
Appeal Decision

Hearing held on 23 May 2017

Site visit made on 23 May 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 4 July 2017

Appeal Ref: APP/F1040/W/17/3167838

Land rear of numbers 53 and 67 Woodville Road, Hartshorne, Swadlincote, Derbyshire, DE11 7ET.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Cartwright and Mr and Mrs Craner against the decision of South Derbyshire District Council.
 - The application Ref. 9/2015/1215, dated 13 December 2015, was refused by notice dated 30 November 2016.
 - The development proposed is residential development (approximately 14 dwellings) .
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Decision

1. The appeal is allowed and planning permission is granted for residential development (approximately 14 dwellings) at land rear of numbers 53 and 67 Woodville Road, Hartshorne, Swadlincote, Derbyshire, DE11 7ET, in accordance with application Ref. 9/2015/1215, dated 13 December 2015, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. The application is in outline format with all matters reserved for subsequent approval other than the access to the site which is to be considered now.
3. The description of the development in the application forms is stated as 'residential development (approximately 14 dwellings)'. The Council described this as residential development of 'up to 14 dwellings'. This is more restrictive in nature and I have used the original description.
4. A draft formal legal Obligation, made under section 106 of the Act was discussed at the Hearing. Subsequently a formal Obligation dated 8 June 2017 and signed by the Council, the appellants and landowners has been submitted. In general terms this covers the provision of affordable housing and open space on site and financial contributions towards the development of sports, health and cultural facilities off-site. I have had regard to the legal Obligation as a material consideration subject to my comments in paragraphs 26 and 27 below.

Main Issues

5. The main issues are:
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- Whether the proposal accords with the strategy in the development plan;
- The effect on the character and appearance of the area;
- As raised by local residents, the effects on living conditions and the effect of the risk from flooding.

Reasons

Background

6. The appeal site comprises an area of open field which partly lies between two frontages of existing houses situated along Woodville Road, and the site also extends to the rear to the east and south east beyond the rear gardens of these houses. The land falls away from the level of the road and then rises again to the east. The appeal site, which does not have any special landscape or environmental designation, adjoins the built-up part of Hartshorne, a modest village with a limited range of services and facilities.
7. The application proposes residential development on the site with an access from Woodville Road. Approximately 14 dwellings are suggested and it is the appellant's intention that 50% of the new properties will be 'affordable housing'. The illustrative plan of the layout shows a single cul-de-sac with detached and linked houses on both sides with two bungalows at the eastern edge of the site and then an open area.

Policy context

8. The development plan for the area includes saved policies in the Local Plan adopted in 1998 (now referred to as the 1998 Plan); the South Derbyshire Local Plan Part 1 adopted in 2016 (the Part 1 Plan) which deals with overall strategy. The Part 2 Local Plan is also in preparation and has been submitted to the Secretary of State for examination. The policies in this latter plan can be given some weight because of its advanced stage. Similarly saved policies in the 1998 Plan have weight depending on their degree of consistency with the National Planning Policy Framework (the Framework).
9. In the lead up to the submission of the application it is apparent that the Council could not demonstrate a five year supply of deliverable housing sites in accordance with paragraph 47 of the Framework. However, as a result of the subsequent grant of permissions by the Council and appeal decisions the parties now agree that at least a 5.27 year supply can be demonstrated. Therefore, I find that the provisions of paragraph 49 and the final bullet point of paragraph 14 of the Framework do not apply in this case.

Accord with the development plan

10. Hartshorne is a local service village as set out in Policy H1 of the Part 1 Plan and this advises that the development of sites within the settlement boundary is appropriate together with sites adjacent to the settlement boundary 'as an exceptions or cross subsidy site' as long as not greater than 15 dwellings. The Council agrees that although the appeal site lies outside of the settlement boundary it lies partly adjoining the boundary in the context of the principle of

an exception site. The ribbon of housing development along Woodville Road is not regarded as being part of the village boundary.

11. Policy H21 of the Part 1 Plan concerns 'Affordable Housing' and part C relates to 'Rural exception sites' which are acceptable subject to meeting four specific criteria. Taking these in turn:-

Meet a clearly identified local need

12. The Council accepts that there is a clear local need for affordable housing across the strategic housing market area (SHMA) and with a particular need for accommodation for the over 65s.

The development provides for a majority of affordable homes

13. The appellant's agent says that the proposal for at least a 50/50 split between open market houses and affordable house would meet the test in the policy but to my mind this does not equate to the simple meaning of 'majority'. The Council argues that the degree of open market homes should only be a small part of the overall development and in support of this refer to paragraph 5.85 of the explanatory text of Policy LP1 but this explicitly refers to a 'cross-subsidy scheme' which is not the same context as the 'rural exception site' in part C of Policy H21. The Council also refers to guidance in the Affordable Housing Supplementary Planning Document (SPD) but as this was only approved for consultation in April 2017 and is at the very early stage in the SPD process, I am unable to give these provisions more than limited weight. Therefore, while the Council says that the amount of open market housing should be the minimum necessary to make the scheme viable, there is not a 'viability' test set out in either Policy H1 or H21 and the appellants do not put forward such evidence.

14. In examining this issue I have also had regard to the definition of 'Rural exception sites' set out in the Glossary of the Framework. This includes the guidance that 'small numbers of market homes may be allowed at the local authority's discretion ...'

15. Overall on this criterion, it appears to me that as the scale of development is relatively small and using the ordinary meaning to the wording of Policies H1 and H21, I find that provided that the extent of affordable housing in the scheme of up to 14 units is in the majority (i.e more than half) the development proposed meets the terms of the policies for an exception site. This breakdown in the number and type of housing units could be specified in a condition.

Need cannot be met in the settlement

16. The Council accepts that the identified local housing need for affordable homes cannot be met within the development limits of the village or in the sub market area of the SHMA.

Relative scale to the village and environmental impact

17. I will consider the environmental effect of the development in the next main issue but in terms of the scale of the proposal the Council agrees that the number of homes proposed would not be out of scale with the size of the village or the facilities available including public transport facilities. Some local

residents refer to other housing development that has taken place locally, but from my observations at my site visit it did not appear to me that in physical terms the cumulative scale of the new development that I saw meant that the development proposed on this site would be out of scale with the village.

18. Overall on Policy H21, subject to the environmental impact of the development I conclude that the proposal meets the terms of Part C so long as a condition is imposed to ensure that the number of affordable units that are developed are in the majority.

Effect on the character and appearance of the area

19. Policy BNE1 of the Part 1 plan says that new development must have regard to valued landscape, townscape and heritage characteristics, while Policy BNE4 also sets out components of landscape character and local distinctiveness that should be respected. In order to assess these and the effect on the character and appearance of the area I considered the proposal from the site itself, from Woodville Road and from the public footpath (Hartshorne FP3) which crosses fields to the east of the site .
20. The Council says that while planning policy does not now recognise the appeal site as a gap between existing built up areas, the open nature of the site as part of the countryside contributes to the entrance/edge of the village and helps to prevent coalescence of the main part of the village with the further ribbon of houses to the west.
21. However, it appeared to me at the visit that because of the presence of the site on the inside of the bend in Woodville Road, the open and hedged frontage of the site plays only a limited part in forming the visual break between the two adjacent built-up frontages. The shrubs and hedge that bound the application site are not prominent in the streetscape. This contrasts with the character of the frontage on the northern side of the road at this point where there is a substantial length of greenery on the outside of the bend which is visually prominent and where there are occasional glimpses though the hedge of longer distance views over open countryside. Further, when viewed from either direction along Woodville Road, I do not consider that the houses indicated on the illustrative layout would be very apparent in the street scene as most would be to the rear of the existing properties and the visibility splays for the proposed access would still leave much of the present planting retained. Accordingly I do not consider that the principle of the proposed housing development would be harmful to the character or appearances of the street-scene.
22. In terms of the wider rural landscape, particularly when viewed from the public realm of the public footpath to the east, the rear of the existing houses and their gardens are seen in the middle distance. These views also include some areas with development in depth as grouped around the properties 'Sycamore' and 'Maple' and other development to the north served off a short cul-de-sac. The illustrative proposal seeks to limit the easterly spread of development with the eastern part of the site retained as open space and 'finish' the proposed development with single storey units. In my judgement, the form of development proposed would fit in with the landscape setting of the existing housing and would not appear visually prominent or look out of place from the countryside.

23. Overall, I do not share the Council's concerns about the development proposed being harmful to the present limit of the village or materially adding to coalescence and I consider that in principle the proposed houses can assimilate into the countryside edge of the built-up area and respect the present urban grain. I find that the form of development proposed does not conflict with the general provisions of Policies BNE1 and BNE4 and meets criterion iv) of H21 as it would not have a materially adverse impact on the local natural and built environment.

Effect on the living conditions of neighbours

24. The Council did not put forward an objection about the scale and form of the development proposed but the occupiers of neighbouring properties raise concerns about being overlooked from the new houses. Although an outline application where the detailed of the layout and the form of the houses are reserved for subsequent approval, I need to be satisfied that the general scale of development proposed is capable of being accommodated on the site. The illustrative plan shows a line of two storey houses along each side of the cul-de-sac and I have significant concerns about the relationship of these properties to the adjoining properties and their private rear gardens. The potential rear garden depth of the new houses is limited and this may result in overlooking from first floor windows and a reduction in privacy. However, the description of development is approximately 14 dwellings and therefore a specific scale of development is not committed and will be dependent on the subsequent detailed plans. The Council says that such plans would be considered in respect of the normal standards for new development and so I do not need to consider this aspect further at this outline stage.

The effect of flood risk

25. The proposal is accompanied by a flood risk assessment (FRA) prepared by the appellants' consultants. The FRA concludes that the site lies in flood zone 1 with a low risk of flooding from rivers. Nevertheless, there is evidence of flooding on the low lying element of the site near Woodville Road as shown in the photographic evidence submitted by neighbours at No.53 Woodville Road. I looked at the nature of the land at the site visit and it appears to me that the pooled ground water on the low lying part of the site is likely to have stemmed from the natural flow of a watercourse being blocked by debris and the resolution of this would be through normal land management. There is no clear evidence before me to establish that the proposed development would increase the local risk of flooding and the introduction of a surface water drainage system is more likely to improve matters.

Other matters

26. The provisions of the Obligation are set out in paragraph 4 above. In addition to the implementation of the affordable housing scheme and open space other financial contributions are put forward. In respect of these contributions, the Council has prepared a schedule to show where the policy requirement for the contribution comes from; how the contribution will be spent; and whether there are any other 'pooled contributions' under the terms of the Community Infrastructure Levy Regulations (CIL).

27. On the information put forward I am satisfied that the contributions are necessary to make the development acceptable in planning terms; and are directly, fairly and reasonably related to the development in scale and kind and do not exceed the defined level of 'pooling'. The Obligation therefore meets the test set out in paragraph 204 of the Framework and the appropriate CIL Regulations.

Planning balance

Bringing together my conclusions on the main issues I have found that while the site lies outside of the defined settlement of Hartshorne and in the countryside, where there is a general presumption against open market housing development, the development of the appeal site is acceptable as a 'rural exception site' in the context of policies H1 and H21. By ensuring that the majority of the homes delivered are affordable houses it is established that the proposal meets the relevant tests set out in Policy H21. There is no clear requirement in these policies that the scale of open-market housing must be the minimum necessary to ensure the delivery of a viable scheme.

28. I have also found that the appeal site does not play an important role visually in forming the edge of the village and contributing to the gap in the frontage to help prevent coalescence. Visually the development proposed would not be harmful to the street-scene or be out of place in the landscape when judged against the appearance of neighbouring development when viewed from the public footpath to the south-east.
29. I do have concerns about the relationship of the development shown on the illustrative plan with neighbouring houses but this concern is capable of being resolved at the reserved matters stage and is not a fundamental barrier to the principle of new residential development.
30. Overall in the planning balance I conclude that the principle of development accords with the development plan and the adverse effects do not outweigh this. I will therefore allow the appeal.
31. In terms of conditions, the Council recommends 19 which I will consider under the same numbering. Conditions No.s 1 and 2 are necessary as it is an outline proposal and further details of the development proposed are necessary. The reserved matters need to be submitted and the development should also be implemented in the periods specified in the Act. Condition 3 is reasonable and necessary to ensure that the development is acceptable to maintain the appearance of the area, however, I will not impose Condition No.4 as I have concerns over the form of development shown on the illustrative layout. Conditions 5, 6 and 19 are necessary to ensure that the hedgerows on the site are retained for their contribution to the appearance of the area and their ecological value and as a wildlife habitat, other than for the formation of the access, and I will impose these conditions.
32. Conditions 7 and 8 deal with the construction phase and these are necessary to ensure that there is safe access to the site during this period. Conditions 9, 14, 15, 16, 17 and 18 deal with highway aspects of the development to ensure that there is safe access to the site and within the layout together with reasonable parking provision and I will impose these conditions. Conditions 10, 11 and 12 deal with the disposal of surface water and foul sewerage from the site. In

principle these are reasonable and necessary but I will combine them and delete the duplication with other legislation.

33. Proposed condition No.13 deals with affordable housing however much of this duplicates some of the terms of the section 106 Obligation and is unnecessary. Further, the scheme requested restricts the tenure of properties and the national Planning Practice Guidance indicates that such a restriction goes beyond the scope of a planning condition. I will therefore not impose the condition in these terms. However, I will modify the condition to state that the number of affordable units that are built on the site shall exceed the number of open market houses and that no more than 80% of the market house are occupied before the completion and transfer of the affordable housing units.

Conclusions

34. For the reasons given above I will allow the appeal.

David Murray

INSPECTOR

Schedule of conditions

- 1) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 2) This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters: Appearance; Landscaping; Layout; and Scale of the development.
- 3) Details submitted under condition 2 shall include the proposed finished floor levels to the dwellings, including existing and proposed surrounding land levels relative to the dwellings, as well as proposed boundary treatments and surfacing materials, and the retention of the landscaping buffer to Woodville Road.
- 4) No development shall commence until all retained hedgerows have been fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the Local Planning Authority.
- 5) No development shall commence until a Landscape and Ecological Management Plan has been submitted to and approved by the Local Planning Authority. Temporary mitigation provisions shall be implemented prior to any works commencing on site and thereafter retained throughout the course of construction. Permanent mitigation and enhancement measures shall be implemented prior to first occupation of the dwellings hereby approved and thereafter maintained as such.
- 6) No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions.
- 7) No development shall be commenced on site until a temporary access into the site to Woodville Road for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall have a minimum width of 5.5m, 10m radii, constructed to base level and be provided with visibility sightlines of 2.4m x 65m in each direction. The area forward of the sightlines shall be cleared and maintained throughout

the period of construction clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

- 8) No development shall commence until a detailed lighting strategy has been submitted to and approved in writing by the LPA. Such approved measures will be implemented in full.
- 9) The number of affordable housing units built on the application site shall exceed the total number of open market housing and no more than 80% of the open market units shall be occupied before the completion and transfer of the affordable housing units.
- 10) No work shall take place on the site until details of schemes for the disposal of foul water and surface water drainage from the site have been submitted to and agreed in writing by the Local Planning Authority. The agreed schemes shall be carried out in conformity with the details which have been agreed before the development is first brought into use and the schemes shall be retained thereafter.
- 11) Prior to the first occupation of any dwelling on the site, the new access shall be laid out in accordance with application drawing, constructed to base level, drained and lit in accordance with Derbyshire County Council's specification for adoptable roads. The access shall have a minimum width of 5.5m, be provided with 2 x 2m footways, 6m radii and visibility splays of 2.4m x 65m in each direction. The area forward of the sightlines shall be level, form part of the public highway, be constructed as footway and not part of any plot or other sub-division of the site.
- 12) Prior to the first occupation of any dwelling, space shall be provided within each plot curtilage for the parking of two vehicles and maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is counted as a parking space, the internal dimensions should not be less than 3m x 6m.
- 13) The new dwellings shall not be occupied until the proposed new estate street, between each respective plot and the existing public highway, has been laid out in accordance with the approved application drawings, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.
- 14) Notwithstanding the submitted information, a subsequent reserved matters or full application shall include design of the internal layout of the site in accordance with the guidance contained in the 6Cs Design Guide and the "Manual for Streets" document issued by the then Departments for Transport and Communities and Local Government.
- 15) The gradient of the new estate street accesses shall not exceed 1:30 for the first 10m into the site from the highway boundary and 1:20 thereafter.
- 16) No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has

undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Mrs L Thorne, MRTPI.	DPDS Consulting
Mr P G Randle	Land Agent
Mr J Craner	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr I McHugh, MRTPI.	'IMCH Planning' - Planning Consultant acting for the Council
Mr R Stewart, MRTPI.	Area Planning Officer, South Derbyshire District Council.

INTERESTED PERSONS:

Mr J Gosden	Chairman, Hartshorne Village Residents Association
Mr and Mrs Cartwright	Neighbours to application site

DOCUMENTS HANDED IN AT THE HEARING

1. Mr Gosen's statement on behalf of the Hartshorne Village Residents Association.
2. CIL Compliance Schedule - from the Council.
3. Statement of Common Ground - May 2017

DOCUMENT RECEIVED AFTER THE CLOSE OF THE HEARING

1. Formal Section 106 Obligation dated 8 June 2017