



Appeal Decision

Site visit made on 21 May 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

Appeal Ref: APP/F1040/W/19/3223811

The Bungalow, Colliery Lane, Linton, Swadlincote DE12 6PB

- 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 M Lee against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/0867, dated 8 August 2018, was refused by notice dated 17 December 2018.
 - The development proposed was originally described as '*Residential development of circa 11 dwelling houses on land in the ownership of The Bungalow, Colliery Lane, Linton. All matters are reserved for future consideration with the exception of access, which is included as a detail.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant asserts that the Council changed the description of development from that given on the application form without agreement. For the avoidance of doubt, I have considered the appeal on the basis of the original description, as an outline application with the matter of access to be considered, and all other matters reserved for future consideration. I have treated the submitted plans as being for indicative purposes only, except for details of the site location and area, and the proposed access.
3. On 19 February 2019, the Government published an update to the National Planning Policy Framework (the Framework). This update does not materially alter the national policy approach in respect of the issues raised in this appeal and therefore the main parties have not been prejudiced by its publication.
4. The appellant signed Certificate A on the application form. The Council contends that this was the wrong certificate, as it points out that an area of land within the red line adjacent to Colliery Lane does not form part of the title deed supplied with the application. I have noted the appellant's points in response, including that there is no other claim on the land. The purpose of the certificate is to ensure that owners of land are aware of development proposals which affect their property, allowing them to engage in the application process. I note that the proposal was widely publicised, including by a site notice and press notice. Based on the evidence before me I am satisfied that, whether or not the correct certificate was signed, no party would be prejudiced by my determination of the appeal.

Main Issues

5. The main issues in this appeal are:

- Whether the proposal would represent a suitable location for housing, having regard to relevant development plan policies and the guidance of the Framework;
- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on protected trees;
- Whether, if necessary, satisfactory provision is made to mitigate the impact of the proposed development on local infrastructure.

Reasons

Location for housing

6. The appeal site is located to the edge of the village of Linton and comprises a bungalow and various outbuildings with spacious grounds bordered by mature trees and hedgerows and a further group of trees to the centre of the site. The settlement boundary of Linton as defined in the South Derbyshire Local Plan Part 2 (2 November 2017) (LP2) runs through the appeal site. The bungalow and a small part of its grounds towards the entrance are within the settlement boundary, where development would normally be acceptable in principle, with the rest of the site, where the proposal would be located, lying outside the boundary and therefore in the countryside for planning purposes.
7. The dispute between the main parties centres principally on the interpretation of the text of Policy H1 of the South Derbyshire Local Plan Part 1 (13 June 2016) (LP1) and its application to the appeal proposal. Policy H1 sets out the settlement hierarchy for the district. Linton is identified as a 'Key Service Village' in the second tier of the hierarchy. Under this tier, the policy states that *'development of all sizes within the settlement boundaries will be considered appropriate and sites adjacent to settlement boundaries as an exceptions or cross subsidy site as long as not greater than 25 dwellings.'*
8. The Council points to two definitions in the glossary to the LP1 which it considers define the terms *'exceptions or cross subsidy site'* in Policy H1:
- 'Affordable Housing Exception Site (or Rural Exception Site): A site which would not normally secure planning permission for housing due to being adjacent to a settlement boundary but is allowed for development solely for affordable housing.'*
- 'Cross subsidy Exceptions Site: Are sites that would not normally secure planning permission, however development of the site is granted for both affordable and some private housing to allow the site to be viable.'*
9. As such, the Council's position is that the proposal for around 11 market dwellings would not constitute an *'exceptions or cross subsidy site'* as defined in the glossary and given the site's location adjacent to, but outside of, the settlement boundary, the proposal would conflict with Policy H1 and the site would not represent a suitable location for housing.

10. The appellant argues that the LP1 provides no definition of an 'exceptions site' or a 'cross subsidy site', and that the 'exception' in the context of Policy H1 refers to the number of dwellings, which in the case of Linton would mean development of no more than 25 dwellings would be appropriate on sites adjacent to the settlement boundary, and thus the appeal proposal for around 11 dwellings would be supported under Policy H1.
11. The appellant has submitted appeal decisions in support of his position¹ where the Inspectors considered the meaning of the wording in Policy H1. In the *Melbourne* appeal, the Inspector considered there to be ambiguity between the language of the policy itself and the phrasing of the glossary definition of '*Cross subsidy Exceptions Site*' as the latter conflates the two terms of the policy. As a result, the Inspector reasoned that the 'exception' in the policy related not to either of the glossary definitions, but to the number of dwellings. A similar conclusion was reached by the Inspector in the *Askew Lodge* appeal.
12. Two other decisions are referred to me by the Council in support of its position, one in Hartshorne² and my own decision on an appeal in Repton³. In the *Hartshorne* appeal, the Inspector cross referenced the requirements of Policy H1 with Policy H21, which relates to affordable housing requirements, having identified the 'exceptions or cross subsidy site' as referring to rural exception sites, before going on to consider the proposal, which included affordable housing, against the criteria of Policy H21.
13. In the *Repton* appeal, I stated that I had no evidence the site was promoted as an '*exceptions or cross subsidy site, which relates primarily to affordable housing led development.*' The appellant contends, in the light of the other appeal decisions cited, that this was a misinterpretation of the policy. Neither the *Melbourne* nor *Askew Lodge* appeal decisions were put to me in evidence during that appeal, and consequently, I was unable to have regard to them. Moreover, the interpretation of Policy H1 was not central to the appellant's case in the *Repton* appeal. Therefore, I regard this decision to be of limited relevance to the present appeal.
14. I have had regard to each of these appeals as material considerations, although the evidence in each case is limited to the submitted decision letters. In doing so, I recognise that consistency in the planning process is important and like cases should be decided in a like manner. However, it is also important that each case is determined on its own merits and on the basis of the evidence before the Inspector at the time.
15. In that respect, the Council also refers to a recent Court of Appeal (CoA) judgement⁴, where it was held that when the disputed policy was read in combination with other policies, it formed a comprehensive spatial strategy, and that by doing so it was clear where development would be acceptable. The findings of the CoA indicate that when applying development plan policies decision-makers should have regard to the development plan as a whole. This judgement is of relevance to the appeal before me in light of the Council's position that other policies in the development plan need to be read in conjunction with Policy H1 to establish where development is permitted under

¹ Appeal Ref: APP/F1040/W/17/3171029 – Dismissed 3 November 2017 (the *Melbourne* appeal) and Appeal Ref: APP/F1040/W/17/3191604 – Allowed 20 April 2018 (the *Askew Lodge* appeal)

² Appeal Ref: APP/F1040/W/17/3167838 – Allowed 4 July 2017 (the *Hartshorne* appeal)

³ Appeal Ref: APP/F1040/W/18/3207758 – Dismissed 2 November 2018 (the *Repton* appeal)

⁴ Gladman Developments Ltd v Canterbury City Council [2019] EWCA Civ 669 – 16 April 2019

the spatial strategy, and of what type. Importantly, this judgement was not before the Inspectors in the other appeals referred to me.

16. On my reading of policy H1, there are two requirements for development to be considered appropriate adjacent to settlement boundaries. First it must be either an 'exceptions or cross subsidy site'. Secondly, the proposal must be for no more than 25 dwellings in this particular case. In this respect, I disagree with the interpretation of the Inspectors in the *Melbourne* and *Askew Lodge* appeals. If, as my colleague Inspectors considered, there is only one requirement, that being a limit on numbers, then the words 'or cross subsidy' in the policy text are superfluous, as the development would not need any other qualification to be permitted as an exception as long as it was 25 dwellings or fewer.
17. However, 'cross subsidy' is defined within the development plan, albeit the glossary definition adds the word 'exception' to the term used in the policy. But in my view, that does not confuse its meaning to such an extent that it cannot be seen that both it and the other glossary definition relate to matters of housing delivery, and that they relate to the terms used in Policy H1. This is reinforced by the fact that both definitions are similar in describing development which would not normally be granted planning permission but are allowed for specific reasons. The '*Affordable Housing Exception Site (or Rural Exception Site)*' definition further refers to the site being 'adjacent to a settlement boundary' which aligns with the locational qualification set out in Policy H1 and would apply to the appeal site. The definitions and their application to Policy H1 are further explained by the Council's Affordable Housing Supplementary Planning Document (November 2017).
18. Policy H21 reinforces the approach of Policy H1, stating that '*rural exception sites that are kept in perpetuity as affordable housing for local people will be permitted adjoining existing Key Service Villages, Local Service Villages and Rural Villages, the number of dwellings to be in accordance with Policy H1 as an exceptional circumstance.*' Policy H21 directly identifies rural exceptions sites as relating to affordable housing for local people; it specifies the location where such sites are permitted – adjoining Key Service Villages – and it is clear that the number of dwellings is to accord with that set out in Policy H1. These requirements of tenure, location and number therefore align with Policy H1.
19. Having regard to the CoA judgement, the development plan as a whole should be considered. When the wider spatial strategy is considered, it is clear to me that Policy H1 is not permissive of all development up to 25 dwellings adjacent to settlement boundaries, as argued by the appellant. Rather, the purpose of Policy H1 is to permit, as an exceptional circumstance, affordable housing schemes, whether fully affordable or cross-subsidised by private housing on sites adjacent to settlement boundaries, up to the limits specified for various settlement types, as part of the wider spatial strategy of the development plan. Such an approach accords with the balanced approach to rural development in the Framework. To read the policy as permissive of all development up to 25 dwellings adjacent to the settlement boundary would seriously undermine the purpose of having settlement boundaries at all, which the Council points out is a well-established planning policy tool, and would permit such a potential amount of development to all sides of a settlement that it could not sensibly be regarded as an exception.

20. For the foregoing reasons, therefore, I find that the proposal for market housing would not constitute an exceptions or cross-subsidy site and so would not be supported under the second tier of Policy H1. Moreover, as the proposal would extend the built form further along this side of Colliery Lane, it would not amount to limited infill or a conversion of an existing building so as to gain support under the fifth tier of the policy which relates to development in rural areas. Furthermore, the proposal would not constitute one of the permitted forms of development in rural areas under Policy BNE5. Therefore, the proposal would not represent a suitable location for housing and would conflict with Policies H1, SDT1 and BNE5 and by extension Policy S1 of the LP1, which together set out the sustainable growth strategy for the district.

Effect on character and appearance

21. The site at present contains a bungalow set back from the road with a number of outbuildings to the rear. The rest of the site is laid to grass with a stand of trees toward the centre of the site. A tall, dense boundary hedgerow starts at the site entrance on Colliery Lane and continues around and along the Seal Wood Lane side to the rear corner of the site. A tall row of trees forms a prominent feature along the rear boundary.
22. There are dwellings forming a continuous row to the opposite side of Colliery Lane as far as the junction with Seal Wood Lane, marking the extent of the built up area of the settlement. The adjacent side of the street is more sporadically developed, with the bungalow on the appeal site and the next door property both set in mature grounds with substantial tree cover giving a semi-rural appearance. Beyond the site to the side and rear are open fields and an evident rural character, with views of the site possible for some distance along Colliery Lane and Seal Wood Lane.
23. The proposal would see approximately 11 dwellings located on the site, with a reduced area of land retained for the bungalow. Access would be taken from a new entrance on Colliery Lane. An indicative site plan shows an L-shaped layout with dwellings roughly aligned with the side and rear boundaries, facing into the site where the circulation routes would be located.
24. The appellant points to the existing boundary hedgerow as marking the edge of the village envelope, and that development would infill up to this 'logical' boundary. The fairly uniform shape of the hedgerow did lend it a domestic character when I viewed it on site. This is reinforced when it is seen in context with the dwellings on Colliery Lane in views from the west. However, when approaching from the junction with Main Street/Linton Heath, the mature trees and hedgerows screen the dwellings on the appeal site side and give a sense of approaching a rural environment.
25. The stand of trees to the centre are classed as young in the appellant's arboricultural report, with a life expectancy of 40+ years, and a potential to reach up to 25m compared to around 4m at present. Such a height may not be achieved in reality given the proximity of the trees to the bungalow, but it is reasonable to think that they would become taller and more prominent in the landscape as time passes. At my visit, I saw that the trees were visible above the boundary hedge and, together with other surrounding trees, they form a notable green buffer between the built form on the opposite side of Colliery Lane and the open countryside.

26. I acknowledge the appellant's points that matters of appearance, scale, landscaping and layout are reserved for future consideration, and the details provided are indicative. However, the constraints of the site, such as its shape and access point, and the number of dwellings which are potentially sought means that there is a strong likelihood that all of the trees to the centre of the site would be lost to development. This would diminish the extent and visual presence of the green buffer. Whilst the design of the dwellings could change, they would likely form a distinctly more intensive, suburban form of development which would fail to relate to the short terrace and detached dwellings which exist on Colliery Lane. Moreover, should tall dormer bungalows or two storey dwellings be built, the development would be readily visible from Seal Wood Lane and Colliery Lane. I acknowledge that the appeal site does not lie within a valued landscape. However, the site provides an informal transition between the built-up area and the countryside which would be eroded due to the loss of trees and the building of dwellings where there are none.
27. I have had regard to other developments to the edge of Linton referred to by the appellant, which I observed on site. These differ from the appeal scheme in location, scale or use, but I do not have full details of these proposals to make meaningful comparisons with the scheme before me. Consequently, I cannot be sure that these are entirely representative of the circumstances in these appeals and, in any case, I have determined this appeal on its own merits.
28. For the reasons given, the proposal would cause harm to the character and appearance of the area, contrary to Policies BE4 of LP1 and BE5 of LP2, and in turn Policy S1 of LP1, which require that the character, local distinctiveness, and quality of South Derbyshire's landscape are protected and enhanced through the careful design and sensitive implementation of new development, including retention of key valued landscape components such as mature trees, established hedgerows and topographical features, unless their loss would not give rise to unacceptable effects on local landscape character.

Effect on protected trees

29. A tree preservation order (TPO) was placed on the site during the course of the planning application. The appellant considers the TPO 'inappropriate and unfair' as the trees are of no public amenity benefit. The Council states that the TPO has been confirmed as of 2 April 2019 and the Council's Tree Officer comments that the trees have moderate to high levels of amenity value.
30. I have already found it likely that the trees to the centre of the site would be lost to the development. I have had regard to the appellant's point that replacement planting could be secured at reserved matters stage. I am not convinced this could be achieved, however, as the indicative plans show dwellings with relatively short front and rear gardens which are unlikely to accommodate trees of any great size, given the potential for them to encroach upon the dwellings with possible effects on levels of light or shading leading to pressure to prune or remove the trees. I also note the comments of the Council's highways department which indicate that the internal roads and turning areas would need to be enlarged to meet relevant standards, which would reduce further the possible areas for replacement planting. Though the layout is indicative, I find it unlikely, given the site's shape and requirements for access and internal circulation, that a vastly different or more spacious

layout could be achieved which could accommodate sufficient replacement planting for the number of trees lost.

31. It is not within the scope of this appeal for me to consider the Council's reasons for imposing the TPO. However, for the reasons already set out, I find that the trees possess amenity value as part of a green buffer between built development and the open countryside to this side of Colliery Lane. I am not persuaded that the development would be able to suitably replace the lost trees in terms of their amenity contribution, and therefore I find that the proposal would conflict with Policy BE7 of LP2, which states that the felling of protected groups of trees will be considered in accordance with the relevant national guidance and regulations, taking account in particular of their amenity, ecological, landscape and historic value, and that where protected trees are subject to felling or removal, a replacement of an appropriate number, species, size and in an appropriate location will normally be required.

Effect on local infrastructure

32. The Council points to a number of impacts on local infrastructure arising from the development. These include additional demand for school places and use of public open space, sports facilities and other built facilities. The basis for the financial contributions sought to mitigate these impacts is set out in the Council's 'Section 106 Agreements - A Guide for Developers' (Version 8, April 2010). In addition, Derbyshire County Council has produced evidence of expected pupil numbers and predicted demand for primary and secondary places. The appellant does not challenge this evidence. On the basis of the evidence before me, I am satisfied that the contributions sought are necessary to mitigate the impacts of the development on local infrastructure and would accord with the tests for planning obligations at Paragraph 56 of the Framework.
33. However, the appellant has confirmed that no signed unilateral undertaking or Section 106 agreement has been submitted. Accordingly, the proposal would fail to secure appropriate financial contributions to mitigate the impact of the proposal on local infrastructure and so would conflict with Policy INF1 of the LP1 which requires that reliable mechanisms are in place to ensure the necessary infrastructure to mitigate the impact of the development is delivered. There would be further conflict with Policies INF6 and INF9 of LP1 which address provision of, and mitigation for impacts of development on, community facilities, open space, sport and recreation.

Other Matters

34. The appellant contends that the appeal site amounts to previously developed land (PDL). The Framework supports development that makes efficient use of land, though the definition of PDL excludes land in built-up areas such as residential gardens. The main parties differ on whether the undeveloped part of the site is within a built-up area or is a residential garden, and thus whether it would amount to PDL. The evidence before me is inconclusive, but even if I were to consider the site amounts to PDL, the proposal would not make efficient use of land as, given the harm I have found in respect of character and appearance, it would not maintain the area's prevailing character and so would not accord with Paragraph 122 of the Framework.

35. The Council did not find harm in respect of highway safety. I have had regard to the comments of interested parties on matters such as increased traffic and the condition of the road but I do not have substantive evidence to conclude differently to the Council. The absence of harm in this respect would, however, be a neutral factor in the planning balance.
36. An application for costs was initially made by the appellant against the Council, but this was later withdrawn. The Council indicated that it was considering making its own application for costs against the appellant, but a formal application has not been made. It is not necessary, therefore, for me to take these matters any further.

Planning Balance

37. The addition of around 11 dwellings to the District's housing stock would be an important benefit of the scheme weighing in favour of the proposal. There would be some economic benefits arising from the construction of the dwellings, though these would be temporary, and subsequently from spending by future residents in the local economy. Given the scale of the development, such benefits would not be significant, and I afford them limited weight.
38. Set against these benefits, I have found there would be significant harm arising from the location of the proposal, its adverse effect on the character and appearance of the area, the loss of protected trees and the failure to mitigate the effect on local infrastructure. This results in conflict with the development plan as a whole to which I give significant weight.
39. The appellant alludes to the marginal position of the Council's five year housing land supply, pointing to appeal decisions from 2016 and 2017 where supply was found to be as low as 4.37 years. I do not have details of these cases before me, however. The Council points to its latest Housing Position Paper showing supply at 5.5 years. The evidence before me in this respect is inconclusive. However, even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits and the proposal would not amount to sustainable development in terms of the Framework.

Conclusion

40. For the reasons given, and taking all relevant matters into consideration, the proposal would result in conflict with the development plan which is not outweighed by other material considerations. The appeal is therefore dismissed.

K Savage

INSPECTOR