



Appeal Decision

Inquiry held on 19 - 21 April 2016

Site visit made on 20 April 2016

by Anthony Lyman BSC (Hons) DipTP MRTPI

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

Decision date: 16 June 2016

Appeal Ref: APP/F1040/W/15/3132831

Cauldwell Road, Linton, Derbyshire, DE12 6RX

- 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 Investin Properties (Jersey) Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2015/0129, dated 28 January 2015, was refused by notice dated 24 June 2015.
 - The development proposed is the erection of up to 61 dwellings (all matters reserved).
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Decision

1. The appeal is dismissed

Application for Costs

2. At the Inquiry an application for costs was made by South Derbyshire District Council against Investin Properties (Jersey) Ltd. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was originally made in outline for up to 75 dwellings and detailed means of access. Subsequently, before the application was determined, the proposal was amended to up to 62 dwellings. Just before the appeal was made, the appellant wrote to the Council advising that the intention was to seek the removal of 'access' from the description of the proposal to be considered at appeal. At the same time, the appellant submitted to the Council a further outline application for an amended scheme of up to 61 dwellings with all matters reserved for future determination. This re-submitted application was refused by the Council on 13 November 2015.
 4. The appellant requested that the Inquiry proceed on the basis of the revised layout of 61 dwellings with all matters reserved. The Council did not object to that submission. The revised indicative layout had been the subject of consultation on the re-submitted application and, therefore, I considered that no-one's interests would be prejudiced by the Inquiry proceeding on that basis, as set out in the description in the Header above.
 5. At the Inquiry, a completed Section 106 Planning Obligation was submitted. The Agreement undertakes to provide local facilities and/or contributions to mitigate the impact of the development on local facilities and services. These
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include on-site open space, and contributions towards off-site built facilities, outdoor sports facilities, education, healthcare and the National Forest. Obligations relating to the drainage of the site are also included. I will refer to this S106 Agreement later in my Decision.

6. Both parties submitted proofs of evidence on housing matters. In the Statement of Common Ground it was agreed that the Council could not demonstrate a five year supply of housing land (HLS) at the time of the Inquiry. In the light of that shortfall the parties agreed that it would not be necessary to call witnesses to give oral evidence to the Inquiry.
7. At the Inquiry the Council stated that the final report of the Local Plan Inspector on the South Derbyshire Local Plan – Part 1 (Local Plan Part 1) was imminent, and that the Council intended to adopt the plan on 19 May 2016. The Inspector's report declaring the plan to be sound was issued on 10 May 2016 and the Local Plan Part 1 was adopted on 13 June 2016. The Local Plan Part 1, together with some remaining saved policies of the South Derbyshire Local Plan (1998) (SDLP), now form the development plan for the District.
8. After the close of the Inquiry, but before the plan was adopted, both parties submitted email correspondence giving their differing views as to the likely impact of the Local Plan Part 1 on the Council's HLS post adoption. I will discuss the email correspondence on the HLS position later in my Decision.

Main Issues

9. The main issues to be considered are, i) the effect of the proposed development on the character and appearance of Linton and the surrounding area, ii) whether the appeal site is appropriate for residential development, having regard to the principles of sustainable development, and national and local planning policies relating to development in the countryside, iii) the effect of other considerations, including housing land supply on the overall planning balance.

Reasons

Background

10. The appeal site is an agricultural field in the countryside to the north-west of the village of Linton. The field lies to the south of Cauldwell Road which, at this point, is an unrestricted, unlit country road lined with grass verges, hedges and occasional hedgerow trees. Although all matters are reserved for future determination, the revised indicative plan includes a layout of 61 dwellings, areas of open space, a play area, a swale/balancing pond, vehicular access from Cauldwell Road and a pedestrian link to the village.
11. The roughly triangular shaped field is enclosed on three sides by hedgerows with countryside beyond, although the field immediately to the south-east has outline permission for residential development granted on appeal in 2014. The appeal site is detached from the settlement edge of Linton, with a short, eastern boundary abutting only the extensive gardens to a single bungalow fronting Cauldwell Road. Beyond the bungalow is the built up housing development on Warren Drive which forms the edge of the village.

Character and appearance

12. Both parties submitted proofs of evidence from their expert landscape witnesses who reached different professional judgements as to the significance of the landscape and visual impacts of the development. I have had regard to these assessments and my own observations from the parties agreed viewpoints, following several visits to the site and the surroundings.
13. The appeal site is not subject to any formal landscape designation and the Council conceded that it is not within a valued landscape as referred to in paragraph 109 of the National Planning Policy Framework (the Framework). Nevertheless, the impact of development on a non-designated landscape can be an important material consideration and the different roles and character of areas should be taken into account to ensure that development is suitable in the local context. Paragraph 17 of the Framework confirms, amongst other things, that the intrinsic character and beauty of the countryside should be recognised.
14. The site is typical of the character traits of the Mease/Sence Lowlands character area identified in the National Character Area Profile (NCA), including gently undulating land forms, and localised areas of small fields with dense hedgerows. At a more local level¹, the appeal site falls within the Village Estate Farmlands landscape character type defined by gently rolling lowlands with minor ridges and shallow valleys which retain a rural remote character with small villages and red brick farmsteads. The site is on a low plateau and slopes gently down to the south from Cauldwell Road. To the north and west the land also generally falls away.
15. The field contributes to and enhances the rural setting of Linton and acts as a buffer, screening views of dwellings on Warren Drive. In views from the north and from the west these existing dwellings are not prominent as shown for instance, in the appellant's viewpoint 13², despite the photograph having been taken in winter with little leaf cover. Warren Drive appears to drop away below the site such that mainly, only the tops of a small number of roofs are visible beyond the intervening hedgerows. This is reflected in the appellant's evidence³ which states that *due to the relatively enclosed nature (of Cauldwell Road,) the appreciation of the settlement edge is not perceived until the receptor is very close*. In contrast, the proposed development would lead to a significant loss of openness, and the long line of up to fifteen close knit detached houses, set back only a short distance from Cauldwell Road would appear prominent and incongruous in the rural street scene.
16. The roadside hedge is relatively low in parts and would do little to ameliorate the dominance of these houses in the rural setting. In longer distance views, such as those from the public right of way adjacent to Badger Wood on rising land to the north, the line of two storey houses on the ridge would break the skyline and have the appearance of an incongruous form of ribbon development extending into the open countryside, creating a prominent hard urban edge to the village. Given the absolutely minimal front gardens proposed to these frontage properties, and the low nature of the roadside hedge, which is shown on the indicative plans to be outside the site boundary,

¹ The Landscape Character of Derbyshire – Derbyshire County Council

² Appendices to Proof of Evidence of Mr Ben Wright

³ Proof of Evidence of Mr Ben Wright - paragraph 4.92

- there would be little opportunity to mitigate the dominant impact of the houses with further landscaping.
17. The prominence of the proposed development would be significantly more harmful than the impact of the dwellings approved on the adjoining field which will take its access from High Street. That site in part, slopes further downhill from the appeal site from which it is separated by a dense, tall hedgerow with trees that would effectively obscure the houses from Cauldwell Road, and from distant views to the north. Having walked along the public footpath through that field on my site visit, I agree with the Inspector's remarks in that appeal Decision⁴ that the site was *a visually well contained field* and that the development *would not breach natural boundaries such as tree belts, woodlands and ridges*.
 18. Furthermore, that developer also intended to incorporate the required 20% National Forest planting within the scheme and the Inspector concluded that *this would represent a significant planting screen for the proposed development*. For this reason, and given the dense and effective boundary screening between that approved scheme and the appeal site, I am not persuaded by the appellant's argument that, once the approved site had been developed, the proposed development would not be visible from any vantage point from where Linton would not already be visible. Furthermore, unlike the appeal scheme before me, that approved development would adjoin the rear garden boundaries of nearly all of the long line of houses on Warren Drive and would be seen as a more natural extension of the village.
 19. I now turn to consider the effect of the proposal on the hedgerow along the northern boundary of the field. The hedgerow is intact and is species rich having 8 woody species and 9 standard trees within it⁵. The hedge is considered to be important under the Hedgerow Regulations (1997) and is a priority habitat under the UK Post-2010 Biodiversity Framework (2012). This roadside hedge makes a significant and positive contribution to the rural character and appearance of the area and to the Village Estates Farmlands landscape character type.
 20. To facilitate the access from Cauldwell Road 11m of the hedge would have to be removed and, either side of the access, the hedge would be cut back to provide the necessary visibility splays. The highway authority also required a pedestrian link to be provided alongside the highway to link the development to the existing footway near to Warren Drive.
 21. In the original scheme, the appellant proposed a 2m footway alongside the highway from the site access to the village. The plan indicated that the hedge would be retained and that it would only need to be trimmed to facilitate the footway. I am not persuaded by this argument. On one of my site visits I walked the route and noted that the grass verge between the edge of the carriageway and the stems of the hedgerow appeared in places to be less than 2m. I consider that substantial lengths of the important hedge would be in danger of being lost to provide a 2m wide footway and its footings. The Council's reason for refusal of the original scheme stated that 70 to 75m of the hedgerow would be lost. A replacement hedge set further back from the road to accommodate a path would be unlikely to be so species diverse or as

⁴ App/F1040/A/14/2214428

⁵ Extended Phase 1 Habitat Survey by Peak Ecology Ltd

- ecologically valuable, and would take time to mitigate the harm caused by the loss of sections of the existing important hedge.
22. To address this issue, the revised indicative plan before the Inquiry proposed a footpath within the site on the southern side of the roadside hedge. Towards the village about 4m of the hedge would have to be removed to facilitate a 'dog leg' through the hedge on to a new section of footway alongside the carriageway. This proposal would still have an adverse impact on the hedgerow and the character and appearance of the area, but the harm would be less than in the original scheme.
23. The highway authority objected to this layout on the grounds that it would not accord with the provisions of Manual for Streets which states that pedestrians and cyclists should generally share streets with motor vehicles. Furthermore, it would not satisfy the 6C's Design Guide which states that routes that run separately from a road are not normally encouraged and, where they do, they should be open, short, straight, well lit and as direct as possible, ideally with each end being visible from the other. The revised proposal would not satisfy all of these requirements, and the highway authority stated that such a path would not be adopted by the authority. Nevertheless, it could remain as a private footpath.
24. Irrespective of these arguments put to the Inquiry, layout and access including pedestrian access are reserved matters, although the degree of potential harm that either option would have on the character and appearance of the area is a consideration in this Decision. The potential loss of parts of the hedge, together with the introduction of a formal illuminated highway junction, white lining, and highway signs, would have a significant negative impact on the rural character of the area.
25. For the reasons given above, this highly prominent development would have a significant detrimental impact on the character and appearance of the area. The proposal would conflict with saved Environment Policy 1 (EV1) of the SDLP that seeks to restrict development in the countryside, and to ensure amongst other things, that the character of the countryside and landscape quality are safeguarded and protected. By failing to have regard to the local context, the landscape character of the area and visual amenity, the development would also be in breach of Policies BNE1 and BNE4 of the Local Plan Part 1. I will consider the weight to be afforded to these policies later in my Decision.

Sustainable development

26. Linton is designated as a Key Service Village in the Local Plan Part 1. It is a sustainable settlement with a range of facilities, and it benefits from regular bus services to Swadlincote and Burton-on-Trent. The proposed development would be in an accessible location. The Framework confirms that to achieve sustainable development, for which there is a presumption in favour, economic, social and environmental gains should be sought jointly and simultaneously. Delivering sustainable outcomes means taking full account of the environmental as well as the economic and social dimensions of development proposals which should not be taken in isolation.
27. The scheme would generate substantial benefits, in particular a mix of housing including affordable homes that would contribute to the Framework's requirement to boost significantly the supply of housing. This would satisfy the

social dimension of sustainable development. Economic gains would be generated through the scale of the investment in the construction of the development and in the likely support for local Linton businesses by the future occupants of the new houses, although there is little evidence that such support is required or necessary to maintain those facilities.

28. The Framework describes the environmental role as contributing, amongst other things to protecting and enhancing the natural environment. The loss of sections of the important, priority habitat hedgerow would carry increasing weight depending on the extent of the loss as set out above. I note the views of the Derbyshire Wildlife Trust that the slight negative impact on biodiversity could be offset by a potential net gain following the development of the wildlife habitats in the green spaces on site. However, that representation appears to have been based on the anticipated loss of only that part of the hedge necessary to create the road access, rather than the potential loss of greater lengths of the priority habitat.
29. Given my earlier findings regarding the harm that the development of this green field site in open countryside would cause to the character and appearance of the local environment, to which I attach significant weight, I find that the environmental dimension would not be satisfied. Taking the three dimensions together, notwithstanding the social and economic benefits that would derive, nor the fact that the dwellings themselves would be built to relevant building standards to meet the challenge of climate change, the harm to the character and appearance of the area (the essence of the environmental dimension in this case) is such that I do not find that the proposal would represent sustainable development.
30. Accordingly, having regard to the Framework and the local planning policies referred to above, that seek to protect the countryside and promote sustainable development, the appeal site would not be an appropriate location for the proposed residential development.

Other considerations – housing land supply

31. At the time of the Inquiry, the Council conceded that a five year HLS could not be demonstrated. The Council submitted that the supply was about 4.4 years, although the appellant considered the figure to be significantly lower. It was agreed that Paragraph 49 of the Framework was engaged, and relevant policies for the supply of housing, including SDLP Policy EV1 should not be considered up-to-date. In such circumstances, paragraph 14 of the Framework confirms that, sustainable development should be allowed, unless any adverse impacts would significantly and demonstrably outweigh the benefits.
32. Shortly after the close of the Inquiry, the Council received the Examining Inspector's final report that found that the South Derbyshire Local Plan Part 1 was sound subject to some modifications. The Council adopted the plan on 13 June 2016. In order to have been found sound, the Council had to be able to demonstrate a HLS in excess of five years at that time. I note the evidence to the Inquiry of the appellant's expert housing witness disputing, amongst other things, the rates of housing delivery on some sites on which the Council relied, and his conclusion that even if the Local Plan Part 1 was adopted, it would not automatically mean a five year HLS exists at the time of my Decision. Amongst other things, the appellant's housing expert questioned the accuracy

- of the Council's housing trajectories from 2009/10, the achievability of delivery rates, and the housing requirement.
33. The appellant also did not accept some of the Council's lead-in times and build rates applied to deliverable sites, and discounted considerable numbers of dwellings from a wide range of housing sites. The number of windfall dwellings was also reduced. Overall, the appellant's expert witness considered that at the time of the Inquiry, an HLS of only 3.48 years existed.
34. Planning Practice Guidance (PPG) advises that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications or appeals where only the appellant's evidence is likely to be presented to contest an authority's position. The Court of Appeal Judgement relating to Hunston Properties Limited⁶ similarly found that, "*It is not for an Inspector on a Section 78 appeal to seek to carry out some sort of local plan process as part of determining an appeal, so as to arrive at a constrained housing requirement figure. An Inspector in that situation is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done. That process is an elaborate one involving many parties who are not present at or involved in the Section 78 appeal.*" I note that in the appellant's proof of evidence, it is the sole author who discounts the numbers of dwellings from numerous sites. Although I do not doubt the expertise of the witness, I have little evidence of his personal involvement with all of these sites.
35. After the receipt of the Examining Inspector's report the Council confirmed in an email dated 20 May 2016 that, amongst other things, with the plan declared sound and allocations thus being deliverable, a housing land supply of about 5.33 years existed. The appellant responded by email that, irrespective of the Council's claimed position, the adoption of the Local Plan Part 1 will make little difference to the deliverability of sites and that a supply of 3.73 years is considered deliverable on adoption. The appellant argued that the Council had persistently overestimated the deliverable supply of housing and that the Council's revised figure of 5.33 years remains marginal and would be adversely affected by any of the sites being delayed. The Council responded that the HLS of 5.33 years has been determined following a pragmatic approach of pushing back some sites in the trajectory to take account of delays, for instance in securing s106 agreements. Without those adjustments, the Council considered that the HLS would be 6.79 years. The Council reiterate that the examining Inspector would not have declared the Local Plan Part 1 sound if the supply upon adoption was below 5 years with which I agree.
36. With regard to the advice in PPG and the Hunston Judgement above, it is not for me to carry out a forensic analysis of the housing statistics. Assessing a five year housing land supply is, by its nature, an entirely predictive exercise in a constantly changing scenario. It is likely that some assumptions made by the Council and the appellant may be flawed or disproven in time. In this case, the appellant's expert witness, although present at the start of the Inquiry, was not called to give evidence or to be cross examined and, therefore, the evidence remains untested. By comparison, the Council's approach has been thoroughly

⁶ St Albans City and District Council v Hunston Properties Ltd and Secretary of State for Communities and Local Government, [2013] EWCA Civ 1610.

tested in Local Plan Part 1 examinations with many parties present. The examining Inspector has very recently found the Local Plan Part 1 to be sound and that appropriate provision has been made for housing having regard for, amongst other things, the Framework and taking account of proposed numbers of new housing.

37. On the evidence before me I conclude that, following adoption of the Local Plan Part 1, I have little reason to doubt that a HLS in excess of five years exists. Accordingly, paragraph 49 of the Framework is not now engaged, and the policies relevant to the supply of housing in both the SDLP and the newly adopted Local Plan Part 1 are up-to-date.

Planning Balance

38. It is common ground that the proposal would be contrary to saved Policy EV1 that seeks to restrict development in the countryside. However, the Policy dates from 1998 and, in accordance with paragraph 215 of the Framework, the weight to be attributed to it depends on the degree of consistency with the Framework. I have been referred to several appeal decisions in which Inspectors have considered the Policy inconsistent with the Framework and attributed it little weight, and other decisions in which some consistency with the Framework has been found. However, unlike the HLS situation before me now, all of these decisions acknowledged the lack of a five year HLS.
39. The appellant argues that the Policy is inconsistent with the Framework and attracts little weight, because, in common with other housing policies in the plan, it confines general housing development to within settlement boundaries. The only exceptions relate to development that is essential for rural based activities or is unavoidable in the countryside. The supporting text gives examples of the latter such as roads, reservoirs and power lines. However, the use of the words 'such as' means that the list is not exclusive. Although the thrust of the SDLP is to restrict general housing to within settlements, some housing outside settlement boundaries will be 'unavoidable', in order to meet new housing targets in the Local Plan Part 1. Accordingly, I am not persuaded that the Policy imposes a blanket ban on development in the countryside. It has a degree of consistency with the more flexible approach of the Framework and carries some weight in this Decision.
40. The appellant also contends that Policy EV1's requirement for landscape quality, wildlife and historic features to be safeguarded and protected is an absolute test which does not allow any harm to be weighed against the benefits and is therefore, inconsistent with the central theme of the Framework on those grounds. I am not persuaded that the policy's requirement for features such as landscaping to be 'safeguarded' or 'protected', represents an absolute ban on anything that could cause harm, no matter how inconsequential or capable of being mitigated. That part of the Policy is consistent with the Framework's recognition of the intrinsic character and beauty of the countryside.
41. Notwithstanding these arguments, the newly adopted Local Plan Part 1 Policies BNE1 and BNE4 are also offended by the proposal and carry significant weight. Furthermore, given my findings that the proposal would not represent sustainable development, the Framework's presumption in favour of such development would not apply, even if it had been demonstrated that the HLS was less than five years.

42. The benefits of the scheme set out above, including the provision of housing to boost significantly the supply in accordance with the Framework, must be afforded considerable weight in favour of the proposal. However, the very recently adopted Local Plan Part 1 has been found to meet the district's objectively assessed housing needs. Although this is not a ceiling, the weight I attribute to these benefits would not outweigh the conflict with Policies EV1, BNE1 and BNE4 and the harm that this unsustainable development would cause to the character and appearance of the area.
43. The s106 contributions to mitigate some of the impacts of the proposal are set out in my preliminary matters section above. These obligations would not outweigh the overall harm identified, and in view of my conclusion, there is no need for me to consider their compliance with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Conclusion

44. For the reasons given above, the appeal is dismissed.

Anthony Lyman

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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| Jack Smyth of Counsel | Instructed by Angela Edwards – South Derbyshire District Council |
| He called | |
| Sue Highley | Project Engineer, Derbyshire County Highway Authority |
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| Simon Tucker BSc (Hons) MCIHT | David Tucker Associates |
| Ben Wright BA (Hons) DipLA CMLI | Aspect Landscape Planning Ltd |
| Tom Collins BA (Hons) MSc MRTPI | Fisher German LLP |

DOCUMENTS

1. Opening submission on behalf of the appellant
2. Copy of appeal Decision APP/F1040/W/15/3121527
3. Extract from Journal of Planning Law re extent of duty on local planning authority to negotiate
4. Letter from Derbyshire County Council dated 14 November 2014
5. Updated housing statistics
6. Letter from Squire Patton Boggs (UK) LLP dated 20 April 2016
7. Completed s106 Planning Obligation dated 20 April 2016
8. Copy of 'The 6Cs Design Guide, Part 1'.
9. Copy of the GLVIA – Third Edition
10. Closing submissions on behalf of the Council
11. Closing submissions on behalf of the Appellant
12. Application for Costs on behalf of the local planning authority
13. Appellant's response to the costs application