



Appeal Decision

Inquiry held on 15 - 18 March 2016

Site visit made on 17 March 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 05 April 2016

Appeal Ref: APP/F1040/W/15/3119206

Land at Ticknall Road, Hartshorne, Swadlincote

- 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 Property Bond Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/1140, dated 24 November 2014, was refused by notice dated 15 April 2015.
 - The development proposed is residential development (class C3), public open space, green infrastructure, school car park and associated works at land at Ticknall Road, Hartshorne, Derbyshire.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was an outline application with all matters reserved except for access to Main Street and Ticknall Road. It was, however, agreed between the Parties that there would be a maximum of 64 houses and that this maximum limit could be imposed by a planning condition.
3. It was agreed by the Parties that the Council could not demonstrate a five years' supply of housing and that the shortfall is significant. It was also agreed that the delivery of this site would not undermine the provisions of the Emerging Local Plan post adoption, whenever that might be¹. In the circumstances no evidence was called in respect of the issue of the five years' housing land supply and I will take the agreed position into account in my determination of the appeal.
4. The reasons for refusal refer to saved Policies EV1 and EV8 of the South Derbyshire Local Plan 1998 (the Saved Local Plan) and Policy BNE1 of the Emerging Local Plan Part 1 (the Emerging Local Plan). It has, however, been agreed between the Parties that many other policies in both the Saved Local Plan and the Emerging Local Plan are relevant² and I will take the relevant policies referred to into account where appropriate. Similarly many other paragraphs of the National Planning Policy Framework (NPPF) are relevant over and above those mentioned in the reasons for refusal.

¹ Statement of Common Ground Part 4

² Statement of Common Ground paragraphs 3.8 and 3.9

5. In addition to the two listed buildings named in the reasons for refusal, Manor Farm and St Peter's Church, the settings of which are considered below, there are a number of other listed buildings in Hartshorne together with a number of non-designated heritage assets. Whilst references have been made in the documents and evidence to these other listed buildings and non-designated heritage assets, for the purposes of this appeal I will only take into account the settings of the two listed buildings as stated in the reasons for refusal.
6. Mr Atkin for the Appellant and Mr Grimshaw for the Council agreed a route³ for the site visit which took place on the afternoon of 17 March 2016. They accompanied me as did Miss Stones for the Appellant and Mr Nash for the Council. The route was some 10km⁴ along PRowS in and around Hartshorne and in the surrounding area. I was able to see from many locations and viewpoints, some of which were where Mr Atkins and Mr Grimshaw had taken photographs exhibited in their proofs, the landscape and the settings of the two listed buildings and I will refer to my observations in the course of this Decision.
7. A s.106 agreement⁵ was made between the Owner of the appeal site, the Appellant, the Council and the Mortgagee which I will consider below.

Main Issue

8. I consider that the main issue is the effect of the proposal on the character and appearance of Hartshorne and the surrounding area taking into particular account the settings of listed buildings; the effect on landscape; the effect on the pattern of built development in Hartshorne; and the sustainability of the proposal in terms of the National Planning Policy Framework (NPPF).

The appeal site and proposal⁶

9. The appeal site is an agricultural field of some 5.02 hectares located 'in the centre of Hartshorne'⁷. It is bounded by hedgerows which border Ticknall Road and Main Street to the west. There are residential properties on the opposite side of the highway as well as a primary school and a public house. To the south there are residential properties and there is agricultural land to the east. The northern edge is bordered by existing woodland containing a watercourse which runs east to west.
10. Vehicular and pedestrian access is currently via a gate off Ticknall Road opposite the junction with Repton Road. A Public Right of Way (PRowS) bisects the site from this point, running east-west and there are further PRowS beyond the eastern edge of the site and the National Forest Way passes along the western side of the site, along the public highway.
11. The site slopes gently from south to north and beyond the site the land rises to the north and east to form elevated ridges with further PRowS across the landscape. The two listed buildings, Manor Farm and St Peter's Church, are on elevated positions above the appeal site.

³ Document B

⁴ As advised by Mr Atkin

⁵ Document C

⁶ The contents of this part of the Decision are mainly taken from the Statement of Common Ground - Parts 1 and

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⁷ Miss Stones' proof paragraph 2.1.1

12. The indicative masterplan⁸ shows a maximum of 64 dwellings located north of the line of the PRoW that runs across the site. Vehicular and pedestrian access would be via a new access off Ticknall Road and there would be a further access off Main Street to serve a car park. The pedestrian access to the PRoW would remain. In the area south of the PRoW as well as the car park there would also be a children's play area and a community green. There would be National Forest planting to the north and east of the residential area together with areas of landscaping and planting to the west.

Reasoning

The character and appearance of Hartshorne

13. Although Hartshorne is mentioned in the Domesday Book as having two estates there is no contemporary evidence about where, if any, settlements were located. Historical maps of Hartshorne were submitted to the Inquiry and one with the date of 1821⁹ shows the Church, Manor Farm and some other buildings in a cluster around Church Street with other buildings along Ticknall Road and Repton Road which are identified as The Nether Town. A later map dated 1882¹⁰ shows a greater cluster of buildings around the Church; buildings at the junction of Main Street and Repton Road; buildings around the Mill Pond at Ticknall Road; and development along Repton Road and Brook Street. Maps up to 1951¹¹ show little development and it is not until a map dated 1960 that development appears to have increased. Since then, as can be seen from aerial photographs dated 1999, 2010 and 2012¹² and Miss Vallender's plan showing the historic development of Hartshorne up to 2015¹³, there was a relatively large increase in dwellings in the period 1961-1996 with some infilling since that date.
14. Although the areas of development are not so named on any of the historical maps, Hartshorne is now divided between Lower Hartshorne and Upper Hartshorne and each has its separate settlement boundary. The appeal site is located between the two with its southern boundary forming a settlement boundary of Upper Hartshorne and its north-western boundary forming a settlement boundary of Lower Hartshorne.
15. Residential development in both Upper and Lower Hartshorne has predominantly been along the main roads, that is, Woodville Road, Main Street, Ticknall Road and Repton Road, with limited development beyond that along roads such as Brook Street, Pear Tree Close and other short cul-de-sacs. It is a matter of obvious fact that there has been no development of the appeal site but although various reasons for this were suggested by witnesses to the Inquiry, I cannot speculate why this is the case.
16. Built development is apparent when walking or driving through the village and there seemed to me to be no apparent dividing line between Upper and Lower Hartshorne given the presence of the primary school, the adjacent buildings and the public house all of which are outside the settlement boundaries. But the appeal site is on the opposite side of the road from those buildings and its

⁸ Drawing No BIR.4453_37A

⁹ CD.25 – Map 1

¹⁰ CD.25 – Map 2

¹¹ CD.25 – Map 8

¹² CD.25 – Aerial 1 - 3

¹³ Plan JV03 in Volume II of Miss Vallender's proof. The Council took issue with some of the dating but I do not consider that affects the overall accuracy of the plan

depth and open nature provide an element of separation between the more built-up parts of the village. I found this to be particularly so when I made an unaccompanied visit in the evening¹⁴ when the darkness of the appeal site, despite the presence of street lighting along the adjacent roads, contrasted with the lights in the dwellings in the more built-up areas.

17. Development in Hartshorne is therefore predominantly linear and given the numbers of dwellings proposed and the indicative masterplan this linearity would not be reflected in the proposal because it would be a nuclear development of some depth leading off one main access onto Ticknall Road into the appeal site. Layout is not a matter before me but the Parties agreed that any development would be broadly in accordance with the indicative masterplan¹⁵. The Design and Access Statement¹⁶ cited by Miss Stones¹⁷ advises that the development 'will be a place with distinctiveness, having its own identity, theme and a vernacular which can positively contribute to both the character of Hartshorne and the wider landscape context'. Whilst I accept that not all parts of a village should look the same and that the layout may change to some limited extent I consider that a proposed development with its own distinctiveness, identity and theme would not respond to local character, reflect the identity of local surroundings, and improve the character of an area as advised by the NPPF¹⁸. Furthermore the proposed estate form of the development with one major access reflecting a gated community and pedestrian accesses some distance from the built-up areas would not be well related to the village and would not address the connections between people and places and integration of the development into the built environment as advised by the NPPF¹⁹.
18. I therefore find that the proposal would have a harmful effect on the character and appearance of Hartshorne and the pattern of development in the village.

The Settings of Manor Farm and St Peter's Church

19. Both Manor Farm and St Peter's Church are listed buildings and s.66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 provides that 'in considering whether to grant planning permission for development which affects a listed building or its setting, [the decision maker], shall have special regard to the desirability of preserving the building or its setting'.
20. In the Glossary to the NPPF the meaning of the setting of a heritage asset is stated as 'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'. Good Practice Advice from Historic England advises that 'setting is not a heritage asset ... its importance lies in what it contributes to the significance of the heritage asset'²⁰ and in assessing the effect of a proposed development a check-list of the potential attributes of a development

¹⁴ On 17 March 2016 as I was requested to do by both the Appellant and the Council

¹⁵ Suggested and agreed condition 3 – Statement of Common Ground part 8

¹⁶ CD2.4

¹⁷ Paragraph 8.5.26 of Miss Stones' proof

¹⁸ Paragraphs 58 and 64

¹⁹ Paragraph 61

²⁰ The Setting of Heritage Assets – Historic Environment Good Practice Advice in Planning: 3 Paragraph 9 SDDC CD.19

affecting setting is set out which includes such factors such as position in relation to landform; prominence, dominance, or conspicuousness; and competition with or distraction from the asset²¹.

21. Reports and evidence relating to, among other things, the two listed buildings, were provided by both the Council and the Appellant and oral evidence was also called by both Parties. The first Heritage Statement was compiled on behalf of the Appellant by CgMs²² at the time of the application. This statement found that the proposal would result in no harm to the settings of either Manor Farm or St Peter's Church. The Council instructed Mel Morris Conservation²³ to make an assessment and to comment on the Heritage Statement by CgMs. Mel Morris did not agree with the way in which the CgMs assessment had been carried out and found less than substantial harm to the setting of Manor Farm and no harm to the setting of St Peter's Church. The proofs of evidence and oral evidence given to the Inquiry by Mr Robertson for the Council and Miss Vallender for the Appellant were, to mind, confusing and contradictory about the way in which their assessments had been carried out and their conclusions.
22. It was agreed that the appeal site itself has no historical features in that, for example, it does not have any evidence of 'ridge and furrow' as many other fields in the vicinity of Hartshorne do. There was, however, no apparent disagreement that the appeal site contributes to the significance of both Manor Farm and St Peter's Church and is therefore within their settings; I have no reason to consider otherwise.
23. Manor Farm is a Grade II listed building of high significance located at the end of Church Street. It is physically located on a ridge with land, including the appeal site, falling away to the north, east and south. Its significance derives from the combination of the survival of its 17th century fabric and later additions in the 19th and 20th centuries. Although in the past its formal frontage may have been to the south its current main elevation is to the north which overlooks, among other aspects, the appeal site. There are currently unimpeded views of the Manor Farm from a number of various public view points including those along Ticknall Road, the PRow across the appeal site and from numerous other locations in the extensive PRow network in the surrounding area.
24. I appreciate that the primary setting of Manor Farm comprises, among other things, those buildings and structures closest to it and that there may no longer be any historical associations or relationships between Manor Farm and other listed buildings in the vicinity or between the village and the residential development therein. I also appreciate that the appeal site is only one field within the historic landscape which contributes to the setting of Manor Farm. But I consider that the undeveloped nature of the appeal site and its agricultural use which reflects the historical and functional farming use associated with the listed building makes a significant contribution to the setting of Manor Farm. The appeal site, together with its part in the wider agricultural and rural landscape, enhances Manor Farm's prominence on the ridge in the landscape and this prominence would be adversely affected and the historical and functional links would be lost by the construction of the

²¹ Assessment Step 3

²² CD2.14

²³ SDDC CD.26

- proposed residential development and which would, in addition, distract from Manor Farm's conspicuous location by introducing a considerable amount of built development, including dwellings of two and two-and-a-half storeys high, into its setting.
25. With regard to Manor Farm both Mr Robertson and Miss Vallender agreed that the proposal would result in less than substantial harm to the heritage significance of Manor Farm, albeit Miss Vallender considered the harm to be slight whereas Mr Robertson considered it to be moderate.
26. The Secretary of State in a decision in respect of Land at The Asps²⁴ refers to 'minimal, less than substantial harm to one listed building and very limited, less than substantial harm to the significance of a non-designated [heritage asset]'²⁵. However, the authorities to which I have been referred²⁶, one of which post-dates the Secretary of State's decision, do not qualify less than substantial harm as it is referred to in paragraph 134 of the NPPF. The consensus of the authorities is that 'when a development will harm a listed building or its setting, the decision maker must give that harm considerable importance and weight. That harm also gives rise to a strong presumption against the grant of planning permission. This is linked to the duty under s.66 [to have special regard to the desirability of preserving the building or its setting]'²⁷.
27. Despite their difference in methodology one area of agreement between Mr Robertson and Miss Vallender was that less than substantial harm would be caused to the setting of Manor Farm by the proposal and I have no reason to consider otherwise. I therefore give this harm considerable importance and weight.
28. St Peter's Church is also a Grade II listed building of high significance. It dates from the 14th or 15th centuries but is believed to be on the site of an earlier church. It was extensively restored in the 1830s by an architect of some repute²⁸. The Church is located on Church Street on land that rises above the wider parish. The tower is an extremely conspicuous landmark that enables the Church to be seen from numerous public viewpoints in the village and the surrounding area.
29. Similarly with Manor Farm the immediate setting of St Peter's Church would not be affected by the proposal but similar reasons as those set out above also apply to St Peter's Church. The elevated position and visibility of the Church is a part of its historical, and on-going, religious significance. The appeal site makes a significant contribution to the setting of the Church and the proposal would interrupt the current clear views towards the Church from within and around the village and in the wider landscape.
30. Miss Vallender analyses the impact of the proposed development on the heritage significance²⁹ of St Peter's Church but the analysis appears to me to

²⁴ APP 5 – APP/T3725/A/14/2221613

²⁵ APP 5 – paragraph 36

²⁶ SDDC CD.17 – Barnwell Manor Wind Energy Ltd v East Northamptonshire DC, English Heritage, National Trust and SCLG [2014]EWCA Civ 137. SDDC CD.18 – The Queen oao The Forge Field Society and others v Sevenoaks DC and others [2014] EWHC 1895 (Admin). APP 10 Forest of Dean DC V SCLG and Gladman developments Ltd [2016] EWHC 421 (Admin)

²⁷ Paragraph 38 of Forest of Dean

²⁸ H Stevens of Derby

²⁹ Paragraphs 4.54 – 4.59 of Miss Vallender's proof

be insufficiently clear to enable her to reach her conclusion that 'the proposed development will cause no harm to St Peter's Church'³⁰ given her finding that 'the experience of St Peter's Church within the appeal site will change but the scale of this is at the very low end of less than substantial harm'³¹. This implies to me that there would be less than substantial harm to the setting of St Peter's Church occasioned by the proposal. Mr Robertson concluded that the proposal would cause less than substantial harm to the significance of St Peter's Church³² and I have no reason to conclude otherwise.

31. The Forest of Dean case establishes that the balancing exercise in paragraph 134 of the NPPF, that is, that the harm should be weighed against the public benefits of the proposal, is an exercise that must be carried out and come out in favour of the Appellant before any other matters are weighed in the planning balance as required by paragraph 14 of the NPPF³³. This is a matter I will consider below.

The Landscape

32. A considerable amount of evidence was given to the Inquiry, both written and oral, in respect of landscape matters on behalf of the Appellant and the Council. There was very little agreement between the witnesses, Mr Atkin and Mr Grimshaw, and I did not find the, to my mind, overly detailed and complex analysis of the landscape provided by both witnesses particularly helpful. I note that Mr Atkins, on behalf of the Appellant, ascribed the appeal site medium value in landscape value terms.
33. Whilst I accept that the appeal site is an agricultural field on the outskirts of a village and that it has no specific features or physical attributes of its own so that it is not a 'valued landscape' within the meaning of paragraph 109 of the NPPF, it is, in my opinion, notable in that it forms part of a wide sweep of generally undeveloped, save for the occasional farm development, countryside rising to the north and north-east towards the ridge of the bowl in which Hartshorne sits. The undeveloped nature of the landscape, including the appeal site, could be seen in many viewpoints, both near and far, and was also apparent along the gaps (rides) in the National Forest planting. As the planting in the National Forest matures it may well be that these views are different but glimpses of the appeal site and its place within the wider landscape would, in my opinion, remain. For these reasons I do not consider that the appeal site is visually contained or that views of it are confined as suggested by the Appellant³⁴.
34. Within wider views of Hartshorne from the north and north-west the residential development along Ticknall Road on the opposite side from the appeal site appears negligible because of its limited depth in from the road and its location at the bottom of the bowl. In contrast, the proposal would extend deep into the appeal site and there would be a relatively small amount of open land to the south of the PRoW, part of which would be a car park.
35. The proposal would result in the loss of a green and open space that forms an integral part of the wider, undeveloped countryside. The currently

³⁰ Paragraph 7.6 of Miss Vallender's proof

³¹ Paragraph 4.59 of Miss Vallender's proof.

³² Paragraph 3.16 of Mr Robertson's proof

³³ APP 10 Forest of Dean – Paragraphs 39 and 47 and the Appellant's closing submissions paragraph 29

³⁴ APP 13 The Appellant's closing submissions – paragraph 39 e

undeveloped field would be replaced by a suburban environment including a considerable amount of housing, associated roads and domestic gardens. I accept that landscaping is not a matter before me and that planting, particularly National Forest planting, could mitigate some of the adverse visual aspects of the proposal, but planting and screening could introduce features that could be equally incongruous in the rural landscape as the proposed built development.

36. I also accept that change is not necessarily harmful but I consider that the extent of the proposal and its location would be detrimental in views from many locations within the surrounding area as well as locally within the village, from the Manor Farm and along the PRow that runs across the site and that mitigation measures in the form of landscaping and planting would not overcome the harm.
37. I therefore conclude that the proposal would have a harmful effect on the landscape.

Sustainability

38. Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development which comprises three elements – economic, social and environmental. Miss Stones addressed these matters in her evidence³⁵. The economic benefits she set out included the direct employment that would arise in the construction of the proposal; the generation of Gross Value Added contribution to the immediate area's economy; the future occupiers' need for services; and their contribution to the labour market. With regard to the social role Miss Stones contended that the benefits of the proposal included the provision of housing, both market and affordable; the provision of a children's play area; and the location itself which has good access to services and facilities although many are not in the village itself. Mr Nash agreed that the appeal site was in an accessible location. The benefits in respect of the environmental role were said to include new woodland planting; the creation of a new ecological corridor along the northern and eastern edges of the development; and the Appellant's case that the proposal would not cause harm to either the landscape or to the setting of St Peter's Church and negligible harm to the setting of Manor Farm.
39. In addition the s.106 Agreement provides for a number of benefits within the three elements. Pursuant to that Agreement 30% of the dwellings would be affordable dwellings with the mix of tenures and other details having been/to be agreed with the Council. There would also be financial contributions towards the Goseley Community Centre extension project; towards the provision a new classroom at Hartshorne Church of England Primary School; towards the provision of a new GP surgery in Woodville; towards the maintenance of the National Forest planting; towards the maintenance of the open space land; towards the Granville Sports College sports pitch improvement project; and, following the grant of reserved matters approval, towards the ongoing maintenance of the sustainable urban drainage system.
40. I am satisfied that the proposal would a make positive contribution to the economic aspects of sustainable development and I am also satisfied that there

³⁵ Miss Stones' proof paragraphs 8.3 – 8.6.5

would be a positive contribution towards housing supply. By virtue of the s.106 Agreement there would be some contribution towards the social element.

41. Although I note that there is agreement between the Parties that the proposal would be sustainable so far as location was concerned I question this given that the village has very limited facilities and services which include the primary school, a number of public houses, a cricket club, a weekly Post Office and a bus stop with a service once an hour between Derby and Swadlincote. There are no services or facilities such as a shop, GP surgery, leisure facilities other than those mentioned above, or a secondary school all of which are located some distance away and which in the main would require transport by private vehicle. To this end I note that the proposed development would have parking spaces in excess of the Council's standards.
42. Furthermore, I have found that there would be less than significant harm to the settings of the two listed buildings to which I must give considerable importance and weight and I have also identified harm to the landscape and to the character and appearance of Hartshorne. Whether the proposed car park, which was originally proposed as a car park for the school until the Highway Authority advised that it would not support a drop-off/pick-up facility because it discouraged the use of non-car modes for taking/collecting children to and from school³⁶ and so which is now described as being a car park for people using the play facilities and open space with an ancillary use for the school, would be a benefit is a moot point. Similarly I question the benefit of the proposed children's play area which would be in close proximity to the existing playground/recreational area adjacent to the primary school which I saw in use on my visit.
43. I accept that all three roles do not have to pass a test in order for a proposal to be acceptable and that any proposal would be likely to result in change and have adverse impacts such that it may not comply with one of the roles. However, taking all of the above matters into account I consider that the proposal would not, on balance, be sustainable development in the terms of the NPPF.

The Saved Local Plan

44. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application (or in this case, appeal) must be determined in accordance with the development plan, unless material considerations indicate otherwise.
45. Saved Policy EV1 seeks to restrict new development outside settlements unless it is (i) essential to a rural based activity; or (ii) unavoidable in the countryside; and (iii) the character of the countryside, the landscape quality, wildlife and historic features are guarded and protected and if development is permitted it should be designed and located so as to create as little impact as practicable on the countryside. It is agreed that Saved Policy EV1 is a relevant policy for the supply of housing and it therefore falls within paragraph 49 of the NPPF. In the agreed absence of a five years' supply of housing it cannot be considered to be up-to-date; it is not, however, to be ignored and depending on the circumstances of the case, weight can be attached to it. Paragraph 14 of the NPPF advises that where a policy is out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly

³⁶ C3 - Letter dated 25 February 2015 bundle of consultation responses

and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.

46. I have been referred to a plethora of Inspectors' appeal decisions and Secretary of State appeal decisions by both the Appellant and the Council relating to, among other things, the weight to be attached to policies such as Saved Policy EV1. Different facts and different policies apply in each appeal decision and the most pertinent in my opinion in this appeal are those which relate specifically to Saved Policy EV1.
47. The appeals I was referred to included High Street, Linton³⁷ where the outline proposal for 110 dwellings on an agricultural field was considered to be contrary to Saved Policy EV1 but it had little weight. In Land at New House Farm³⁸ the outline proposal was for up to 300 dwellings on agricultural land and the policy was found to be out-of-date but the Inspector did not specify what weight, if any, he had given to it. In Land north east of Coalpit Lane³⁹ an outline proposal was for up to nine dwellings on undeveloped land outside the village and the policy was found to be broadly consistent with the NPPF and it was given material weight. In Land at Main Street⁴⁰ an outline proposal for over 55s housing in an open field was found to be contrary to criterion (iii) of the policy but again no mention was made of the weight given to the policy. In Land at SK2816⁴¹ which was an outline application for residential development, Saved Policy EV1 was found not to be consistent with the NPPF and was consequently given limited weight. In Land at Valley Road⁴² a proposal for 64 dwellings in a field was found to be in limited conflict with the policy and 'whilst the policy is out-of-date insofar as it restricts housing supply, its objective to protect the countryside and its intrinsic character are consistent with paragraph 17 of the NPPF and this must be weighed against other considerations'.
48. The appeal decisions are therefore inconclusive about such matters as whether Saved Policy EV1 is consistent with the NPPF or not and about what weight should be given to it. The NPPF recognises the intrinsic character and beauty of the countryside⁴³ and the aim of Saved Policy EV1 is to protect the countryside from development and I therefore consider that the policy is not inconsistent with the NPPF.
49. The reasons for refusal also cite Saved Policy EV8 the heading of which is 'Open spaces in villages and settlements' and it seeks to ensure that such features which make a valuable contribution to the character or environmental quality of individual villages and settlements are safeguarded from development. The Appellant's contention was that the site was not in the village but in the countryside and that the policy did not therefore apply. But I note with some interest that the description of the site in the Statement of Common Ground begins with the sentence 'The site is located in the village of Hartshorne and comprises 5.02 hectares of agricultural land located centrally to the settlement'. The description of the site being 'in the village/in the centre of Hartshorne' is also found in other documents submitted by the Appellant

³⁷ CD4.1 APP/F1040/A/14/2214428

³⁸ CD4.2 APP/F1040/A/14/2228361 and APP/F1040/A/15/3005774

³⁹ SDDC CD39 APP/F1040/W/15/3004663

⁴⁰ SDDC CD40 APP/F1040/W/15/3136939

⁴¹ APP 7 APP/F1040/W/15/3134873

⁴² SDDC CD41 APP/F1040/W/15/3033436

⁴³ Paragraph 17 point 5

including the Design and Access Statement⁴⁴, Miss Stones' proof⁴⁵ and the OPUN letter⁴⁶.

50. Whether Saved Policy EV8 is applicable or not I consider that because it restricts development, which includes housing, it is also out of date. Paragraph 109 of the NPPF refers to the protection of valued landscapes and the aim of Saved Policy EV8 is to safeguard open spaces which make a valuable contribution and, whether the appeal site is a valued landscape for the purposes of the NPPF and whether it makes a valuable contribution as required by Saved Policy EV8 or not, I consider that the policy is consistent with the NPPF.
51. However, as both Saved Policies EV1 and EV8 are out-of-date, and taking into account all the decisions, authorities and submissions that were made I consider that both Saved Policy EV1 and Saved Policy EV8 should be accorded limited weight.

The Emerging Local Plan

52. Consultation is currently taking place on the proposed modifications to the Emerging Local Plan following a note dated 7 January 2016 from the Inspector⁴⁷. The Inspector wrote that once she had considered the responses she should be able to complete her report which, as submitted by the Council, infers that she considers that the Emerging Local Plan is sound⁴⁸. The Council anticipates the adoption of the Emerging Local Plan at a meeting on 19 May 2016, although Miss Stones thought that June 2016 was a more likely date. In any event, it would appear that adoption of the Emerging Local Plan is not too far off.
53. This would indicate that on adoption the Council would be able to demonstrate a five years' supply of housing which, even if fragile as suggested by Miss Stones and in the Rebuttal submitted to the Inquiry⁴⁹, renders the housing policies in the Emerging Local Plan relevant, albeit with limited weight, in this appeal.
54. The Policies that are relevant are Policy BNE1 which expects development to be well designed and one of the principles to be taken into account relates to the creation of places with a locally inspired character that respond to their context and have regard to valued landscape, townscape and heritage characteristics; Policy BNE2 which expects development to protect, conserve and enhance heritage assets such as listed buildings and their settings; and Policy BNE4 which seeks to protect the character, local distinctiveness and landscape of South Derbyshire.

Conclusions on the main issue

55. For the reasons given above I conclude that the proposal would have a harmful effect on the character and appearance of Hartshorne and the surrounding

⁴⁴ CD2.4 paragraph 1.5

⁴⁵ Paragraph 2.1.1

⁴⁶ Exhibited to Miss Lewis' proof which in turn was exhibited to Miss Stones' proof

⁴⁷ SDDC CD38

⁴⁸ C5 The Council's closing submissions paragraph 28

⁴⁹ APP 1

area; it would result in less than significant harm to the settings of Manor Farm and St Peter's Church which are both listed buildings; it would have a harmful effect on landscape and on the pattern of built development in Hartshorne; and would not be sustainable development within the terms of the NPPF. Although having limited weight, the proposal would be contrary to Saved Policy EV1 of the Saved Local Plan and Emerging Local Plan Policies BNE1, BNE2 and BNE4.

Other Matters

56. There are currently consultations taking place about whether any part/parts of Hartshorne should be designated as a Conservation Area/Area of Special Character⁵⁰ and whether any areas in Hartshorne should be designated as Local Green Spaces⁵¹. As these matters are still the subject of consultation I cannot speculate what the outcome may be; there are currently no Conservation Areas/Areas of Special Character in Hartshorne nor are there any designated Local Green Spaces and it is this present situation that I have to take into account in this appeal.
57. Any recreational use of the appeal site that there may have been in the past, and the last event appears to have been in 2012, was limited and, as the land is privately owned, dependent on the wishes of landowner. I therefore give no weight to any past recreational use of the appeal site.
58. The Appellant placed some emphasis on the proposal including woodland planting and green infrastructure which the National Forest Company considers would further the National Forest character of the proposals and tie the proposed development to the woodland which surrounds the site⁵². However, the consultation response is in relation to the environmental and landscaping aspects of the proposal in relation to the setting within the National Forest and specifically excludes a comprehensive assessment of the full planning merits of the application. I therefore give this little weight.

Conditions

59. The NPPF advises that consideration should be given to whether an otherwise unacceptable development could be made acceptable through the use of conditions and that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects⁵³.
60. I have considered the suggested and largely agreed conditions⁵⁴. Whilst they meet the tests in the NPPF and are all relatively straightforward 'usual' conditions that would generally be imposed on an outline proposal such as this, given my findings in respect of the main issue I do not consider that their imposition would render the unacceptability of the proposal acceptable.

⁵⁰ SDDC CD43

⁵¹ APP 9

⁵² CD2.30

⁵³ Paragraphs 203 and 206 of the NPPF

⁵⁴ Statement of Common Ground Part 8

NPPF paragraph 134 balance

61. Paragraph 134 advises that 'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use' and case law has established that this exercise must be carried out and come out in favour of the Appellant before any other matters are weighed in the planning balance as required by paragraph 14 of the NPPF.
62. The harm that would result to the settings of two listed buildings from the proposal must be given considerable importance and weight. The identified harm also gives rise to a strong presumption against the grant of planning permission. In favour of the proposal is the provision of much needed housing, both market and affordable, and the other public benefits that have been mentioned above in my consideration of the sustainability of the proposal. However, the harm to the settings of Manor Farm and St Peter's Church would be permanent and irreversible and I conclude that this harm would outweigh the public benefits of the proposal and I dismiss the appeal.

The planning balance

63. Given my finding against the Appellant in respect of the paragraph 134 balance it follows that the adverse impacts of the proposal would also significantly and demonstrably outweigh the benefits in applying the paragraph 14 balance and that there should be no grant of planning permission.

The s. 106 agreement

64. I have commented above on the obligations contained in the s.106 agreement. As I have reached the conclusion that the appeal should be dismissed there is no necessity for me to consider it further.

Gloria McFarlane
Inspector

APPEARANCES

FOR THE APPELLANT

Mr S Choong Counsel

He called

Miss L Stones who gave evidence on planning matters
BA(Hons) Dip TP MRTPI

Ms J Vallender who gave evidence on heritage matters
MA ACifA

Mr J Aitkin who gave evidence on landscape and visual impact matters
BSc(Hons) DIP LIM CMLI

FOR THE LOCAL PLANNING AUTHORITY

Mr J Smyth Counsel

He called

Mr C Nash who gave evidence on planning matters
MRTPI MA BSc(Hons)

Mr I Grimshaw who gave evidence on landscape matters
CMLI MRTPI MA MSc(Dist) BA(Hons)

Mr N Robertson who gave evidence on heritage matters
MIHBC MA(Hons) Dip-Heritage

INTERESTED PERSONS

Mr J Gosden Chairman of the Hartshorne Village Residents Association

DOCUMENTS SUBMITTED AT THE INQUIRY BY THE APPELLANT

APP 1 – Rebuttal to the Council’s Proof of Evidence Addendum

APP 2 - Review of a Conservation Area Appraisal

APP 3 - Duplicated in the Council’s core documents and so not submitted

APP 4 – Aiden Jones v Mordue and SSCLG and South Northamptonshire Council
[2015] EWCA Civ 1243

APP 5 - Secretary of State Decision - Land at The Asps APP/T3725/A/14/2221613

APP 6 - Cheshire East BC v SSCLG and Richborough Estate Partnerships LLP
[2015] EWHC 410 (Admin)

APP 7 – Inspector’s Decision – Land at Linton Heath APP/F1040/W/15/3134873

APP 8 - Duplicated in the Council’s core documents and so not submitted

APP 9 – Appendix D – Local Green Spaces

APP 10 – Forest of Dean DC v SSCLG and Gladman Developments Ltd
[2016] EWHC 421 (Admin)

APP 11 – Suffolk DC v Hopkins Homes Ltd and SSCLG and Richborough Estates
Partnership LLP v Cheshire East BC and SSCLG [2016] EWCA Civ 168

APP 12 – Opening submissions on behalf of the Appellant

APP 13 – Closing submissions on behalf of the Appellant

DOCUMENTS SUBMITTED AT THE INQUIRY BY THE COUNCIL

C1 – Addendum to the evidence of Miss Nicola Sworowski

C2 - Additional Council Core Documents SDDC CD38 – CD45

C3 – Responses to the application for the proposal which informed the s.106
Agreement

C4 – Responses to the application for the proposal which informed the agreed
suggested conditions

C5 – Closing submissions on behalf of the Council

OTHER DOCUMENTS SUBMITTED AT THE INQUIRY

Document A - Mr Gosden's statement

Document B - Plan of the accompanied site visit route

Document C - S.106 Agreement

Document D - Agreed suggested condition 31

THE APPELLANT'S CORE DOCUMENTS

Lever arch files containing as follows:

CD 1.1 to CD 1.15 – two files

CD 2.1 to CD 2.10 – two files

CD 3.1 to CD 3.4 - one file

CD 4.1 to CD 4.27 – two file

CD 5.1 – one file

CD 6.1 to 6.8 – two files

CD 7.1 to CD 7.2 – one file

THE COUNCIL'S CORE DOCUMENTS

One lever arch file containing SDDC CD1 – SDDC CD45 (including CD38-CD45
submitted during the Inquiry)