
Appeal Decision

Site visit made on 19 May 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2020

Appeal Ref: APP/R1038/W/20/3244901

Land off Mill Lane, Holmgate, Clay Cross, Chesterfield

- 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 David Booth against the decision of North East Derbyshire District Council.
 - The application Ref 19/00827/OL, dated 16 August 2019, was refused by notice dated 18 November 2019.
 - The development proposed is construction of two three bed one and a half storey detached dwellings on land at Mill Lane, Holmgate, Clay Cross, Derbyshire.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal seeks outline planning permission with approval for access, layout and scale. Appearance and landscaping are matters reserved for determination later.
3. I note that the Council added the phrase "affecting the setting of a Listed Building" to the description of proposed development on its decision notice. I have no evidence that the appellant agreed to this change. Furthermore, as the phrase would not amount to development, I have removed it from the description.
4. The Council refer to the proposal being contrary to various policies in the Emerging Local Plan (ELP). Paragraph 48 of the National Planning Policy Framework (the Framework) advises that Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to the Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
5. The ELP is at an advanced stage and the broad aims and objectives of the policies referred to, which relate to spatial strategy, distribution of development and development in the countryside, are consistent with policies in the Framework. However, I have not been provided with any details regarding the

matter of unresolved objections to policies. For this reason, I afford the emerging policies limited weight.

Main Issues

6. The main issues are whether:

- the appeal site would be a suitable location for housing having regard to local and national policies;
- the proposal would preserve the setting of a Grade II Listed Building, namely Henmore Cottage, and
- the proposal would result in an unacceptable loss to biodiversity.

Reasons

Suitability of location

7. For planning policy purposes, the site is located outside the settlement boundary of the town of Clay Cross and therefore in open countryside. Saved Policy H3 of the North East Derbyshire Local Plan (NEDLP) states that planning permission will only be granted for housing development outside the defined Settlement Development Limits (SDLs) if the proposal falls within one or more of certain specified categories, none of which apply in this case. Policy SS9 of the ELP is similar to Policy H3 of the NEDLP, though the categories are more extensive. The proposal does not satisfy any of the categories listed in ELP Policy SS9.
8. This stretch of Mill Lane is undeveloped on its western side, except for some lightweight structures sited on allotments on the corner of Mill Lane and Valley Road. The adjoining land to the west of the Lane consists of fields within the open countryside. These separate the built-up eastern boundary of Clay Cross town from development further north-west of the site and a small number of properties sporadically located along the stretch of Holmgate Road west/south-west of the site.
9. The proposal would introduce built development where there is currently none. The proposed dwellings would be highly visible above the suggested replacement hedge along Mill Lane and the proposed access would provide clear views into the site of the dwellings and associated hard-standing parking/turning areas. Furthermore, domestic paraphernalia would inevitably be sited within the proposed outdoor amenity areas. As such, the proposal would result in a prominent intrusion into the open countryside. Consequently, the separation between the built-up settlement edge and the open countryside would be eroded, thereby having a detrimental impact on the character and appearance of the area.
10. I note the appellant considers the proposal would be a minor extension of the existing residential development east of Mill Lane. I acknowledge that the proposed dwellings would be within proximity of existing residential development, and as such, would not result in isolated homes in the countryside. However, this does not prevent the proposal having a detrimental impact on the character and appearance of the area, which I have concluded would result from the proposal.

11. Paragraphs 77-79 of the Framework deal with housing in rural areas. In summary, the Framework advises that policies and decisions should support housing developments that reflect local needs, support opportunities to bring forward rural exception sites, promote sustainable development in rural areas by locating housing that would enhance or maintain the vitality of rural communities and avoid isolated homes in the countryside. Given the site's proximity to the town of Clay Cross and other residential properties, the proposal would make a small contribution to maintaining the vitality of this community and would not result in isolated homes in the countryside. However, I have not been provided with any evidence that the proposal would provide housing to reflect a local need or that the site qualifies as a rural exception site. As such, the proposal would not accord, on the whole, with rural housing policies in the Framework.
12. In light of the above, I conclude that the principle of residential development in the location proposed does not accord with saved Policy H3 of the NEDLP or with rural housing policies in the Framework. Furthermore, the proposal would not accord with saved policies GS6 and H12 of the NEDLP or paragraph 127 of the Framework. These policies, among other things, require development to be sympathetic to its surroundings and to protect the character of the countryside and landscape.

Setting of Listed Building

13. Henmore Cottage, a Grade II Listed Building (LB), is located on the corner of Holmgate Road and Mill Lane, close to the south-eastern corner of the site. The building is listed for its architectural and historical qualities. It dates to 17th Century, with later additions. Some of its key architectural features are its mixed stone construction, gritstone dressings, large quoins to the west, brick gable end stacks, central stone porch with painted bargeboards at the front and a mix of sliding sash and recessed and chamfered mullion windows. The building is the first property one encounters at the eastern edge of the Clay Cross settlement, as one travels east along Holmgate Road towards Clay Cross.
14. I have a statutory duty to give considerable importance and weight to the desirability of preserving the setting of a Listed Building. In addition, paragraph 193 of the Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
15. The Framework defines setting broadly as the surroundings in which a heritage asset is experienced. Thus, I consider the surroundings within which Henmore Cottage is experienced include the section of Mill Lane that passes by the site to join Holmgate Road and the land either side of it. In particular, a significant part of the LB's setting is the appeal site and the adjoining open countryside to the west, which the site forms part of. I consider this part of the LB's setting contributes substantially to the significance of the LB. Introducing buildings into the site, one of which would be very close to the north-western tip of the LB, and engineering an access point to serve the proposed dwellings, would destroy a substantial part of the LB's setting, which would significantly harm the setting of the LB.
16. With respect to paragraph 196 of the Framework, I consider the harm to the setting of the LB to be less than substantial. In such circumstance the Framework advises that the harm should be weighed against the public

benefits that would result from the development. The appellant suggests that the proposal would provide an opportunity to visually improve the appearance of a derelict parcel of land. In addition, I note that 2 further dwellings would make a small contribution to the housing needs of the area and provide some minor economic benefits. Although these are positive attributes arising from the appeal proposal, such benefits do not outweigh the harm that would be caused to the setting of the LB.

17. The proposal would not therefore accord with saved Policy BE9 of the NEDLP, Policy SDC6 of the ELP or heritage policies in the Framework which, among other things, seek to preserve or enhance the setting of LBs.

Biodiversity

18. For the purposes of appraising the proposed development, the existing site-specific circumstances form the baseline against which an assessment is to be made.
19. The Preliminary Ecological Appraisal (PEA) submitted was undertaken following the clearing of the site. It concluded that, subject to boundary trees and nesting birds being protected (which could be secured via conditions, should the appeal be allowed), there would be no issues re flora, invasive species, trees, hedgerows, water vole, badgers, bats, birds, amphibians, reptiles or invertebrates. The PEA recommended that no further surveys were required and that ecological enhancements could be provided, such as tree and shrub planting, provision of bat roosting and bird nesting opportunities and holes between plots suitable for hedgehogs.
20. Hence, in light of the above, I conclude that, if the appeal was allowed, subject to the hedge that would be removed along Mill Lane to provide the required visibility splays being replaced and the recommended protection and enhancement measures outlined in the PEA being provided, the proposed development would not lead to the loss of mature landscape features that would result in a net loss to biodiversity. As such, the proposal would accord with saved policies NE1 and NE3 of NEDLP and paragraph 170 of the Framework, which seek, among other things, to prevent the loss of distinctive landscape features, flora or fauna and to maintain and enhance biodiversity.

Other Matters

21. The appellant suggests that the existing Local Plan does not allow for a review of SDLs, which it is claimed do not meet the up-to-date housing needs of the District and the five-year supply of housing demonstrated. The Council accepts that the SDLs are out of date and do not meet the up-to-date housing needs of the District. However, the Council considers it has a healthy supply of housing land, which the appellant has not challenged. The addition of 2 dwellings within this context attracts little weight in the planning balance. Additionally, the Council state that within the ELP there is no intention to alter the SDL in this location.
22. The appellant has drawn my attention to recent residential development close to the site, on the site of a former Public House, the Buck Inn. I do not have full details of this development. Although the appellant suggests that the appeal is also previously developed land, from the available evidence and my own observations during the site visit, there is little basis for asserting that the

appeal site has any of the normal attributes associated with previously developed land as defined in the Framework.

Planning Balance

23. Notwithstanding information provided by the Council dated March 2019, it is unclear as to whether it can demonstrate a five-year supply of deliverable housing sites. However, even if the Council is unable to demonstrate such a supply, the application of policies in the Framework that protect assets of particular importance (in this case the setting of the LB) provides a clear reason for refusing the development proposed. Consequently, the presumption in favour of sustainable development does not apply.
24. I have noted the appellant's willingness to construct development of vernacular design with sensitive use of local materials, which would help integrate the development into the rural scene. In addition, I acknowledge that the build programme would be short and create little disruption and disturbance and that no significant new infrastructure would be necessary. It is also accepted that there would be no highway or flood risk implications and no deleterious effects would arise in terms of biodiversity. There would also be some minor economic and social benefits arising.
25. However, I have found that the proposal would have a significantly harmful effect on the setting of a LB. Moreover, the site would not be a suitable location for residential development due to the significant harm that would arise to the character and appearance of the area. These are important considerations in the context of the requirements of both Local Plan policy and the Framework and are matters that collectively attract substantial weight.

Conclusion

26. In light of the above, the proposal would conflict with the development plan and the Framework, when taken as a whole. There are no material considerations that indicate that a decision should be made other than in accordance with the development plan. Having considered all other relevant matters, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR