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## Appeal Decision

Site visit made on 7 May 2014

**by Chris Preston BA (Hons) BPI MRTPI**

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

**Decision date: 16 June 2014**

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**Appeal Ref: APP/G2435/A/13/2208611**

**Tea Kettle Hall, Long Whatton Road, Diseworth, Derby DE74 2QH**

- 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 David Bell against the decision of North West Leicestershire District Council.
  - The application Ref 13/00120/OUTM, dated 12 February 2013, was refused by notice dated 24 May 2013.
  - The development proposed is residential development of 19 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application submitted to the Council sought outline planning permission with all matters reserved except for the proposed layout. However, following discussion between the appellant and the Council, the matters for which detailed approval was sought were amended prior to the determination of the application and the matter of layout was removed from consideration. The description of development on the decision notice was; *proposed residential development of 19 dwellings (Outline –details of part access included)*.
3. Reference to 'part access' was intended to indicate that access to the site would be from the existing access point onto Long Whatton Road. These amendments were agreed between the main parties prior to the determination of the application and I have considered the appeal on that basis. Consequently, with the exception of the point of access onto the highway, the details shown on drawing numbers 12.2731.04, 12.2731.05, 12.2731.06 and 12.2731.07a were submitted for indicative purposes only.
4. The Council's reasons for refusal refer to emerging policies within the Submission Core Strategy. However, the Council subsequently resolved to withdraw the Submission Core Strategy in October 2013. Therefore, I have attached no weight to the emerging policies listed within the decision notice.

### Main Issues

5. The main issues are:
  - i) the effect of the proposal on the character and appearance of the area;

- ii) whether the proposal would represent a sustainable form of development with regard to the definition within the National Planning Policy Framework (the Framework);

## Reasons

### *Character and Appearance of the Area*

6. The site, which is roughly L-shaped in plan, lies to the south-east of the village of Diseworth, with an existing vehicular access from the B5401; Long Whatton Road. The majority of buildings within the village are situated to the north of Long Whatton Road and the land to the south retains a predominantly open character with the exception of buildings associated with agricultural and equine related uses.
7. The site itself is previously developed, with evidence of work relating to the construction of a hotel, for which approval was granted in 1996<sup>1</sup>. The visible evidence of construction is limited to surface level works relating to the car park and access roads and the walls of the hotel, which have only been completed to a low level. The car park is not hard surfaced but evidence of kerb stones depicting the perimeter can be seen from within the site. It is clearly some time since any construction took place and the majority of the site is now overgrown with vegetation. In addition, mature trees and hedgerows around the perimeter provide an effective screen to previous building operations when viewed from the public highway and adjacent footpaths. Consequently, in its current condition, the site assimilates with the open band of countryside to the south of the village.
8. The indicative plans and sections show a development of two storey housing with a built footprint covering the majority of the site, with the exception of the area immediately adjacent to Long Whatton Road which would incorporate a re-opened watercourse and the southernmost section within which a belt of trees would be maintained. Although the plans are submitted for indicative purposes only, given the proportions of the site, the topography and the position of the watercourse, I consider that the density and site coverage shown on the drawings before me is representative of how a scheme of 19 dwellings could be accommodated. In particular, any development of that scale would occupy the front section of the site and also extend into the comparatively thin strip of land which extends onto higher ground to the south.
9. The proposal would therefore erode the present open character of the site and have an urbanising effect on the rural character of the area to the south of The Green. As described above, the existing village is concentrated to the north of The Green and the proposed development would fail to respect this existing urban form. In visual terms I consider that the development would integrate poorly with the existing settlement and appear as an anomalous cluster of housing projecting out significantly into open land to the south of the village. In particular, the comparatively narrow rear section of the site would extend onto higher ground, being surrounded by open fields on three sides. The development in this section of the site would be particularly prominent from the public footpath which passes to the east and would have very little relationship with the existing built form elsewhere in the village. Consequently, in my view, the proposal would not appear as a natural extension of the existing settlement

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<sup>1</sup> Application Number: 951038

but as a detached and unsympathetic extension into open countryside. In this respect, the proposal would be harmful to the character of the countryside and the surrounding area.

10. I have noted the tree survey submitted by the appellant and observed that all of the significant trees and hedgerows are located around the perimeter of the site. With careful design and attention to layout, I am satisfied that the site is of sufficient size to accommodate 19 dwellings without resulting in the loss of any significant trees and that hedgerows could be maintained and supplemented with new planting. In this respect, I am satisfied that the proposal would comply with the requirements of policy E7 of the North-West Leicestershire Local Plan (2002) (the Local Plan), which seeks to make appropriate provision for hard and soft landscaping, incorporating existing trees and hedgerows, where necessary or desirable.
11. The second reason for refusal also refers to car parking arrangements. Within their statement, the Council set out their concern that the proposal does not demonstrate how two car parking spaces per dwelling could be accommodated. From the documents before me it is apparent that the Council's concern in this regard relates to the visual impact of car parking and the design of the scheme as opposed to matters of highway safety. Regardless of this point, the indicative scheme shows that each dwelling would have access to two parking spaces, including space within garages. I am satisfied that sufficient information has been provided to demonstrate that a satisfactory parking solution could be provided through the submission of detailed reserved matters.
12. However, the retention of existing trees and hedgerows and the internal design and car parking layout would not mitigate the significant visual impact of the development and the effect on the character and appearance of the countryside to the south of the village. As set out above, the proposal would result in substantial built development, extending to the south of the village into open countryside within an area largely free of development. In my view this would result in an incongruous form of development that would be poorly related in its form to the existing settlement and harmful to the wider character of the countryside.
13. I have taken account of the planning history of the site and the potential fallback position relating to the extant planning consent for a hotel. The Council note the length of time since the hotel approval was granted and consider it unlikely that the scheme will be brought forward. They refer to the planning statement which suggests that the scheme is unlikely to be attractive to hotel operators as a result of the location of the site and size of the building. No contrary evidence has been submitted.
14. Consequently, on the evidence before me, the alternative fallback scenario is unlikely to come forward. Regardless of this point, the nature of the current proposal is significantly different to the approved hotel development. The dwellings would be spread over a wider portion of the site, as opposed to the hotel which was a single building set within large areas of car parking and landscaping. Due to the wider coverage of buildings across the site, the visual impact of the housing scheme would be significantly different to that of the hotel. Therefore, the potential fallback scenario has not altered my conclusions with regard to the impact of the current proposal on the character and appearance of the area.

15. In this respect, I conclude that the proposal would fail to comply with paragraph 17 of the Framework which, amongst other things, requires that decisions take account of the roles and character of different areas, recognising the intrinsic character and beauty of the countryside. Similarly, policies E4 and H7 of the North West Leicestershire Local Plan (2002) (the Local Plan) require, amongst other things, that proposals should be assessed taking account of local character, including the wider setting of buildings, and the distinctiveness of the townscape and/or landscape. For the reasons given, I conclude that the proposal would be poorly related to the existing built form of the village and would harm the character of the surrounding countryside. Therefore, the proposal would fail to comply with the requirements of policies E4 and H7 of the Local Plan.
16. In their first reason for refusal the Council have referred to policy S3 of the Local Plan. This is a policy of countryside restraint which applies to all land outside the settlement boundaries, as defined by the Local Plan. The rationale for the policy relates to the need to protect the countryside for the sake of its natural beauty and the diversity of its landscape.
17. The parties dispute whether policy S3 is a policy relating to the supply of housing. Paragraph 49 of the Framework states that 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 deliverable housing sites. The Council acknowledges that it cannot demonstrate a five year supply of deliverable sites. Officers of the Council have also acknowledged, in relation to other recent housing applications<sup>2</sup>, that development on land outside defined settlement boundaries will be necessary in order to meet the housing needs of the district.
18. However, in their view, the aims of policy S3 relate to the protection of the countryside and not specifically to the supply of housing. In support of their case, the Council cite the High Court judgement<sup>3</sup> in relation to land north of Stephenson Way, Coalville. This judgement, in part, related to Policy E20 of the Local Plan, a restrictive policy which sought to prevent development that would have an adverse effect on the openness of land designated as a 'Green Wedge' within the district. Although the implications of the policy were to restrict the potential for housing on the designated land, the judgement concluded that it was not a policy for the "supply of housing". The Council consider that the conclusion of this judgement should also apply to policy S3 on the basis that its aims are to protect the countryside. In their view it is not a policy relating to housing supply and, consequently, should not be considered out of date for the purpose of paragraph 49. They also contend that the policy remains consistent with the aims of paragraph 17 of the Framework which states that planning should protect the intrinsic value of the countryside.
19. In the appellant's view, the policy is related to the supply of housing because it seeks to prevent housing development within the countryside outside of the defined settlement boundaries within the Local Plan. The Council cannot demonstrate a five year land supply based on sites within the settlement boundary and recognises that development on land outside those defined limits will be required to meet housing needs. Consequently, in line with paragraph

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<sup>2</sup> 13/00061/FULM, 13/00110/OUT, and 13/00648/FULM

<sup>3</sup> William Davis Limited & Jelson Limited v Secretary of State for Communities and Local Government & North West Leicestershire District Council [2013] EWHC 3058 (Admin)

49 of the Framework, the appellant contends that the policy is not up to date. This was a view shared by the Inspector in relation to the 'Ashby de la Zouch' appeal<sup>4</sup> who considered that policy S3 was out of date because it seeks to restrict or direct the location of housing. However, I note that this appeal decision was issued prior to the High Court judgement referred to by the Council.

20. Taking account of the High Court judgement I concur with the Council's view that Policy S3 is not a policy relating to the supply of housing. Rather, it is a policy which aims to protect the countryside for the sake of its intrinsic value. Consequently, in my view, the policy is not out of date by virtue of paragraph 49 of the Framework.
21. However, paragraph 215 of the Framework recognises that due weight should be given to relevant policies within existing plans according to their consistency with the Framework. Whilst paragraph 17 of the Framework recognises that decisions should take account of the intrinsic value of the countryside, this principle is set in the context of a requirement to make sufficient land available for development, taking account of the needs of residential communities. Policy 47 of the Framework seeks to boost significantly the supply of housing and requires local planning authorities to ensure that their Local Plan meets the full, objectively assessed, needs for market and affordable housing in the housing market area.
22. The Council cannot identify a five year supply of housing land within the defined settlement boundaries. Policy S3 does not permit housing development outside of those boundaries, unless it is related to agriculture or forestry. Therefore, if applied consistently the policy would result in a substantial shortfall of housing land when set against local need. Consequently, although S3 is not out of date for the purposes of paragraph 49 of the Framework, its implications are clearly inconsistent with the overarching aims of the Framework, when viewed in the round.
23. Although I conclude that the proposal would harm the character of the countryside, and thereby fail to comply with the aims of policy S3, the relative weight to be afforded to the question of housing supply and protection of the countryside is a balancing exercise that must be undertaken based upon the circumstances of the case before me. This exercise must include an assessment of the benefits of the proposal in terms of the supply of housing. I address this matter in more detail below.

#### *Whether the Proposal Would Represent Sustainable Development*

24. It is common ground between the Council and the appellant that saved policy H4/1 of the Local Plan is a policy relating to the supply of housing. Therefore, in the absence of a five year supply of housing land, the policy cannot be considered up to date, taking account of paragraph 49 of the Framework. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development, as set out at paragraph 14 of the Framework.
25. Paragraph 7 of the Framework identifies 3 dimensions to sustainable development: economic, social and environmental. With regard to the economic role, the proposal would provide short term construction jobs with

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<sup>4</sup> APP/G2345/A/13/2192131

associated benefits to the local economy. The social role would benefit from the provision of 19 dwellings, including affordable housing, particularly taking account of the absence of a 5 year supply of deliverable housing land. In that respect, I am particularly mindful of the requirements of paragraph 47 of the Framework and the need for local authorities to ensure that they plan to meet the full and objectively assessed need for market and affordable housing in the relevant housing market area.

26. However, the social role, as defined in paragraph 7 of the Framework, requires the supply of housing to be linked to accessible local services which meet the needs of the community and support its health, social and cultural well being. As identified within Appendix 5 of the Council's appeal statement, few services exist within the village. Residents would therefore be relatively isolated from shops, medical services and cultural or recreational facilities. The statement submitted by the local highway authority notes that the closest centre offering a range of shops, services and employment areas is Castle Donington which is over three miles from the appeal site. I also note that the bus service through the village is hourly and does not extend into the evening, the last bus, on the current timetable, being at 18:37. Consequently, in terms of the social role, as defined by the Framework, the accessibility to a range of local services for residents of the proposed housing would be limited.
27. Due to the distance from shops, services and employment opportunities and the limited bus service which passes through the village, I consider that the private car would be the most likely mode of transport for the majority of trips to and from the proposed dwellings. This would involve lengthy trips in an unsustainable mode of transport for shopping, work and leisure purposes, contrary to the environmental aims of the Framework which seeks to use natural resources prudently and move towards a low carbon economy.
28. As identified above, I also consider that the proposal would relate poorly to the existing built form of the settlement and cause harm to the character and appearance of the countryside. In that respect, the proposal would not accord with the aims of protecting the natural and built environment, both of which form part of the definition of sustainable development at paragraph 7 of the Framework.
29. Therefore, I consider that the economic and social benefits relating to the proposal, including the contribution to the supply of local housing, would not outweigh the negative social and environmental constraints relating to the unsustainable location of the site and the impact upon the character and appearance of the area. When viewed in the round the proposal would not represent a sustainable form of development based on the three stranded definition contained within the Framework. The location of the site is such that the proposal would be inherently unsustainable.
30. The proposal would facilitate the re-use of the site which has been partially developed following implementation of the hotel scheme. The Framework encourages the re-use of previously developed land that is not of high environmental value. However, in my view, this guidance must be read in the context of the need to secure sustainable development which is a golden thread running through the Framework.

31. In view of the above, the development does not accord with the presumption in favour of sustainable development, as set out at paragraph 14 of the Framework.

#### *Other Matters*

32. In relation to comments from the County Ecologist I am satisfied that the site is of sufficient size to accommodate 19 dwellings and retain trees and hedgerows around the perimeter of the site, including a buffer zone around those features. Protection of existing trees and hedgerows could be adequately controlled through condition. Consequently I consider that the proposal would not have a detrimental impact on ecological assets.
33. The Council is satisfied that the proposal would not fail to preserve or enhance the character or appearance of the Diseworth Conservation Area. Given the location of the site, set on the opposite side of Long Whatton Road, apart from the rest of the village and the Conservation Area boundary, I concur with this view.

#### *Unilateral Undertaking*

34. I am in receipt of a signed unilateral undertaking which would obligate the appellant and/or developer to provide affordable housing and community facilities, namely a landscaped children's play area. Given that I am minded to dismiss the appeal for other reasons it is not necessary for me to consider the agreement further.

#### **Conclusion**

35. I have concluded that the proposal would cause harm to the character and appearance of the countryside to the south of Diseworth and that it would represent an unsustainable form of development. Consequently, the presumption in favour of sustainable development, as set out at paragraph 14 of the Framework, does not apply.
36. The proposal would contribute 19 houses, including affordable housing, towards the recognised shortfall in the supply of deliverable housing land. However, the Framework establishes that the purpose of the planning system is to secure sustainable development. The proposal before me would fail to contribute towards this aim. Considering this factor, in addition to the impact on the character and appearance of the countryside, I conclude that the benefits to the supply of housing do not outweigh the significant harm that would result from the proposal.
37. In view of the above, and taking all other factors into account, I conclude that the appeal should be dismissed.

*Chris Preston*

INSPECTOR