

Report of the Director of Planning and Regeneration Service

ITEM NO. SUBJECT

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Appeal against refusal of Erection of 9 No. detached dwellings
with associated garages at Land off Grange Farm Drive, Aston,
by Redmile Homes

ITEM 1

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Recommendation

That the decisions to allow the appeal though dismiss the claim for costs are noted.

1. PLANNING APPEAL

Background

A planning application was submitted (ref: RB2013/0696) for the erection of 9 No. detached dwellings with associated garages at Land off Grange Farm Drive, Aston, by Redmile Homes.

The application was refused by Planning Board against Officer's recommendation on 19 November 2013 for the following reason:

The Council considers that the loss of the open space area would result in a deficiency of high quality open space provision on the overall site which would not be replaced by equivalent or better provision in terms of quantity and quality in the area. As such, the proposal does not comply with Policy ENV5.2 Incidental Urban Greenspace of the Rotherham Unitary Development Plan and the National Planning Policy Framework.

An appeal was lodged with the Planning Inspectorate on 30 May 2014 and was considered by way of a Hearing on 5th September.

Main Issues

The Inspector considered that the main issue to be the effect of the proposal on the provision of high quality open space.

Decision

The Inspector noted that the site forms part of the overall open space for the surrounding estate, which can be categorised into four areas; the site itself, a linear area bordering the public footpath on the northern boundary of the whole estate, an area to the east surrounding a watercourse, and an area on the south west edge of the estate, currently used as a compound. Whilst there was a requirement within the 2001 planning permission for the overall estate for planting the areas of public open space, there is no provision or formal arrangement for the maintenance of these areas. Some, such as the areas bordering the public footpath and the stream, are maintained informally by the Council at present, whereas the appeal site does not have any maintenance at all.

It was agreed by both parties at the Hearing that at the time of the planning permission in 2001 it was standard practice for the Council to adopt areas of public open space in residential developments. This policy changed around 2005 towards an approach of requiring planning obligations to provide for maintenance of such areas. It was reasonable therefore for the appellant to assume in 2001 that the areas of public open space within the site would be subsequently adopted and maintained by the Council, and not to contain allowances for such maintenance within their development appraisal. It is also reasonable for the Council's policy in relation to such matters to have changed in the time taken for the estate to be built out. The maintenance of the open space on site is therefore at an impasse. In effect, this leaves the

public open space within the overall estate, including the appeal site, with no financial provision for future maintenance.

The Inspector considered that the development of 9 houses would generate profit for the appellant and then provide, via condition, for the laying out and future maintenance of these remaining public open spaces across the wider development. The proposal would therefore solve the impasse that currently exists. At the Hearing it was suggested that the appellant could plant up the appeal site as required by Condition 7 of the 2001 permission and local residents could then subsequently maintain the land. Whilst the Inspector was in no doubt that this offer was made in good faith, without any formal agreement this may not happen in practice; residents may change their minds, or move away and there is no guarantee that maintenance would continue. He also noted in this respect that the Parish Council considers, quite reasonably, that they do not have the funds to maintain the land. This solution would also leave the problem of maintaining other areas of open space on the wider development.

It seemed to the Inspector therefore that the proposed scheme is the only option available at the present time which would reasonably and effectively pay for the maintenance of the public open space on the estate. Without the scheme, the appeal site would likely continue to be unmaintained. Whilst he noted some views that the site at present is used for play by local children and that the land looks after itself to a certain degree, over time the scrub would become more established and the site would become more heavily overgrown, further reducing its effectiveness as an amenity space. Other areas of public space on the estate may well suffer the same fate.

The 2001 permission contained a condition to ensure a provision of 60m² of public open space was provided for each dwelling. Whilst the estate is over provided on this ratio at present, the proposed development, by adding a further 7 properties and reducing the area of open space on the site reduces this amount down to 54m² based on the appellant's figures, below the required figure. However, since the 2001 permission was granted, the Council's green space standards have altered. The Rotherham Green Spaces Strategy, September 2010, contains catchment distances for different grades of Green Space. This is based on the distance that people will walk to reach areas of local and neighbourhood green space. The catchment for a neighbourhood space is 15 minutes walk, or 840m, and for a local space is 5 minutes or 240m.

The Inspector noted that the Council's Greenspaces Manager considers that the proposed development would meet the Green Spaces Strategy, as the whole of the estate is within 840m of the Fairview recreation ground to the north, some parts of the estate are within 240m, and the rest will be within 240m of the unfinished green space that would be retained once the development is complete. The proposed open space at the south west corner of the estate is, according to the appellant's figures, 2,805m² and would thus fit the required size of a local green space of more than 0.2ha. Evidence presented to the Planning Committee also confirms that the space is of

sufficient size to provide safe and clean areas for walking, informal recreation and play, and sitting out areas. Concern has been raised that this land is close to the A57, a busy road to the south of the site and so potentially not suitable for children to play on. However, he noted that the area does not border the A57 directly; there is a belt of established trees and an access road bordering the southern side of the open space. This area of land, once complete would meet the definition of a local green space and would make the estate compliant with the green spaces strategy.

The Inspector also did not consider that the space directly to the north of the appeal site would merely be a landscaped strip along an alleyway. The public footpath to the north of the site is part of a network of paths across the estate which provides relatively easy access to Fairview recreation ground and to local schools. The proposed hard surfaced footpath as part of the scheme will also assist, providing easier access to this network of paths, particularly for parents with pushchairs and for those less able to use the rough paths that currently cross the site.

The Inspector accepted that local residents raise concerns over the lack of local space for children to play on, and fear that the proposal, if allowed, would further remove areas that are available, leading to play occurring on streets. However, at present the site is not fit for informal recreation and play. The improvements that the proposal will provide for at other public space areas within the estate would provide better quality play areas for local children, and the proposal would also provide better access to other local open spaces such as the Fairview recreation ground.

He noted that Policy ENV5.2 of the Rotherham Unitary Development Plan (June 1999) states that development that results in the loss of small areas of urban green space will only be permitted under certain circumstances, including that development will only be permitted if alternative provision of equivalent community benefits and accessibility is provided, or it would enhance the local urban green space provision. Whilst the proposal would reduce the overall green space available on the estate, the mechanism by which the proposal would allow the maintenance of the remaining green sites on the estate would provide greater community benefits and accessibility and would enhance local green space provision.

Furthermore Paragraph 74 of the National Planning Policy Framework concerns proposals to build on existing open space. This states that, amongst other things, open space should not be built on unless equivalent or better provision of open space in terms of quantity and quality is provided in a suitable location. For the reasons given above the Inspector considered that the proposal would result in a far better provision of open space in terms of quality in a suitable location, and this would outweigh the reduction in overall quantity.

Conclusion

For the reasons detailed above, the Inspector allowed the appeal and concluded that the proposal would have a positive effect on the provision of high quality open space. Whilst the overall quantity of open space on the site would be reduced, the quality of the open space across the estate would be improved significantly. The proposal would comply with Policy ENV5.2 of the Unitary Development Plan and with the Green Space Strategy.

The following conditions were attached to the approval:

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

2) The development hereby permitted shall be carried out in accordance with the following approved plans: BM-SLD-01, BM-SL-01, BM-LL-03, Matlock house type M-FP-01 Floor Plans and separate Elevations, W House type floor plans and elevations W-PL-01, Ashbourne type floor plans and separate elevations A-FP-01.

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

4) No development shall take place until details of the proposed means of disposal of foul and surface water drainage, including details of any offsite work, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

5) Before the development is brought into use, that part of the site to be used by vehicles shall be constructed with either:

- A permeable surface and associated water retention/collection drainage; or
- An impermeable surface with water collected and taken to a separately constructed water retention/discharge system within the site.

The area shall thereafter be maintained in working order.

6) No development shall take place until road sections, constructional and drainage details have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and implemented before the development is completed.

7) No development shall take place until a scheme detailing how the use of sustainable/public transport by the residents of the proposed development will be encouraged has been submitted to and approved in writing by the local planning authority. The scheme shall include a timescale for implementation and the scheme shall be carried out in accordance with the approved details.

8) No development shall take place until a revised landscape scheme has been submitted. This scheme shall include:

- A planting plan and schedule detailing the proposed species, siting, planting distances, quality and size specification.
- A written specification for ground preparation and soft landscape works.
- The programme for implementation
- Written details of the responsibility for maintenance and a schedule of operations, including replacement planting, that will be carried out for a period of 5 years after completion of the planting scheme.
- A timetable for implementation

The scheme shall be carried out in accordance with the approved details.

9) Any plants or trees which within a period of 5 years from completion of planting die, are removed or damaged, or that fail to thrive shall be replaced. Assessment of requirements for replacement planting shall be carried out on an annual basis in September of each year and any defective work or materials discovered shall be rectified before 31st December of that year.

10) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas within the wider development, including those areas as shown on the coloured plan BM-LP-01 Rev B as Areas 'A', 'B' and 'C' submitted at the Hearing on 5 September 2014, other than small, privately owned domestic gardens shall be submitted to and approved by the local planning authority prior to the occupation of the development. The landscape management plan shall be carried out in accordance with the approved details.

11) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied. Development shall be carried out in accordance with the approved details.

2. COSTS

The appellant submitted a claim for costs against the Council the day before the Hearing.

The Inspector concluded on these matters that on procedural matters it is clear from the evidence that the draft Statement of Common Ground (SoCG) was submitted to the Council well in advance of the hearing date, and that the final SoCG was only released a few days prior to the hearing. The Council consider that the statement was being refined collaboratively and that their own experience is that SOCGs are only normally agreed close to the date of the hearing. However, Rule 6A of The Town and Country Planning (Hearings Procedure) (England) Rules 2000 (as amended), states that the local planning authority and the appellant shall together prepare an agreed SoCG, and ensure that it is submitted within 5 weeks of the start date. The SoCG was

therefore late and from the evidence provided and the Inspector concluded that this was due to the Council's internal delays. He considered this to be unreasonable behaviour.

However, he noted that whilst there are differences between the draft SoCG and the final, signed SoCG, these are in line with what could be expected given the reason for refusal and the Council's appeal statement. He also noted that the applicant did not claim that the late agreement of the SoCG has led to additional costs on their part. He considered therefore that the Council's unreasonable behaviour on this matter had not led to unnecessary or wasted expense in the appeal process.

On the issue of the Green Spaces Strategy and providing information that is manifestly inaccurate or untrue, the Inspector noted that it is clear that the Council as a whole took a different view to their own Greenspaces Manager. However, whilst he agreed that the proposal complies with the Green Spaces Strategy, and specifically its catchment based rationale, the strategy is a detailed one and the Council were entitled to come to a different view based on other elements of the strategy, and based on the information they had heard on the value of the green space of the appeal site at present. The Inspector did not consider that the Council had acted unreasonably in this instance.

Paragraph 49 of the Framework refers to the five year housing land supply and states that relevant policies for the supply of housing cannot be considered up to date if such a supply cannot be demonstrated. However, whilst it could be argued to have an effect on housing, he did not consider that Policy ENV5.2 of the Rotherham Unitary Development Plan is necessarily a relevant policy for the supply of housing. The policy aims to protect areas of incidental urban green space from development for the benefit of the community in which they sit, not restrict housing or define housing areas specifically. The Council considered the benefit of the proposals, and analysed the relevant aspects of the development plan in their appeal statement. Whilst the Inspector came to a different view to the Council on these matters, he did not consider that the Council had behaved unreasonably in this respect.

The Inspector noted that it is clear both from the evidence and the Hearing itself that some members of the local community have strong feelings about the proposed development, and their perceptions over the status of the appeal site throughout the development of the surrounding estate. It is also clear that these local community members consider that the appeal site has value to them in amenity terms at the present time, a reasonable planning consideration. This reflects directly in the reason for refusal, which concerns the loss of the appeal site and the fact that this would not be being replaced directly by a further site. This evidence is added to and supported by the Council in their appeal statement. There has not been a failure to produce evidence to substantiate the reason for refusal, and nor have vague or generalised assertions been made about the proposal's impact. The Inspector

therefore did not consider that the Council have behaved unreasonably in this respect.

In conclusion, whilst the Inspector found an example of procedural unreasonable behaviour, he did not consider that this unreasonable behaviour has demonstrably resulted in unnecessary or wasted expense, as described in the National Planning Practice Guidance. He did not find evidence of substantive unreasonable behaviour and the claim for costs was dismissed