



Appeal Decision

Site visit made on 7 August 2023 by T Bennett BA(Hons) MSc

Decision by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2024

Appeal Ref: APP/Y2430/W/23/3314822

Land South of 44 Great Lane, Frisby on the Wreake, Leicestershire, LE14 2PB

- 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 and Mrs Christopher and Geoffrey Sheriff and Foden against the decision of Melton Borough Council.
 - The application Ref 22/01155/OUT, dated 21 October 2022, was refused by notice dated 21 December 2022.
 - The development proposed is a 4 bedroom dwelling with all matters reserved except for access.
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Decision

1. The appeal is allowed and planning permission is granted for a new 4 bedroom dwelling with all matters reserved except for access at Land South of 44 Great Lane, Frisby on the Wreake, LE14 2PB in accordance with the terms of the application, Ref 22/01155/OUT, dated 21 October 2022, subject to the attached schedule of conditions.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. Outline planning permission is sought with all matters reserved except for access. I have had regard to the site location plan, access drawings and the indicative layout but have regarded all elements of these drawings as indicative apart from the details of the access.
4. There is some variation between the original description of development as shown on the application form and that used by the Council on the Decision Notice. Whilst I am satisfied that both versions are seeking to describe the proposed development, I have used the description of development as shown on the decision notice as a more accurate and detailed description of the proposal which I note has also been adopted by the Appellant on the appeal form.

Main Issue

5. The main issue in this appeal is whether the proposed site is acceptable for residential development.

Reasons for the Recommendation

6. The appeal site relates to a parcel of land adjacent to, but outside of the built settlement of Frisby on the Wreake (Frisby). It is located south of 44 Great Lane and north of an access road serving a large new residential development to the west of the appeal site. Hedging borders the eastern boundary of the site adjacent to Great Lane and Gaddesby Lane, except for a gate which provides access to the site.
7. The Council considers that as the site is outside the defined Limits of Development identified within the Frisby Neighbourhood Plan (NP) it would consequently be contrary to Policy H1, H3 and H6 of the Frisby NP.
8. The Frisby NP was made in August 2018 and clearly indicates that the appeal site lies outside, but adjacent to the Limits of Development outlined in Policy H3. In this regard the proposal is contrary to Policy H3, which sets out that residential development will be approved where it lies inside the Limits of Development. Policy H6 of the NP relates to windfall sites. This sets out that small scale proposals for infill will be supported where it meets a series of criteria, the first being that the proposal is within the Limits of Development. It therefore also fails to accord with part of this Policy.
9. The Melton Local Plan (LP) which has not adopted limits to development, was adopted in October 2018. Frisby is defined as a Rural Hub within the LP. Strategic Policy SS2 of the LP outlines how housing within Rural Hubs will be delivered by planning positively for development on sites within and adjoining Rural Hubs, and encourages small scale residential windfall development where it would represent sustainable development.
10. On this basis, there is a conflict between Policy SS2 of the LP, which allows for appropriate development adjacent to a village boundary and Policy H1, H3 and H6 of the NP which only allows for development *within* the Limits of Development. This conflict is not disputed by the Council.
11. Section 38 (5) of the Planning and Compulsory Purchase Act (2004) states that if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan. In this case, the local plan was adopted after the neighbourhood plan, and on this basis the local plan policy must take precedence.
12. Additionally, paragraph 29 of the National Planning Policy Framework (the Framework) makes it clear that Neighbourhood plans should not promote less development than set out in the strategic policies, or seek to undermine those strategic policies. The footnote to this paragraph indicates that Neighbourhood Plans must be in general conformity with the strategic policies contained in any development plan that covers their area. This further emphasises that the strategic policies in the LP, take precedence over the NP. Paragraph 30 of the Framework reinforces this and states, '*once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless [my emphasis] they are superseded by strategic or non-strategic policies that are adopted subsequently.*'

13. Based on the above, the proposal should be assessed against Policy SS2 of the LP. Given that the location of the site is immediately adjacent to the development limits of Frisby, it would not conflict with this strategic policy.
14. Further to the above, mature vegetation incorporating trees and hedging, lines the western and southern boundary of the appeal site, screening it from views when approaching the village from the south. Although glimpsed views can be observed from the rear of the site whilst on the new access road, the contained and defined site is viewed against the existing pattern of development. The site appears as part of the domestic setting of the predominantly detached properties that form a linear pattern of development to the north on Great Lane, rather than as part of the open countryside to the south and west. It would appear as a logical extension to the village, coherent with the established pattern of development.
15. The site would be accessed from a stretch of road after the Frisby village sign, where speed is restricted to 30mph. Conditions are such that I do not consider it would restrict future occupants of the dwelling in walking or cycling, and would be well placed for accessing village amenities. Whilst I observed no footpath at the front of the site, I understand from the Appellant's statement of case, that a footpath is to be created, passing the appeal site. This footpath would be associated with the nearby residential estate currently under construction.
16. For the reasons set out above, I am satisfied that the proposal would not conflict with the development plan when read as a whole, and the site in principle is acceptable for residential development and would constitute sustainable development as required under Policy SS1 and SS3 of the LP. Accordingly, outline planning permission should be granted. Whilst there is conflict with Policies H1, H3 and H6 of the NP, which amongst other matters, require new residential housing to be contained within the limits of development, material considerations in this specific case, outweigh this conflict.

Other Matters

17. I note concerns have been raised with regard to increased traffic. However, I am mindful that the local highways authority has not raised any objections in relation to the proposal, highlighting there has been limited accidents in the past 5 years. They are also satisfied with the access plans detailing the visibility splays. Based on my onsite observations and the evidence submitted I would agree with their conclusions.
18. The Appellant's planning statement suggests that the proposed dwelling would be single storey. The Council consider that this would not meet an identified need in the village. However, I note in the NP, that bungalows have been identified as a favoured housing type, therefore whilst it would be a large bungalow, I see no reason why this would not be an appropriate dwelling type for the locality. Nevertheless, as this is an outline application, the identification of the house type would be indicative only and would be a reserved matter, and one which I have therefore only placed limited weight on.
19. The Council state that the authority already has sufficient sites to meet its self-build register and can already meet its housing supply. Whilst this may be the case, the requirement to meet housing supply should not be regarded as

establishing a maximum amount of development, and should not preclude additional sites that represent sustainable development coming forward. Indeed within the supporting text of Policy SS2 of the LP, small scale residential windfall development is encouraged where it represents sustainable development.

20. Concerns have been raised that an unfavourable decision could set a precedent for other planning applications to come forward, and also that there is a precedent for refusing this type of application in the locality based on three previous refusal decisions made by the Council. However, I have not been supplied with detailed information on these, and in any case, this has had no significant bearing on my decision, which I have assessed on its own planning merits and in consideration of the specific site context of this location, which I find acceptable for the reasons already set out.
21. Regarding sewer capacity and the disposal of foul water, no technical evidence has been submitted to suggest there is a problem with the sewer capacity and I note that this is not a matter of dispute between the Council and the Appellant. I am therefore satisfied that matters of surface and foul drainage can be adequately addressed through an appropriate condition.
22. An objection has been raised in relation to overlooking from the proposed development. Since the proposed development seeks outline planning permission, I am satisfied that detailed matters of design would be able to address the size, scale and location of the dwelling, as well as the location of rooms and windows, in order that any effect in this regard can be minimised. Any scheme would in any event require further approval by the Council.

Conditions

23. I have had regard to the list of conditions that have been suggested by the Council. I have removed conditions relating to external materials, dwelling height, landscaping and boundary treatment as these are matters reserved for future consideration.
24. I have imposed conditions 1, 2, 3 and 4 related to reserved matters, timescales and plans, in the interests of certainty and the avoidance of doubt.
25. In the interests of protecting the environmental quality of the area, it is necessary to impose condition 5 requiring the submission and subsequent implementation of a drainage scheme to address both surface and foul water.
26. I consider condition 6 regarding tree and hedgerow protection measures necessary to protect the character and appearance of the area, and condition 7 requiring a scheme for ecological mitigation and enhancements necessary to conserve and enhance biodiversity.
27. I have imposed conditions 8 and 9 requiring details of traffic management and the full implementation of the approved access arrangements prior to first occupation as necessary in the interests of highway safety. However, I have omitted the suggested condition requiring full details of the location of parking spaces to meet current standards along with turning / manoeuvring space as this would fall to be considered as a reserved matter in approving *Layout*.

Conclusion and Recommendation

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

T Bennett

APPEAL PLANNING OFFICER

Inspector's Decision

29. I have considered all the submitted evidence and my representative's recommendation and on that basis the appeal is allowed, subject to the listed conditions.

Martin Seaton

INSPECTOR

Schedule of Conditions

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Proposed Access - Drawing number 8344_03_01 Rev C but only in respect of those matters not reserved for later approval.
5. A full Drainage Strategy setting out the details of both surface water and foul drainage systems shall be submitted for approval by the Local Planning Authority. The agreed details shall then be implemented prior to the first occupation of the dwelling.
6. Prior to the commencement of development details of any and all tree and hedgerow protection measures relating to existing trees and hedgerows on the site to be retained shall be submitted to and approved in writing by the Local Planning Authority. The agreed details shall then be implemented prior to work commencing and retained for the duration of construction.

7. No development (including vegetation clearance) shall take place until an ecological mitigation, compensation and enhancement strategy has been submitted to and approved in writing by the Local Planning Authority. Any mitigation, compensation or enhancement measures (such as integrated bird and bat boxes) need to be clearly shown on all relevant submitted plans/elevations. All works are to proceed strictly in accordance with the approved scheme.
8. No development shall commence until such time as a traffic management scheme has been submitted to and approved by the Local Planning Authority in consultation with the Highways Authority giving details of traffic control methods to be used to ensure the safety of highway users during the construction phase. The approval scheme shall then be implemented at all times during the construction phase.
9. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on the submitted drawing titled 'Proposed Access' (Drawing number 8344_03_01 Rev C) have been implemented in full. Visibility splays shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway / verge / highway.

****End of Conditions****