



Appeal Decision

Hearing held on 31 October 2017

Site visit made on 31 October 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 17 November 2017

Appeal Ref: APP/P1045/W/17/3176852

Land to the east of Derby Road, Doveridge

- 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 Roche Enterprises Ltd against the decision of Derbyshire Dales District Council.
 - The application Ref 16/00922/OUT, dated 15 December 2016, was refused by notice dated 15 March 2017.
 - The development proposed is residential development of up to 14 dwellings (outline).
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing, an application for costs was made by Roche Enterprises Ltd against Derbyshire Dales District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline with all detailed matters other than means of access reserved for future approval. However, during the Hearing it was confirmed that the appellant had requested that access also be treated as a reserved matter prior to the Council making its decision. As the outline application was determined by the Council on the basis that all detailed matters were reserved, I necessarily deal with the appeal on the same basis treating the indicative site layout plan (drg. no. 1225 003 Revision D) as illustrative.
4. A completed counterpart planning obligation by way of Unilateral Undertaking under Section 106 of the Planning Act (UU) dated 21 August 2017 was submitted by the appellant in advance of the Hearing. The UU includes planning obligations relating to affordable housing and education contributions. I return to the UU later in my decision.
5. During the Hearing, it was confirmed that the parties could not reach an agreement with respect the precise wording of a Statement of Common Ground and did not intend to finalise the draft documents that had been previously provided to me. However, it was agreed between the parties that the main issues identified during the Hearing reflect the matters in dispute and I determine the appeal on that basis.

Main Issues

6. The main issues are:

- Whether the development proposed would be consistent with the objectives of policies relating to the location and supply of housing, and;
- The effect on the character and appearance of the area.

Reasons

Policy background

7. The development plan consists of the saved policies of the Derbyshire Dales Local Plan (LP), adopted November 2005. The appeal site lies outside of the settlement of Doveridge as defined by the LP and is not allocated for residential development. Consequently, it is in an open countryside location.
8. Based upon the evidence before me, the hearing sessions for the Examination in Public of an emerging Derbyshire Dales Local Plan (ELP) took place in May 2017. I have been provided with a schedule of main modifications to the ELP that was published in July 2017 for consultation, with the deadline for comments having now expired. It was confirmed at the Hearing, that the main modifications to the ELP have been submitted to the Examining Inspector, but the Inspectors Report has yet to be published. Based upon the ELP as modified, the site is not proposed to be allocated for residential development and would fall outside of the proposed settlement boundary of Doveridge.
9. The site has been subject to two recent appeal decisions; an outline application with all matters reserved for up to 17 dwellings on the same site¹ and an outline application for up to two dwellings with all matters reserved except for access on part of the site subject to this appeal². Since the initial appeal decision in 2016 for up to 17 dwellings, circumstances have changed in terms of both the preparation stage of the emerging ELP and because the Council have indicated that a five year supply of deliverable housing sites can now be demonstrated. In that respect, the evidence before me also includes recent appeal decisions relating to proposed developments at Babbs Lane, Doveridge³ and at Land off Main Road, Brailsford, Derbyshire⁴. As part of those appeals, up-to-date evidence relating to the Council's housing requirement and housing supply has been tested through an Inquiry held on 13 June 2017 and a Hearing held on 28 June 2017 respectively. In determining those appeals, each Inspector accepted that a five year supply of deliverable housing sites can be demonstrated by the Council.
10. The appellant in taking account of the recent appeal decisions has confirmed both prior to and during the Hearing that the issue of five year housing supply is no longer a matter in dispute. The calculation of housing supply is based upon an objectively assessed need (OAN) of 5,680 dwellings across the period of 2013 to 2033 based on the 2014 Population and Household Projections as set out in Emerging Policy S6 of the ELP. Those figures are the most recent available and were utilised by each Inspector at the respective Inquiry and Hearing. There is no evidence before me which would lead me to take a

¹ Appeal Ref: APP/P1045/W/16/3148676 - Dismissed - 29 July 2016

² Appeal Ref: APP/P1045/W/17/3167657 - Dismissed - 6 July 2017

³ Appeal Ref: APP/P1045/W/16/3152087 - Dismissed - 14 August 2017

⁴ Appeal Ref: APP/P1045/W/17/3167362 - Allowed with Conditions - 8 September 2017

different approach. The housing supply conclusions included application of a 20% buffer and accounted for accumulated backlog from 2013/14 to 2016/17 using the Sedgfield method. In that context, I have no reason to take a different view to the Inspector conclusions in each of those decisions that the Council can demonstrate a deliverable five year supply of housing land in accordance with paragraph 47 of the National Planning Policy Framework (the Framework). I return to this finding as part of the planning balance.

11. The Council made its decision relating to this appeal proposal on the basis that housing policies in the LP are out-of-date as they do not account for the need for development beyond its plan period which was up to 2011. In doing so, the Council set aside Saved Policies H4 and SF4 of the LP despite those policies having been considered by a previous Inspector to be relevant to the assessment of the proposal relating to up to 17 dwellings. I do not consider that the Council's approach with respect to Saved Policies H4 and SF4 was correct when having regard to paragraphs 11, 211 and 215 of the Framework, as to my mind, development plan policies should not be simply disregarded as a result of being deemed out-of-date. Furthermore, I concur with a recent Inspector's interpretation of the *Daventry District Council v SSCLG and Gladman Developments Limited* [2015] EWHC 3459 (Admin) judgment set out in the appeal decision relating to the proposal for up to two dwellings for part of the same site. In that context, saved policies should not be regarded as out-of-date simply because the LP is time expired.
12. It is, therefore, necessary that I firstly assess the proposal against the relevant saved policies of the LP and other material considerations, including the emerging policies of the ELP, which I now go on to consider. The due weight to be given to those policies relative to the Framework and as part of any resultant planning balance is a matter that I then intend to return to.

Policies relating to the location and supply of housing

13. Saved Policy H4 of the LP relates to housing development outside of settlement framework boundaries and is, therefore, relevant to the proposal before me. Saved Policy H4 states that planning permission will be granted for housing that is essential for the operation of agriculture, forestry or other enterprises, which needs to be in that location; or consists of affordable housing for an identified local need. Saved Policy SF4 of the LP relates to development in the countryside and lists criteria where development will only be permitted, which reiterates and expands upon those listed in Saved Policy H4.
14. The appellant has not sought to demonstrate that the proposal would relate to an essential requirement for agriculture, forestry or other enterprise. Saved Policy H4 of the LP requires that housing development outside of settlement framework boundaries, which does not relate to an essential requirement, consists of affordable housing. The proposal relates to market housing with the UU intending that affordable housing at a rate of 33% would be constructed within the development. Although affordable housing may form part of the development, the proposal would not comply with Saved Policy H4 given that market housing is included. There is also conflict with Saved Policy SF4 of the LP as the proposal would not accord with its listed criteria. The permissive approach in that policy to other needs which can only be met in a rural area, subject to additional criteria, is reasonably restricted in terms of housing development by Saved Policy H4.

15. The appellant has drawn my attention to the historic under-delivery of affordable housing relative to local need in Derbyshire Dales. However, the Council has sought to address such matters through an Affordable Housing Programme (AHP) and in the ELP within Emerging Policy HC4, when taken together with Emerging Policies S3 (Settlement Hierarchy), S5 (Development in the Countryside), HC1 (Location of Housing Development) and HC2 (Housing Allocations). Whilst the influence of a Community Infrastructure Levy Charging Schedule has been raised, it can be afforded little weight as it remains at an early preparation stage. Consequently, I have no reason to consider that affordable housing in accordance with the ELP would not be delivered.
16. The UU accompanying the proposal seeks compliance with the requirements of Emerging Policy HC4 that residential developments of 11 dwellings or more should provide 30% of the net dwellings proposed as affordable housing. However, the site lies in the countryside and outside of the proposed settlement boundary of Doveridge in the ELP, where Emerging Policy S3 indicates that development will be strictly limited to that which has an essential need to be located in the countryside, with associated criteria set out in Emerging Policy S5. Compliance with Emerging Policy HC4 in terms of provision of affordable housing would constitute a benefit to be weighed in any planning balance, but does not of itself demonstrate an essential need for development relative to the criteria of Emerging Policy S5. Consequently, the proposal would conflict with Emerging Policies S3 and S5 in that respect, with associated conflict with Emerging Policy HC1 of the ELP.
17. The draft Doveridge Neighbourhood Development Plan 2017 - 2033 (D-NDP), was also provided during the Hearing⁵. However, the D-NDP does not currently include specific housing policies relating to land beyond the Doveridge settlement boundary which add to those relevant in the LP or ELP. In any case, the D-NDP is at an early stage of preparation and I afford little weight to it.
18. In terms of accessibility, the development would not result in isolated homes in the countryside. The site has nearby footpath links to the Doveridge settlement where existing services and facilities are available, including routes with street lighting. There are also regular bus services nearby to Uttoxeter and Burton upon Trent where a wider range of services and facilities, including employment opportunities, would be accessible. However, given the conflict with development plan policies identified, any benefits in that respect are to be considered as part of the subsequent planning balance.
19. I conclude that the development would not be consistent with the objectives of policies relating to the location and supply of housing. The proposal would conflict with Saved Policies H4 and SF4 of the LP and Emerging Policies S3, S5 and HC1 of the ELP in that respect.

Character and appearance

20. The Council's Landscape Sensitivity Study (LSS), published in August 2015, assesses the area within which the appeal site is situated as being highly sensitive to new housing development and also refers to land to the east of the Doveridge settlement and beyond Derby Road as acting as a strong limit to development. It is evident that selected localised assessment took place as part of the LSS, given that there are other areas of land, including on the

⁵ Hearing Document 2

opposite side of Derby Road to the north which are assessed to be of low sensitivity. Nevertheless, I agree with the appellant that the categorisation of the location of the site within the LSS does not rule out residential development but requires individual appraisal of development proposals. Such an approach is also consistent with that taken by the Council when previously granting planning permission for residential development in Hulland Ward⁶ on a site proposed to be allocated in the ELP.

21. The site consists of an existing field which adjoins the eastern side of Derby Road and at the time of my visit had the appearance of managed grassland. A dense wooded area adjoins the northern boundary of the site with buildings associated with a neighbouring crane hire business located further beyond. The site is also bounded by a hedgerow behind a shallow grass verge along most of the Derby Road frontage. However, there are gaps which provide open views across the site and surrounding fields toward the undulating topography of the wider landscape beyond the A50. The site adjoins a cluster of dwellings to the south with a linear arrangement that leads toward a grouping of other dwellings located to the opposite side of the road beyond the junction with Bell Lane. In contrast, the land immediately opposite to the site on Derby Road consists of open fields bounded by hedgerows and intermittent trees, which form part of a transition into the rural character of the countryside from the more developed parts of Doveridge.
22. A Landscape Visual Impact Assessment (LVIA) provided by the appellant concludes that the landscape and visual impacts of the development would be highly localised and very limited. LVIA viewpoints 1 and 2 are taken from a public footpath which crosses fields on the opposite side of Derby Road. Viewpoints 3 and 4 are taken from Derby Road along the site frontage, and viewpoint 5 is taken from a footpath that is situated to the south of the site which runs in a broadly east to west direction. Those LVIA viewpoints correspond with those considered to be most significant by the previous Inspector relating to the proposal for up to 17 dwellings on the same site (footnote 1). I have no reason to take a different view, as I observed that the other LVIA viewpoints are more distant from the site and influenced by a mix of intervening screening and changes in topography.
23. The previous Inspector who assessed the site from LVIA viewpoints 1 - 5 found that the site is a very visually prominent location when viewed from Derby Road and the public footpath network. Based upon my observations, I agree with the previous Inspector. The existing site when viewed together with adjoining woodland to the north and open fields to the east and west, forms part of a visual break and a gap in built development visible along Derby Road (including from LVIA viewpoints 3 and 4) and beyond the main settlement of Doveridge from footpaths nearby (including from LVIA viewpoints 1, 2 and 5).
24. Having regard to the above, I also agree with the previous Inspector that despite the appeal site and fields in close proximity having some features that are not typical of the 'Needwood and South Derbyshire Claylands' LCA and the Landscape Character Type 'Settled Farmlands', they are viewed as an integral part of the wider landscape and play an important role in establishing and enhancing the open and rural character of the area. The site has no specific landscape, ecological or heritage designation so as to indicate a valued

⁶ Council ref: 16/00832/OUT

landscape for the purposes of paragraph 109 of the Framework. Nevertheless, the contribution that the site makes to the character and appearance of the area is a relevant planning consideration. The site and the fields immediately surrounding are important to the character and setting of Doveridge through their contribution to the transition to a wider area of countryside around the settlement.

25. The previous Inspector identified that the effect of a proposal for up to 17 dwellings whilst localised would be significantly harmful to the character and appearance of the area. In seeking to address those concerns, the appellant has reduced the maximum numbers of dwellings to 14 and has indicated that a substantial broad leaved woodland planting belt would be provided to help the development assimilate into the landscape. I note that the previous Inspector found that there was little specific evidence before her to suggest that landscaping and other reserved matters could overcome the harm identified. However, it is unclear whether the evidence included the extent of woodland planting now proposed, which I necessarily go on to consider.
26. The construction of dwellings on the site would result in built development where there is presently none on a greenfield site. The layout plan before me is illustrative. However, the shape of the site would inevitably result in a continuation of the linear form of development present to the south. Consequently, the proposal would considerably narrow the gap between existing built development further to the north that is visible despite the wooded area adjoining the site. Different forms of development could be provided as part of a reserved matters submission, including designs that could correspond with existing two storey dwellings to the south. However, the footprint of buildings and the resultant bulk, scale and massing of built form, together with hardstanding and domestic paraphernalia, would inevitably change the character of the site when viewed from Derby Road and the surrounding footpath network. Whilst, the use of bungalows could reduce the overall scale and massing of built form it would not mitigate the resultant change of the site to a more suburban character and appearance.
27. Planting of trees to assimilate with woodland to the north, as part of a reserved matters submission or outside of planning controls, could provide some visual containment of the site as it matures particularly from distance views toward Derby Road and of the wider landscape from Derby Road. In that context, built form would become less conspicuous over time from some vantage points, including LVIA viewpoint 5. However, it would not fully mitigate the prominent intrusion of development into open countryside and the increased sense of enclosure of built form which would be experienced in a prominent location on Derby Road and visible from other parts of the footpath network, including LVIA viewpoints 1 - 4, irrespective of the screening or backdrop of trees that could emerge over time. Consequently, the development of the site would be harmful to the character and appearance of the area and visual amenity which although localised would be considerable. The retention of a hedgerow or additional planting along the site frontage would not mitigate the harm.
28. In reaching the above findings, I have taken into account that a nearby site has recently been granted outline planning permission for 70 dwellings by the Council⁷. However, that site is located further to the north on the opposite side

⁷ Council Ref: 15/00389/OUT

of the road behind a dense grouping of trees. Consequently, it would not influence the character of the immediate surroundings of the site to an extent that would justify the proposal. In reaching that view, I also give significant weight to the findings of both Inspectors who considered previous proposals at the appeal site and reached a similar view on that matter.

29. A recent appeal decision granted planning permission for 2 dwellings on land to the eastern side of Derby Road⁸ further to the south at the opposite end of the cluster of dwellings. The development was under construction at the time of my visit and I observed that it is located amongst a grouping of dwellings close to the junction of Bell Lane. The close relationship and grouping of the two dwellings with other dwellings nearby on both sides of Derby Road reflect different circumstances to the proposal before me. Consequently, I give little weight to the conclusions of that previous Inspector as the circumstances of that development do not replicate the harm I have identified.
30. A number of other appeal decisions have been drawn to my attention relating to sites in Worcestershire⁹, Kent¹⁰, West Sussex¹¹ and Berkshire¹², where issues such as visual impact, containment and benefits afforded by vegetative screening and / or woodland planting were considered. However, I do not have the full details of the circumstances which led to Inspectors reaching their conclusions and therefore, cannot be certain that they replicate the proposal before me given the differences in locational and development plan context. I, therefore, necessarily consider the proposal before me on its own merits.
31. Manor House, a Grade II* Listed Building, is located on the opposite side of Derby Road beyond an expansive area of land with intervening trees along its boundaries that provides screening which would limit inter-visibility with the proposal. Consequently, I am satisfied that the proposed development would preserve the setting of the Grade II* Listed Building. However, the absence of concern in that respect is a neutral factor.
32. I conclude that the development would result in considerable harm to the character and appearance of the area. It would, therefore, conflict with Saved Policies SF5 and NBE8 of the LP. When taken together, the policies seek, amongst other things, to ensure that new development preserves the character, appearance and local distinctiveness of its surroundings. Those policies are consistent with the design objectives of the Framework and in so far as it seeks recognition of the intrinsic beauty of the countryside. The development would also conflict with Emerging Policies PD1 and PD5 of the ELP which contain similar requirements to Saved Policies SF5 and NBE8 of the LP.

Planning Obligation

33. The counterpart UU is signed and dated but does not include an accompanying plan which identifies the site and instead refers to a HM Land Registry Title (Title Number DY258923). Following submission of a corresponding HM Land Registry Title Plan during the Hearing¹³, I am satisfied that it is complete and would take effect if planning permission were to be granted.

⁸ Appeal Ref: APP/P1045/W/16/3145895 - Allowed with Conditions - 14 September 2016

⁹ Appeal Ref: APP/P1805/W/17/3175713 - Allowed with Conditions - 18 August 2017

¹⁰ Appeal Ref: APP/U2235/W/16/3145575 - Allowed with Conditions - 9 December 2016

¹¹ Appeal Ref: APP/Z3825/A/13/2200213 - Allowed with Conditions - 18 June 2014

¹² Appeal Ref: APP/R0335/W/14/2228002 - Allowed with Conditions - 20 August 2015

¹³ Hearing Document 3

34. Notwithstanding the above, I have reservations that the covenants in the UU are not precise in terms of delivery of the affordable housing and availability for occupation and allocation by a Registered Provider as they rely considerably upon the definitions and rules of interpretation in the agreed terms of the UU. However, I afford significant weight to the view of the Council's Senior Solicitor expressed at the Hearing that, notwithstanding those reservations, the planning obligation would provide for affordable housing within the site as intended. I, therefore, take the planning obligation relating to affordable housing into account when determining this appeal.
35. The UU would also provide financial contributions to secure the provision of two secondary education places and a post 16 year place at Queen Elizabeth's Grammar School. The contributions are justified by evidence provided as part of the planning application consultation, are necessary to make the development acceptable in that context and would comply with the statutory tests contained in The Community Infrastructure Levy Regulations 2010.

Other Matters

36. The development would have a number of benefits relating to its contribution to housing supply and choice in Derbyshire Dales arising from up to 14 dwellings including the potential for delivery of affordable housing in an accessible location, which are important considerations that carry significant weight. There would also be associated economic benefits during construction and support for local services and facilities after occupation, which carry moderate weight based on the scale of the development proposed.
37. In addition, subject to the submission of a detailed site layout and landscaping as part of the reserved matters, the provision of a wooded area and additional hedgerow planting could provide additional benefits, albeit modest, in terms of ecology and biodiversity within the site. However, the weight that can be afforded to those matters is limited as the existing layout remains illustrative. In that context, any associated benefits of a wooded area in terms of noise mitigation for future residents and shading of adjacent agricultural land are matters which can be afforded little weight.
38. There is no substantive evidence in terms of the limited road traffic accidents in the local area or their causes which would lead me to consider that the formation of a new access on Derby Road would be harmful. Based upon the evidence and my observations, a safe and suitable access to the site could be achieved for all people as part of a reserved matters submission. Furthermore, the increase in traffic movements would not have a severe residual cumulative impact upon the transport network. The development, therefore, would not have a harmful impact upon highway or pedestrian safety.
39. The design of a detailed site layout and landscaping at reserved matters stage would also be capable of ensuring no significant effect upon the living conditions of occupiers of neighbouring properties.
40. The site is located in Flood Zone 1. Consequently, the development would not be at unacceptable risk of flooding or increase the risk of flooding to surrounding properties, subject to a detailed site layout as part of the reserved matters and drainage provision. The latter details could be secured by condition if the appeal were to be allowed.

Planning Balance

41. As previously stated, the Council can demonstrate a deliverable five year supply of housing land in accordance with paragraph 47 of the Framework. The circumstances by which paragraph 49 of the Framework would engage paragraph 14, therefore, are not met. However, as Saved Policies H4 and SF4 of the LP pre-date the Framework they are necessarily also considered in terms of paragraph 215. The approach of Saved Policies H4 and SF4 is broadly consistent with the Framework in terms of its core planning principles, particularly the fifth bullet of paragraph 17, and paragraphs 28, 54 and 55. However, the policies relate to settlement boundaries and identification of countryside in the LP that are based upon assessments of housing need up to 2011. Furthermore, it is evident that the Council's ability to demonstrate a five year housing land supply places some reliance upon proposed housing allocations in the ELP that lie outside of existing LP settlement boundaries. Accordingly, Saved Policies H4 and SF4 of the LP cannot be considered up-to-date and paragraph 14 of the Framework is engaged.
42. I have identified a number of benefits of the development that weigh in its favour, including the contribution to the supply of housing of up to 14 dwellings with affordable housing in an accessible location. There would also be some moderate economic, social and environmental benefits that I have identified which also weigh in favour of the proposal. The absence of harm in terms of highway and pedestrian safety, living conditions of occupiers of neighbouring properties, flood risk and the setting of a Grade II* listed building are neutral factors which neither weigh for nor against the proposal.
43. However, I have found that there would be considerable harm to the character and appearance of the area in a countryside location resulting in conflict with Saved Policies SF5 and NBE8 of the LP, which are consistent with the Framework, and also conflict with Saved Policies H4 and SF4. There would be associated conflict with Emerging Policies of the ELP, albeit that those policies carry only moderate weight in the context of paragraph 216 of the Framework based upon their advanced stage of preparation but taking into account that they remain subject to objections and modifications.
44. Having regard to all of the above and in the context of paragraph 14 of the Framework, I conclude that the extent of the harm identified would significantly and demonstrably outweigh the benefits of the appeal proposal. Consequently, the proposal would not result in sustainable development when considered relative to the development plan and the Framework as a whole.
45. The Framework does not change the statutory status of the development plan in terms of decision making. I conclude that the identified harm relating to the proposal and the associated conflict with the development plan are not outweighed by the other material considerations in this case.

Conclusion

46. For the reasons set out above and having taken all other matters into account, I conclude that the appeal should be dismissed.

Gareth Wildgoose

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jeremy Fryer	Roche Enterprises Ltd
Sian Griffiths	RCA Regeneration Ltd - Director
Gareth Sibley	RCA Regeneration Ltd - Senior Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Chris Whitmore	Derbyshire Dales District Council – Principal Planning Officer
Katie Hamill	Derbyshire Dales District Council - Senior Solicitor
Joseph Baldwin	Derbyshire Dales District Council - Area Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

- 1 E-mail correspondence dated 30 October 2017 relating to draft Statement of Common Ground
- 2 Doveridge Neighbourhood Development Plan 2017 - 2033 dated October 2017
- 3 HM Land Registry Title Plan (Title Number DY258923) at 1:1250 scale
- 4 Application for costs made by Roche Enterprises Ltd (including appended e-mail thread)
- 5 E-mail correspondence dated 9 August 2017 from Gareth Sibley to Chris Whitmore.