



Appeal Decision

Inquiry Held on 29 and 30 May 2019

Site visit made on 30 May 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 8 July 2019

Appeal Ref: APP/K2420/C/18/3209195

Land to the south of Cadeby Hall, Main Street, Cadeby, Leicestershire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Nigel Salt of Salt Construction Limited against an enforcement notice issued by Hinckley & Bosworth Borough Council.
- The enforcement notice was issued on 18 July 2018.
- The breach of planning control as alleged in the notice is the carrying out of works for the construction of a dwellinghouse and ancillary structures including walls as shown on Drawing B14/27/PR53/01A from the lapsed planning permission 14/00574/FUL without the required planning permission.
- The requirements of the notice are:
 1. Demolish and remove the works specified in paragraph 3 of the notice from the Land;
 2. Level, make good and seed the Land with grass.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the formal decision.

Application for costs

1. At the Inquiry an application for costs was made by Mr Nigel Salt, of Salt Construction Limited, against Hinckley & Bosworth Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

2. Several preliminary matters were raised during the Inquiry. Firstly, it emerged that the red line plan attached to the notice included land outside the ownership of the appellant. The Council explained that the red line was derived from the planning permission referenced in the allegation. It confirmed that all interested parties had been served as required. The case officer posted a copy of the notice into the mail box of Oak Tree House and a signed witness statement was provided to that effect.
3. The allegation includes walls which, it is argued, have been erected to subdivide the newly created residential curtilage associated with the subject dwelling from Oak Tree House. The appellant claims that the notice is not clear as regards the walls because the drawing referenced in the allegation does not include any walls. Also, the gates and walls at the main entrance to the site have planning permission but lie within the red line.

4. The Council submitted an amended plan which seeks to exclude the land in different ownership and identify the walls targeted. However, it is acknowledged that their ownership is unknown, especially the wall along the shared boundary with Oak Tree House. I am invited to correct the notice and substitute the amended plan.
5. The Courts interpret the power to correct notices¹ very widely provided this would not cause injustice to the appellant or to the local planning authority. The appellant indicated that substituting the amended plan at such a late stage in proceedings would cause injustice.
6. An enforcement notice is a nullity if it is so defective on its face that it is without legal effect². A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test is derived from *Miller-Mead*³. A notice may also be "hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or in what respect he had failed to comply with the condition or again, that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches". In such circumstances the notice may be found to be a nullity.
7. During the site visit, I saw the approved gate, piers and walls at the entrance to the site. There was a further wall under construction that ran alongside the driveway to the approved dwelling, terminating in a second set of gates at the entrance to Oak Tree House. The wall continued along the shared boundary between Oak Tree House and the subject dwelling. Although there are no walls shown on the plan referenced in the allegation, I do not consider the notice to be unclear as it would be apparent to the recipients of the notice that it attacked walls within the red line.
8. It could be argued that the main entrance gate, piers and walls should be excluded, as they have planning permission, but I do not consider this to be necessary. Under section 172(1)(a) of the 1990 Act, the local planning authority may issue a notice where it appears to them that there has been a breach of planning control. The entrance gates, piers and walls have planning permission and do not constitute a breach, so the local planning authority has no power to require their removal.
9. To conclude on this matter, I find that the notice tells the recipient fairly, what he has done wrong and what he must do to remedy it. It is not hopelessly ambiguous or uncertain and I do not consider it to be a nullity or otherwise invalid. I have not substituted the amended plan as I do not consider this to be necessary.
10. In relation to other preliminary matters, the main parties agreed that the notice could be corrected without injustice to refer to the correct drawing reference B14/27/PRS3/01A (as opposed to PR53) in the allegation. Also, paragraph 4.3 should be corrected to identify permission reference 17/000393/FUL, which has been implemented.

¹ Section 176(1) of the 1990 Act.

² Paragraph p173.06 Sweet and Maxwell Encyclopedia of Planning Law and Practice.

³ *Miller-Mead v Minister of Housing and Local Government* [1963] 2 WLR 225.

11. During the Inquiry, I invited comments on whether I should consider an additional ground of appeal under ground (f)⁴ in relation to the walls. There was no complaint under ground (f) that the requirements were excessive and the description of the alleged breach should be narrowed down. However, I am obliged to consider if there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total demolition. The retention of the walls would not fulfil the purpose of the notice, which is to remedy the breach by restoring the land to its condition before the breach took place. However, there is a ground (a) appeal and associated deemed planning application. This allows me to consider whether permission could and should be granted for the walls in isolation from the remainder of the alleged breach, having regard to any fallback position conferred by the permitted development rights⁵. In view of this, I have considered the retention of the walls under ground (a) and there is no need to consider a further ground (f) appeal.
12. Finally, the revised plan that the appellant initially proposed, Ref 743-NS.51 was withdrawn. I have, therefore, determined the appeal on the basis of the plan referenced in the corrected allegation.

The appeal on ground (c)

13. In order to succeed on an appeal on ground (c) the appellant must show on the balance of probability that the matters stated in the notice do not constitute a breach of planning control. The ground (c) appeal concerns the walls only as there is no argument before me that the dwelling under construction does not constitute a breach.
14. The Council accepts that the ground (c) appeal is made on the appropriate grounds. It is argued that there are, in effect, two breaches comprising (i) the dwelling under construction and (ii) the walls, however, this is not how the allegation is drafted.
15. The starting point is the alleged breach as stated in the allegation. From this, it is clear that the walls were considered to be part and parcel of the development associated with the dwelling under construction. The Council argued that the walls would not be necessary if there were only one dwelling on the site as they exist to subdivide the residential curtilages. Permitted development rights relate to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure only, not works for the construction of a dwellinghouse and ancillary structures including walls as alleged. Therefore, it could be argued that permitted development rights conferred by Schedule 2, Part 2, Class A of the GPDO do not exist.
16. If I were to accept the argument put by the appellant, I would need to consider the limitations set out in A.1.(b). This says that development is not permitted by Class A if the height of the gate, fence, wall or other means of enclosure would exceed 2 metres above ground level.

⁴ Section 174(f) of the 1990 Act as amended - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

⁵ Article 3(1) and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

17. The appellant argued that the walls were incomplete and the finished ground level would be higher than it is at present. Nonetheless, the development which occurred must be what was alleged when the notice was served, not some subsequent altered development. This is particularly the case where operational development is alleged to be permitted development since the GPDO does not grant retrospective planning permission.
18. The main parties measured the walls during the site visit. It was agreed that the wall to the rear of the appeal building measured 2.04 metres in height (excluding its foundations). The piers either side of the gates to Oak Tree House measured 2.25 metres to ground level. Consequently, the height exceeds the limitations in A.1.(b) and the walls cannot be considered to be permitted development. Therefore, the appeal on ground (c) must fail.

The appeal on ground (a) and the deemed planning application

Planning History

19. There is a planning history relevant to the appeal. Planning permission was granted for the erection of a dwelling and detached outbuilding in 2015 (the 2015 permission)⁶. This is the permission cited in the allegation. Following this, two applications for two detached dwellings on the site were refused, and a subsequent appeal was dismissed in 2016 (the 2016 appeal)⁷.
20. A further permission for a detached dwelling was approved in 2017⁸. This was subject to amendments including the scheme referenced 17/00393/FUL⁹, which I understand has been implemented (the 2017 permission). The resulting dwelling is known as Oak Tree House. Finally, an application was granted on appeal for the retention of gates, piers and walls at the site entrance in 2018 (the 2018 appeal)¹⁰. The previous decisions are material considerations that carry significant weight.
21. Dialogue has taken place between the Council and the appellant about whether the 2015 permission could be implemented alongside the 2017 permission that resulted in Oak Tree House. The Council's final position on the matter was that the schemes were incompatible. The appellant has not sought to challenge that position. Having regard to the evidence submitted on this matter, in particular the precedent laid down in *Pilkington*¹¹, I am also of the opinion that the two schemes are incompatible. The plans approved in 2015 clearly envisaged that there would be only one dwelling on the site and the land around it would remain undeveloped. As that is no longer the case, it is not physically possible to carry out the development authorised in 2015 in accordance with the permission.
22. Nonetheless, work has commenced to implement the 2015 permission and the dwelling is under construction, albeit unfinished. At the time of my visit, the building was essentially a shell with walls and a roof, but without its windows or any internal fixtures or fittings. A boundary wall was also partially built.

⁶ Ref 14/00574/FUL dated 5 May 2015.

⁷ Ref 15/01169/FUL dated 18 January 2016, Ref 16/00386/FUL and Appeal Ref APP/K2420/W/16/3156057 dated 25 November 2016.

⁸ Ref 17/00011/FUL dated 2 March 2017.

⁹ Dated 21 June 2017.

¹⁰ Ref APP/K2420/D/18/3199006 dated 8 June 2018.

¹¹ *Pilkington v SSE* [1973] 1 WLR 1527.

Policy Background

23. The adopted development plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 consists of the Core Strategy¹² and the Site Allocations and Development Management Policies DPD 2016 (SADMP).
24. The site lies outside the settlement boundary of Cadeby as identified in the SADMP, but it falls within the Cadeby Conservation Area. The main parties agree the relevant policies are Policy CS13 of the Core Strategy, which seeks to guide development to the most sustainable locations and identifies Cadeby as a rural hamlet, and Policy DM4 of the SADMP which seeks to safeguard the countryside. The development conflicts with these policies as it does not fall within any of the categories cited as appropriate on land outside the settlement boundary.
25. The Council accepts that DM4 and the associated settlement boundaries are out-of-date as they are derived from a housing requirement figure which is lower than has since been established. However, I agree that DM4 is broadly consistent with the National Planning Policy Framework (the Framework) and should be afforded significant weight. I am referred to previous Inspectors' decisions in which similar conclusions were reached¹³, and I have no reason to disagree with that approach. Nonetheless, the site is within the environs of the built form of the village and would not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. Nor would it undermine separation between settlements or exacerbate ribbon development. Consequently, I find the conflict with Policy DM4 to have limited weight.
26. Given the acceptance that DM4 is out-of-date, I have had regard to paragraph 11d of the Framework. This states that where policies which are most important for determining the application are out-of-date, planning 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. Assets of particular importance includes designated heritage assets. Despite the Council's assertions, I find DM4 to be one of those most important for determining the application. This is a proposal for a dwelling which lies outside of the settlement boundary and, therefore, the policy that deals with that form of development is most relevant.
27. Consequently, I have first considered whether the application of policies in the Framework that protect designated heritage assets, considered alongside Policies DM10, DM11 and DM12 of the SADMP and CS13 of the Core Strategy which concern design and the historic environment, provide a clear reason for refusing the development.

Main Issues

28. I consider the main issues to be:

- (i) Whether the development preserves or enhances the character or appearance of the Cadeby Conservation Area;

¹² Hinckley and Bosworth Borough Council Core Strategy, December 2009.

¹³ Ref APP/K2420/W/17/3188948 dated 20 July 2018 and APP/K2420/W/18/3197865 dated 17 October 2018.

- (ii) The effect of the development on the setting of Cadeby Hall, which is considered to be a non-designated heritage asset.

Reasons

Whether the development preserves or enhances the character or appearance of the Cadeby Conservation Area

29. The development for which permission is sought comprises a two-storey house, an outbuilding and boundary walls. The building is accessed via a driveway from the A447, which also serves Oak Tree House. The partially constructed house is sited close to the southern boundary of Cadeby Hall.
30. The Conservation Area covers an area encompassing the village of Cadeby, which is described in the Council's Conservation Area Appraisal 2007 (CAA) as a small former agricultural settlement. The CAA states that the character of the village is derived from its agricultural origins, evidenced by the open views of the countryside between buildings, the numerous woodland trees and the former and existing farm buildings. The core of the historic settlement is centred around a road junction towards its southern end. The traditional buildings tend to be set at or near the back edge of the pavement, while the later development is set further back from the road. I saw examples of what could be described as 'backland' development, but this is not widespread.
31. The development is within a 'key space' as identified in the CAA. Prior to the erection of Oak Tree House and the main entrance gates, piers and walls, the open nature of this part of the Conservation Area had remained largely intact. The exception to this is a relatively tall conifer hedge that has been planted in an east-west orientation across the area. Historic maps show that the site was formerly part of the grounds of Cadeby Hall, identified as The Wilderness. However, I accept that the focus of the wider grounds has shifted from the south-east of the Hall to the area to the north. Cadeby Hall is described in the CAA as part of the transition to the countryside, loosely connected to the village along an impressive tree-lined drive. Overall, it is apparent that the key spaces identified in the CAA are important to the rural character of the Conservation Area.
32. The appellant asserts that, since the CAA was adopted, there has been a material change in the area due to the implementation of the planning permissions. It is argued that this development gives the site and its vicinity a modern residential character, rather than agricultural land, which renders the CAA out-of-date in its assessment of this key space.
33. Oak Tree House lies towards the western end of the site, closer to the rear of the houses fronting Main Street. Between this dwelling and the main entrance gates there is an expanse of land which would have remained largely open had the subject building and the walls alongside the driveway not been erected. The main entrance gates announce the development, suggesting they serve a development of some size. However, the distance between the main entrance and Oak Tree House would have limited its impact. The long driveway cuts across the open land but the low-key boundary fencing envisaged by the Council would not have conflicted with its appearance as former agricultural land. Hence, I do not accept the argument that the site was that of residential curtilage, and I find that the CAA assessment is justified, despite the development that has occurred since it was adopted.

34. Given the above, I find that the significance of the Conservation Area, insofar as it relates to this appeal, to be primarily associated with the plan form and layout, and the character and style of the buildings which reflect the historic development of the village, including the identified key spaces and associated views.
35. The appeal building comprises three bays and has a rectangular plan form. It is orientated so that its principle elevation faces towards the A447, from where it is visible in public views along the driveway. Due to its scale and form, the building is visually imposing, albeit views are limited by intervening trees and/or existing development. It sits to the east of Oak Tree House, which has a similar presence although its impact is reduced due to its siting towards the western end of the site. The boundary of the appeal building is delineated by relatively high walls and Oak Tree House has its own set of entrance gates.
36. The appeal building represents an intrusion into the key space associated with Cadeby Hall. When considered in the context of the existing development of Oak Tree House, this incursion is harmful. The development of two detached dwellings on the land, as proposed, intrudes upon the open and rural nature of this part of the Conservation Area, which is an important element contributing to the significance of the designated heritage asset.
37. The additional existing development of the main entrance gates, piers and walls, and the boundary walls within the site, exacerbates the harm. The walls are relatively tall structures that divide up the site and threaten to further disconnect the land from its historic associations with Cadeby Hall. Moreover, the walls link the main entrance with Oak Tree House, introducing an urbanising feature which detracts from the former open appearance of the land. Although the conifer hedge separates the land into parcels, these distinct elements retained an open appearance and could still be read as part of wider land historically associated with the Hall.
38. I appreciate that, by virtue of the various planning permissions, Oak Tree House and the appeal building have planning permission as separate entities. As do the main entrance gates, piers and walls. Each individual application was judged to be acceptable. Nonetheless, the combined effect of the existing and proposed buildings and associated structures would result in a form of development that would be alien and incongruous. The size, form and siting of the dwellings is at odds with the historic development pattern, which is characterised by smaller buildings arranged along the streets or by higher status buildings in generous grounds. Furthermore, the incursion into the key space would erode the significance of the Conservation Area.
39. I note the comments of the Conservation Officer with regard to the 2015 permission, which concerned the appeal dwelling. While the location, scale and design were judged to be acceptable, it was envisaged that only one dwelling would be located within the site, the remainder of which would remain largely open. The circumstances before me are materially different.
40. The 2016 appeal for two dwellings on the site is relevant as it concerned two dwellings, as currently identified. The Inspector found the development would have a suburbanising effect on the then undeveloped open space in the Conservation Area and would erode the setting of Cadeby Hall. I have taken into account the differences between that scheme and the development before me. That proposal was of a larger overall scale and the dwellings were of a

different design. In particular, the appeal building is smaller and sited further back from the A447. However, as explained above, the appeal building is visually imposing and it represents an incursion into the key space. The combined effect of the approved development and that currently sought would be harmful despite the differences in size, scale and design, and any reduction in hard standing areas.

41. I acknowledge that the main entrance gates, piers and walls in themselves have been judged to be acceptable by an Inspector. However, when considered in the context of the two houses and dividing walls, they become a suburbanising feature.
42. I saw that views into and across the site are limited, the main view being from the A447 along the driveway. The CAA indicates views across the open space from the A447 are to be protected. Although there is no arrow that directly corresponds to the view in question, I do not consider this to mean that only views from the exact point of the arrows are of importance. The arrows are evenly spaced and indicate that public views from along the road are equally important. In addition, the appeal building is visible from the outbuildings and gardens of Cadeby Hall. The fact that some of the outbuildings have been recently extended and converted does not have a bearing on where the building is visible from. Moreover, public views are only one element when considering effects on significance. The spatial element is also an important consideration.
43. Paragraph 193 of the Framework advises when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Given the relatively localised impact of the development, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
44. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant is of the opinion that the proposal would be beneficial because it would be more sustainable to retain and use the building for its intended purpose rather than demolish it. I disagree that demolishing the building would conflict with the aims of the Framework, which seek to move towards a low carbon economy. Ultimately, the dwelling is unauthorised. The fact that building it has had an environmental impact does not justify retaining the building and expending further emissions to complete the development. Consequently, I give this consideration limited weight.
45. Other benefits were advanced including the social and economic benefits of construction and the contribution future occupants may make to the local economy and community. However, it was acknowledged that these benefits would have limited overall effect.
46. Given the above and in the absence of any significant public benefit, I conclude that, on balance, the proposal would fail to preserve the character and appearance of the Cadeby Conservation Area. This would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 196 of the Framework and conflict with Policies DM10, DM11 and DM12 of the SADMP and CS13 of the Core Strategy that seek, among other things, to secure development that complements or enhances the character of the surrounding area while also avoiding harm to the significance

of designated heritage assets. As a result, the proposal would not be in accordance with the development plan.

The effect of the development on the setting of Cadeby Hall

47. Cadeby Hall is a substantial property identified within the CAA as an unlisted building of local historic or architectural importance. The Hall and its outbuildings are set within large grounds, served by a tree-lined drive which can be accessed either from the A447 or Main Street.
48. The main body of the Hall, that identified in the CAA, largely dates from the early nineteenth Century and reflects an eclectic architectural style. There is a long projecting wing connecting the main building with a converted outbuilding, which provides ancillary residential accommodation and is known as the Coach House. There is a traditional stable range to the east of the Hall connected by a more modern structure. A Dutch barn remains to the south of the stable range, close to the boundary with the appeal site.
49. Cadeby Hall is set within relatively large grounds. The landscaped grounds to the north and the garden land immediately surrounding the house are visually and functionally related to the Hall. However, historic maps show the land to the south-east, including the appeal site, once formed the grounds associated with the Hall. The land has a historic association with the Hall, which remains evident despite the apparent removal of parkland trees, the reduction in the surrounding tree belt, the addition of the dividing conifer belt and the development built pursuant to the planning permissions.
50. The Hall is one of the principal houses in the village. Its size and appearance identify the building, historically, as of high status. The Hall contributes positively to the character and appearance of the Conservation Area. The formal grounds and the landscape to the south-east form the setting to the Hall and contribute to its significance as a non-designated heritage asset. The changes to the landscape setting over the years has altered the relationship of the Hall to its surroundings but the historic association remains.
51. The appellant indicates that only the core of Cadeby Hall should be considered an 'important building' for the purposes of the CAA. However, the outbuildings, whether they have been converted or not, represent the evolution of the Hall. I do not agree that the Coach House reads as a separate dwelling. The outbuildings are evidence of the Hall's agricultural links and/or its status as a building of note within the village. They are functionally and visually linked to the Hall, they contribute to the significance of the asset and cannot be disregarded.
52. The appeal building is mainly visible in views from the grounds of the Hall and from the rear windows of the Coach House. It is also visible alongside the rear wing and the rear driveway to the Hall. The appeal building, in combination with Oak Tree House, the entrance gates and piers, compete with the Hall due to the scale and siting of the modern development. The overall effect is that of an enclave of suburban development that does not complement the Hall, nor are the buildings subservient to it, acknowledging its historic status.
53. I have established that the land to the south, of which the appeal site forms part, contributes to the significance of the asset due to historic associations which remain evident. The addition of the further building and its associated

development would intrude into the remaining open land, and significantly alter its character. This would contribute to severing the link between the asset and its original setting, causing harm to its significance. Given the formal grounds to the north would be unaffected, I agree the harm to be minor. Nonetheless, the development would have an adverse effect on the setting of Cadeby Hall as a non-designated heritage asset, contrary to Policies DM11 and DM12 of the SADMP.

54. As explained above, I am obliged to consider whether there is an 'obvious alternative' which would overcome the planning difficulties with less cost and disruption. This would be to allow the retention and completion of the walls.
55. I have found that one part of the walls, and the piers, only marginally exceed the relevant permitted development limitations. While it is argued that similar structures could be erected without planning permission, I think it unlikely that this would happen. The walls, gates and piers delineate the boundaries between the two dwellings. A solid boundary would not be necessary if there were only one dwelling. In addition, I have found that the erection of the walls alongside the driveway only adds to the cumulative harm. Although the land is now in different ownerships, and some form of boundary treatment is probable, this would not have to be a relatively tall, solid wall. Consequently, I do not consider there to be an obvious alternative and the notice should not be varied to allow the retention and completion of the walls.

Other Matters

56. I have considered the effect of the development on the living conditions of the occupiers of Cadeby Hall. I saw from my site visit that the appeal building is highly visible from the upper floor of the Coach House and is visually imposing. However, the main view was from the window of a kitchen/breakfast room, which I do not consider to be a main habitable room. Although there are views from the living room, the height of the windows limits the impact to a certain extent, as the occupiers would need to be standing and looking out to perceive the impact of the appeal building. Therefore, I do not find there would be an adverse impact on outlook.
57. The windows of the Coach House are relatively close to those of the appeal building, but there is no direct relationship. I do not consider there would be a material loss of privacy. Moreover, I am mindful that the Coach House provides ancillary accommodation and is not a separate dwelling.
58. To conclude on this matter, I find that there would be no adverse effect on the living conditions of the occupiers of Cadeby Hall. The development would accord with Policy DM10 of the SADMP, which seeks to protect the privacy and amenity of neighbouring occupiers.
59. It is argued that the dwelling would be sustainably located within a village setting, although it was accepted that the occupants would be dependent on a private car to access a range of facilities. I agree there would be minor economic and social benefits because the occupants may contribute to the local economy and engage in community activities. The addition of one 'self-build home' would contribute to the local housing supply and there would be limited economic benefits associated with the build process. I have already explained why I consider that the emissions benefit advanced by the appellant carries limited weight.

Conclusions

60. I have found that Policy DM4 and the associated settlement boundaries are out-of-date. However, it is broadly consistent with the Framework and carries significant weight. The development would be outside of the defined settlement boundary and contrary to Policy DM4, although I give the conflict with that policy limited weight.
61. Policy DM4 is one of those “most important” for determining the application, having regard to Paragraph 11d of the Framework. However, I have found that the development would have a harmful impact on the character and appearance of the Cadeby Conservation Area contrary to the development plan. Hence, the application of policies in the Framework that protect designated heritage assets provides a clear reason for refusing the development proposed. Consequently, the ‘tilted balance’ is not engaged. In addition, there would be minor harm to the significance of Cadeby Hall.
62. The appellant maintains that there are numerous benefits to the proposal. Taken together, these benefits would be minor and would not outweigh the harm identified above.
63. For the reasons given above, the appeal on ground (a) should not succeed.

Conclusion

64. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

65. It is directed that the enforcement notice is corrected by the:
- i) deletion of the reference B14/27/PR53/01A from paragraph 3.1 of the notice and its replacement with reference B14/27/PRS3/01A, and:
 - ii) deletion of the reference 17/00789/FUL from paragraph 4.3 prior to (“the Second Dwelling”) and its replacement with 17/00393/FUL.
66. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Christian Hawley instructed by Mrs Elizabeth Marjoram of Bird, Wilford and Sale

He called:

Ms Gail Stoten of Pegasus Planning Group

Mr Jonathan Imber of JMI Planning

FOR THE LOCAL PLANNING AUTHORITY:

Ms Stephanie Hall instructed by Hinckley and Bosworth Borough Council Legal Services

She called:

Mr Philip Grover of Grover Lewis Associates

Ms Rhiannon Hill of Hinckley and Bosworth Borough Council

INTERESTED PERSONS:

Mr Kevin Brennan

DOCUMENTS

1 Statement of Common Ground

2 Site Plan Ref 14/00574/FUL

3 Witness Statement of T J White – Planning Enforcement Officer

4 Alternative Enforcement Notice Plan