



Appeal Decision

Hearing Held on 12 & 13 February 2019

Site visit made on 13 February 2019

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2019

Appeal Ref: APP/P1045/W/17/3188285

Land East of Les Ardennes, Mugginton Lane End, Hulland Ward, DE6 3EE

- 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 Mrs Pamela Fox against the decision of Derbyshire Dales District Council.
 - The application Ref 16/00872/OUT, dated 30 November 2016, was refused by notice dated 12 July 2017.
 - The development proposed is 'application (all matters except for access to be reserved) for the residential development of up to 17 dwellings with associated infrastructure (one access off Mugginton Lane End)'.
 - This decision supersedes that issued on 15 March 2018. That decision was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application for the proposal was refused by the Council in 2017, and an appeal was dismissed in March 2018. However, the appellant made a successful challenge in the High Court and the Inspector's decision was quashed. I have dealt with the appeal on the basis that the previous decision and the conclusions reached have no legal effect and the merits of the case must be determined as if they had not been previously considered.
3. At the hearing an application for costs was made in writing on behalf of the appellant against Derbyshire Dales District Council. The costs application is the subject of a separate Decision.
4. Following the refusal of planning permission, a new National Planning Policy Framework (the Framework) was published on 24 July 2018. After the hearing had closed, a revised Framework was published on 19 February 2019 together with the results of the Housing Delivery Test. The parties were given an opportunity to comment on the implications of these where they may be relevant to the appeal. The Council did not respond but I have taken account of the appellant's comments in coming to my decision. References to the Framework hereafter are to the February 2019 version.

5. The application was determined against the policies in the Derbyshire Dales Local Plan (2005) (DDLp). The new DDLp adopted on 7 December 2017 replaces the 2005 plan in its entirety and its policies can therefore be afforded due weight in the determination of this appeal. References hereafter are to the 2017 DDLp.
6. The application was submitted in outline with all matters reserved for subsequent approval with the exception of the means of access as shown on Drawing No. 000-G4A-00-00-DR-A-103. A proposed site plan¹ and typology plan² also accompanied the application. These show the location of the main access road and the general layout of new housing. Whilst not formally part of the scheme, I have treated these plans as a guide to how the site might be developed, were the appeal to succeed.
7. A completed planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 dated 29 January 2018 (the s106 agreement) accompanied the appeal and I return to the provisions of the s106 agreement later in my decision.

Main Issues

8. The main issues in this case are:
 - The effect of the proposed development on the form and character of Hulland Ward and the surrounding area; and
 - Whether or not the site would be a suitable location for the proposed development including in relation to the accessibility of local services and facilities; and
 - Whether or not a five year supply of deliverable housing sites can be demonstrated and the implications for the appeal.

Reasons

Character and appearance

9. The appeal site is outside but adjacent to the Hulland Ward settlement boundary and in the countryside where DDLp Policy S4 restricts new development to specific categories with an overarching aim to protect and where possible, enhance the landscape's intrinsic character and distinctiveness
10. DDLp Policy PD1 requires new development to respect the character, identity and context of the District's townscapes and landscapes and contribute positively to an area's character, history and identity. Development on the edge of settlements should enhance and/or restore landscape character. Policy PD5 sets out a number of criteria against which the impact on landscape character will be assessed and seeks to resist development which would be detrimental to the character of the local and wider landscape or the setting of a settlement. The approach to protect and enhance landscape character in accordance with a set of criteria and not impose a 'blanket ban' on development in the countryside is consistent with the Framework and DDLp Policies PD1 and PD5 can be afforded due weight in the determination of this appeal.

¹ Drawing No 000-G4A-00-00-DR-A-103 Revision A (dated 21.03.17)

² Drawing No 000-G4A-00-00-DR-A-104

11. Hulland Ward is located along an elevated ridge line and the built up area has a distinctive west-east axis which broadly follows the A517. Its position affords long distance views to the wider landscape to the north and south of the village. More recent estate development is mainly to the north of the A517 and to the west of the A517/Moss Lane/Mugginton Lane End junction. The development at Charles Walker Close to the west of the appeal site is the exception to this pattern of development but has not undermined the strong linear form of the eastern end of the village created by frontage development on both sides of Mugginton Lane End.
12. The dispersed and single plot depth of development in the vicinity of the appeal site creates the impression of the main built up area of the village 'thinning out' towards the open countryside to the south and east of Hulland Ward. This contributes to the rural setting and character of this part of the village. To the west of the appeal site, there is a clear demarcation between the edge of the built up area delineated by the rear boundaries of properties to the south of the A517 and Mugginton Lane End and the open countryside beyond. This creates a pleasing contrast between the main built up area and its rural surroundings with open countryside running up to the edge of the village contributing to its rural character.
13. The appeal site comprises the southern half of a larger field to the east of Hulland Ward's main built up area. The northern half of the field fronting onto Mugginton Lane End is allocated in the DDLP for 18 dwellings (site HC2(r)) and has outline planning permission for residential development³. Along the northern boundary of the appeal site there are no physical features separating it from the allocated site. To the west the well-established, dense hedge on the field boundary and mature trees and vegetation around Les Ardennes create a verdant edge to the built up area. There is a sparser hedge along the southern boundary with one mature hedgerow tree.
14. Whilst it has a limited number of individual landscape features, the site is a component of the wider 'Sandstone Slopes and Heaths' landscape character type the key characteristics of which include a gently rolling upland plateau and small to medium fields surrounded by hedgerows. The Council's Landscape Sensitivity Study concludes that the site lies within an area of high landscape sensitivity and that development to the south of the village has the potential to result in the coalescence of Hulland Ward and Hulland Village. Due to the small scale and enclosed nature of the landscape and its position directly adjacent to existing development, the appellant's Landscape and Visual Impact Assessment (LVIA) concludes that the site falls within an area of medium landscape sensitivity.
15. From the more distant viewpoints in the LVIA to the south of the village, the intervening topography and vegetation limit direct views of the site and given the separation distance between the two settlements there would be no coalescence between Hulland Ward and Hulland village. From more distant viewpoints to the east, the development would be viewed in conjunction with the existing scattered development around the site and the new dwellings on the allocated site. For these reasons, I concur with the LVIA findings that from these wider vantage points the magnitude and significance of effect on landscape character would be negligible.

³ Reference 16/00832/OUT

16. At closer distances, development on site HC2(r) will result in changes to the character and appearance of this part of the village. However, that site is of relatively limited depth and development would not extend beyond the well defined edge of properties on Charles Walker Close and to the south of the A517. In contrast, the appeal proposal would protrude well beyond the edge of the built up area, creating a north-south emphasis which would be at odds with the prevailing west-east linear form of the village. It would extend and consolidate the built up area at a point where the built up area is thinning out towards open countryside, resulting in a significant urbanising effect.
17. A number of Public Rights of Way (PROW) run between Hulland Ward and Hulland village to the south. The first section of PROW FP14 off the A517 to the west of the appeal site is enclosed by the rear boundary fences of properties on Charles Walker Close and the hedges on the garden boundary of Les Ardennes. Thereafter it crosses open fields and affords longer distance views of the rural landscape to the south. When using the path in either direction, the presence of new development would erode the natural and open character of the site and would significantly detract from the experience of footpath users.
18. Whilst not identified in the LVIA viewpoints, the development would also be readily visible from the eastern most of the two footpaths to the side of Fields Farm. From this vantage point, the proposed development would appear as a harsh and jarring feature which would protrude into open countryside and would relate poorly to the form and character of the village.
19. The mitigation measures proposed in the LVIA would go some way towards reducing the visual impact of the development and there would be benefits from reinforcing and managing the existing hedge along the southern boundary. Conditions could be imposed to ensure that any reserved matters proposal provides for the retention of existing hedges and hedgerow trees and their management to strengthen landscape character. Nonetheless, in the short to medium term whilst these features mature the development would have a stark and harsh appearance due to its position beyond the existing developed edge and protruding into open countryside.
20. For the reasons outlined above, the appeal proposal would cause material harm to the form and character of Hulland Ward, its setting and the landscape character of the Sandstone Slopes and Heaths. For these reasons, I conclude in relation to the first main issue that there would be conflict with DDLP Policies PD1 and PD5 which require development to respect settlement and landscape character.

Location

21. Hulland Ward is a third-tier settlement within the DDLP settlement hierarchy, where Policy S2 seeks to focus new development within the settlement boundary in accordance with the scale, role and function of the settlement, unless otherwise indicated in the plan. Areas outside the settlements listed in the hierarchy are defined as countryside where development will be strictly limited to that which has an essential need to be located there.
22. As a third-tier settlement, Hulland Ward is a sustainable location for development with a number of services and facilities including a filling station and shop, doctor's surgery, three pubs, a village hall and a church. At

approximately 0.8 km away, these facilities are within a reasonable distance from the site.

23. Access to the village via Mugginton Lane End would be via the new access road serving the development on site HC2(r). Whilst a footway across the site frontage is shown on the site layout plans, there is no footway further to the west in front of 'Les Ardennes' where the grass verge is also very narrow. At my site visit, I observed regular movements of Heavy Goods Vehicles (HGVs) along Mugginton Lane End travelling to and from the Aggregate Industries premises to the south of the village.
24. The combination of walking on the carriageway, the absence of street lighting and proximity of HGV and other vehicle movements would be likely to dissuade new residents from walking this route. Furthermore, the legal status of the path in front of Charles Walker Close as a public right of way is unclear as indicated by the signs at either end and in representations. Whilst this is a civil matter, the lack of clarity on public access would be a further impediment to residents walking into the village.
25. The appellant's Transport Assessment concludes that pedestrian access would be enhanced by the footpath link to be provided from the south west corner of site HC2(r) to FP14 which connects with the A517 as shown on the indicative layout. I walked FP14 as part of my unaccompanied and accompanied site visits. Its restricted width, uneven surfacing and absence of lighting would make walking to access daily needs challenging, particularly for those with mobility difficulties, parents with pushchairs or accompanied by small children. The same issue with the path in front of Charles Walker Close would also arise on this route.
26. Cycling along local roads would be a sustainable transport option and bus services to larger centres including Ashbourne, Belper and Derby station are available from the bus stop on the A517. A Travel Plan to support sustainable transport options could be made a condition of any permission.
27. However, the site would not be in the optimum location to maximise the use of walking to access services and facilities to meet daily needs. Residents would be likely to use the private car and whilst journeys to the village would be short, this does not accord with the aims of DDLP Policy HC19 which indicates that new development should support the use of local pathway networks to improve choice of travel and ensure safe access to developments on foot. The Framework acknowledges that opportunities to maximise sustainable transport will vary from urban to rural areas. However, it also requires that a safe and suitable access should be available for all users and the development should enable and support healthy lifestyles including by layouts that encourage walking.
28. I acknowledge that pedestrian access from the proposed development on site HC2(r) to the village would be via the same routes. However, this proposal would result in an additional 17 dwellings in this location. Based on the circumstances of the site, the evidence before me and for the reasons outlined above I conclude that the site would be poorly located for pedestrian access to services and facilities, contrary to the provisions of the Framework and DDLP Policy HC19.

5YHLS

29. The Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against the housing requirement set out in adopted strategic policies. Paragraph 73 indicates that the supply should include an appropriate buffer, moved forward from later in the plan period to ensure choice and competition in the market for land.
30. The Council's latest calculations on the 5YHLS are set out in its Annual Position Statement (December 2018) (APS) for the relevant five year period 1.4.18 to 31.3.23. The APS sets out that a 10% buffer has been added to the supply of specific, deliverable sites. Whilst the HDT results have subsequently shown that 93% of the housing requirement has been delivered over the last 3 years, the appeal is being determined in accordance with the evidence before me which is the buffer set out in the APS. I emphasise, however that any findings which I make are based upon the evidence heard and the arguments put forward and are particular to this appeal.
31. The appellant argues that the APS should have a clear 'cut off' point of 1.4.18 and that the Council's assessment of land supply should not be continually updated as and when new information arises, such as the submission of reserved matters applications. Whilst I have been referred to the *Woolpit* decision⁴ in support of that point, in that case, the Council sought to add sites to the supply beyond the cut-off point in its Annual Monitoring Report. That is not the case here. The Council has rolled forward the 5YHLS period and supplemented the information set out in its hearing statement. It is inevitable that circumstances will change and the Council's approach to capturing the latest available evidence has been proportionate.
32. Based on the DDLP requirement of 284 dwellings per year, addressing the shortfall of 410 dwellings since the start of the plan period (1.4.13), using the *Sedgefield* method and the application of a 10% buffer, the requirement for the relevant five year period is 2013 dwellings or 402 per year. This matter was agreed by the main parties in the additional Statement of Common Ground (additional SoCG).
33. However, the 5YHLS remained a matter of dispute between the parties. The Council considered that it could demonstrate a 5.57 year supply of specific, deliverable sites whilst the appellant's figure was 4.1 years. The additional SoCG listed five sites with planning permission and nine sites allocated in the DDLP where the 5YHLS is in dispute. In addition, the contribution from the area of the Peak District National Park that is within Derbyshire Dales District was also disputed. To clarify, I have used the appellant's figures⁵ as the 'baseline' for my assessment.

Sites with planning permission

34. The Planning Practice Guidance (PPG) provides further details of what may constitute 'clear evidence' having regard to the definition of 'deliverable' set out in Annex 2 of the Framework, including progress towards the submission of an application, site assessment work and information about viability, ownership or infrastructure. The APS does not include pro formas for sites with planning

⁴ Appeal Reference APP/W3520/W/18/3194926

⁵ Appendix B of appellant's final comments dated 15.1.19

permission as at 31.3.18. Accordingly, there is no up to date information about developer intentions for start dates, rates of delivery or expected completion dates.

35. Whilst reserved matters applications have been submitted for the sites at Wheeldon Way, Hulland Ward (SHLAA site 208) and Main Road, Brailsford (SHLAA site 501) these applications are at an early stage and undetermined. There is no clear evidence of start dates, rates of delivery or expected completion dates and overall no clear evidence that housing would be delivered on both sites within five years. Consequently these sites should not count towards the supply.
36. However, the site at Dimple Road, Matlock (SHLAA site 141) has detailed planning consent for 11 dwellings until November 2020 and its current use as a car park does not constitute clear evidence that no dwellings will be delivered in the five year period. Although some time has elapsed since the Council confirmed the start of development at Chequers Farm, Wirksworth in 2014 (SHLAA site 83) (10 dwellings) this does not constitute clear evidence that no further progress will be made. The site at Wardmans, Wirksworth (SHLAA site 217) has detailed planning consent for 34 dwellings including a mill conversion. Whilst a subsequent application has been made for commercial units on part of the site, this does not constitute clear evidence that no dwellings will be delivered in the relevant five year period.
37. In summary, I consider that there is a realistic prospect that 55 dwellings could be delivered on these sites in the five year period and adding these to the appellant's assessment of supply from sites with planning permission (1360 dwellings) gives a total of 1415 dwellings with planning permission which would contribute to the five year supply.

Sites allocated in the DDLP and National Park supply

38. The other principal difference between the parties is accounted for by the delivery of sites allocated for housing in the DDLP. The appellant points to the lack of 'clear evidence' to support the Council's position that housing completions will begin on these sites within five years.
39. The APS includes the SoCGs submitted to the DDLP Examination and supplemented by later 'pro-formas' as evidence that housing completions will begin on the allocated sites in the next five years. The submitted SoCGs were compiled and submitted to the DDLP examination in 2017 prior to the changes to the definition of deliverable in the Framework. The quality of information submitted in the later pro-formas varies and in some instances, it is not clear who has completed the form and some information is redacted. A number of sites will require planning permission with consequent lead-in times for delivery on site. The information provided as part of the appeal evidence is limited, resulting in a level of uncertainty over the deliverability of sites.
40. Taking account of various matters including uncertainty about when full planning applications will be submitted and a lack of robust information about the progress of the schemes, I conclude that the Council's delivery assumptions on sites HC2(b),(e),(l),(p),(u) and (cc) are not supported by clear evidence that housing completions will begin within the five year period.

41. However, sufficient evidence has been supplied in the pro forma for the site off Gritstone Road, Matlock (site allocation HC2(w)) to demonstrate a realistic prospect of the phase 2 dwellings being delivered on this site, in addition to the 75 dwellings already permitted. Accordingly, 104 units could be delivered to the five year supply from this site, over and above the 75 units which were agreed by the parties.
42. The planning application at Tansley House Gardens, Tansley (site allocation HC2(bb)) is subject to a legal agreement and whilst there have been negotiations over the level of affordable housing to be provided, the pro forma demonstrates a realistic prospect and timescale for delivery. The site could realistically deliver 49 dwellings to the five year supply.
43. The planning application for the site at Thatchers Croft, Tansley (site allocation HC2(z)) is also subject to the completion of a s106 agreement. The Council's anticipated start date of 2019/20 may be on the optimistic side taking into account the timescale for a reserved matters application. However, the landowner is a developer and rolling the trajectory forward a year would still enable the site to contribute 19 dwellings to the five year supply.
44. In summary, I consider that 172 dwellings could be delivered on these allocated sites within the five year supply. Adding this figure to the appellant's assessment of 220 dwellings gives a total of 392 dwellings from DDLP allocations which would contribute to the five year supply.
45. The contribution from the Peak District National Park is based on anticipated completions of 20 dwellings per year. This element of supply was assessed through the DDLP Examination and found to be sound, based on past delivery rates and future contributions from deliverable sites. The contribution is confirmed in a Memorandum of Understanding through the Duty to Cooperate and it is not my role to re-run the examination of broad assumptions about housing land supply that has been conducted at the DDLP Examination sessions. The Council's approach to include 100 dwellings from the National Park towards the five year supply is justified.

Overall summary on 5YHLS

46. Based on the figures above the supply would be 1415 dwellings with planning permission, 392 on DDLP sites, 100 within the National Park and 75 dwellings on windfall sites giving a total of 1982 dwellings against a requirement of 2013. The Council is therefore unable to demonstrate a five year supply of land for housing. In these circumstances, the presumption in favour of sustainable development set out at paragraph 11 of the Framework is engaged.
47. This states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. As the proposal would not affect any of the protected areas or assets referred to under Footnote 6, it is the second part of the paragraph which needs to be applied.

Other matters

48. The Surface Water Drainage Strategy accompanying the planning application set out four options to deal with surface and foul water drainage. Had the

appeal been allowed, I am satisfied that conditions could have been imposed to secure appropriate details with any reserved matters application.

49. The Transport Assessment concludes that the proposed access serving site HC2(r) would provide a safe and suitable access point for the appeal site from Mugginton Lane End and that the proposal would not be harmful to highway safety on the local road network.
50. The proposal is in outline only at this stage and I see no reason why a satisfactory layout could not be secured at the reserved matters stage to ensure that the living conditions of adjoining occupiers would not be harmed.
51. Concerns have been raised about the impact on ecology but I note that the Derbyshire Wildlife Trust did not raise concerns subject to conditions to secure a badger survey, the retention of existing hedgerows and trees and the submission of a landscape and ecological management plan as part of any detailed proposal.
52. I have taken into consideration all other matters raised by the parish council and local residents but none lead me to a different conclusion on the main issues.

S106 Agreement

53. I have considered the obligations in the s106 agreement against the tests set out in the Framework, the PPG and the Community Infrastructure Levy Regulations 2010. In relation to affordable housing, the obligation is necessary to meet the requirements of DDLP Policy HC4 which requires 30% affordable on sites of 11 or more dwellings. Contributions towards secondary and post 16 education facilities of £3,694.09 per dwelling are required by Policy S10 which requires enhancements to education capacity to support the DDLP development strategy. The Council confirmed that there are no pooling restrictions in place.
54. I am satisfied that had the appeal been allowed, the obligations would have been necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to the development. It therefore meets the statutory tests set out in paragraph 56 of the Framework.

Planning Balance and Conclusion

55. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for any determination, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Framework is an important material consideration. I have concluded that the presumption in favour of sustainable development as set out in paragraph 11 (d)(ii) of the Framework should apply in this case.
56. Whilst DDLP Policy S2 seeks to focus development within settlement boundaries, the phrase 'unless otherwise indicated in the Local Plan' indicates that there may be circumstances whereby an exception is made to this approach. In this context, criteria (i) of Policy S4 provides for development on the edge of settlement boundaries in the absence of a 5YHLS but this must be read in conjunction with its overarching aim to ensure that new development

protects and, where possible, enhances the landscape's intrinsic character and distinctiveness.

57. I attach substantial weight to the benefits of increasing the supply and choice of housing in the absence of a 5YHLS and in particular, the contribution that the scheme would make to increasing the supply of affordable housing. The appellant also confirmed that the scheme could make an early contribution to the 5YHLS given the developer interest in the site.
58. The contribution to the economic dimension of sustainable development would include the jobs created during construction and receipts from the New Homes Bonus and Council Tax. Money spent on goods and services in the area would support the local economy. New residents would also be likely to support local services and community groups, contributing to a thriving rural community. Overall, I afford the social and economic benefits significant weight in favour of the appeal.
59. In relation to education, the s106 agreement would mitigate the impact of the proposed development and is neutral in the overall planning balance.
60. On the other side of the planning balance, the proposal would harm the character and appearance of Hulland Ward and its setting within the wider landscape and would not be in a suitable location to support walking to and from village facilities. Whilst the conflict with DDLP Policies S2 and S4 has to be considered in the context of the land supply position, the conflict with DDLP Policies PD1, PD5 and HC19 carries substantial weight against the grant of planning permission in the overall planning balance. These conflicts are of sufficient importance that the proposal should be regarded as being in conflict with the development plan when read as a whole.
61. My conclusion is that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the proposal would not comply with the development plan, read as a whole. As a result, the application of paragraph 11 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.
62. For the reasons outlined above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Sarah Housden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:	
Mr R Kimblin of Counsel	
Mr D Hutchinson	Principal Planner, Boyer Planning Ltd
Mr N Harris	Director, Boyer Planning Ltd
FOR THE LOCAL PLANNING AUTHORITY	
Mr J Bradbury	Development Manager
Mr M Hase	Policy Manager
INTERESTED PERSONS	
Mrs M Cox	Local resident
Mr D Cox	Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

1. Five Year Housing Land Supply – Statement of Common Ground (Version 2) February 2019
2. Extracts from Planning Practice Guidance relating to the Definition of 'Deliverable'
3. Landscape Character and Design Supplementary Planning Document (September 2018)
4. Derbyshire Dales Local Plan (2017) and Policies Map
5. Plan accompanying reserved matters application for land off Wheeldon Way, Hulland Ward Drawing No 302 Revision P-00 Proposed Site Layout Plan
6. Site layout plan A001 accompanying reserved matters application for site HC2
7. Tables of 5YHLS calculations
8. High Court Judgement 2019 EWHC 128 (Admin) Gladman v SSCLG and Sedgemoor District Council
9. Letter dated 13.2.19 re appellant's agreement to pre commencement conditions
10. Costs application on behalf of the appellant dated 12.2.19

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Letter from Boyer dated 12 March 2019.