



Appeal Decision

Site visit made on 13 February 2018

by **Elizabeth Pleasant DipTP MRTPI**

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

Decision date: 23 March 2018

Appeal Ref: APP/R1038/W/17/3189171

Land off Back Lane, Wessington

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Partner Construction Limited against the decision of North East Derbyshire District Council.
 - The application Ref 17/00331/FL, dated 17 March 2017, was refused by a notice dated 2 August 2017.
 - The development proposed is for 16 dwellings. Including 2 x 2 bed bungalows, 8 x 2 bed houses and 6 x 3 bed houses.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development set out in the banner heading is taken from the application form. A revised description has been subsequently agreed between the appellant and the local planning authority which describes the development proposed as "The erection of 16 dwellings (10 shared ownership and 6 rent to buy units) (including 2 bungalows)(Major Development)(Affecting Public Footpath) (Amended Plans)." I am satisfied that this is an accurate description of the appeal proposal and it is on the basis of this revised description that I have determined the appeal.

Application for costs

3. An application for costs was made by Partner Construction Limited against the decision of North East Derbyshire District Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues in this case are:
 - Whether or not the proposed development is in an accessible location;
 - Whether or not the proposed development would provide affordable housing in accordance with the development plan;
 - The effect on landscape character and appearance of the area;
 - The effect on highway safety; and

- The effect on drainage, with particular regard to surface water disposal.

Reasons

Development Plan

5. The North East Derbyshire Local Plan, adopted 2005 (Local Plan) is the development plan for the area. The Council is preparing an Emerging Local Plan (2011-2033), however it is in the very early stages of consultation and the weight that I can attribute to it is therefore limited. Similarly, the Wessington Neighbourhood Plan is also in its infancy and can be afforded no weight.
6. The Council's Interim Planning Policy for New Housing Development in North East Derbyshire 2010 has been drawn to my attention. It seeks to address circumstances where there is an absence of a 5-year supply of housing, suggesting that the Council will consider proposals for new housing development outside of the Settlement Development Limits (SDL) subject to various criteria, including that the site should adjoin an SDL and not form a prominent intrusion into the countryside. Although the document carries no statutory weight as it does not form part of the development plan, it indicates that the Council accept that development outside of SDL would be necessary to meet its housing requirement. I have had regard to this document in making my decision.

Whether or not the proposed development would be in an accessible location

7. The appeal site comprises some 0.71 hectares of pastoral land which is located outside of the SDL for Wessington as identified in the Local Plan. The site is therefore defined in the Local Plan as an area of countryside.
8. Policy GS1 of the Local Plan requires all development proposals to have regard to the need to maintain or improve the quality of life for the District's communities, maintain economic growth and preserve or enhance its environment and contribute towards achieving a sustainable pattern of development. To achieve this, amongst other criteria, Policy GS1 (a) requires development to be located within the defined SDL, unless the development is acceptable in the countryside, or overriding exceptional circumstances can be demonstrated and; (c) be well related to existing, or capable of providing, public transport networks, other services and facilities, and be accessible on foot and by cycle.
9. In this instance the proposed development, although adjacent to, would lie outside Wessington's SDL and encroach into open countryside. Furthermore, it would not be for a form of development that is identified in Policy GS6 of the Local Plan as being acceptable in the countryside. The proposed development would therefore conflict with Policy GS6 and criteria (a) of Policy GS1.
10. Wessington is a small village with some facilities and services, including a church, primary school, public house and fish and chip shop. The appeal site lies within walking distance of those facilities. The village is also served by a bus service which runs Mondays – Saturdays between Matlock, Alfreton and Clay Cross, where a greater number of services, facilities and employment opportunities are located. However, the bus service¹ is two hourly and does not run beyond 1800 hours. It does not therefore provide a completely viable

¹ Appendix 7, Local Planning Authority Statement of Case.

alternative mode of transport, in particular in respect of providing access to employment. Furthermore, in view of the local topography and distance from the nearest employment opportunities, cycling would be unlikely to be a realistic option.

11. In addition, the village does not have a convenience store and it is also clear from Derbyshire County Council's consultation response that Wessington Primary School would not have capacity to accommodate the projected three primary pupils arising from the appeal proposal. Furthermore, a planned community hall has yet to come into fruition. Consequently to access those facilities and services more car journeys are likely to be required.
12. In the absence of being able to demonstrate a five year supply of deliverable housing land, Wessington has seen considerable growth in recent years, including on land outside of its SDL. Some 115 dwellings have been approved over the last 10 years and over half of those new dwellings have been, or are nearly completed. Whilst I accept that the appeal site has similar levels of access to services and facilities as those sites which have been granted planning permission, further housing in this location would result in even more car trips, and it is clear that some of those existing facilities are being stretched. This cumulative effect is a relevant consideration. In this regard the proposal would contribute to a pattern of development where residents would be largely reliant upon a private car and would fail to reduce the need to travel. Whilst, the proposal would allow new residents to provide some support for services in Wessington, those services are limited and this reduces the weight I attribute to this as a benefit.
13. Accordingly, the proposal would conflict with criteria(c) of Policy GS1 of the Local Plan, the aims of which are set out above. It would also conflict with one of the core planning principles of the National Planning Policy Framework (the Framework) which aims to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are, or can be made sustainable.

Affordable Housing

14. Policy H3 of the Local Plan advises that planning permission will only be granted for housing development outside of the defined SDL if the proposal falls within one or more of a number of listed categories which include, affordable housing on rural exception sites in areas where there is a proven identified need for such housing. Policy H9 of the Local Plan relates specifically to exception sites in rural areas for affordable housing.
15. The proposed development is described as the erection of 16 dwellings (10 shared ownership and 6 rent to buy units). It was considered by the Council as an application for 100% affordable housing and there is no dispute that the shared ownership and rent to buy tenures proposed would meet the definition of Affordable Housing set out in Annex 2 to the Framework. In the absence of a planning obligation being provided, the main parties have agreed that the affordable housing could be secured by a condition.
16. Policy H9 advises that as an exception to normal planning policies applying throughout the area, the District Council will grant planning permission for affordable housing on rural sites that would not normally be released for development, provided that, amongst other criteria: (a) it would meet a

genuine local need that would not otherwise be met by the housing market (this need should be shown by the appellant); and (d) it takes full account of environmental considerations as set out in policies in the Local Plan.

17. From the evidence before me there does not appear to be a demonstrable affordable housing need within Wessington Village, this need having been addressed by recent housing development. However, the Council do not dispute that they have an unfulfilled wider affordable housing need across the District. I have also taken into consideration the proposed rent to buy tenure which is an affordable housing offer not currently available within the District, and which would add to the housing mix available. However, in the absence of any demonstrated local need within Wessington, and taking into consideration my conclusion on the first main issue set out above, the proposed affordable housing in this location would conflict with environmental considerations set out in other policies in the plan.
18. Accordingly, I conclude that the appeal proposal would not provide affordable housing in accordance with the development plan. It would conflict with Policy H3 and H9 (a) and (d) of the Local Plan, the aims of which are set out above.

Landscape character and appearance

19. The appeal site lies on the northern side of Back Lane and forms part of a much larger agricultural field. The field adjoins the settlement edge of Wessington Village and there is residential development adjacent to the site's western boundary and along the opposite side of Back Lane fronting towards the appeal site. A public footpath crosses the site and traverses the field in a north east/south west direction, providing walkers with uninterrupted views across the Amber Valley. It is understood that the public footpath is heavily used by local walkers and residents of the village and they clearly value the site's open character and use of the footpath for recreation.
20. Policy NE1 of the Local Plan seeks to ensure, amongst other things, that the varied and distinctive landscape of the District is conserved or enhanced and development proposals would not result in the loss of distinctive features that contribute towards and add value to the landscape character of an area.
21. The site lies within the Derbyshire Peak Fringe and Lower Derwent Character Area². As part of a wooded farmlands character type its key characteristics include, small to medium irregular fields enclosed by hedgerows, scattered ancient woodlands and hedgerow trees and an undulating intermediate landform with gentle slopes. The appeal site is typical of this landscape type. It forms part of an undulating field enclosed by native hedgerows and scattered hedgerow trees.
22. The appeal proposal would develop the part of the field fronting onto Back Lane and in a location where there is existing residential development on the opposite side of the road. On entering or leaving the village along Back Lane, the proposed development would therefore appear as an extension to the existing street scene by the continuation of housing along both sides of the lane. Furthermore, the existing mature trees adjacent to the appeal site's eastern boundary would provide a robust sylvan edge to the development and indeed to the village.

² Appendix 7 Appellant's Statement, Derbyshire Landscape Character Assessment.

23. In landscape terms the proposed development would retain the existing stone walls and hedgerows and would also include new hedgerow planting. The existing open views across the valley towards Brackenfield Church from Back Lane, the Orchard opposite and for the occupiers of existing properties, which overlook the appeal site, would be lost. However, this would only be a localised impact and the experience of users of the public footpath would not be altered significantly. On entering the footpath from Back Lane, walkers would quickly pass adjacent to the proposed housing and emerge into the open landscape where those views of the valley would be reinstated. Travelling in a southerly direction towards the village, the proposed housing would sit on a plateau and only become visible at closer quarters. The development would follow the topography of the land and when viewed from a distance and from across the valley, it would appear as part of the wider settlement edge.
24. The absence of any existing physical features to define the northern boundary of the site would mean that the rear gardens and elevations of the proposed development would be particularly conspicuous in closer quarters. However, this would only be a short term impact and the new hedgerow proposed along this boundary would create an appropriate interface between the urban and rural landscape in the long term.
25. Having regard to the street scene, the proposed development would include a mix of short terraced blocks of housing, semi-detached houses and bungalows. There would be clear space between the terraces and the semi-detached pairs, which would reflect the existing spatial character found along Back Lane. In addition, the existing stone wall along the site frontage would be retained, and this landscape feature, together with the proposed enhanced planting, would screen the hardstanding and parking areas proposed directly in front of the houses. At a density of 23 dwellings per hectare I am not persuaded that the proposal would represent an over development of the site and for the reasons given above, the scale and layout of the development would not appear uncharacteristic in the street scene as a whole.
26. Overall, for the reasons set out above I conclude that the appeal proposal would have a less than significant harmful effect on the landscape character and appearance of the area. It would not therefore conflict with Policy NE1 of the Local Plan, the aims of which are set out above.

Highway safety

27. The appeal proposal would include two new vehicular accesses onto Back Lane to serve the site, and a two metre wide footway would be provided across the appeal site frontage. There does not appear to be any dispute between the main parties that vehicles would be able to enter the appeal site and leave it in a forward gear. In addition, the accesses would be furnished with adequate visibility splays which have been demonstrated commensurate with a speed survey. It is also agreed that the proposals would include sufficient onsite parking space for future occupiers. However, the Council remain concerned that the proposed development would introduce additional manoeuvres onto a stretch of highway adjacent to the appeal site that would impact negatively on the safe and free flow of traffic and safety of other highway users by reason of the road's limited width and alignment. In addition, they are concerned that the increase in road traffic created by the development would have an adverse impact on the local highway network.

28. The appeal site is located on a relatively straight section of Back Lane where the speed limit is restricted to 30mph. It is lit, has a footway along one side and no road markings or waiting restrictions. The Transport Statement³ (TS) which accompanied the original planning application identifies the carriageway width as approximately 5.2m.
29. Evidence from the TS estimates that at the worst-case scenario, the development proposals may generate twelve movements (in and out) in the early evening peak hour. This is equivalent to one movement every five minutes. Based on technical references set out in Appendix A-A9 of the TS, where two way movements do not exceed thirty during peak hours, there would be no material impact on the highway network. Moreover, the Highway Authority has not raised any objections to the appeal proposal.
30. From the evidence I have before me it is apparent that the development would be served by a safe access with appropriate gradient, width, alignment and visibility. Additionally, the site is accessible to a road network of adequate standard to safely accommodate the anticipated traffic generated by the development. I have taken into consideration third party concerns that given the proximity of the site to the settlement edge, vehicle speeds may exceed 30mph. However, in the absence of any substantive evidence to suggest that the speed limit is not observed, I give this consideration limited weight.
31. The Council has not provided any evidence to counter the conclusions of the TS or Highway Authority. Therefore, based on the evidence before me, and taking into account my own observations on my site visit, I am satisfied that the proposed development would not have a detrimental effect on highway safety.
32. I conclude that the appeal proposal would not be harmful to highway safety. I therefore find no conflict with Policy T2 of the Local Plan which seeks to ensure, amongst other things, that development would be served by a safe means of access and is accessible to a road network that can accommodate the traffic generated by the development. I also find no conflict with the Framework (paragraph 32) which advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Drainage

33. The appeal site lies within Flood Zone 1 where there is a low risk of flooding. It is also identified as a site where there is a low risk of surface water flooding. It is however clear from third party correspondence that there are local concerns relating to poor surface water drainage on this part of Back Lane and the appeal site.
34. The application is accompanied by a Flood Risk Assessment and as soakaways are not considered feasible due to existing ground conditions, the appeal proposal includes a balancing pond to attenuate water before discharging into Winny Brook to the north. No specific objections on drainage grounds have been raised by any of the statutory consultees, and the appellant has indicated that should the appeal proposal be acceptable in all other respects, they would be willing to accept a condition requiring details for the design and associated

³ Transport Statement, Prepared by iprt Transport Planning Group, dated 14 March 2017

management plan for surface water drainage to be agreed with the local planning authority.

35. In view of the site location within an area of low flood risk, and in the absence of any substantive evidence to lead me to conclude that any additional surface water generated by the development could not be adequately disposed of, I am satisfied that surface water disposal matters could be adequately addressed by a condition. This would be reasonable and necessary to prevent localised flooding and safeguard the living conditions of future occupiers.
36. For the reasons given above I conclude that the appeal proposal would not have a harmful effect on drainage, with particular regard to surface water disposal. I find no conflict with Policies CSU4 and NE9 of the Local Plan which seek to ensure, amongst other things, that new development would not take place in an area at risk of flooding and includes making adequate provision for surface water drainage.

Other Matters

Setting of Roadbrook Farm

37. Third parties have raised concerns that the proposed development would have a harmful effect on the setting of Grade II listed Roadbrook Farm. This farm and its associated farm buildings lie to the north west of the appeal site and its significance is partly derived from its farm and setting. However, it is located some distance from the appeal site and separated from it by undulating open fields. There would be limited inter-visibility between the proposed development and the farm buildings and I do not consider that the appeal proposal would have a harmful impact on the setting of Roadbrook Farm. The proposal would therefore accord with the provisions of the Planning (Listed Building & Conservation Areas) Act 1990 and preserve the setting of Roadbrook Farm.

Housing Land Supply

38. There is some dispute between the main parties about whether or not the Council is able to demonstrate a five-year supply of deliverable housing sites. When the Council determined the application in August 2017 they stated that they did not have a five-year housing land supply. However, the Council has recently published a Five Year Housing Land Supply Statement, 2017⁴ which they believe demonstrates that the Council has a seven year supply.
39. The appellant does not consider that the position has changed since my colleague's decision in June 2017⁵ where he concluded that the District had a 1.79 year deliverable housing land supply. However, the Council advise that the current supply is based on an updated, September 2017 Strategic Housing Market Assessment (SHMA) and Objectively Assessed Need (OAN) and takes into account the most up to date National Household Projections (February 2016).
40. The Council's evidence, including their application of only a 5% buffer for past under delivery, an average lapse rate of 5% for minor sites and site deliverability expectations have not been independently scrutinised at

⁴ Appendix 4, Local Planning Authority Statement of Case.

⁵ APP/R1038/W/17/3169558

examination. Whilst it may be that the Council's housing land supply position has improved substantially since June taking into account their updated SHMA-OAN, I do not have sufficient evidence before me to be able to conclude that its policies for the supply of housing should be considered to be up-to-date.

Planning Balance

41. Paragraph 14 of the Framework indicates that where relevant policies are out of date 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 taken as a whole.
42. Policy GS1 is a general development strategy policy which seeks to create a sustainable environment, maintain and improve the quality of life for residents and preserve or enhance the environment. For the reasons set out in my first main issue I give the proposed development's conflict with this policy significant weight.
43. I also give significant weight to the proposal's conflict with Policy H9. The proposed affordable housing would not be located in an accessible location and it is not required to meet an identified local need.
44. However, Policies H3 and GS6 of the Local Plan pose a restriction on housing development outside of SDL. The strict application of these policies would prevent improvement to any shortfall in the supply of housing, and in view of the site's location on the edge of the village I attribute limited weight to the conflict with these policies.
45. The proposal would have some social and economic benefits of addressing an under-supply of housing land. In addition the provision of sixteen affordable homes would undoubtedly be a substantial social benefit. There would also be some economic benefits through investment during the construction period, and some increase in local householder spending in the village pub, fish and chip shop and support for the local bus service. However, there is no evidence to confirm that those services and facilities are under threat in the absence of the development.
46. I have found no significant harm to landscape character or the appearance of the area. There would be no unacceptable impact in terms of highway safety or drainage that could not be mitigated by conditions. However, the absence of harm is not a benefit that would weigh in favour of the scheme.
47. The proposed development would result in encroachment and urbanisation of the open countryside. However, the contribution the scheme would make to biodiversity through hedgerow planting and alleviation of flood risk would, to an extent, mitigate that harm.
48. On the other hand Wessington has seen a substantial amount of housing development in recent years and has only limited facilities. Public transport is restricted to daytime services and there is no convenience store. Furthermore, the existing primary school is at capacity and the proposed development would not mitigate the impact of the proposed development on school places, nor help maintain the village's playground.
49. I accept that the proposal would help to meet a District wide unfulfilled need for affordable housing, which would be a substantial social benefit. However,

the Framework must be considered as a whole. In this instance, the continued unplanned expansion of Wessington Village into the countryside, where existing services are limited and facilities stretched, would to my mind perpetuate the need for future residents to travel by motor vehicles to access shops, employment and other services. Further affordable housing development in this location, would not therefore contribute to a sustainable pattern of development, would not preserve the environment and would not in my opinion improve the quality of life for the local community. These considerations all weigh heavily against the proposal.

50. The lack of a five year supply of housing land does not automatically lead to a grant of planning permission. Even if I were to conclude that there is a shortfall in the five-year housing supply on the scale suggested by the appellant, the adverse environmental impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As such the proposal is not sustainable development does not therefore benefit from the presumption in favour of sustainable development.

Conclusion

51. The proposal would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations including the provisions of paragraph 14 of the Framework.
52. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Elizabeth Pleasant

INSPECTOR