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Appeal Decision

Site visit made on 24 May 2024

by S. Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 03 June 2024

Appeal Ref: APP/W3005/W/24/3336447

Land adjacent to Trevelyan, Blackwell Road, Huthwaite, Sutton in Ashfield NG17 2RG

- 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 Evolution Homes against Ashfield District Council.
 - The application Ref V/2022/0601, dated 5 August 2022, was refused by notice dated 1 November 2023.
 - The development proposed is the construction of 9 residential dwellings.
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of 9 residential dwellings at Land adjacent to Trevelyan, Blackwell Road, Huthwaite, Sutton in Ashfield NG17 2RG in accordance with the terms of the application ref: V/2022/0601, dated 5 August 2022, subject to the conditions in the attached schedule.

Procedural Matter

2. The National Planning Policy Framework 2023 (the Framework) was amended on 19 December 2023. The amendments made did not have a material bearing upon the main issue in this appeal, and it was therefore not necessary to seek comments from the main parties upon it. Where I have referred to the Framework, it is that of the December 2023 version.

Main Issues

3. The main issue is whether the proposal would amount to piecemeal and premature development and whether it would represent a functional, safe and accessible environment, enhancing the character of the area.

Reasons

4. The appeal site is located within an area designated as countryside as outlined within policy ST4 of the Ashfield Local Plan Review 2002 (LP). Under policy ST4, permission will only be granted for sites allocated for development, or development appropriate to the countryside, as outlined in policy EV2 of the LP. Policy EV2 of the LP restricts development in the countryside to defined appropriate forms of development. This includes 'infill' development. Policy ST1(d) of the LP, as referenced in the Council's reason for refusal, states that development will be permitted where it will not '*prejudice the comprehensive development of an area*'.

5. The Council is currently progressing its Emerging Local Plan. The Regulation 19 consultation was undertaken throughout January 2024, and the Local Plan documents were submitted to the Secretary of State on 29 April 2024. It is noteworthy that the latter had not happened when the Council made its decision to refuse planning permission. Within the Emerging Local Plan, the appeal site comprises part of a proposed wider housing allocation for 99 dwellings, under Policy H1St (Land off Blackwell Road/Main Street, Huthwaite).
6. The Council's concern is that granting planning permission for nine dwellings on part of the emerging housing allocation would have an adverse impact upon the possible development of houses within the wider emerging housing allocation. Furthermore, it claims that it may prohibit the potential to put in place infrastructure improvements relative to the development of the wider emerging allocation for more dwellinghouses (e.g. the provision of a wider footpath along the frontage of the appeal site). It is noteworthy that the Highway Authority (HA) has commented in its consultation response that '*any future submission of the full scheme will require the applicant to provide defined improvements to local transport facilities along with new and improved pedestrian/cyclist facilities, both within the development and to connect with the neighbouring areas*'.
7. In addition, the Council claims that, whilst the HA provided comments that the general layout of the scheme was acceptable, it advised that the current access arrangements may not be adequate to facilitate a larger development, given the apparent adverse vertical alignment of the site and the potential need for retaining structures which will increase the footprint of the required highway. The Council states that the development of the nine dwellings therefore has the potential to hinder the provision of a safe and suitable access for any future development of the wider site allocation of which the appeal site forms part. It also says that the road is unlikely to be adopted and as such refuse vehicles would not travel onsite but would park on Blackwell Road. It also states that as parking would be likely to take place on Blackwell Road, this would lead to traffic problems.
8. The Council also raises a concern that, in the absence of a comprehensive scheme for the proposed housing allocation, the proposal would not deliver any financial contributions towards a shortfall in doctor, dental and schools places in the area. There is no objective evidence before me to indicate that the proposal for nine dwellings is required to make contributions in respect of the above. However, this does not mean that it would not be possible for the Council to consider whether it is necessary for future residential schemes to make provision for any necessary infrastructure needs. Any such decision(s) would clearly need to take account of any existing approved residential developments or commitments in the area.
9. In respect of the Council's concerns above, it is necessary that I reach a view in terms of how much weight I afford to the Emerging Local Plan. At this moment in time, neither the appeal site nor the land beyond it is allocated for housing in an adopted development plan. While policy ST4(d) of the LP does seek to restrict development which would prejudice the comprehensive development of an area, such a policy relates to a 2002 development plan where the comprehensive development of both the appeal site and adjacent

land was not envisaged from a housing point of view. Indeed, the adopted development plan for the area shows that the appeal site is in countryside.

10. I acknowledge that since the Council decided to refuse planning permission for the appeal development, the Emerging Plan has now been submitted to the Secretary of State for Examination. Paragraph 50 of the Framework states that a *'refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination...Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan making process'*. However, it does not automatically follow that the development of the appeal site would prejudice the development of the wider area or that it should be resisted upon grounds of prematurity. It requires a careful and reasoned analysis of how the development might prejudice the development of the wider area.
11. I have considered the detail of the third-party objections to the proposed housing allocation. I cannot be certain if the wider land, including the appeal site, will be allocated for housing in a new development plan for the area. However, and for the reasons outlined below, this is not a determinative matter. This is because I do not find that the proposal would prejudice the wider development of the proposed housing allocation.
12. I have not been provided with any objective or policy evidence to demonstrate that it would be necessary for the proposal to contribute to any local infrastructure improvements. The HA has raised no objection to the proposals on a highway safety or accessibility basis. Furthermore, the amended proposals accord with the Council's car parking requirements. In fact, more car parking spaces are proposed than suggested by the Council. In this regard, the Council's comment about vehicles being unacceptably parked on Blackwell Road is not reasonably made.
13. The LPA is concerned that if the wider site is allocated for housing in a new development plan there may be a requirement for infrastructure improvements. However, this is a matter that could be suitably addressed as part of the planning application(s) on the wider proposed housing site. Therefore, I do not see why any subsequent housing development proposal(s) elsewhere within the proposed housing allocation would not be capable of providing any necessary infrastructure improvements, either in full or on a proportionately phased development basis.
14. Furthermore, should the wider land be allocated for housing, I do not see why it would not be possible to incorporate the proposed access as part and parcel of an on-site bicycle/pedestrian connection to the settlement, and/or for alternative bicycle or pedestrian links to be explored elsewhere within the wider proposed housing allocation site. In reaching this view, I note that the wider land is blue edged, and hence that the appellant has sufficient ownership or control as to what happens on the appeal site and upon the wider area if it is allocated for housing. In addition, there is no reason why any future development of land beyond the appeal site could not provide a suitable design for the area as a whole, including the appeal site. Therefore, I

do not agree with the Council that these matters justify a refusal of planning permission on prematurity or piecemeal development grounds.

15. In respect of the widening the footpath in front of the site, I note that the appellant is happy to accept the imposition of a planning condition requiring the provision of a two-metre-wide footway across the site frontage. Indeed, this was considered by the Planning Committee.
16. I recognise that the HA may choose not to adopt the proposed access road, though it is not clear why it would choose not to do so. I find that such a provision would suitably facilitate access into the wider proposed housing allocation. It would not be too narrow and would include pavements. I have not been provided with any objective or detailed evidence to indicate that it would not be possible to ensure that the access was built or improved to an adoptable standard, or that it would not be possible to make use of it to ensure an acceptable access into the wider proposed housing allocation.
17. The Council states that if the access road is not adopted, refuse vehicles would not enter it to empty bins and that this could result in unacceptable collections from Blackwell Road. I do not find that there is any physical impediment to refuse vehicles using the access road, whether it be private or adopted. Dedicated bin storage areas are shown on the plans, and even if it were necessary to wheel bins to Blackwell Road for collection, I do not find that such regular but infrequent collections would cause unacceptable harm to highway safety or the free flow of traffic on Blackwell Road.
18. Furthermore, a planning condition could be imposed relating to technical details for the roads as well as in respect of their maintenance and management.
19. I acknowledge that any future development of the land to the rear of the appeal site may involve some engineering challenges in highway design terms. However, I have no sufficient evidence before me to support any claim that the proposed development of the appeal site would prejudice the development of the wider land from a highway safety or possible road adoption, point of view. The HA alludes to possible difficulties but does not expressly state that the proposed access would be unacceptable from the point of view of serving a wider area, or that it would not be possible to make amendments to it should this be necessary.
20. For the collective reasons outlined above, I do not find that the proposal would lead to piecemeal or premature development. The proposal would not prejudice the possible development of the wider proposed housing allocation. Furthermore, any development of the land within the wider proposed housing allocation could contribute to any required infrastructure improvements in the area.
21. The Council's claim that the proposal would fail to deliver a functional, safe, or an accessible built environment is not substantiated. In respect of the latter, while the appeal site is in the countryside, it is nevertheless very close to a settlement, where there is a choice of modes of transport, and where there would be some off-site pedestrian improvements made in association with the nine dwellings proposed. The development of the appeal site would

not mean that the Council could not consider the need for further accessibility improvements in the area associated with any future housing development.

22. For the above reasons, I conclude that the proposal would not conflict with policy ST4(d) of the LP. No reasonable case has been made by the Council to refuse planning permission based upon prematurity or piecemeal development having regard to paragraph 50 of the Framework.

Other Considerations

23. There is no dispute between the parties that the LPA cannot demonstrate a deliverable five-year supply of housing sites. The Council's Planning Committee report states that it can demonstrate only 2.93 years' supply. In this context, paragraph 11d(ii) of the Framework is engaged.
24. The provision of nine dwellings would make a very positive contribution to the housing under-supply position in social terms. Moreover, the proposal would seek to make efficient use of land in a sustainable location. Furthermore, there would be economic benefits associated with new residents supporting existing facilities and services in the area and, while short-lived, there would be some construction employment benefits. These are matters to which I collectively afford considerable positive weight in the planning balance.
25. The appeal site falls within the countryside. Policy EV2(g) of the LP permits '*infill*' development in countryside locations. The reasoned justification to the policy states that '*infill will normally comprise one or two dwellings in a small gap in existing development*'. The appeal development would infill a gap between existing development. However, it is a relatively wide gap, and nine dwellings are proposed rather than the advised '*one or two dwellings*'.
26. To the extent that nine dwellings would be constructed on the land, which is currently devoid of built form, I find that some limited and localised harm would be caused to the open and undeveloped character of the appeal site. Despite this limited harm, the dwellings would nonetheless assimilate well with other properties in the area and would be suitably designed. They would closely relate to the adjacent settlement and would not be appreciated as an isolated form of development. Therefore, I afford the conflict with policy EV2 (g) only limited weight in decision making terms.

Other Matters

27. I note that a significant number of third parties have objected to the proposal. Some of the concerns raised have been addressed in my decision. All other relevant planning matters were addressed in the officer report considered by members of the Planning Committee. I have no reason to depart from the conclusions reached in the officer's report considered by the members in respect of the other matters raised by third parties. Furthermore, several of the matters raised are adequately controlled in terms of the imposed conditions as detailed below. None of the other matters raised by third parties alter or outweigh my overall conclusion below.

Planning Balance and Conclusion

28. I have found some conflict with policy EV2 of the LP. I afford this conflict only limited weight in the planning balance because the harm caused to the character and appearance of the countryside would be localised and limited. In this regard, the LPA is proposing that the site should be allocated for housing in its Emerging Local Plan.
29. Even if the wider area were to be allocated for housing, there is no reasonable evidence before me to indicate that the appeal proposal would be premature, or that it would prejudice residential development on a larger parcel of land. Furthermore, there is no reasonable evidence to substantiate the Council's claim that the proposal would not be acceptable from a functional, safe, and accessible point of view. In reaching this conclusion, I have had regard to consultee responses, none of which advise refusal of planning permission.
30. Subject to the imposition of planning conditions, I find on balance, that the limited harm caused to the character and appearance of the area, including the conflict with policy EV2 of the LP, is significantly and demonstrably outweighed by the benefits identified above and when assessed against the policies in the Framework taken as a whole. I reach this conclusion whether I consider the proposal based on the adopted development plan for the area that exists now, or in the context of the proposed Emerging Development Plan housing allocation for the site and its wider area.
31. Therefore, I conclude that the proposal would deliver sustainable development and hence the appeal should be allowed.

Conditions

32. The Council has suggested several conditions in the event that planning permission were to be approved. These have been agreed by the appellant. Where necessary, I have amended some of them in the interests of certainty and precision. Pre-commencement conditions have been expressly agreed by the appellant. I am satisfied that the conditions meet the tests as outlined in paragraph 56 of the Framework. I have included the reasons for imposing the conditions alongside the conditions themselves.

S Hartley

INSPECTOR

Schedule of Conditions

1)The development hereby permitted shall begin before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended.

2)The development hereby permitted shall be carried out in accordance with the following plans/drawings: 053-101 Revision B (The "Bridgebank" Plot 1 - Floorplans and Elevations); 053-102 Revision B (The "Mapperley" Plot 2 — Floorplans and Elevations); 053-103 Revision B (The "Lutterworth" Plot 3 — Floorplans and Elevations); 053-104 Revision A (The "Mapperley" Plot 4 — Floorplans and Elevations); 053-105 Revision B (The "Mapperley" Plot 5 — Floorplans and Elevations); 053-106 Revision B (The "Chelmsford" Plot 6 — Floorplans and Elevations) 053-107 Revision B (The "Bridgebank" Plot 7 — Floorplans and Elevations); 053-108 Revision B (The "Ripon" Plots 8 & 9 — Floorplans and Elevations); 053-109 Revision B (Garages Plots 6 & 7 — Floorplans and Elevations); 053-Site Block Plan Revision B (Site Block Plan); 053-Location Plan Revision A (Site Location Plan) and "Reenee's View, Blackwell Road, Huthwaite" (Proposed Street Scenes).

The development shall thereafter be undertaken in accordance with these plans.

Reason: For the avoidance of doubt and in the interests of certainty.

3)The materials and finishes to be used for the external elevations and roof of the proposal shall match those outlined in the submitted details.

Reason: In the interests of the character and appearance of the area.

4)The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and thereafter retained as approved.

Reason: In the interests of the living conditions of occupiers of the site, highway safety and the character and appearance of the area.

5)Prior to the first occupation of the dwelling(s) hereby approved a scheme of sound mitigation shall be submitted to and approved in writing by the local planning authority. The scheme shall be designed following the completion of sound survey undertaken by a competent person. The scheme shall take account of the need to provide adequate ventilation, where an open window would not achieve the following criteria. The scheme shall be designed to achieve the following criteria with the ventilation operating: Bedrooms 30 dB LAeq (15 Minutes) (2300 hrs – 0700 hrs); Living/Bedrooms 35 dB LAeq (15 Minutes) (0700 hrs — 2300 hrs); All Other Habitable Rooms 40 dB LAeq (15 Minutes) (0700 hrs - 2300 hrs); All Habitable Rooms 45 dB I-Amax to occur no more than 10 times per night (2300 hrs - 0700 hrs); Any outdoor amenity areas 55 dB LAeq (1 hour) (0700 hrs — 2300 hrs). The approved scheme shall be implemented in full and retained thereafter.

Reason: To protect the aural amenity of future occupiers of the dwellings.

6)No dwelling hereby permitted shall be occupied until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft

landscaping. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the character and appearance of the area.

7)Details of the proposed treatment of the site's boundaries shall be submitted to and approved in writing by the Local Planning Authority. Any garden fence or other nonpermeable structure should be provided with small holes (gaps 130mm x 130mm) to allow a continuous pathway in which hedgehogs and other small mammals can move through the developed residential site. The holes in the boundary treatments shall thereafter be retained in perpetuity.

Reason: In the interests of biodiversity and the character and appearance of the area.

8)No part of the development hereby permitted shall be brought into use until the access is constructed with a gradient not exceeding 1 in 20 for a distance of 10 metres from the rear of the highway boundary.

Reason: In the interests of highway safety.

9)No part of the development shall be occupied on any part of the application site until a minimum 2-metre-wide footway has been provided along the entire site frontage, the details of which shall be first submitted to, and approved in writing and thereafter constructed to the satisfaction of the Local Planning Authority.

Reason: In the interest of accessibility and highway safety.

10)No part of the development shall be occupied on any part of the application site until a suitable bin collection point is provided for all proposed dwellings to enable refuse collection from the public highway, the details of which shall be first submitted to, and approved in writing and thereafter constructed to the satisfaction of the Local Planning Authority. The approved bin collection point shall thereafter be retained as approved.

Reason: In the interest of pedestrian safety.

11)No development shall be commenced until technical details of the roads and proposed arrangements for future management/maintenance of the proposed streets and private accessways including associated drainage have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and to ensure that the liability of bringing roads up to standards to meet those required for highway safety purposes does not become the responsibility of the Highway Authority.

12)All excavations shall be covered overnight or else have an escape ramp to prevent entrapment of badgers, hedgehogs and other wildlife. All pipework with a diameter greater than 150mm should be capped off at the end of the day and chemicals should be stored securely.

Reason: In the interests of biodiversity and to avoid harm to wildlife during construction

13) Prior to the occupation of the hereby approved dwellings, one bee brick shall be installed within each of the dwellings.

Reason: In the interests of biodiversity.

14) Land Contamination

a) No works shall take place (save for above ground demolition works and site preparation works) until a remediation scheme to deal with the potential ground contamination of the site has been submitted to and approved in writing by the local planning authority.

The scheme shall include:

- i. A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
- ii. The results of the site investigation and detailed risk assessment referred to in (ii) and based on these, an options appraisal and remediation strategy giving full details of the remediation and mitigation measures required and how they are to be undertaken;
- iii. A verification plan setting out the details of the data that will be collected to demonstrate that the works set out in the remediation strategy in (iii) are complete to a satisfactory standard; and
- iv. If required, a monitoring and maintenance plan, setting out provisions for long-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The contamination remediation works shall be carried out in accordance with the approved details and completed prior to the first occupation of any area identified by the report. The provisions of the monitoring and maintenance plan shall be in force from the first occupation of the development and retained for its lifetime.

b) If during the works any additional suspected contamination is encountered, all works in the relevant part of the site shall cease immediately and not resume until either:

- i. The potential contamination has been assessed and a remediation scheme has been submitted to and approved in writing by the Local Planning Authority.
- ii. Timescales for submission of a remediation scheme and details of works which may be carried out in the interim have been agreed in writing by the Local Planning Authority.

Any additional land contamination shall be fully remediated prior to the first occupation of any area identified by the report.

c) The development shall not be occupied until a post completion verification report, including results of sampling and monitoring carried out, has first been submitted to and approved in writing by the local planning authority demonstrating that the site remediation criteria have been met.

Reason: To protect future occupiers of the development from unacceptable land contamination risk

15) The development hereby permitted shall be carried out in accordance with the Ecological Impact Assessment (dated 01/2022) and the Ecology Update and Biodiversity Plan (dated 07/2023). The recommendations made within these documents, including Section 4 (Biodiversity Plan) of the Ecology Update and Biodiversity Plan, shall be strictly adhered to.

Reason: In the interests of biodiversity.

16) Prior to the commencement of development, a walk over badger survey shall be completed and the results, along with details of any necessary mitigation measures, shall be submitted to and approved in writing by the local planning authority. All works and measures shall proceed in accordance with the approved details.

Reason: To protect future occupiers of the development from unacceptable land contamination risk.

17) The highway proposed as part of this development shall be completed and available for use up to the site boundary to the north before the occupation of the 8th dwelling on the site.

Reason: To ensure the development as a whole is completed and access is provided to the land to the north to reflect the potential for it to be used for housing should a draft emerging local plan for the area, which includes a draft housing allocation, be adopted by the Council.