



Appeal Decision

Site visit made on 17 October 2018

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 16 November 2018

Appeal Ref: APP/K2420/W/18/3197865

Land south of Chapel Fields Livery Stables, Chapel Lane, Witherley

- 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 Mr A Cartwright of Cartwright Homes Limited against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 15/00441/FUL, dated 14 April 2015, was refused by notice dated 11 October 2017.
 - The development proposed is residential development forming 21 dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Following the submission of the planning application the scheme was amended reducing the number of houses proposed on the site. The description of the development that appears on the decision notice and on the appeal form is 'erection of 10 dwellings and associated access.' I am content that this amended description adequately describes the proposal and I shall use it in the determination of this appeal.
3. A properly completed unilateral undertaking made under section 106 of the Town and Country Planning Act 1990 was submitted after the site visit. It secures financial contributions towards education and the provision of affordable housing, off-site play space and open space. Its terms are addressed in more detail within the decision.

Main Issue

4. The main issue in this appeal is whether the appeal site would be a suitable location for the proposed development having regard to the spatial strategy for the Borough, the effect of the proposal on the character and appearance of the countryside and landscape, and its effect on the operation of the Parish Room.

Reasons

Location of development

5. The development plan for the Borough includes the Hinckley & Bosworth Core Strategy ('Core Strategy') and the Site Allocations and Development Management Policies Development Plan Document ('SADMPDPD').
6. The spatial strategy of the Core Strategy is to focus the majority of new housing on urban areas within the Borough, whilst also providing some new housing in rural areas to accommodate their development needs. In rural

areas the Core Strategy identifies three main types of settlement: Key Rural Centres, Rural Villages and Rural Hamlets. Witherley is classified as a Rural Village owing to its limited services. Policy 12 of the Core Strategy supports new housing within its settlement boundary to provide a mix of housing types and tenures to meet the identified needs of the settlement. The appeal site is next to but outside the settlement boundary for the village. The location of the proposed housing scheme would therefore be contrary to policy 12 of the Core Strategy.

7. Accordingly, for planning policy purposes the appeal sites lies within the open countryside where development is strictly controlled by policy DM4 of the SADMPDPD. Given that the proposed housing development would not fall within any of the exceptions to this policy it would therefore also be contrary to policy DM4 of the SADMPDPD.
8. In relation to Witherley Core Strategy policy 12 advises that the Council will:
"Work with the Highways Agency to address identified problems with the A5/Kennel Lane junction. If these problems can be overcome, the council will allocate land for limited housing development".
9. This section of the policy was clearly pointing to the site allocations process. In that context, it is evident from the SADMPDPD that the Council did indeed work with the Highways Agency (now Highways England) but that this did not generate a solution to the junction problems. Thus, no land was allocated for housing at Witherley in the SADMPDPD. Although the work of this particular part of policy 12 is now, in effect, complete (as the SADMPDPD has been adopted) given its very clear terms that does not render the policy "out-of-date" in the terms suggested by the appellant¹. Nor can the appellant's proposal accord with this part of policy 12 as it is not a development management criterion aimed at schemes that may come forward following the completion of the site allocations process.
10. Nevertheless, the parties agree that following a recent inquiry² policies of the development plan governing the supply of housing, such as policy 12 of the Core Strategy and policy DM4 of the SADMPDPD, are out of date as they relate to an earlier housing requirement that is lower than the current assessed need. On the basis of the Inspector's reasoning in that decision and the evidence before me, I have no reason to disagree with that position.

Character and appearance

11. Policy DM4 of the SADMPDPD seeks to protect the intrinsic beauty and character of the countryside by safeguarding it from unnecessary development. It is therefore consistent with paragraph 170 of the National Planning Policy Framework ('the Framework') which is supportive of such an approach.
12. The appeal site is an overgrown field next to Chapel Lane with its perimeter enclosed by a hedge with occasional trees along its southern and eastern boundary. The site is located next to the eastern edge of built development associated with the village with a single detached house on its western side.
13. The site lies within the Sence Lowlands Landscape Character Area which is characterised by hedged fields in a flat to gently undulating landscape with

¹ Bloor Homes (East Midlands) v Secretary of State for Communities and Local Government

² Appeal Ref: APP/K2420/W/17/3188948

- linear villages and scattered agricultural buildings. Although there is a cluster of disused overgrown single story livery buildings on the site they cover only a small part of it and the overgrown state of these buildings means that they are starting to merge into the landscape.
14. Although Chapel Lane is a private unadopted no through road that gives access to Drayton Farm Barn the lane is well used by those who use the Parish Room, farm vehicles and customers of the farm's boarding kennels. Moreover, a public footpath cuts southwards across the western side of the appeal site. The appeal site therefore forms part of the open countryside around the village and the rural landscape whose openness and greenness is experienced by those who make use of Chapel Lane and the footpath. As a result, it contributes to the scenery of the village, emphasises its rural character and appearance and is of moderate value to the landscape.
 15. The proposed development would result in widening of the lane, the loss of a significant proportion of the countryside on the site, including the front hedgerow along the front boundary, through development of the field with housing. In terms of the Sence Lowlands Landscape Character Area, the development up to three houses deep of the site would be at odds with the pattern of linear development associated with its villages. In urbanising a significant part of the site it would also be at odds with the open farmland and scattered isolated buildings that predominantly characterises this landscape type. The attractive appearance of the proposed houses would not offset the harm caused.
 16. In resulting in the loss of the hedgerow along the front of the site and in significantly affecting a well-used area with a distinct rural character the proposed development would not comply with the sensitivity assessment for residential development within this Landscape Character Area.
 17. Replacement planting as part of the proposed scheme has been referred to, with a thick band of trees in particular indicated along the southern side of the site. However, this would take time to establish itself and so in the short to medium term would not compensate for the urbanising effect of the proposed development in views from the footpath on the approach from the south. Moreover, copses of trees are not characteristic of the locality or the Landscape Character Area.
 18. The older western part of the village lies within a Conservation Area. Its heritage significance is architectural and historical. As the appeal site lies outside the Conservation Area the relevant issue, having regard to section 16 of the Framework, is the effect that the proposed development would have on the heritage significance of the Conservation Area in terms of its setting. The appeal site, positioned a significant distance to the east, is located sufficiently far away from the edge of the Conservation Area for the proposed development not to adversely affect views into or out of it. As a result, it would not adversely affect its setting or heritage significance.
 19. For the reasons given above, I therefore disagree with the findings of the appellant's Landscape and Visual Appraisal and conclude that the proposed development would cause demonstrable harm to the character and appearance of the countryside and landscape. This would be contrary to policies DM4 and DM10 of the SADMPDPD which seek to protect the countryside and landscape character by safeguarding the countryside from development and requiring that development complements the character of the surrounding area.

Parish Room

20. The Parish Room is an important well used community asset in the village that is available for hire. In the twelve month period up to August 2018 the Parish Council states that it has been used for over 400 social events. Located beyond the continuous built form of the village and surrounded by open countryside on three sides there is currently little scope for noise associated with its use causing annoyance or nuisance to neighbours. There are no planning conditions that restrict its hours of use.
21. The appeal site surrounds the Parish Room. The proposed development would position two houses directly to the rear of the Parish Room separated only by the short back gardens to these dwellings. On the western side of the Parish Room, beyond its small car park and an access drive, three further houses set behind modest front gardens would face the side or rear of the building. Five of the proposed houses would therefore be in close proximity to the Parish Room with a front or rear elevation of each containing windows to at least one main habitable room facing this building.
22. The Parish Room has large windows in its sides and windows in its front and rear. As a result, noise generated within the building can easily escape, particularly in warmer weather when windows are opened. In the absence of any planning restrictions on the hours of use of the Parish Room well attended social events at the building with music occurring during the day or late into the evening would annoy and disturb future occupants of the five dwellings described and have a significant adverse effect on their living conditions. This could result in restrictions being placed on the use of the Parish Room which would significantly reduce its value as a facility enjoyed by the community.
23. The local planning authority and its environmental health service do not consider that the development would harm the living conditions of future neighbours or restrict the use of the Parish Room. However, for the reasons given above, in the absence of substantive evidence that has been submitted to the contrary, I disagree.
24. For the reasons given above, I therefore conclude that the amenity of the occupiers of the proposed development would be significantly adversely affected by the use of the Parish Room. This would be contrary to policy DM10 of the SADMPDPD which, amongst other matters, seeks to prevent such harm. As a result, contrary to paragraph 182 of the Framework, it is likely that restrictions would be placed on the use of the Parish Room that would significantly reduce its value as a community facility.

Other matters

25. As part of the proposed development several new access points onto Chapel Lane would be created. Owing to traffic speed and the level of use of the lane this has resulted in highway safety concerns regarding the potential for accidents. However, as part of the proposed development a section of Chapel Lane in front of the appeal site would be widened and upgraded. Following the submission of a Transport Statement, subject to the use of appropriate conditions, the Council has no objection to the proposed scheme on highway safety grounds. I have no reason to disagree with that position.

Overall Conclusions: The Planning Balance

26. For the reasons I have set out earlier, the proposal would be in conflict with policy 12 of the Core Strategy and policies DM4 and DM10 of the SADMPDPD. These policies seek to focus new development on urban areas with development in Witherley only supported within its settlement boundary in order to further sustainability objectives and protect the countryside and its character. Policy DM10 also requires that the amenity of occupiers of the proposed development is not adversely affected by activities in the vicinity of the site.
27. Applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is an important material consideration and contains a presumption in favour of sustainable development.
28. It is common ground between the parties that development plan policies are out of date as they relate to an earlier housing requirement that is lower than the current assessed need. However, the Council has a housing land supply in excess of five years and the policies cited in relation to the main issue are consistent with the Framework in that they seek to focus development within settlements in order to protect the countryside and landscape whilst also seeking to protect living conditions. As a result, I attach significant weight to the policy conflict between the proposed scheme and the development plan and the harm that would be caused to the spatial strategy for the Borough, the character and appearance of the countryside, landscape and living conditions.
29. In circumstances where policies that are most important for determining the application are out of date, the so-called tilted balance in paragraph 11 of the Framework applies. It states that in such circumstances 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.
30. The policies of the Framework as a whole constitute the Government's view of what sustainable development means in practice. There are three objectives in sustainable development: environmental, social and economic.
31. Environmentally, as the site is not allocated there would be conflict with the spatial strategy of the development plan and the Framework which is clear that the planning system should be genuinely plan led with plans acting as a platform for local people to shape their surroundings. I have also found that demonstrable harm would be caused to the character and appearance of the countryside and landscape through loss of a significant part of the appeal site, which is of moderate value to the landscape, to built development.
32. There is the potential for some biodiversity gains on the site. The proposed houses would also be attractive in appearance. However, as this is a requirement of the development plan and the Framework this is not a benefit that weighs in favour of the proposal. The use of a sustainable drainage scheme has also been referred to as a benefit. As the purpose of such a scheme though is to ensure that the proposal does not increase surface water run-off from the site, it is required mitigation and does not constitute a benefit.
33. Socially, in lieu of the provision of two affordable houses on site the scheme would provide £61,000 towards off site provision. This would help meet some of the identified need for affordable housing in the village. The provision of ten

- open market dwellings would more than meet the identified need for such housing in Witherley. The scheme would also provide a car parking area for the Parish Room. I attach noteworthy weight to these benefits of the scheme.
34. Importantly though, I have found that the amenity of the occupiers of the proposed development would be adversely affected by noise associated with the use of the Parish Room and that it is likely that this would result in restrictions being placed on this important, well used community facility. As a result, I find that it is realistic that the scheme would cause significant harm to the vibrancy of the community, contrary to the social objective of sustainable development contained in the Framework.
35. Reference has been made to contributions that would be made towards public open space and education. However, as the purpose of these contributions is to mitigate the effect of the development on these areas they are not benefits to be weighed in favour of the proposal.
36. Economically, construction of the proposed development would result in spend on materials and twenty jobs, although this would be short lived. The additional households living in the proposed dwellings would also boost the spending power of the local economy by a small amount to the benefit of existing local services and businesses. I attach some weight to these benefits.
37. Once fully occupied the scheme would also result in additional Council Tax payments. However, as these payments would be to provide services for the residents this is not a benefit of the scheme. The development would trigger payment of a New Homes Bonus, but there is no evidence of a connection between the payments and the development to enable it to be taken into account in accordance with the advice in Planning Practice Guidance.
38. My overall conclusion in this case, having considered all the matters raised, is that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework and development plan as a whole. Consequently, the presumption in favour of sustainable development contained within the Framework and policy DM1 of the SADMPDPD does not apply, and material considerations do not indicate that planning permission should be granted for a scheme that is not in accordance with the development plan. I therefore conclude that the appeal should be dismissed.
39. As I noted as a procedural matter, at the request of the Council the appellant has submitted a properly completed unilateral undertaking pursuant to section 106 of the Town and Country Planning Act 1990. The tests in paragraph 204 of the Framework and regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) apply to planning obligations. In this case however, as the appeal is to be dismissed on its substantive merits, it is not necessary to assess the agreement against these requirements.

Ian Radcliffe

Inspector