



---

## Appeal Decision

Site visit made on 20 February 2018

**by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 March 2018**

---

**Appeal Ref: APP/A3010/W/17/3189977**

**Land to the south of Fox Covert Lane, Misterton DN10 4EJ**

- 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 Mr D Jacklin against the decision of Bassetlaw District Council.
  - The application Ref 17/00758/OUT, dated 5 June 2017, was refused by notice dated 14 September 2017.
  - The development proposed is described as outline planning permission for residential development of up to 65 dwellings, including 23 social houses, with all matters reserved.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The application is in outline with all matters reserved for future consideration. A drawing showing the position of a proposed access was submitted with the application. I have had regard to this in the determination of this appeal.

### Main Issues

3. The main issues are:
  - Whether the proposed development would be appropriately located having regard to the position of the site outside of the development boundary of Misterton and the effect on the character and appearance of the surrounding area.
  - Whether the proposed development can be safely undertaken and occupied bearing in mind the location of the site within the consultation distance of a Major Hazard Site/Pipeline.
  - The effect of the proposed development on highway safety.
  - The effect of the proposed development on protected species.
  - Whether, having regard to the 5 year housing land supply, the proposed development would be appropriately located with regard to the Council's spatial strategy for new housing.

## Reasons

### *Character and appearance*

4. The appeal site comprises a former agricultural field located to the south of Fox Covert Lane and an unmade track, Tupcroft Lane, with wider open countryside beyond. A characteristic feature of the area in the vicinity of the appeal site is that development is concentrated to the north of Fox Covert Lane with the area to the south comprising open countryside. Fox Covert Lane thus provides a defined settlement boundary to development that lies within the village with the wider countryside located to the south.
5. The proposed site, in being located to the south of the Fox Covert Lane and outside the development boundary of the village is defined for planning purposes as being located within the open countryside. The proposal would represent the extension of residential development into the open countryside. This would result in the urbanisation of a site that forms an important part of the wider countryside.
6. Owing to the position of the appeal site to the south of the defined development boundary and its protrusion into open countryside, the proposal would appear as a significant standalone addition to the settlement. It would have a poor functional relationship to the existing built form of the village within the settlement boundary. As such, it would not form part of the recognisable and defined settlement pattern of the village.
7. The Council indicate that the site is identified in the Bassetlaw Landscape Character Assessment as being located within the Mid-Nottinghamshire Farmlands Policy Zone 02: Wakeringham where landscape actions are to conserve the open rural character of the landscape. Whilst this assessment affords no statutory protection, it nevertheless does recognise the contribution that the open rural nature of the area makes to the landscape character.
8. The proposal would result in an isolated block of residential development protruding into the countryside, outside of the recognisable and established settlement pattern of the village. The current rural appearance of the site would be unacceptably lost and a more suburban character would prevail. As such, it would result in the urbanisation of this part of the countryside that would erode the open rural character of this part of the landscape and the access to views beyond.
9. The proposed development would fail to conserve the open rural character of the landscape and would cause significant harm to the character and appearance of the surrounding area. As such, the proposal would not accord with Policies DM4 and DM9 of the Bassetlaw Core Strategy and Development Management Development Plan Document (2011) (DPD). These policies, amongst other things, require that new development should respect its wider surroundings and landscape character, make a functional and physical link with the existing settlement and should not comprise a standalone addition.

### *Proximity to Major Hazard Site*

10. The appeal site is located to the north of a Petroleum Storage Depot and, as such, is defined by the Health and Safety Executive (HSE) as being located within the Consultation Distance of a Major Hazard Site/Pipelines. The HSE has

produced a map with risk contours that identifies a risk based approach to the assessment of development relative to the safety risks arising from the proximity to the Petroleum Storage Depot.

11. The risk contours refer to 'inner', 'middle' and 'outer' zones. The appellant has referred to the HSE's Land Use Planning Methodology Guidance which provides a matrix of advice as to whether the HSE 'advise against' or 'do not advise against development' relative to the type of development proposed and its position relative to the risk contours.
12. In this case, the southern corner of the site is located within the 'inner zone' where the matrix identifies that the HSE would advise against development. The remainder of the southern half of the site is located within the 'middle' and 'outer' zones where the matrix identifies that the HSE would not advise against development. The northern half of the site is located outside of the Consultation Distance of a Major Hazard Site/Pipelines.
13. I have taken into account the appellant's view that, given the outline nature of the proposal, a layout could be designed at reserved matters stage that excludes dwellings from the inner zone and utilises this area for open space purposes. Whilst I have some sympathy with this view, the formal response from the HSE to the Council is 'that there are sufficient reasons on safety grounds for advising against the granting of planning permission in this case'. I have attached significant weight to the views of the HSE.
14. Notwithstanding the appellant's suggestions regarding the layout, against the background of the unequivocal and unambiguous response of the HSE, I have no other evidence that would demonstrate that the HSE can be satisfied that a form of development could be secured without compromising public safety risks. Consequently, at this stage, I cannot be satisfied that the proposed development can be safely undertaken and occupied. The proposal would be contrary to the advice provided in the National Planning Policy Framework (the Framework) regarding the provision of a safe form of development.

#### *Highway Safety*

15. The indicative plan shows that the proposed access would be off Tupcroft Lane which the local highway authority suggests is a byway open to all traffic (BOAT). At the intersection between Fox Covert Lane and Tupcroft Lane, Fox Covert Lane turns through 90 degrees and becomes Grovewood Road.
16. The local highway authority indicates that for general vehicular access to be gained from Tupcroft Lane, the carriageway would require making up to all-purpose highway standard and to be adopted as such. However, Tupcroft Lane is not shown within the application area. Although the local highway authority suggests that the part of the frontage of the site adjoining Fox Covert Lane would provide the most likely area to form a junction to serve the development, in light of the access position shown on the indicative plan I have no evidence to confirm that this would be the case.
17. If Tupcroft Lane was to be used as the means of access then it would entail use of the junction with Fox Covert Lane at a position where the road turns through 90 degrees. I recognise that the means of access is a reserved matter. However, given the number of vehicular movements that would be likely generated by the proposed development and the horizontal alignment of the

existing highway, I agree with the highway authority that it may prove difficult to locate the junction in a position that provides adequate forward visibility for right turning vehicles and that the outline proposals should demonstrate that a suitable junction is at least feasible within the land available.

18. Taking into account the existing configuration of the junction and the absence any other evidence to demonstrate that a safe means of access is feasible, I share the Council's concerns that the proposal does not adequately demonstrate that safe access can be achieved. As such, the proposal is contrary to Policy DM4 of the DMP which, amongst other things, requires that new development should not have a detrimental effect on highway safety.

#### *Protected Species*

19. Although the appeal site is not covered by any nature conservation designation, I am mindful of the comments provided in the Preliminary Ecological Appraisal Report which indicate the potential for protected species to be present on the site or immediately adjacent. I have attached significant weight to these comments.
20. Paragraph 99 of the Government (ODPM) Circular 06/2005, which remains in force, indicates that a survey should be carried out before planning permission is granted where there is a reasonable likelihood of a protected species being present and affected. Consequently, it advises that surveys should only be required by a planning condition in exceptional circumstances.
21. The Preliminary Ecological Appraisal Report identifies that further detailed surveys are required in order to assess the presence of protected species on the site. As such, more detailed ecological surveys, as identified in the Preliminary Ecological Appraisal Report, should have been submitted prior to the Council's consideration of the proposal.
22. Taking into account the advice contained within Circular 06/2005, I do not have any evidence to indicate that there are any exceptional circumstances in this case to suggest that such a survey could be required by a pre-commencement planning condition. Consequently, the proposal would be contrary to Policy DM9 of the DPD. This policy, amongst other things, requires that development proposals should demonstrate that they will not adversely affect or result in the loss of features of recognised importance, including protected species.

#### *Spatial development strategy*

23. The Council accepts that it cannot demonstrate a 5 year supply of land for housing in accordance with paragraph 47 of the Framework. In these circumstances, Paragraph 49 of the Framework states that relevant policies for the supply of housing cannot be considered up to date if a five year deliverable supply of sites cannot be demonstrated. Where relevant policies are out of date paragraph 14 of the Framework is to be applied requiring the granting of planning permission unless an adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.
24. The Council's approach to the location of new development is set out in Policy CS1 of the DPD. This policy indicates that until the adoption of the Site Allocations DPD, development in the settlements identified in the hierarchy will

be restricted to the area inside defined development boundaries. It also recognises that additional permission may be granted where development would assist in addressing the shortfall in 5 year housing supply. The appellant indicates that Misterton is identified in the hierarchy set out in Policy CS1 as a Local Service Centre which can support moderate levels of growth.

25. Notwithstanding the fact that the DPD predates the Framework, its approach accords with the core principles of sustainable development as set out in paragraph 7 which advises that there are three dimensions to sustainable development: economic, social and environmental. Whilst it may be possible to deliver positive gains to one of these, this should not be to the detriment of another. In order to achieve sustainable development, the Framework advises that the planning system should ensure that economic, social and environmental gains are sought jointly and simultaneously. Policy CS1 the DPD reflects the advice provided in paragraph 7 of the Framework by seeking to direct housing growth in sustainable settlements and prevent uncontrolled growth into the surrounding countryside.
26. There are benefits, both socially and economically, associated with the proposed development, notably its contribution to the provision of affordable housing and the supply of housing generally. Such benefits are by no means insignificant. However, there would be environmental harm caused to the character and appearance of the local area and the creation of new housing at an inappropriate countryside location. These factors would not accord with the environmental dimension of sustainability. In addition the proposal does not adequately demonstrate that it can be safely undertaken and occupied and that there would be no harm to protected species or highway safety.
27. Given the above and having had regard to the policies of the Framework as a whole, the failure to accord with the environmental dimension of sustainability and the uncontrolled expansion of development into the countryside would significantly and demonstrably outweigh the benefit of providing additional housing and the contribution that this would make to meeting the District's housing supply. The proposed development would thus be contrary to paragraph 14 of the Framework.

#### *Other matters*

28. I have taken into account the concerns of the Parish Council and interested parties regarding the impact of the proposal on local health and school facilities, sewage and surface water disposal. Although these matters have been carefully noted, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.

#### **Conclusion**

29. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

*Stephen Normington*

INSPECTOR