



Appeal Decision

Site visit made on 27 June 2016

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 1 August 2016

Appeal Ref: APP/R1010/W/16/3147350

Land to the East of Duchess Street, Whitwell, Derbyshire

- 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 Mrs Sue Whawell against the decision of Bolsover District Council.
 - The application Ref 15/00144/OUT, dated 16 March 2015, was refused by notice dated 29 January 2016.
 - The development proposed is 15 new dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline with all matters reserved. I have dealt with the appeal on this basis, treating the site plan as indicative only.

Main Issues

3. The main issues in this case are:
 - The effect of the proposal on the character, appearance and openness of the countryside; and
 - Whether the proposal would result in the loss of the best and most versatile agricultural land.

Reasons

Character, appearance and openness

4. The appeal site is an unused and overgrown strip of land on the eastern edge of the settlement of Whitwell, outside the designated settlement boundary. The land rises up steeply from a central point to the northern boundary adjacent to Phil's View, a detached dormer bungalow.
 5. The appeal site and adjacent fields are part of a much larger piece of land which extends to the east and is designated as an important open area (IOA) under the Bolsover District Local Plan 2000 (LP) saved Policy GEN 10. The purpose of the policy is to protect the openness of areas which are important to the character of a place, providing a setting and separating them from other concentrations of development. In this instance the IOA seeks to separate the settlements of Whitwell and Hodthorpe.
 6. The site is open and overgrown and backs onto rear gardens to the north and west bounded by a line of mature trees and shrubs. There is a row of planted leylandi
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conifer trees of substantial height along the eastern boundary beyond which are open arable fields extending to the Robin Hood Railway line and the settlement of Hodthorpe.

7. The National Planning Policy Framework (the Framework) aims to boost the supply of housing and there is no dispute that the Council does not have a 5 year supply of housing land. On the basis of the limited information before me I find no reason to disagree. Consequently relevant policies for the supply of housing are not considered up to date. Such relevant policies are not only policies in the development plan that positively provide for the delivery of housing by restricting the locations where they may be developed. Relevant policies for the supply of housing are those that create and constrain housing supply. Policy GEN 10 specifically seeks to restrict development, and it therefore acts as a constraint on the supply of housing. Consequently it falls within the remit of paragraph 49 of the Framework.
8. Paragraph 14 of the Framework states that where relevant policies are out of date permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, or specific policies in the Framework. The contribution that 15 houses would make to the supply of housing land, therefore, weighs heavily in support of this appeal.
9. However, as well as having a restraining effect upon development, the policy also has a strategic purpose which seeks not just to prevent the coalescence of settlements but also to protect setting. The purpose of protecting landscape areas is generally consistent with the Framework and in particular paragraph 17 and core planning principle 5 which states that planning should take account of the different roles and character of different areas, recognising the intrinsic beauty and character of the countryside. I, therefore, attach moderate weight to the Policy in this regard.
10. Policy GEN 10 allows development in IOAs, but only if it does not detract from the objective of maintaining the open character of the 'break'. Openness is generally held to refer to freedom from development. I consider that the construction of 15 dwellings on a site which currently has no development would inevitably reduce the openness of the site and IOA.
11. There would clearly be an extension of the built-up area into the IOA as a result of the proposal; however, parties agree that it would be a relatively minor incursion. Phil's View represents an isolated protrusion beyond the settlement boundary, the majority of which is defined by the rear curtilages of Duchess Street, Mill Crescent and Mill Lane. Nevertheless, technically the proposal would not narrow the gap between the closest point of Whitwell and Hodthorpe, the closest point on the eastern boundary being Phil's View.
12. However, IOAs have also been established as they provide the setting to the settlements which gives them their character and identity. The settlements of Whitwell and Hodthorpe are two distinct settlements which are separated by agricultural fields but which are linked by Welbeck Street.
13. Whilst there is an existing line of conifers, I agree with the Council that this creates an artificial boundary as it does not reflect the stone boundary walls and native hedges which are more typical of the area. In contrast, the row of mature deciduous trees and shrubs situated to the rear of properties on Duchess Street on the western boundary of the site follow the line of the settlement boundary and provides a natural and softer edge to the settlement. I consider that the proposal

would predominately be seen against the backdrop of this landscape belt rather than the existing built up development.

14. Given the open nature of the site I consider that it is visually related to the fields and open countryside beyond rather than the settlement itself. Consequently I consider that the site performs an important role in providing the immediate setting of the settlement edge.
15. Furthermore, whilst the layout of the site is reserved for future consideration and the proposed plans are illustrative; the layout of the proposed development would nevertheless be constrained by the characteristics of the site. In order to accommodate 15 dwellings on this narrow site development would inevitably be of a linear nature as shown on the indicative site plan. This linear development would be perpendicular to the existing road in stark contrast with the line of traditional development fronting Welbeck Street and the cul-de-sac type development of adjacent properties to the west.
16. Whilst there is a row of terraced properties on the south side of Welbeck Street, these properties better reflect the dense terraced properties in the settlement and in any event the appeal site relates visually to development on the north, not south side of Welbeck Street,
17. Moreover, the development would be highly visible to pedestrians who I noted on my site visit regularly pass the site on the way to Hodthorpe. The development would be particularly visible as the site rises steeply to the north. I note that the proposal is for bungalows; however, given the elevated nature of the site I consider that even single storey development would be highly visible. Consequently, notwithstanding that the layout is reserved for future consideration, the proposal to introduce development of a linear nature into this open area would be at odds with the existing pattern of development, detract from the setting of the settlement and the character and appearance of the surrounding area.
18. Given the narrow nature of the site I agree with the Council that it is unlikely that the row of conifers would remain as they would overshadow any future development. The removal of the conifers would expose the proposed development in views from the east and whilst indigenous replacement planting could be secured by way of a condition, this would take some time to establish.
19. It is suggested that the lower portion of the site is part of the garden or curtilage of no 81 Welbeck Street and that this is the last lawful use of this part of land. However, the Council state that they have no record of the use of this land as garden and I note that the existing curtilage of no 81 Welbeck is clearly defined by a fence and a wall thus separating it from the appeal site. It is not my role to determine the lawful use of the land; this is open to the appellant under section 191/192. However, even if it were deemed that this was garden land it would not necessarily be incompatible with maintaining the open character of the IOA.
20. The site has been assessed as available in the Strategic Housing Land Availability Assessment (SHLAA) in recognition of the appellant's intentions for the land. However, reference is made in the site assessment to the potential impact on landscape character. Furthermore, the inclusion of sites within the SHLAA does not necessarily mean that it will be acceptable in planning policy terms.
21. Attention is drawn to an appeal decision¹ in which the Inspector concluded that there is no direct equivalent in national policy for a protected Open Area policy and that the Local Plan Policy E12 is out of date. However, importantly she states that

¹ APP/J3015/A/13/2198848

the Policy is out-of-date insofar as it relates to the Hempshill Hall POA noting that the POA is identified for residential development in the work on the emerging Plan. Furthermore, the proposal is for 116 dwellings. This case is not, therefore, directly comparable to the appeal proposal which limits the weight which I can attach to it in my decision.

22. Attention is also drawn to an appeal decision² where the Inspector concluded that the relevant development plan has an end date of 2011 and is, therefore, time expired. Whilst this case is similar insofar as the Plan has also time expired and that there is a shortfall of housing, this case relates to a larger scale development. Furthermore I notice that the characteristics of the site are very different being surrounded on 3 sides by development and on the remaining side by a bypass. Consequently, this case is not directly comparable to the appeal proposal which limits the weight which I can attach to it in my decision.
23. Taking the above into account, I conclude that the proposal would reduce the openness of the IOA; would have a harmful effect on the setting of Whitwell; and would be harmful to the character and appearance of the area. The proposal would, therefore, be contrary Policy GEN 10 of the Local Plan and paragraph 17 of the Framework.

Best and Most Versatile Agricultural Land

24. Policy ENV 2 of the Local Plan seeks to protect the best and most versatile (BMV) agricultural land, and states that permission will not be granted for development which involves the loss of such land unless there is a strong need for development of the site which overrides such need to protect. The Framework states that the planning system should contribute to the natural environment by protected valued soils and that local planning authorities should take into account the economic and other benefits of such land. The Agricultural Map included with the Council's submission clearly shows the land around Whitwell as Grade 2 quality agricultural land.
25. The appellant draws attention to the alleged use of the lower part of the site as a garden; however, there is no evidence before me to suggest that this is the case. The appellant considers that the site should be re-graded as grade 5, lower quality agricultural land for a number of reasons including the fly tipping which has occurred at the lower part of the site; potential contamination; and the steep gradient towards the upper part of the site which would limit the use of mechanical farming methods.
26. Whilst the appellant has reproduced the Ministry of Agriculture, Fisheries and Food Agricultural Land Classification of England and Wales 1988, there is very limited substantive evidence before me in relation to the quality of the agricultural land on the appeal site itself. In any event, it is not my role to determine whether the land should be re-graded as lower quality.
27. However, the land has clearly not been used for agriculture for some time and I consider that the narrow nature of the site together with the steep gradient at the north end of the site would diminish the attractiveness of the site for more intense agricultural methods.
28. Consequently, given the nature of the site I consider that the need for housing in the area would be a material consideration which would outweigh the loss of the grade 2 agricultural land. This approach would be consistent with Policy ENV2 which states that permission will not be granted for development which involves the loss of

² APP/R1038/A/13/2202979

such land unless there is a strong need for development of the site which overrides such need to protect. I, therefore, conclude that the proposal would not conflict with Policy ENV 2.

Other matters

29. The Council indicate that there is a requirement for a contribution of £34,197 towards the provision of 3 primary school places at Whitwell Primary School, the need for which arises from the development. There is no 106 obligation or unilateral undertaking before me, however, as the appeal is to be dismissed on other substantive issues, it is not necessary to look at this issue in detail, given that the proposal is unacceptable for other reason.

Overall Planning Balance and Conclusion

30. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. It is common ground that the Council does not have a five year supply of deliverable housing sites. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of housing.
31. Paragraph 14 states that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
32. Paragraph 8 of the Framework makes it clear that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The proposal would bring social benefits in terms of making a contribution, albeit limited, to new housing provision in the Borough. I attach significant weight to this benefit.
33. The proposal would also bring modest economic benefits in the short term during the construction phase and in terms of the contribution that future occupiers would make to the economy of Whitwell in the longer term. I attach significant weight to this benefit.
34. However, whilst the proposal is situated in a sustainable location, for the reasons stated above, it would reduce the openness of the IOA; have a harmful effect on the setting of Whitwell and harm the character and appearance of the area. The proposal would not, therefore, meet the environmental dimension of sustainable development. Furthermore, the Framework confirms that good design is a key aspect of sustainable development and in order for this to be acceptable it should improve the character and quality of the area. The proposal would not, therefore, constitute a sustainable form of development and I, therefore, conclude that a presumption in favour of sustainable development does not apply to this site. I, conclude that the harm which I have identified would significantly and demonstrably outweigh the benefits taking into account the other policies in the Framework.

Conclusion

35. For the reasons stated above and taking all other matters into consideration, the appeal should be dismissed.

Caroline Mulloy

INSPECTOR