

Appeal Decision

Hearing held on 2 September 2015

Site visit made on 2 September 2015

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 2 October 2015

Appeal Ref: APP/F1040/W/15/3025091

Land at Brook Lane, Sutton-on-the-Hill, Ashbourne, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr M and Mrs and T Rayworth against South Derbyshire District Council.
 - The application Ref: 9/2015/0070 is dated 23 January 2015.
 - The development proposed is the formation of an aquatic plant and fish farm including erection of polytunnel, storage building, dwelling, access and associated drainage (resubmission of planning application Ref: 9/2014/0785).
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr M and Mrs T Rayworth against South Derbyshire District Council, and is the subject of a separate Decision.

Procedural matter

3. At the Hearing, the appellants confirmed that, unlike the previous application, permission is sought for the proposed dwelling for a temporary three year period, rather than on a permanent basis as previously proposed.

Main issues

4. Taking into account the Council's statement setting out the reasons why it would have refused permission had the appeal not been lodged, I consider the main issues in this case are:
 - Whether there is an essential need for the proposed dwelling which is likely to be sustained, so as to amount to exceptional circumstances in the context of policies which seek to restrict new development in the countryside
 - The effect of the proposal on the setting, and therefore the significance, of the nearby Grade II listed building (Sutton Mill).
 - The effect of the proposal on the surrounding countryside;
 - the effect of the proposal on the site's ecology;

- The effect of the proposal on the site's trees; and
- Whether the proposal should be considered sustainable development in the overall planning balance having regard to such matters as the Council's housing land supply position.

Reasons

5. The appellants seek permission to establish a new business for rearing Koi Carp and growing aquatic plants for sale. A number of buildings are proposed which would be grouped closely together at the northern end of the site. The storage building would contain the small-fry fish rearing tanks and associated equipment. The polytunnel would be used to split and separate plants for planting in the outdoor pond and would contain tanks for housing fish prior to being packaged and sold. A prefabricated dwelling is also proposed comprising a living room/kitchen, three bedrooms, bathroom and office. The existing site levels would be re-contoured to provide flood compensation areas, and the existing two ponds would be merged to form one larger pond. Access would be taken from Brook Lane, which would run through the site as a raised track to a parking and turning area next to the buildings.

Planning policy context

6. Paragraph 55 of the *National Planning Policy Framework* (the Framework) says isolated homes in the countryside should be avoided unless there are special circumstances, such as an essential need for rural worker to live permanently at or near their place of work. Whether this need is essential will depend on the needs of the enterprise rather than the personal preferences or circumstances of any individual.
7. Saved Policy H8 of the *South Derbyshire Local Plan*, 1998 (LP) seeks to restrict housing development in the countryside, although sets out a number of exceptions, including where the development is necessary for the operation of an established rural based activity, and where it can be demonstrated that a countryside location is necessary to the efficiency of the activity. Saved LP Policy EV1 similarly seeks to restrict development outside settlement boundaries unless it is essential to a rural based activity.
8. However, the Council cannot demonstrate a five-year supply of deliverable housing land as required by paragraph 47 of the Framework. Consequently, under the terms of paragraph 49, any relevant policies for the supply of housing should be considered out of date. The Council's putative reasons for refusal refer to a number of saved LP policies. Whilst Policies EV2, EV9, EV11, EV13 and T6 cannot be considered out-of-date; others, including EV1 and H8 which seek to restrict development outside settlements and are thus relevant to the supply of housing, must be considered out-of-date. Accordingly, I can attach little weight to saved policies EV1 and H8, and the fact that the appeal site falls outside the defined settlement boundary of the village is not, of itself, a determining factor in my decision. I shall therefore assess the first issue relating to the justification for the proposed dwelling against the requirements of paragraph 55 of the Framework.

Justification for the proposed dwelling

9. Paragraph 55 replaces advice in the former PPS7 Annex A which set out a methodology for assessing whether there was an essential need for a rural

workers dwelling. However, this no longer applies, and it is now necessary to decide on a case by case basis which factors need to be taken into account, and given weight to, when making such an assessment. Nevertheless, it is still necessary to establish whether an essential need can be demonstrated. To do this I need to consider whether it is essential for the proper running of the enterprise for a worker to live on the site and be readily available at most times, and be satisfied that the enterprise is viable and likely to be sustained.

10. I support of the proposal the appellants have submitted a statement prepared by Dr Bruno Broughton, a fisheries management consultant. This was evaluated by an Agricultural Consultant engaged by the Council and their evidence was discussed at the Hearing. Given the nature of the business there is no dispute between the parties that a full time on site presence will always be desirable. This is to enable immediate intervention to rectify any failure of life-support equipment used in the fish rearing unit, to monitor fish welfare and the routine feeding of fish, to monitor environmental conditions in the unit, and to respond quickly to any pollution threats. There are also genuine security concerns due to the high value of the fish.
11. Furthermore, although a financial test is no longer a pre-requisite of essential need, I still need to be satisfied that the enterprise would be viable and likely to be sustainable, at least in the short to medium term. Figures have been produced which set out the annual income and operational costs for a three-year period. Year 1 shows income from ornamental fish sales; whereas years 2 and 3 and three include income from fish and aquatic plant sales. This equates to a net income of £4,750 in year 1, £17,750 in year 1, and £31,750 in year 3. These net income figures are modest, and furthermore take no account of wages to the employees or investment loan costs (although the appellants have confirmed that the development of the site and business would be funded from their own capital reserves).
12. As the business is not yet operating, its success and future profitability can only be conjectural. A particular concern is that whilst sales are shown as doubling year on year, and Dr Broughton says that the market for Koi and aquatic plants is both lucrative and expanding, there is no substantive evidence to show where the specialised customer base will be drawn from, or how it will grow or be sustained to achieve the projected sales figures.
13. The appellants' ability, knowledge and expertise in being able to successfully sustain such a business have also yet to be proven. Whilst Mr Rayworth has bred and grown high quality Koi carp for several years this has been on a small 'hobby' scale. I accept that professional help and guidance may be available, but this does provide a sufficiently sound basis on which to justify the proposal.
14. I appreciate that permission is sought initially for a 3-year period, to enable the viability of the business to be assessed, and a condition could be imposed requiring the structures to be removed and the land re-instated if the Council took the view that there was no justification to extend the period of permission. Nonetheless, the substantial site works, new access, alterations to the ponds, formation of platforms for the buildings, tree and vegetation removal and replacement, would all bring about a very marked change to the appearance and character of the site. Consequently it would not be practical or a realistic to expect that the site could or would be re-instated to its previous condition in this eventuality.

15. Overall, I consider the appellants have failed to provide a sufficiently robust or convincing case to demonstrate that there is an essential need for a dwelling on the site, and as such the proposal conflicts with the requirements of paragraph 55 of the Framework.

Effect on the setting of a listed building

16. The appeal site is located immediately to the south of Sutton Mill, a Grade II listed building dating from the late 18th century, and a designated heritage asset. The statutory approach to development which may affect the setting of a listed building is set out in Section 66 (1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*. It requires the decision maker, in considering whether to grant listed building consent or planning permission for any works or development affecting a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.
17. Saved LP Policy EV13 states, amongst other things, that regard will be had to the need to preserve the setting of listed buildings. This follows the approach in the Framework, one of the core principles of which is to conserve heritage assets in a manner appropriate to their significance. Paragraph 132 says when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed by development within its setting.
18. Although the listing designation does not refer to its setting, the rural landscape to the south, including the mill pond, mill stream and water meadows contribute to the character and significance of the building, and add to the understanding of the heritage asset. The Mill was built apart from the village adjacent to the water source, and the pattern of development in the village, with dwellings on the higher ground away from the flood plain, has been maintained. The appeal site is well wooded, and its present natural appearance contributes to the sylvan setting of the Mill.
19. The site of the proposed dwelling and other structures are on elevated ground. Although existing vegetation would afford some screening, it is inevitable that the structures would impinge on the view from the Mill, Common Lane and the bridge to some degree; more noticeably so in the winter months. At present the only other major impacts on the rural aspect (other than Mill Farm which has been on the site since at least the 19th century), are a rebuilt house (the Croft) which is beyond the appeal site, and distant views of the roofs and chimney stacks of a few houses in the village.
20. It was drawn to my attention at the Hearing that a number of trees at the northern extremity of the site had been removed without the appellants' knowledge. Nonetheless, whilst unfortunate, this has no bearing on my consideration of this issue, and in any event, I accept that it is the appellants' intention to strengthen planting to screen the buildings rather than remove it. However, I do not consider it appropriate to rely on new planting, which will take many years to mature, to screen a harmful form of development.
21. For these reasons I consider the proposal would fail to preserve the setting, and therefore the significance, of Sutton Mill. However, I am satisfied that the degree of harm caused would be less than substantial, and in such situations this harm should be weighed against any public benefits arising from a

proposal. It has not been shown that public benefits would outweigh this harm, and so the proposal would conflict with the Framework and saved LP Policy EV13.

Effect on the surrounding countryside

22. Although not subject to any specific landscape quality designation, the site and surrounding countryside lies within the Riverside Meadows sub-category of the *Needwood and South Derbyshire Landscape Character Area*. This sub-category is characterised by flat flood plains with seasonally waterlogged soils, localised patches of willow in damp hollows, and scattered locally dense trees along watercourses and field boundaries. Historically there would have been little evidence of built development on the flood plan except (as here) the occasional water mill, and the proposal would introduce significant new development into this typically undeveloped and comparatively unchanged landscape type.
23. Even though it is proposed to retain as many of the existing trees and as much of the vegetation as possible, and carry out replanting with appropriate species, there will clearly be significant initial losses as a direct consequence of the compensatory flood storage works, formation of level platforms for the structures, and provision of the access.
24. For these reasons I consider the proposal would have an unacceptable impact on the character and appearance of the appeal site and the surrounding countryside. It would be harmful to its intrinsic character, this being one of the core planning principles set out in paragraph 17 of the Framework, and would conflict with saved LP Policy EV1 which requires development to be designed and located so as to create as little impact as practicable on the countryside.

Effect on the site's ecology

25. The appeal site contains various natural features including trees, ponds and typical wetland vegetation, and is bordered by the Sutton Brook. It has also been managed under a stewardship scheme for a number of years, and is very much in its natural, unimproved state. Saved LP Policy EV11 states that development that would result in significant disturbance to sites containing protected species will not be permitted.
26. The application was accompanied by an ecological appraisal¹ and associated surveys which have been scrutinised by the Derbyshire Wildlife Trust (DWT) on behalf of the Council. At the Hearing it was confirmed that DWT were satisfied that the correct survey procedures has been followed with regard to the presence of protected species. No bats or signs of bats were recorded during the survey, and only two trees were identified as having features suitable for use by roosting bats. The two ponds were assessed for their potential to support great crested newt. With habitat suitability assessment scores of 0.47 and 0.41 both ponds are deemed as being of 'poor' suitability for great crested newt; this being mainly attributable to the fact they support dense stickleback populations, possibly owing to the fact that they are regularly flooded.
27. The Council's main outstanding concern appears to be that the appraisal fails to adequately address the impact of the likely changes to the existing ecosystem in terms of flora and invertebrates that would result from the proposed merging of the two ponds. In the absence of a suitably robust survey, the

¹ Dunelm Ecology Ecological Appraisal December 2014

Council says it cannot be satisfied that the proposal would not minimise the impact on biodiversity or, where possible, provide net gains in biodiversity in accordance with paragraph 109 of the Framework.

28. However, the appellants have satisfied the requirements set out in Circular 06/2005² to establish the presence or otherwise of protected species to ensure that all relevant material considerations have been addressed in reaching a decision. Nonetheless, I share the concerns of the DWT that proposed changes to the form of the ponds could lead to initial loss of reeds, willows and other characteristic vegetation, and could potentially have a harmful impact on the habitat of aquatic invertebrates. In this regard the Council has suggested a condition which requires a detailed survey of the ponds to be carried out in accordance with standard pond survey methodology. The results of this, along with a scheme for any loss of ecological interest, and a timescale for a programme of mitigation, would need to be submitted to and approved by the local planning authority before any development commences.
29. Therefore, and subject to the imposition of such a condition, I conclude on this issue that the proposal would not materially harm the site's ecology. As such I find no conflict with LP Policy EV11 and the Framework,

Effect on the site's trees

30. During the course of the application the Council placed a Tree Preservation Order on a mature Ash tree close to the proposed access point on Brook Lane. It is not disputed that the proposed access road would pass through the root protection area of that tree.
31. Due to the boggy nature of the ground and the frequent flood events in this area, the Council considers that ordinary methods of protecting roots from soil impaction may not prove effective. However, at the Hearing various options were discussed, including a cellular confinement system with a semi-permeable top surface, which may be acceptable. Overall, I am satisfied that this matter could be satisfactorily addressed by means of a condition requiring a full tree protection plan including construction method statement.
32. I conclude on this issue that the proposal would not harm the future health and life expectancy of the protected tree. As such, I find no conflict in this regard with saved LP Policy EV9.

Other matters - flood risk

33. The appeal site lies within an area of flood risk, with different parts of the site falling within zones 1, 2 and 3 on the Environment Agency's (EA) flood risk maps. Paragraph 100 of the Framework says inappropriate development in areas at risk from flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Paragraph 103 says local planning authorities should only consider development appropriate in areas at risk from flooding where, informed by a site-specific flood test assessment following a sequential test, it can be demonstrated that the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location. It also requires the new development to be

² ODPM Circular 06/2005: Biodiversity and Geological Conservation –Statutory Obligations and their impact within the Planning System

appropriately flood resilient and resistant, including safe access and escape routes, and for priority to be given to sustainable drainage systems.

34. The application was accompanied by a Flood Risk Assessment³ and the Council accepts that there could be a need for the business to be located in an area at risk of flooding, and is satisfied that the sequential test search demonstrates that no other suitable sites are available.
35. In order to create a wider platform for the structures, it is proposed to relocate part of the high level bank (forming the existing and proposed access track) from the west to the east side of the site on a level for level basis, this extending the area within flood zone 1 (lowest risk). The mound to the west would also be lowered to ensure that the existing flood flow route would be maintained. More of the bank would be excavated than placed as fill, and there would be a modest net increase in overall flood storage capacity. The compensatory flood storage calculations show that the proposed development would not be at unacceptable flood risk, and will ensure that the flood risk will not be increased off-site. I note that surface water run-off from land to the east drains towards the site in periods of heavy rainfall. However, the layout of the proposed structures and associated drainage (including culverts) would ensure that any increased flood risk from that source is mitigated. The appellants have also negotiated an emergency access and egress arrangement via the field to the east.
36. Overall, having considered the detailed measures in the FRA and other information submitted by the appellant, I am satisfied that the proposed fully addresses the flood risk implications of the scheme, and meets the requirements of the Framework in this regard.

Other matters - Highway safety

37. The appeal site is accessed from Brook Lane, which is an adopted highway as far as the ford across the Sutton Brook. However, the last part of the lane, along which access would be taken, is unsurfaced, narrow and in many places overhung by vegetation. Brook Lane is also part of a well-used public footpath which continues over the foot bridge into the meadows beyond. Saved LP Policy T6 says all proposals must incorporate adequate access provision.
38. The proposal will inevitably lead to an increase in vehicle movements, and I share the concerns of many local residents that the means of access is far from ideal, particularly as the lower section of the lane is subject to flooding at certain times of the year and there is potential for conflict between vehicles and pedestrians sharing the confined space. Furthermore, as the unsurfaced section of the lane is not within the ownership or control of the appellants, it would not be possible for them to carry out any improvements or maintenance.
39. However, the County Highway Authority was consulted on the application and raised no objections subject to conditions concerning the design of the access and turning area. Paragraph 32 of the Framework says development should only be refused on transport grounds where the impacts would be severe. Therefore, and taking into account the modest number of traffic movements likely to be generated, I consider it would be unreasonable to resist the proposal for reasons of highway safety.

³ Flood Risk Assessment Version 3.2: October 2014 – Prepared by Julia Williams

Whether the proposal would represent sustainable development

40. I have concluded that the proposal would not materially harm the site's ecology (subject to conditions), would not result in unacceptable flood risk for future occupiers, would not harm the protected Ash tree, and would not harm highway safety. However, I have found that the proposed dwelling has not been adequately justified so as to amount to exceptional circumstances in the context of policies which seek to restrict new development in the countryside, and that the proposed development as a whole would have a harmful effect on the setting of Sutton Mill and the character and appearance of the surrounding countryside. These are substantive and overriding objections which must be decisive.
41. It is also necessary to determine whether the proposal is sustainable in the wider context of the Framework when taken as a whole. Paragraph 7 identifies a three-stranded definition of sustainable development based on economic, social and environmental factors. Whilst the impact of this proposal for just one (temporary) dwelling on the overall housing supply is small, the delivery of housing is nonetheless a material consideration in favour of the proposal. There would also be limited economic benefits arising from the establishment of a new rural enterprise and the provision of a family home would represent a social benefit.
42. However, my conclusions with regard to the harmful environmental impacts of the proposal including its countryside location and harmful effect on the setting of a listed building would substantially and demonstrably outweigh any potential social and economic benefits of the appeal scheme. For this reason I conclude that the proposal does not amount to sustainable development, and the presumption in favour of such development does not therefore apply.
43. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Derek Kitson	Derek Kitson Architectural Technologist Ltd
Dr Bruno Broughton	Fisheries Management Consultant
Julia Williams	Flood Risk Advisor
Matthew Rayworth	Appellant
Tamar Rayworth	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Steven Mott	SDDC
Neil Robertson	SDDC
David Hughes	David Hughes Agricultural Consultancy Ltd
Trevor Taylor	Derbyshire Wildlife Trust
Peter Eastough	Arboricultural Consultant

INTERESTED PERSONS:

Jean Parkinson	Local resident
Brian King	Local resident
Stan Fraser	Local resident
K R Dutton	Local resident
R D Dutton	Local resident

DOCUMENTS

- 1 Consultation response: 18 September 2014 – David Hughes Agricultural Consultancy Ltd
- 2 Consultation response: 9 February 2015 - David Hughes Agricultural Consultancy Ltd
- 3 Emails between Jon Guarnaccio (Dunelm Ecology) and Derek Kitson
- 4 Background information from Matthew and Tamar Rayworth
- 5 Saved policies South Derbyshire Local Plan

PHOTOGRAPHS

- 1 Aerial Photographs
- 2 Photograph showing Brook Lane

PLANS

- 1 Plan showing Derbyshire County Council adopted highways
- 2 Plan showing settlement boundary