
Appeal Decision

Site visit made on 25 July 2017 and 7 August 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 17th August 2017

Appeal Ref: APP/P1045/W/17/3174588

Land adjacent Thatchers Lane, Tansley DE4 5FD

- 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 A Lewis against the decision of Derbyshire Dales District Council.
 - The application Ref 16/00913/OUT, dated 14 December 2016, was refused by notice dated 15 February 2017.
 - The development proposed is the erection of 5 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for future consideration. I have considered the appeal on this basis and treated the submitted block plan as indicative only.
3. Following receipt of the appellant's final comments, I carried out a second unaccompanied site visit.

Main Issues

4. The main issues are the effect of the development on:
 - The character and appearance of the area; and
 - Biodiversity and protected species.

Reasons

Character and Appearance

5. The appeal site is a steeply sloping open field on the edge of the village of Tansley. The site lies outside the defined settlement boundary of the village in both the saved policies of the adopted Derbyshire Dales Local Plan (LP)(2005) and the emerging Local Plan (ELP). I understand the ELP is currently out for consultation on main modifications (MM) and is thus at a late stage of preparation. Although the Council has not relied on any policies relating to housing outside settlements in its reason for refusal, there is nothing before me to suggest that the development would meet the relevant criteria in LP policies H4 and SF4 or ELP Policy S5 in this regard.

6. The site is irregularly shaped, with a number of dwellings between it and Thatchers Lane along part of its northern boundary, though at its north western end the site adjoins the roadside. The site's eastern boundary is the edge of a public footpath. Beyond this path the field continues and the remaining triangular plot has outline permission for a single dwelling which was granted on appeal¹. The southern boundary is a row of mature trees.
7. The site is within an area identified as having high landscape sensitivity in the Council's 'Landscape Sensitivity Study' (LSS)(2015). This is not a statutory landscape designation, but does give some indication of its prominence and importance to local character. Notwithstanding its somewhat overgrown appearance, the nature of the site, including the tree lined brow of the hill and steep slope, create an attractive backdrop to the existing dwellings on Thatchers Lane which helps to reinforce the rural character of the village. The importance of this is emphasised here as, from below the site, the trees restrict views to the fields beyond. Thus the site provides an important visual link to the open countryside beyond the edge of the built form. This feature of the site is also visible to an extent from the junction of Thatchers Lane and Nottingham Road, where there is a direct view of the dwellings, field and tree line beyond. This row of dwellings creates a clear and definitive edge to the built settlement in this location. I took the opportunity to view the site from longer distance locations above the village and, while there are buildings to the south east of the site at a higher level, the site itself is generally seen more in the context of the open countryside beyond the trees.
8. Any development of an open and undeveloped site such as this would result in some change to the character of the area. This does not always lead to harm. However, in this case the steepness of the slope means that any dwellings located here are likely to be prominent features that would, in some cases, sail above the existing dwellings. The dwellings, along with all associated domestic paraphernalia and the access road, would have an unwelcome urbanising effect on the site that would significantly diminish the contrast between the settlement and the countryside beyond. This would be to the detriment of the rural character and setting of the village. The retention of the trees and most of the existing hedgerows would be unlikely to sufficiently mitigate the resulting impact. The areas identified as being open on the indicative plan would provide some visual connection to the countryside but they would not be sufficient in themselves to provide adequate mitigation for the overall urbanisation of the site or resulting encroachment.
9. The appellant has drawn my attention to the allowed appeal for a single dwelling on land to the other side of the public footpath that dissects the field. The Inspector in that case noted that this triangular plot of land is 'tucked away' with housing on three sides and that local views are dominated by dwellings at a higher level to the south and south east. In this regard, the appeal site is clearly different in nature. The site is in no way tucked away or hidden from view, but would rather take up a prominent location above the existing row of dwellings on Thatchers Lane. While the other dwellings to the east and south east would still be in view from certain vantage points, the relationship of the site to existing buildings is somewhat different. This part of the field is more visible and prominent than the other site, particularly from the junction of Nottingham Road and Thatchers Way. Moreover, when standing on

¹ Appeal reference: APP/P1045/W/15/3138585

the part of Thatchers Way that runs parallel to the site, looking west to where the indicative plan suggests the majority of development might take place, there is no overt sign of any development beyond the site and thus the sense of encroachment and extension of the village would be more strongly felt.

10. Five dwellings strung out across the field with a new access road would have a larger and more damaging effect on local character than what has already been permitted. The permitted dwelling would also be accessed from an existing lane and thus would have some level of integration with the existing pattern development. The proposal before me would require a new access road. As a result, the development would not be as well integrated with existing dwellings or settlement pattern. Moreover, I consider that as shown on the indicative plan, the development would appear as an unsympathetic and poorly related add-on to the edge of the village. Therefore, while the two sites might be part of the same field, they are not identical in terms of their wider prominence or relationship with other dwellings. Neither would the scale or resulting effects of development be comparable. As such, I do not consider the existing permission provides significant support for development on the remainder of the field.
11. The appellant has also drawn my attention to another site on the opposite side of Thatchers Lane (Thatchers Croft) which is subject to an undetermined planning application. I note that the site is referred to in the Council's housing land information as contributing to its housing land supply. It would be reasonable to assume therefore that there is an element of support for the development of this site from the Council. This site is in the same landscape sensitivity area as the appeal site and is in close proximity to it. The development of both sites would result in the loss of open and undeveloped land.
12. I have not been provided with full details of the application or anything which sets out the Council's position on this site. Nevertheless, I observed some clear differences between the two sites. The site off Thatchers Croft is lower on the hillside than the appeal site and is well screened by the existing development on Thatchers Croft from Nottingham Road. The Thatchers Croft site is also at the end of the road built to accommodate the relatively modern estate and, to an extent, the site would appear as something of an extension to this development. Again, there would appear to be some integration here with the existing pattern of development, which would not be the case with the appeal site. The relationship between the Thatchers Croft site, the dwellings around it and the distinct edge created by Thatchers Lane would also mean that the two sites would not have the same effect in terms of encroachment.
13. The Council's apparent support for development in the same landscape sensitivity area as the appeal site does not mean there should be an automatic assumption that any and all development in the same category is appropriate or acceptable. Indeed, the allowing of the appeal on the adjacent site is an indicator that development in such areas can be acceptable in some circumstances. Nonetheless, in considering this appeal on its own merits, I find that the development would result in the clear encroachment of development into the open countryside in a sensitive and prominent location which would have an unacceptable urbanising impact. The result of the development would be to significantly reduce the visual connection between the village and the countryside to the detriment of the rural character and setting of the village.

The two examples of development on other nearby sites do not alter my views on this.

14. Taking all the above matters into account, I therefore find that the development would have an unacceptable impact on the character and appearance of the area. Accordingly, there would be conflict with LP policies SF5 and NBE8 which seek, amongst other things, to ensure development preserves, protects or enhances the quality and local distinctiveness of its surroundings and the character and appearance of the landscape. There would also be conflict with paragraph 17 of the National Planning Policy Framework (the Framework) which seeks, amongst other things, to ensure planning recognises the intrinsic beauty of the countryside.

Biodiversity & Protected Species

15. The appellant has submitted a Preliminary Ecological Assessment (PEA) which seeks to address the concerns the Council raised in its initial assessment of the application. This concludes that there are a number of ecological receptors on the site which would need to be addressed in any subsequent development. In particular, the report notes potential issues with trees, hedgerows, bats, badgers and breeding birds. Whilst the report considered the presence of amphibians and reptiles to be low, it still made recommendations in relation to reasonable avoidance measures to be implemented during construction.
16. My main concern with the findings of the PEA relates to badgers. While the PEA did not find any direct evidence of a badger sett that Derbyshire Wildlife Trust (DWT) information suggests might exist, it nevertheless did not conclude that the sett was absent. Evidence of badger activity in or around the site was found and the report recommends that a further impact assessment would be required in order to assess the usage of the site, confirm whether or not the sett is present and, if it is, identify what form of mitigation might be required.
17. Paragraph 99 of Circular 06/2005 states that *"it is essential that the presence or otherwise of a protected species, and the extent to which they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."* Badgers are a protected species and I do not consider it appropriate to rely on a planning condition to require further impact assessments. Notwithstanding the age of the DWT data, without robust evidence to the contrary there is still a realistic risk of an impact on a protected species which has not been fully addressed by the evidence provided.
18. The initial PEA is also not specific about the amount of hedgerow that might be removed, whereas the final correspondence suggests that only 10 metres of one boundary would be removed and that this could be replaced with similar species. There is nothing before me to suggest that such an approach would not be acceptable in principle. Landscaping is a reserved matter. Had I been minded to allow the appeal, I am satisfied that the granting of permission would not have prejudiced the Council's ability to consider this issue fully at the reserved matters stage.
19. I also consider that adequate protection for birds, bats, amphibians and reptiles could be addressed by condition. The indicative layout identifies areas that would remain open which would have the potential to provide some mitigation

for the inevitable loss of some natural grassland. However, even if these factors are sufficient to address the effects on other biodiversity impacts, this would not outweigh the concerns set out above regarding the absence of any detailed information or evidence in relation to badgers.

20. Consequently, there is insufficient evidence to be confident that development could take place without harm to a protected species or that such harm could be adequately mitigated. Neither do I consider that such issues can be appropriately addressed by condition. Accordingly, there would be conflict with Policy NBE5 of the LP and paragraph 118 of the Framework which seek, amongst other things, to ensure development is only permitted where direct or indirect adverse effects on protected species can be avoided or mitigated.

Other Matters and Planning Balance

21. The parties appear to agree that as the LP is time expired its policies for housing are out-of-date. This would include LP policies H4 and SF4. However, these policies still form part of the saved development plan and paragraph 215 of the Framework states that due weight can be given to relevant policies in existing plans according to their consistency with the policies in the Framework. LP policies H4 and SF4 only permit housing outside defined settlements if it is essential for the operation of agriculture, forestry or other enterprise that needs to be in such a location or consists of affordable housing meeting a local need. These policies are broadly consistent with the aims of paragraph 55 of the Framework and thus I see no reason why they should be considered out-of-date simply as a result of the being time expired.
22. Nonetheless, there is dispute between the parties as to whether the Council can demonstrate a five year supply of deliverable housing sites as required by paragraph 47 of the Framework and whether the policies would be out-of-date by other means. However, I do not consider this to be a decisive issue in this case.
23. The provision of up to 5 dwellings would be seen as a benefit when considered against the Framework's requirement to boost significantly the supply of housing. The appellant has not however provided any substantive evidence relating to the scale of shortfall he asserts currently exists, even if the provisions of the ELP are not in place. There is nothing before me to suggest that the provision of 5 dwellings in this context would make a significant contribution to the supply or would be of particular importance to meeting local needs. Considering the advanced stage of the ELP, the evidence is also very strong that the Council is taking all necessary measures to address any previously identified shortfall and that there would be a high degree of flexibility within it. Even if there were a current shortfall in supply, this situation is unlikely to persist for an extended period of time. These factors lead me to conclude that the benefits of housing delivery in this location should carry only moderate weight.
24. I recognise that the development is in a location with reasonable access to services and facilities, which would provide some economic, social and environmental benefits and there would be short term economic benefits as a result of construction. These benefits would also be limited in scale. A lack of harm to living conditions, highways or the public right of way are neutral factors that do not add any weight in favour of the development.

25. Balanced against this is the significant harm I have found to the character and appearance of the area and the potential risk to a protected species contrary to policies in the LP and Framework. Such harm conflicts with the environmental dimension of sustainable development. Taking all of the above matters into account, even if I were to accept the appellant's position that the Council does not have a five year supply and its policies for the supply of housing are out-of-date, I consider that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Conclusion

26. As a result of my findings, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan. For this reason I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR