sustainable development.

Conclusion on the second main issue

18. There is an absence of a 5 year housing land supply. In accordance with paragraph 49 of the Framework in such a situation local policies that govern housing land supply such as policies CS3 and CS6 of the Core Strategy and policy RES5 of the Local Plan should not be considered up to date. On the evidence before me, I therefore find that there is more than a limited degree of conflict between the Framework and the approach of the development plan on

the issue of residential development and housing land supply. In these circumstances, full weight may not continue to be given to relevant policies of the development plan, as paragraph 214 of the Framework makes clear.

19. Housing applications should be considered in the context of the Framework's presumption in favour of sustainable development, a matter upon which I have previously concluded that the development would comply. Whilst the location of the proposal would be contrary to the development plan, I therefore conclude that the absence of an adequate housing land supply and the sustainable nature of the development outweigh such non compliance.

Other matters

Play and open space facilities

20. A properly completed section 106 agreement has been drawn up having regard to policies REC3 and IMP1 of the Local Plan and the supplementary planning document 'Play and Open Space Guide'. The provisions sought in relation to play and open space facilities have been assessed having regard to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

21. The effect of 4 additional family sized houses would be an increased demand on play and open space facilities. Whilst in terms of available land existing provision is sufficient the quality of facilities is substandard. The proposed development would exacerbate the inadequacy of existing facilities. The monies sought, which are fairly and reasonably related in scale and kind to the development, would be used towards the cost of constructing a new sports pavilion at 'The Common', close to the appeal site.

22. As a consequence, the request for the contribution accords with the Regulation and the development plan. I shall therefore take the provisions of the agreement into account. However, the obligation does not add weight in favour of the proposal as its purpose is to ensure that the proposal would comply with the development plan.

Residential development refused on appeal

23. An application for the development of a house on land within the Green Wedge next to the appeal site was refused on appeal in 1998 (APP/K2420/A/98/300371). However, just as that Inspector exercised his judgement based upon planning policy at that time and the merits of the case, so have I exercised my judgement in relation to this appeal. As a consequence, I attach little weight to this consideration against the proposal.

Access

24. Access to the site would be off the existing access serving the houses on the western side of the site. The Council has no objection to this arrangement subject to the surfacing of drives and turning areas in a hard bound material. I saw no reason why such surfacing could not be provided and I have no reason to disagree with those conclusions.

Conditions

25. For the avoidance of doubt, and in the interests of proper planning, I shall list the approved plans in a condition attached to the permission and require that the development is carried out in accordance with these plans. To combat climate change in accordance with the development plan the carbon emissions associated with the occupation of a new dwelling need to be reduced. In the

interests of highway safety the surfacing material on the driveway and turning areas to each property needs to be hardbound. Given that there is a former landfill site nearby the possibility of contamination on the site needs to be fully assessed in order to safeguard future residents and the environment. I have required all these matters by condition, revising the Council's suggested conditions where necessary to better reflect the requirements of Circular 11/95 '*The Use of Conditions in Planning Permissions*'.

Conclusion

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Ian Radcliffe

Inspector

Schedule

1) Details of the appearance, landscaping 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: 11 32 03B, 11/32 05.

5) The dwellings shall achieve a minimum of Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 or higher has been achieved.

6) Prior to first occupation of any of the dwellings hereby permitted, the access drive and any turning space shall be surfaced with a hard bound porous material and shall be so maintained at all times.

7) No development shall take place until a site investigation assessing land contamination, including landfill gas, has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before the development begins.

8) If, during the course of development, any contamination is found which has not been identified in the site investigation required by condition 7, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

APPEARANCES

FOR THE APPELLANT:

Mr Bailey BA(Hons) DipTP MRTPI	James Bailey Planning
Mr Morris	appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Fryer BA(Hons) DipTP MRTPI Area Planning Officer	Hinckley & Bosworth Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

1 Notification letter detailing the time, date and location of the hearing, together with a list of persons notified.
2 5 year housing land supply position table as of 1 October 2011
3 E-mail from the Parish Council to Mrs Fryer regarding other improvements sought for The Common.