



Appeal Decision

Site visit made on 15 October 2024

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

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/B3030/W/24/3348128

Land West of Main Street, South Muskham, Nottinghamshire NG23 6EE

- 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 Keith Phillips-Moul against the decision of Newark & Sherwood District Council.
 - The application Ref 23/02283/OUT, dated 21 December 2023, was refused by notice dated 20 February 2024.
 - The development proposed is four dwellings with all matters reserved except access. The development plan
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The original application sought outline planning permission with all matters reserved except for access. It is on this basis that I have assessed the proposal and determined the appeal, taking account of all other material considerations.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the surrounding area with particular regard to the local landscape and protected trees and hedgerows;
 - whether the proposed development would comply with national planning policy and guidance which seeks to steer new development away from areas at the highest risk of flooding; and
 - the effect of the proposed access on highway safety.

Reasons

4. The appeal relates to a large rectangular site between Great North Road and Main Street with an area of about 0.5 hectares. There is a narrow strip of land at the eastern end of the site which connects the site to Main Street. This, along with the rest of the site, was substantially overgrown at the time of my visit. The western boundary faces Great North Road and is defined by dense hedgerow and trees. There is an access gate on this boundary and this forms the basis of the proposed access point for the scheme from Great North Road.

5. The appeal site forms part of the Main Open Area (MOA) of South Muskham, as defined by the Policies Map Insert and Policy NA/MOA in the Newark and Sherwood Allocations and Development Management DPD 2013 (the ADM). It is surrounded by residential curtilages, some with long back gardens, except for an area of open space, also within the MOA, to the north-east of the site.
6. According to the most recently published Environment Agency Flood Maps, the entire site lies within Flood Zone 2 and is therefore at a medium risk of fluvial flooding. The village hall is to the southeast of the site and there are Grade II listed buildings at Grange Farm Mews approximately 40 metres distant from the southern boundary of the site and on the opposite side of Main Street.

Character and Appearance

7. I have had due regard to the relevant development plan policies within the Newark and Sherwood Core Strategy DPD 2019 (the Core Strategy) and the ADM, including Spatial Policies 1, 2 and 3. I have also considered the overarching policy constraint found within a designated Main Open Area. This constraint, in Policy NA/MOA of the ADM, dictates the overall principle of development within the MOA confirming that within such areas planning permission will not normally be granted for built development.
8. Whilst not widely visible from public vantage points or publicly accessible, the appeal site is nonetheless of great value to the character of South Muskham as it contributes in part to a break in the overall built form of the village. This results in its contribution towards securing a more relaxed, lower residential density that is more appropriate in the immediate vicinity, noting South Muskham's position within the settlement hierarchy and the visual transition between the main form of the village and the surrounding countryside. The proposed development would fundamentally disrupt and erode the currently open nature of the site as residential use would require, at the very least, the urbanisation of much of the greenfield site. At the time of my visit, I could see that the site represents a softened landscape due to the dense hedge and tree boundaries. The proposed development of the site would result in the experience of the site in that way being completely lost.
9. The site is surrounded by residential curtilages which front onto the local road network. As a result, notwithstanding the proposed community open space on the eastern part of the site, the development of the site in its entirety would represent backland development both from the perspective of Main Street when viewed from the east and south and, to a lesser extent, from Great North Road to the west behind any frontage properties proposed.
10. The proposal would therefore be at odds with properties to the north which have a highway frontage and long rear gardens and also when considered in the context of the Main Open Area (MOA) which fundamentally lessens the residential density of the area. In allowing the proposal, a precedent would be set for the development of the remaining MOA adjacent to the site and, potentially, the long rear gardens to the north, thus significantly altering the overall rural character of the village.
11. I have considered the appellant's points about the surrounding development within South Muskham having eroded any importance the site had to the village's local character. I have also had regard to points concerning the age of the Local Plan, the fact that the five-year time period for its review has passed and that the policy applied by the Council in this case (the MOA) should be afforded reduced weight. As a result, in applying Paragraph 225 of the National Planning Policy Framework (the Framework), I find the policies identified in the development plan to be consistent with the Framework and have been given due weight in this appeal.
12. The appellant refers to an appeal allowed at Ashleigh, north of the appeal site, which they say sets a precedent for development. In this context, the appellant believes that the Council's assertion that the inevitable back land nature of the development would not be in

keeping with the settlement character' does not stand up to scrutiny. The development at Ashleigh is noted. However, this has limited weight in my determination of this case as each scheme must be assessed on its own merits and circumstances. In any event, I note that the other proposal was refused by the Council and allowed on appeal by a colleague inspector who assessed the evidence before them in that particular case to reach their decision.

13. Whilst the nature of the proposal could be considered as small-scale, the proposed scheme would have a detrimental impact on the character of the area due to the significant extent of its overall development plot. The proposal, as set out, would undermine the built framework of South Muskham, conflicting with the aims and principles of the MOA and the lower density form of development in the immediate vicinity of the site. This would potentially lead to the whole area of land between Main Street and Great North Road being significantly developed, thus altering and permanently harming the overall rural character of the village. The proposed scheme is therefore not considered appropriate to South Muskham and the indicative layout would not respect, and have a harmful impact on, the prevailing character of the surrounding built form and result in an intrusive development.
14. The proposal would be within a MOA where development of built form is resisted in principle by Policy NA/MOA of the ADM. Furthermore, the proposed development of the site would be out of character with the prevailing rural setting and would unacceptably alter the legibility of the local landscape pattern by introducing development within the MOA. Furthermore, the inevitable back land nature of development that would occur would fail to be in keeping with the settlement character in the context of the local landscape.
15. Consequently, taking all relevant matters into account, I conclude that the proposed development would have a detrimental effect on the character and appearance of the surrounding area with particular regard to the impact on the rural setting of the local landscape. The proposal would therefore be contrary to Spatial Policy 3, Core Policy 9 and Core Policy 13 of the Core Strategy and Policies NA/MOA and DM5 of the ADM. It would also be contrary to the relevant provisions within the Framework.

Impact on trees and hedgerows

16. A Tree Constraints Survey (TCS) submitted with the application confirms that from a total of 43 trees and groups of trees assessed on the site, three trees are of sufficient quality to merit retention (Category B). Two of these are within neighbouring gardens and one is on the site boundary. The indicative site layout plan has been carefully prepared, according to the appellant, to avoid the root and canopy constraints of these trees. I note that the remainder of the trees surveyed are Category C trees of lesser arboricultural importance. There are also six small Category U trees identified as 'dead' or 'near dead'.
17. The Council identifies the submitted Tree Constraints Plan as inadequate as it does not provide sufficient detail regarding the impact of the proposed scheme on existing trees. It is noted also that some existing trees are not shown on the submitted indicative site layout plan for the proposed scheme. As a result, it is not clear whether the impacts on those trees, including the full extent of the root protection areas and further growth considerations, have been sufficiently identified and addressed. It is therefore also not clear whether the site would be capable of accommodating the four dwellings proposed in an acceptable way with regard to the impact on existing trees.
18. The Council states that adequate space has not been allowed for the long-term retention and maintenance of existing mature trees. Whilst I acknowledge the site layout plan is indicative, on the basis of what is before me, I cannot be sufficiently satisfied that the adequate space has been provided between the proposed siting of the dwellings and the root protection areas and crown spread of the retained Category B and Category C trees. The evidence provided does not provide sufficient detail to persuade me otherwise. For

these reasons, I find that there would potentially be harm to the long-term health and viability of those trees which have a high amenity value.

19. Furthermore, from what I have seen, the proposed access from Great North Road would result in the loss of an important hedgerow with diverse ecological and aesthetic impacts. I acknowledge the appellant's points that the effects on hedgerows have been minimised where possible in the design of the site layout and highway access. I have also had regard to the Council's Tree Officer and their review and submissions which advise that hedgerow G43 should be classified as 'important' in line with the Hedgerows Regulations (1997). This does not appear to have been addressed in the submitted evidence for the appellant. The appellant's preliminary ecological report identifies that there was no evidence of protected species found within or immediately adjacent to the proposed development footprint during the survey. For these reasons, the appellant says that the removal of the hedgerow for the proposed access would have no adverse ecological and character implications.
20. Notwithstanding this, the appellant has not adequately demonstrated that the site can accommodate the development proposed and how the potential impact on existing trees and hedgerows, which could consequentially result in harm to the long-term health and viability of trees of high amenity value, would be mitigated. Furthermore, the appellant has not demonstrated sufficient consideration of British Standard BS5837 where particular care is required regarding the retention of large, mature, over-mature or veteran trees which become enclosed within a new development. In my assessment, this would have an unacceptable adverse impact on these trees to the detriment of the character and appearance of the local landscape and area. Moreover, the proposed access would result in the loss of part of an important, prominent and substantial hedgerow which would have significant adverse environmental, ecological and visual character implications.
21. Consequently, for the above reasons, I conclude that the proposal would have a significant detrimental impact on the protected trees and hedgerows that are present on, and adjacent to, the appeal site. As a result, the proposal would be contrary to Core Policies 9 and 12 of the Core Strategy, Policy DM5 of the ADM and the relevant sections of the Framework.

Flood Risk

22. Core Policy 10 of the Core Strategy, Policy DM5 of the ADM and the Framework set out a sequential approach to flood risk when considering development proposals. The appeal site is in Flood Zone 2 (FZ2) according to the most up-to-date Environment Agency (EA) Flood Maps and therefore is at a medium risk of flooding.
23. The appellant's submitted Flood Risk Assessment (FRA) makes no reference to the application of a sequential test which would provide evidence to support development being appropriate at this specific site. This is because they consider the site, or at least the majority of it, to be in Flood Zone 1 (FZ1) rather than FZ2. The appellant believes the EA Flood Map is not up to date, and therefore incorrect, as recent models (post 2021) have not yet been uploaded due to the EA's ongoing National Flood Risk Assessment Project, as I have noted in the EA's letter at Appendix A of the appellant's statement of case. Modelled flood levels submitted on behalf of the appellant show much of the appeal site, particularly the area where the dwellings are proposed, lies in FZ1. The appellant states that this was not fully considered by the Council when assessing the proposal. It is therefore argued that there should be no objection to the scheme and the sequential test is not necessary.
24. In my assessment, although the appeal site is not shown as being affected by flood defence breaches, it does not automatically follow that the flood risk classification can be changed from FZ2 to FZ1. I have seen no evidence from the EA to clarify, confirm or indicate that the flood risk classification of the appeal site, either in part or in full, has formally changed to FZ1 as a result of the appellant's assessment of any other assessment

- or modelling undertaken for the EA. Neither has the appellant submitted a formal Flood Map challenge to the EA to make a change to the classification. Therefore, in the absence of any formal clarification from the EA in relation to the flood risk classification for the appeal site as being within FZ1, whether in whole or in part, in my assessment, I find the EA's published Flood Map to be the definitive reference. As such, the appeal site is within FZ2.
25. Notwithstanding the view that part of the site is within FZ1, a sequential test considering alternative sites for development was undertaken on behalf of the appellant during the application process. The area of coverage to be applied to the test is set out in the Planning Practice Guidance (PPG) and defined by local circumstances relating to the catchment area for the type of development proposed. The geographic area applied in this case related to the parish boundaries of South Muskham and Little Carlton and Newark. The chosen area contains amenities, services and educational facilities which would serve the proposed increase in population resulting from the development, as explained within the sequential test. The appellant believes that this provides a robust justification for the catchment area rather than the wider District for an outline planning permission for a small-scale development.
 26. The Council's view, having regard to the PPG, is that the sequential test area of application should be the administrative boundary of the Newark and Sherwood District. This aligns with the catchment area for new housing in the District as defined in accordance with Spatial Policies 1 and 2 of the Core Strategy. As a result, the Council considers there to be many other sites within the District to be at a lower risk of flooding that could accommodate the amount of development proposed.
 27. Given what is before me, I find the District-wide approach to be the most appropriate, reasonable and justified position to take. The development plan is based on a District-wide approach to housing delivery and development, amongst other matters. As such, I consider the District to provide the most suitable basis on which to undertake a flood risk sequential assessment for housing delivery and development. The appellant's reasoning for choosing a smaller area is acknowledged. However, it does not provide a fully considered and robust assessment of the potential for more suitable sites to be developed for housing across the District with regard to the development plan and other material considerations. Therefore, the sequential test submitted is considered inadequate and inappropriate in this case. As such, the proposal fails to meet the requirements of the sequential test.
 28. In conclusion, the proposal development would be in FZ2 and is defined as being 'more vulnerable' to flood in Annex 3 of the Framework regarding flood risk vulnerability classification. For the reasons stated, the proposal fails the sequential test and is therefore considered neither appropriate nor acceptable given the uncertainty about the flood risk vulnerability issues of the site. There are no material planning considerations that outweigh the requirement to properly apply the flood risk sequential test nor justify the application of a more localised area in which to apply it. Furthermore, due to its failure to pass the sequential test, it is therefore not necessary to go on to consider whether the proposal could be made safe from flood risk for its lifetime.
 29. Consequently, I conclude that the proposal would not comply with Core Policy 10 of the Core Strategy and Policy DM5 of the ADM. Furthermore, it would not comply with the relevant sections of the Framework and the PPG, which are material considerations.

Highway Safety

30. Spatial Policy 7 of the Core Strategy says that development proposals should be appropriate for the highway network with regard to the volume and nature of traffic that would be generated. Proposals should also ensure that the safety, convenience and free flow of traffic using the highway are not adversely affected and appropriate parking is

- provided. Policy DM5 of the ADM also requires the provision of safe access to new development and appropriate parking provision.
31. The Council indicates in its reason for refusal that the proposed development seeks to introduce an additional vehicular access onto the site from Great North Road. However, for clarity, from the evidence before me, the proposed access is identified at the location of an existing gated access point and would constitute an enhancement to that existing access for vehicles and pedestrians.
 32. Notwithstanding this, I note that the access proposed from Great North Road includes land owned by the highway authority (HA). The HA has indicated that this should not be included and identified within the proposal as approval had not been sought or provided by the HA. Moreover, the submitted access plans, such as the access scheme layout within the Transport Technical Note (TTN) and the revised Site Layout Plans, do not match. As a result, without a single definitive plan, it is not reasonably possible to approve the proposed access arrangements. Furthermore, without the necessary details, I find that only the suggestion of works to a footway along the eastern side of Great North Road and the omission of pedestrian dropped kerb crossings lacks the necessary detail for an appropriate and full assessment to be undertaken.
 33. Further to this, there are issues relating to the pedestrian accessibility of the site more generally. Whilst I accept that the proposal is for outline planning approval, access in this case is a matter to be considered in full. The proposed scheme indicates that pedestrian access between the site and village hall from an area of land within the eastern part of the site. However, no clear proposal for such a means of access is provided. The appellant's Planning, Design and Access Statement also indicates that this area of land would be used only for services. In addition, the appellant does not appear to have control of the land required to provide a direct access between the site and the village hall. As a result, pedestrians would have to reach the village hall via Main Street from either a pedestrian access onto Main Street, which is not shown on the proposed site layout plan, or from the proposed site access onto Great North Road.
 34. The pedestrian route via Main Street would include no continuous footway along the western side of Main Street between the site frontage and the village hall. Pedestrians would therefore need to walk in the carriageway which would have a detrimental impact on highway safety and would be unacceptable. I also note the HA's comments stating concerns about a lack of visibility along Main Street for pedestrians emerging from the site. This would also be harmful in terms of highway safety. In relation to the Great North Road pedestrian route between the site and the village hall, with the proposed footways in place, pedestrian access could be achieved. However, the route along the Great North Road and adjacent to a busy roundabout junction would not be particularly attractive or safe due to the proximity of pedestrians on the narrow footway to traffic on the highway, some of which would be large heavy goods vehicles.
 35. In my assessment, taking account of the HA's assessment, elements of the access proposal are considered acceptable to the HA. However, it is evident to me that there are also several aspects which are not. Accordingly, from the submissions made and my analysis of them, I find that the proposed access does not demonstrate that it would operate safely and for these reasons it is not appropriate or acceptable.
 36. I have considered the content of the road safety audit undertaken for a previous application on the site (ref: 19/00786/OUTM) within which several safety issues were identified. I acknowledge that the audit is a standalone document to the previous application which is understood to have been for a larger housing development. However, as the HA has specified, it is for the appellant to demonstrate how such issues would be addressed and mitigated by the proposed development. The proposed scheme in this appeal may be smaller than previous proposals. However, the same highway safety issues remain in

relation to the proposed scheme before me in this case remain unaddressed and not adequately mitigated. Accordingly, having noted no substantive evidence supporting the proposal and addressing these issues, the proposed development is unacceptable.

37. I have also had regard to the HA's response to the submitted TTN which refers to accident data from the 'Crashmap' website for the period 2018-2022. I note the HA's comment that this period includes the Covid-19 lockdown and does not represent a standard most recent five-year period of data. As a result, the conclusion in the TTN relating to a lack of accidents in the vicinity of the appeal site cannot reasonably be accepted. Furthermore, the HA indicates that the appellant could have obtained more up-to-date accident data from the HA's agent. These matters lead me to find that only limited weight can be given to this accident data in the TTN in the determination of this appeal.
38. Overall, in addition to my assessment of highway safety, the HA's objection to the scheme is a material consideration of some significance and weight and is based on the appellant provided insufficient information to allow for the full and appropriate assessment of the proposal regarding highway safety. There is no substantive evidence in these matters that I have seen which would outweigh the significant harm identified in highway safety terms.
39. Consequently, from the submitted evidence and all I have seen, I conclude that the proposed development would have a significant detrimental effect on highway safety for pedestrians, cyclists and drivers. Accordingly, it would be contrary to Policy SP7 of the Core Strategy, Policy DM5 of the ADM and the relevant sections of the Framework.

Conclusion

40. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A McCormack

Inspector