



Appeal Decision

Hearing held on 25 March 2025

Site visit made on 25 March 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Appeal Ref: APP/F2415/W/24/3358256

Land North of Broughton Way, Broughton Astley, Leicestershire LE9 6EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Telford Five Ltd against the decision of Harborough District Council.
 - The application Ref is 24/00528/OUT.
 - The development proposed is described as 'outline application for the development of up to 17 self-build residential dwellings (access only to be considered).'
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Decision

1. The appeal is dismissed.

Applications for costs

2. Prior to the Hearing an application for costs was made by Telford Five Ltd against Harborough District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline form with all matters except access reserved for future consideration. I have determined the appeal on this basis, treating the submitted plans as illustrative.
4. In December 2024, the Government published a revised National Planning Policy Framework (the Framework). The parties were given opportunity to comment on the amendments. During the Hearing they were also referred to the Gladman judgement (2020)¹, with regard to the need to consider development plan policies in the application of paragraph 11(d)(ii) of the Framework. I have taken the comments of the parties into account in reaching my decision and I am satisfied that no prejudice has endured.
5. The appeal proposal was refused for 3 reasons. Following the submission of the appeal, the Council agreed that the third reason relating to biodiversity matters could be adequately addressed by a planning condition. At the Hearing we discussed whether it was appropriate to condition the submission of revised baseline data in respect of the biodiversity condition of the appeal site. Ultimately this reason for refusal was not defended by the Council. I will come back to this matter later in my decision.

¹ Gladman v SSHCLG, Corby BC and Uttlesford DC [2020] EWHC 518 (Admin).

6. An executed S106 agreement was received prior to the Hearing on 20 March 2024 along with a Community Infrastructure Levy (CIL) Compliance Statement with which I have had regard to.

Main Issue

7. The main issue in relation to this appeal is whether the appeal site is in a suitable location for housing development with particular regard to its location within a defined Area of Separation (AoS).

Reasons

8. Planning permission is sought for the erection of up to 17 self-build and custom build houses (SBCH), on a parcel of land that is situated between Sutton in the Elms to the north and Broughton Astley.
9. The parties agree that the development plan for the area comprises the Harborough Local Plan (HLP) 2019 and the Broughton Astley Neighbourhood Plan (BANP) 2014. Although not cited in the reasons for refusal, HLP policies SS1 and H1 seek to direct new development to the most sustainable locations. Whilst Broughton Astley is defined as a key centre, Sutton in the Elms is not specifically identified. Policy SS1 specifies that development in other villages, rural settlements and the countryside will be strictly controlled.
10. Policy H5 of the HLP supports SBCH in any location *considered suitable for housing* [my emphasis] in accordance with the spatial strategy and the criteria set out in Policy GD2. If a proposal fails to comply with Policy GD2 it follows that the location would not be suitable for housing for the purposes of Policy H5.
11. The Council confirms that Policy GD2 of the HLP would support SBCH development adjoining key centres such as Broughton Astley, as it would meet an identified district wide housing need. However, this is subject to compliance with criterion 2(d)-(g).
12. It therefore falls to be determined whether the proposal complies with Policy GD2 criterion (d)-(g) including that the scale of development individually or cumulatively with existing and committed development reflects the size of the settlement concerned and the level of service provision within that settlement, it is physically and visually connected to and respects the form and character of the existing settlement and landscape, it retains as far as possible existing natural boundaries within and around the site and it complies with Policies GD6 and GD7 of the HLP. Policy GD6 relates to defined Areas of Separation (AoS), none of which relate to the appeal site. However, it does fall within an AoS defined by Policy EH2 of the BANP which seeks to prevent the coalescence of Broughton Astley and Sutton in the Elms.
13. The parties dispute whether the proposal would respect the form and character of the existing settlement and landscape and therefore, whether it would accord with criterion 2(e) of Policy GD2 of the HLP and whether it would retain the separation of Broughton in Astley and Sutton in the Elms, as required by Policy EH2 of the BANP. This is a matter to which I now turn.

Character and Appearance/Coalescence

14. The appeal site is located within the Upper Soar – Broughton Astley Open Farmland Local Landscape Character Area as identified within the Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study (BACA), 2011. It is classified as having moderate landscape sensitivity. A number of defined characteristics of that typology are observable in the vicinity, including the gently sloping landform, mixed farmland contained by hedgerows and sparse and dispersed settlement pattern.
15. Whether or not the appeal site comprises agricultural land², the parties agree that it consists of open scrubland bordered by hedgerows and trees. A public right of way (PROW) crosses through the appeal site in a diagonal direction providing pedestrian access between Broughton Astley and Sutton in the Elms. As you enter from Broughton Way, the open, verdant character of the appeal site is apparent and distinct from the built environs of Sutton in the Elms, a generally small linear settlement of organic, piecemeal development that is aligned along both sides of Sutton Lane to the north. As an undeveloped parcel of land, the appeal site contributes positively to the verdant, bucolic character of the area and in particular, the rural setting of Sutton in the Elms.
16. To the east is a paddock and associated stable building and children's play equipment. To the south on the opposite side of Broughton Way (B581 bypass) is the larger settlement of Broughton Astley which includes a number of sizeable residential estates along with a number of local facilities and services. The appeal site is now partially bordered to the west by an allocated employment site for which there is a commenced planning approval for industrial/warehouse buildings with ancillary offices³. Whilst an internal access road appears to have been laid, no buildings are currently present.
17. The appellant suggests the proposal would be infill development as they consider previously developed land (PDL) adjoins the appeal site on all boundaries. The landscape character appears to have changed since the production of the BACA. Even if I could accept that all of the adjacent land was PDL, it does not follow that it has a developed character. I observed that the land to the east shares the verdant, open and undeveloped characteristics of the appeal site, even if it contains small-scale development such as stabling and solar panels. This is similarly true of the land to the north-west.
18. In combination, these parcels of land provide an important visual and spatial gap between Broughton in Astley and Sutton in the Elms, as recognised by the AoS designation. However, the AoS is not particularly deep and I was struck by the limited degree of separation between the settlements during my visit. Given the narrow gap between the two and the stated aims of the BACA and Policy EH2 of the BANP of avoiding coalescence, the sensitivity to change is considerable. Whilst the field itself may be of low landscape value, it plays a significant role in maintaining the historic settlement character of identity of Sutton in the Elms in particular. This is an integral part of the landscape as a whole.
19. The proposed housing development would stretch between Broughton Way and Sutton in the Elms in a generally rectangular block. As such, it would not appear

² As defined by S336 of the Town and Country Planning Act 1990.

³ Planning applications 19/00856/OUT and 22/01803/REM.

part and parcel of Broughton Astley given the strong boundary presented by Broughton Way. Neither would it appear as a logical extension to the linear pattern of Sutton in the Elms, or relate to built development on either side. Although it was suggested that the development would not be seen from Sutton in the Elms, the proposed houses would be at a higher land level and therefore visible, albeit glimpsed, in the gaps between dwellings on Sutton Lane.

20. Rather than forming infill development, the proposal would result in an arbitrary protrusion of built development into the countryside. I note this is a view shared by interested parties and the previous Inspector who was also clearly aware that the adjacent employment site would become part of the future context of the appeal site⁴. Even if I could consider the proposal as infill, I have not been referred to a development plan policy which defines or supports such development in this location.
21. At the Hearing the appellant accepted that the proposal would give rise to some coalescence at the spatial level but suggested that as 5.6ha of the 7ha AoS would remain post-development, the proposal would not significantly undermine its purpose. I find this difficult to reconcile as it plays down the importance of the depth of the AoS which is critical in preventing coalescence. Given the presence of houses opposite the appeal site on the other side of Broughton Way are agreed to be part and parcel of Broughton Astley, and dwellings to the north are located in Sutton in the Elms, I fail to see how the development of the appeal site which spreads between the two, would not lead to complete physical coalescence of the 2 currently distinct settlements.
22. The appellant indicates that the appeal site formed part of land parcel 12, identified within the BACA as having a medium capacity to accommodate development and that this established the principle of residential development. The BACA is not entirely clear as it simultaneously suggests that residential development of the land parcel and thereby the appeal site, could be considered appropriate and that there are strong coalescence factors affecting this. It states that any development would cause complete coalescence between Broughton Astley and Sutton in the Elms⁵, as I have indicated would be the case above. It goes on to suggest that any development would be subject to mitigation measures. These include but are not limited to restricting building heights, providing additional planting to reinforce the western and southern boundaries and utilising the southern and eastern boundaries as open space to provide separation between the settlements.
23. The proposed scheme is submitted in outline form with the final design and layout to be considered at the reserved matters stage. Nonetheless, the indicative site plan does not appear to provide the suggested mitigation recommended by the BACA, such that I could be certain that the scale of development proposed could be appropriately assimilated. Indeed, the appellant's own evidence in the Bright Associates Briefing Note (the Briefing Note) acknowledges that the illustrative capacity plan is not an appropriate solution for the housing layout.
24. Although the Briefing Note suggests that it would be feasible to design a solution for development to protect the principles of the AoS, it is not clear from the written or oral evidence, what that would look like. Whilst I acknowledge that the description of development would allow less dwellings to be constructed, I see the

⁴ Paragraph 14 of appeal decision APP/F2415/W/23/3328703.

⁵ Bullet point 4 on Page 34 of Appendix C of the BACA.

proposal as the clear intention of the appellant to achieve a specific number of homes. The appeal is considered on that basis.

25. Having said all of that, the BACA is not adopted planning policy. The landscape aims in respect of preventing coalescence as highlighted by the BACA are however, reflected in the designation of the land between Broughton Astley and Sutton in the Elms as an AoS in the BANP. Policy EH2 of the BANP whilst not preventing any development in the AoS, is clear that development which would detract from the open character of the area or reduce the visual separation between the 2 settlements, should not be permitted.
26. Even though the site frontage would relate to the future neighbouring employment development if completed, the proposal would nonetheless result in the erosion of the appeal sites' open and verdant character. This would occur from the obvious urbanisation arising from the erection of 17 dwellings and associated gardens, parking areas and access roads. The effects of this would be visible from Broughton Way, even with the retention of the existing roadside landscaping.
27. The harm would however, be more acutely felt by users of the PROW with the change in character from an undeveloped field to a housing estate. A markedly different character would ensue, adversely affecting the undeveloped and verdant qualities of the area as identified above. It is likely that the PROW would need to be formally diverted and I understand that the precise route is not determined. However, the outline nature of the proposal does not negate the need to consider the impact of the proposed dwellings on the PROW network, which should not be interfered with lightly.
28. The proximity of the PROW to nearby housing provides local residents with easy and almost immediate access to the countryside, a value I note is recognised by interested parties. The experience of users is likely to be significantly and adversely altered by the proposal with little if any, ready perception of separation between built development in Broughton Astley and Sutton in the Elms. Users of the PROW would feel like they are walking through an extended suburban area. The effects would be localised but nonetheless, the proposed development would significantly undermine the existing spatial and visual relationship between the two settlements.
29. The completion of the adjacent development for industrial/warehouse buildings⁶ would result in a greater level of built development being visible from the PROW within the appeal site. Nonetheless, users would still experience and appreciate the rural character of the area from the undeveloped nature of the appeal site itself and its connection to the countryside beyond. Even when the employment development is completed, the AoS would maintain an open and undeveloped parcel between the two settlements, such that they would not be physically or visually linked despite their proximity. This would be appreciated by users of the PROW.
30. The Council's Area's of Separation: Review of Existing and Potential Areas (2024) is clear that the area between Broughton Astley and Sutton in the Elms is fragile and that the absence of built development in the gap is important in retaining a sense of separation⁷. It seems to me that the importance of the AoS in protecting

⁶ Planning application references 19/00856/OUT and 22/01803/REM.

⁷ Paragraph A.77 of the Area's of Separation: Review of Existing and Potential Areas.

the separate identities of the two differing settlement is amplified, rather than diminished by the committed employment development. I note that this was a view shared by the Council and Cllr Grafton-Reed at the Hearing.

Conclusion – Appropriate Location

31. Given the narrowness of the present gap between Broughton Astley and Sutton in the Elms and its sensitivity to change, the incursion of the proposed residential development would significantly undermine the stated intentions of the BACA and the AoS, causing physical and visual coalescence. Given that the two settlements have stood apart since their origins and the clear aims of Policy EH2 of the BANP, the harm arising from encroachment would be substantial.
32. The adverse effect that would arise from the proposed development on the character and appearance of the area through the erosion of the AoS are such that the appeal site could not be considered as a location suitable for SBCH. Consequently, the proposal conflicts with Policies GD2, GD5, GD8 and H5 of the HLP and Policies H3 and EH2 of the BANP. Together these policies seek to ensure that new development respects the form and character of the existing settlement and landscape and prevent development that would detract from the open character of the AoS or reduce the visual separation of settlements. Conflict is also found with paragraphs 135(c) and 187(b) of the Framework which seek to ensure development is sympathetic to local character and history including the surrounding environment and landscape setting.

Other Matters

33. The parties agree that the Council has a shortfall of 172 self-build plots. As a scheme for 100% SBCH, the proposal for 17 dwellings would make a meaningful contribution to meeting the requirement for such housing within the district.
34. Prior to the Hearing I was supplied with an executed S106 legal agreement which makes provision amongst other things, for securing the proposed dwellings for SBCH. There is no dispute between the parties relating to the provisions of the S106. I am satisfied that its content is fit for purpose and secures various necessary contributions, as well as securing the self-build nature of the proposal. As the construction of new houses will add to the housing supply including SBCH for which there is a defined need, I give significant weight to these matters.
35. The location of the appeal site would facilitate access to local services and facilities, a positive matter that weighs in favour of the proposal.
36. Mandatory provision of 10% biodiversity net gain (BNG) would be required for this development. Despite a holding objection from Leicestershire County Council's Ecologist due to concerns that discrepancies in the appellant's ecological information prevented the identification of the pre-development biodiversity value of the site, the main parties agreed that reason for refusal 3 could be satisfactorily dealt with by a condition, prior to the submission of any reserved matters. If I was minded to allow the appeal, I would need to consider this further.
37. Reference is made to a previous appeal decision that allowed SBCH in Sutton in the Elms. The application of weight to particular matters will be dependent on the specific circumstances and context. In that case, the development was not located in an AoS and was considered to complement rather than harm the character and

appearance of the village, such that the weight attached to the SBCH justified granting permission. These are material differences to the appeal before me.

Planning Balance and Conclusion

38. The appeal site would not be a suitable location for housing development given the harm that would be exerted on the character and appearance of the area through the erosion of the AoS and the coalescence of Broughton Astley and Sutton in the Elms. The magnitude of harm would be substantial.
39. The BANP and LP which form the development plan predate the Framework. However, the weight to be attached to development plan policies does not hinge on its age⁸. Due weight should be given to existing policies according to their degree of consistency with the Framework given that the policies in the Framework are predicated on the primacy of the development plan in the plan-led system.
40. The policies of the development plan that are most relevant for determining the application are broadly consistent with the Framework in respect of the need to protect the character and appearance of the countryside, and requiring new development to be sympathetic to local character and history. Only insofar as housing figures are Policies H1 and GD2 deemed to be out of date. Therefore, the conflict between the proposal and BANP Policies H3 and EH2 and LP Policies GD2, GD5, GD8 and H5, should be given significant weight in this appeal.
41. There are no policies in the development plan which positively favour development of this kind in this specific location. Accordingly, as the proposal would be contrary to the policies referred to above, there would be conflict with the development plan as a whole.
42. Following the revisions to the Framework, there is an acknowledged shortfall in the Council's housing land supply. I find this to be in the order of 1096 dwellings, with a 3.55 year supply⁹. This shortfall is considered to be significant and means that the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework is engaged. Planning permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
43. Paragraph 14 of the Framework states that for proposals involving housing, the adverse impact of allowing development that conflicts with a neighbourhood plan (NP) is automatically likely to significantly and demonstrably outweigh the benefits when the NP is 5 years old or less, and contains policies and allocations to meet its identified housing requirement. That is not the case here due to the age of the BANP. Thus, the proposal should be considered under paragraph 11(d) in the usual way.
44. Caselaw is clear that the application of the paragraph 11(d)(ii) balance does not exclude the application of development plan policies i.e. they are not automatically set aside¹⁰. At the Hearing the parties agreed that the weight to be given to the conflict or compliance with the policies of the Framework is a matter for the decision-maker. I have taken into account the views of the parties in reaching my conclusions.

⁸ As set out within paragraph 232 of the Framework.

⁹ With reference to paragraph 6.3 of the Statement of Common Ground.

¹⁰ As discussed in *Gladman v SSHCLG, Corby BC and Uttlesford DC* [2020] EWHC 518 (Admin).

45. The proposal would contribute to the Framework's aim of significantly boosting the supply of housing, particularly SBCH which has a defined need in the area. The appeal site is also in an accessible location, broadly in line with the aims of section 9 of the Framework. Although now a statutory requirement, the scheme would bring moderate benefits in terms of biodiversity. Cumulatively, the benefits of the proposal are significant.
46. However, the appeal site plays a crucial part in the broader purpose of maintaining separation between Broughton Astley and Sutton in the Elms. The separation between the two is finite and fragile. Maintaining the individual identity of these settlements is important to the wider character of the area and the landscape. Notwithstanding the absence of a 5-year housing land supply and SBCH provision, the harm arising from coalescence would be irreversible. The harm is a matter I attach substantial weight to, having regard to paragraphs 135 and 187 of the Framework. For this reason, the adverse impacts arising from the proposal would not be significantly and demonstrably outweighed by the benefits. Consequently, the presumption in favour of sustainable development does not apply. The policies of the Framework and other material considerations do not indicate that planning permission should be granted.
47. I have not considered the issue with regard to a BNG condition further as it would not be determinative.
48. For the reasons given above, the appeal is dismissed.

M Clowes

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joe Nugent

Brownshore Management

FOR THE LOCAL PLANNING AUTHORITY:

Ruth Meddows-Smith

Planning Officer

Louise Finch

Development Planning Manager

Vanessa Evans

Team Manager - Ecology and Biodiversity

INTERESTED PARTIES

Cllr Clive Grafton-Reed

Ward Member for Sutton in the Elms and
Primethorpe/Vice-Chair of Broughton Astley Parish
Council



Costs Decision

Hearing held on 25 March 2025

Site visit made on 25 March 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Costs application in relation to Appeal Ref: APP/F2415/W/24/3358256

Land North of Broughton Way, Broughton Astley, Leicestershire LE9 6EX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Telford Five Ltd for a full award of costs against Harborough District Council.
 - The appeal was against the refusal of the Council to grant planning permission for outline application for the development of up to 17 self-build residential dwellings (access only to be considered).
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Decision

1. The application for an award of costs is refused.

The Submission for Telford Five Ltd

2. An application for costs was made in writing prior to the Hearing. The basis of the applicant's costs claim is that the Council did not afford appropriate weight to the shortfall in the delivery of self-build and custom housing (SBCH), it did not substantiate each reason for refusal and provided inaccurate assertions about the potential effects of the development. Reference is also made to the refusal of planning permission on grounds that were capable of being dealt with by conditions and that the Council has inconsistently dealt with its decision-making. During the Hearing the applicant added orally to their costs claim in pointing out the delays caused by the failure of the legal services department.

The Response by Harborough District Council

3. The Council's rebuttal was submitted in writing in advance of the Hearing. It suggests that the Council considered the weight to be given to SBCH and gave full reasons for refusal, the applicant was aware of the need for a completed S106 following the previous appeal and the Council has proactively agreed to the resolution of biodiversity matters via a condition, removing the need for refusal reason 3. The Council further advises that the applicant has had 2 previous applications for similar proposals on the site refused and dismissed at appeal, and the current proposal has failed to address the reasons for refusal.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

5. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal.
6. The reasons set out on the Council's decision notice are clearly articulated and states the policies of the development plan and paragraphs of the National Planning Policy Framework (the Framework) that the proposal was considered to be in conflict with. The Council's committee report and statement of case explain the reasons for refusal in more detail. The apportionment of weight is a matter for the decision maker and it is clear that the Council gave significant weight to SBCH in its consideration of the proposal, but ultimately found it was insufficient to overcome the harm identified to the Area of Separation (AoS)¹.
7. I can see no evidence that the Council made inaccurate assertions regarding the effects of the development on the character and appearance of the area which is also a matter of judgement. Just because the Council held a different view to the applicant, does not mean it was wrong. In my decision I have found that the Council had legitimate concerns regarding this matter such that it was not unreasonable in its approach. Moreover, it took into account the 2 previous appeal decisions, which the applicant appears to have given little regard to. On the evidence before me, I am satisfied that the Council substantiated its reasons for refusal and it did not make vague or inaccurate assertions. Clearly there is a difference of opinion between the parties but that does not mean unreasonable behaviour has occurred.
8. Reason for refusal 3 on the Council's decision notice related to ecological matters, which the applicant considers could have been resolved by planning condition. The Council worked with the applicant to agree this matter prior to the Hearing, such that it did not seek to defend this reason for refusal. However, this was in part due to the receipt of some information including the District Level Licensing Document which the applicant only submitted during the appeal process. I therefore find the Council's actions to be positive rather than unreasonable in this regard. Moreover, it is clear that even if the Council's decision had not included an ecological reason for refusal, the proposal would still have been refused on the other substantive grounds. An appeal is likely to have followed anyway.
9. The applicant suggests that the Council has been inconsistent with its decision-making as the site is infill due to the planning permission granted for the major mixed-use development to the west and buildings and infrastructure to the east. In my decision I have determined that the proposal would not amount to infill, a view shared by the Council and previous Planning Inspector. The employment development has arisen as a result of an allocation for such use and this has not affected the AoS which is a separate designation. There is no evidence that the Council has been inconsistent in its decision-making. To the contrary, it has consistently refused residential development within the AoS.
10. It is understood that progression of the S106 was delayed, a matter which the Council has acknowledged is regrettable. However, neither party has presented clear evidence as to what contributed to the delays. I acknowledge that the S106 appears to have only been completed prior to the Hearing due to the tenacity of the applicant and this will have no doubt have been frustrating. Nonetheless, the applicant's own evidence indicates that there was communication with the Council's

¹ Paragraph 6.18 of the Council's committee report.

solicitor on numerous occasions during the application process, albeit not to their satisfaction. There is no evidence that the delay in progressing the S106 was as a result of conscious behaviour on the part of the Council. It also appears that the Council has been proactive in concluding the S106 during the appeal process, such that the appeal has not been prejudiced by it.

11. Taking these matters together, I find that unreasonable behaviour has not arisen. It therefore follows that unnecessary or wasted expense has not been incurred.

Conclusion

12. Although I understand the applicant's evident frustration with their perception of the Council's approach, insofar as is relevant to this costs application, based on all of the evidence before me, it has not been demonstrated that any action or inaction by the Council amounts to unreasonable behaviour as described in the PPG. An award of costs is not justified.

M Clowes

INSPECTOR

Richborough