



Appeal Decision

Hearing held on 22 September 2020

Site visit made on 23 September 2020

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2020

Appeal Ref: APP/R1038/W/19/3240407

Land to the west of Derby Road (A61), Wingerworth, New Tupton S42 6DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
 - The appeal is made by Land Allocation Ltd against the decision of North East Derbyshire District Council.
 - The application Ref: 19/00376/OL, dated 27 March 2019, was refused by notice dated 4 September 2019.
 - The development proposed is outline planning application for residential development including means of access with all other matters reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration save for the access. I have assessed the proposal on this basis and treated the drawings as simply being an illustration of how the proposal could ultimately be configured.
3. A dated version of the Unilateral Undertaking in accordance with Section 106 of the Town and Country Planning Act 1990 was provided by the appellant after the hearing. This contains obligations for affordable housing provision and financial contributions in respect of primary and secondary education, health care and public open space. The proposed sums within it are as per the undated version which was submitted prior to the hearing.
4. Although the emerging North East Derbyshire Local Plan 2014-2034 (2018) (ELP) is at an advanced stage, it is yet to be adopted and its policies may be subject to further change, which limits the weight to be attached to it. The saved policies of the North East Derbyshire Local Plan (2005) (LP), and the policies of the Wingerworth Parish Neighbourhood Plan (2018) (NP) therefore constitute the development plan for the purposes of the appeal. I will determine the appeal on this basis.

Application for costs

5. An application for an award of costs was made by Land Allocation Ltd against North East Derbyshire District Council. This application is the subject of a separate decision.

Main Issues

6. Following its decision, the Council has set out that, in the light of the Deerlands Road appeal decision in 2018¹, it is not seeking to defend its opposition to the proposed development on the basis of the site's location outside settlement development limits (SDLs). Nevertheless, the Council ascribes some weight² to Sustainable Development Policy GS1 of the LP, along with several other development plan policies pertaining to development in the countryside, which are cited in the first reason for refusal. Furthermore, whether Policy GS1 is among those most important for determining the case is a matter of dispute between the parties.
7. Having regard to the above, the main issues are:
 - whether the appeal site would be a suitable location for the proposed development with reference to the spatial strategy in the development plan, andthe effect of the proposed development on:
 - the character and appearance of the area
 - highway safety, and
 - transport network capacity.

Reasons

Spatial strategy

8. The site is located beyond the built-up area of Tupton, outside the settlement's SDL as defined in the LP. As a field with hedge boundaries which adjoins other fields along its north-western boundary and is used for grazing livestock, it has a clear rural character and function. As such, the appeal site is within the countryside.
9. Saved Policies GS1, GS6 and W2 of the LP together seek to restrain development in the countryside, which these policies define as areas outside SDLs. The proposal would conflict with criterion a) of Policy GS1, and Policies GS6 and W2 of the LP in that it would locate development outside Tupton's SDL. With up to 67 dwellings, the proposal would add substantial suburban mass, roads, impermeable surfaces and domestic paraphernalia, including cars, to the site. For reasons I go into later, this would harmfully urbanise an area of countryside. Therefore, the proposal would not conserve the quality of the area's natural assets and would conflict with criterion d) of Policy GS1 of the LP.
10. The proposal would not make use of previously developed land (PDL) and thus would conflict with criterion b) of Policy GS1 of the LP.
11. The proposed development would be accessible to the road network, including regular bus services to Chesterfield and Derby. It would also be within a short walk of services and facilities in Tupton. In this respect the proposal would satisfy criterion c) of Policy GS1 of the LP.

¹ Appeal Ref: APP/R1038/W/17/3192255 ('the Deerlands Road decision'), which gave outline planning permission for residential development on another site, in Wingerworth.

² As per the Council's Hearing Statement, paragraphs 4.3 to 4.4.

12. In conclusion, although the proposal would adhere to Policy GS1c) there would nevertheless be an overall conflict with the spatial strategy in the development plan due to the failure to adhere to criteria a), b) and d) of Policy GS1 of the LP, and Policies GS6 and W2 of the LP. Thus, the appeal site would not be in a suitable location for the proposed development, with reference to the spatial strategy in the development plan.

Character and appearance

13. The site is an approximately wedge-shaped grass field which slopes down noticeably in a northerly direction. Established hedgerow including some trees runs along much of the site's perimeter. It is bounded by dwellings on Nethermoor Road, and to the north and west by countryside which includes Sutcliffe Wood and Hanging Banks Wood. To the east of the site is the A61 and countryside beyond.
14. The site is set within a rolling landscape which is characterised by a mix of fields, woodland blocks and valleys. This combination of elements provides a verdant separation between settlements. Within this context, the site is part of an area of countryside which separates Tupton from Wingerworth. As such it contributes significantly to the countryside gap between and the 'green frame' around these settlements.
15. The draft Local Settlement Gap (LSG) designation between Tupton and Wingerworth in the Publication Draft of the ELP is on the other side of the A61 and does not include the appeal site. However, the ELP and thus the boundary of the LSG is yet to be finalised. Moreover, the draft LSG boundary does not alter what I observed 'on the ground', that the site contributes substantially to the gap between the settlements.
16. Judging by the indicative layout, it is likely that the proposal would incorporate a substantial landscape buffer along much of the site's western boundary and its northern tip. It is also feasible that houses would be set back from the A61 with a landscape strip to the front. These elements, along with the rolling landscape, vegetation and other developments in the area - which are noted in the Landscape and Visual evidence of the appellant - would go some way to soften and assimilate views of the proposed development.
17. Nevertheless, the proposed wedge-shaped development of up to 67 new houses across the greenfield site would substantially pierce the countryside gap to the north of Tupton, heading towards Wingerworth. Judging by the indicative layout, a compact suburban residential character is likely to replace the rolling, spacious and verdant countryside character across much of the site. This would urbanise a substantial part of a countryside quadrant to the north-west of the roundabout near the site. The extension of urbanisation of the countryside between Tupton and Wingerworth to the west of the A61, and in a northerly direction well beyond the northernmost extent of Tupton's built-up area, would be substantially discordant with the existing pattern of the settlement and the identity of its countryside setting. The above would be contrary to the primary aims of conserving the rural character and settlement pattern of the Wooded Farmlands Landscape Character Type³, in which the site is located.

³ As per The Landscape Character of Derbyshire Fourth Edition, 2014 (Derbyshire County Council).

18. Furthermore, the visually softening and containing effect of perimeter hedging, woodland and new planting would be limited by seasonal leaf fall, and domestic pressures for thinning and pruning. The rural character of the site would be eroded by views above and through vegetation of the roofscape and upper parts of buildings. Vehicular access in and out of the site onto the A61, and associated openness requirements of its visibility splay, would draw further attention to the urbanising effect of the proposed development.
19. The above impacts would be noticeable from the south and east to pedestrians using the pavement along the A61 and other road users including motorists and passengers on the regular double and single decker buses using the A61 corridor. In addition, the impacts would be perceived from dwellings in Tupton on the northern side of Nethermoor Road and the eastern side of the A61, from adjoining woodland and countryside to the north and west and from within the site.
20. As such, the proposal would have a detrimental urbanising effect on the countryside setting of Tupton and erode the countryside separation gap between Tupton and Wingerworth.
21. Supporting text for Policy W16 of the NP suggests a strong connection between this policy and LSGs which are to be defined through the ELP. The proposed development would be located outside the draft LSG in the ELP. That said, it is not certain that the site would be beyond LSG boundaries as the new Local Plan is yet to be finalised. Moreover, the proposal would undermine retention of settlement separation and identity, which is expressly espoused by the wording of Policy W16. Therefore, the proposal would conflict with Policy W16 of the NP.
22. In conclusion, the proposed development would harm the character and appearance of the area. As such, it would conflict with Policies GS1, GS6 and NE1 North East Derbyshire Local of the LP. Together the policies seek to ensure, amongst other things, that development complements local landscape and countryside character.

Highway safety

23. The proposed vehicular access to the site would be located at approximately the centre of the site's eastern boundary, via a stretch of the A61 Derby Road between Wingerworth and Tupton. This stretch comprises a two-lane, single carriageway road with a 50mph speed limit. From what I saw during my site visit, albeit a snapshot in time, this is an apparently busy stretch of the A61 with a steady flow of traffic in both directions including cars, lorries and buses.
24. This relatively straight stretch of the A61 runs from the southern edge of Wingerworth, via a wooded corridor into an area of more open countryside, on to the roundabout in Tupton where Nethermoor Road, Queen Victoria Road and the A61 converge. The proposed site access would be located approximately 130m from the roundabout, which is known locally as the 'four lanes' roundabout.
25. Southbound, the host stretch of the A61 slopes down past the Hunloke housing estate towards a dip in the road near the northern end of the appeal site before rising up towards the 'four lanes' roundabout. It is undisputed by the main parties' highways and transportation consultants that slow-moving traffic queues can occur approaching the roundabout, and I saw this to be the case.

26. The above combination of factors causes southbound vehicles to approach the proposed site access on the 50mph stretch, before starting to brake in the dip, then climb and brake again on the approach to the roundabout. Vehicles in the northbound lane accelerate away from the proposed roundabout. Therefore, a complex mix of speeding up and slowing down by vehicles occurs in the vicinity of the proposed site access and 'four lanes' roundabout.
27. The proposal would result in southbound vehicles stopping or slowing within the carriageway in order to make a right turn into the development. The carriageway does not appear to be wide enough to accommodate a right lane turn for turning vehicles to wait in, outside of the southbound lane. Moreover, additional private and other vehicle movements arising from the up to 67 proposed new dwellings would occur between the development, southbound and northbound lanes of the A61.
28. These additional vehicle movements and manoeuvres would occur within the context of a complex sequence of vehicles speeding up and braking on a busy 50mph stretch of road, coming in and out of the dip on the A61, in the vicinity of the proposed access and 'four lanes' roundabout in Tupton. The proposal would therefore result in additional volume and complexity of vehicle manoeuvring on, to and from a sensitive stretch of the A61. Future additional traffic from the substantial amount of new housing development which is under construction in the Wingerworth area would add to this volume and complexity. Together, the above would increase the risk of distraction to drivers and vehicle collisions in the vicinity of the proposed site access.
29. Consequently, the proposal would have an unacceptable adverse effect on highway safety. Detailed analysis of the effect on vehicle manoeuvres on the section of highway comprising the approaches to the proposed access and 'four lanes' roundabout, taking account of cumulative traffic increases from committed housing growth in the Wingerworth and Tupton area, is not presented to persuade me otherwise.
30. Derbyshire County Council Highway Authority have not objected to the proposed access, subject to planning conditions. Also police and Crashmap personal injury collision data indicates that there has not been a record of substantial collisions in the immediate vicinity of the proposed access between 2013 and 2019. Nevertheless, the absence of such objection and reported incidents does not automatically mean that the area and proposal in question are inherently safe from a highway safety perspective. Moreover, the police and Crashmap data would be of limited assistance as it would not take into account the impacts from the development.
31. The appellant's Traffic and Transportation Statements consider that the proposal would achieve a safe and suitable access and therefore not result in harm to highway safety. However, community concern has been raised regarding highway safety, which I have found to be valid for the reasons described above.
32. In conclusion the proposal would harm highway safety. As such, it would conflict with Policy T2 of the LP and Policy W17 of the NP, which together seek to ensure that development safeguards highway safety.

Transport network capacity

33. Given the scale of proposed development and the site's accessibility by alternative modes of travel, the proposal would not result in severe harm to transport network capacity. As such, it would not conflict with Policy T2 of the LP which seeks to ensure, amongst other things, that development safeguards road network capacity. The absence of harm in this respect is a neutral factor which does not weigh in favour of the development.

Other Matters

34. I appreciate that the officer's report found insufficient harm in relation to spatial strategy, character and appearance and highway safety to justify refusal, but this does not alter my reasoning. In any case, Members reached a different conclusion.

Planning Balance and Conclusion

35. In the light of the main issues described above, I consider that the most important policies for determining the appeal are Sustainable Development Policy GS1 of the LP, Landscape Character Policy NE1 of the LP, Local Settlement Gaps Policy W16 of the NP, Highway Access and Impact Policy T2 of the LP and Highway Safety Policy W17 of the NP.
36. While the LP was adopted in 2005, as established in paragraph 213 of the National Planning Policy Framework (the Framework) a policy's age does not in itself render it out of date. The important question is the extent to which the policies in the development plan are consistent with the Framework.
37. Policy GS1 of the LP seeks, amongst other things, to focus development within SDLs unless the development is acceptable in the countryside, or 'overriding exceptional circumstances' apply. The 'exceptional circumstances' element of Policy GS1 is inconsistent with the Framework. Policy GS1 of the LP prioritises rather than simply encourages the use of PDL before greenfield sites. In this respect Policy GS1 exceeds the emphasis in paragraph 84 of the Framework. This limits the extent to which the proposal conflicts with PDL policy.
38. Moreover, the housing targets in the LP are out of date, as was identified by the Inspector in the Deerlands Road decision. In the light of this, it is undisputed that the spatial portrait of the LP no longer meets the development needs of the district. Furthermore, the Wingerworth Parish Neighbourhood Plan 2016-2033 (2018) (NP) does not allocate housing sites. The Inspector in the Deerlands Road decision⁴ found the Wingerworth SDL to be 'meaningless unless there are policies related to it'.
39. Nevertheless, as pointed out by the Council in its Hearing Statement in the current appeal case, much of the content of Policies GS1, GS6 and W2 of the LP follows sound sustainable development principles. These include Policy GS1 requiring development to preserve or enhance the environment of North East Derbyshire and contribute towards achieving a sustainable pattern of development. Policies GS6 and W2 of the LP together seek to restrict development in the countryside to what is appropriate in a rural location, with particular regard to character, farming function, infrastructure provision, environmental impacts and thriving communities.

⁴ Paragraph 20.

40. Moreover, the requirement for development to be located within SDLs is not in itself inconsistent with the Framework. SDLs can help protect countryside character and focus development in the most sustainable locations. Given the rural character of the appeal site, Tupton's SDL appears to be logically drawn.
41. Furthermore, for the purposes of this appeal the Council can demonstrate a supply of deliverable housing sites of in the region of 8.3 years. The longer term effects of Covid-19 on housing supply are yet to be manifested and so, for the purposes of this appeal, that supply figure stands. Accordingly, North East Derbyshire District has an especially healthy scale of deliverable housing land supply. This scale of supply is significantly larger than the 'five year housing supply' which was found in the Deerlands Road decision⁵ and the 7.4 year worst case supply scenario identified in the appeal decision for Land east of Little Morton Road in 2019⁶.
42. Taking the above together, Policies GS1, GS6 and W2 of the LP are to some extent inconsistent with the Framework. Nevertheless, Policies GS1, GS6 and W2 of the LP are also to some extent consistent with the Framework in that they follow some sound sustainable development principles. Moreover, given that the District's supply of deliverable housing sites substantially exceeds the Framework's five year requirement, restraint on development beyond Tupton and Wingerworth's SDLs, as prescribed by Policies GS1, GS6 and W2 of the LP, would not prevent housing supply being boosted. Therefore, in this case I attach moderate weight to Policies GS1, GS6 and W2 of the LP.
43. I have had regard to the other Inspectors' findings in the previous appeal decisions on other sites⁷ cited by the appellant, including that Policies GS1 and GS6 of the LP were considered out of date. I have also considered the arguments and evidence presented afresh in this case, in the light of the especially healthy current housing supply in the district - which is well in excess of the Framework's five year requirement - and the apparent logic of Tupton's SDL, given the site's rural character.
44. Given my findings that Policies GS1, GS6 and W2 of the LP are partly consistent with the Framework, and restraint on development beyond Tupton's SDL would not prevent the especially healthy supply of housing in the district, I consider that Policies GS1, GS6 and W2 of the LP are not out of date. Moreover, Policies W16 and W17 of the NP and Policy T2 of the LP are not out of date. Together, this results in the 'basket' of the most important policies for determining this case not being out of date. Therefore, the tilted balance, as set out within paragraph 11 of the Framework, is not engaged.
45. The proposed up to 67 dwellings would contribute modestly to local housing supply, within the context of around 8.3 years supply of deliverable housing sites for 2,183 dwellings in the district. The proposed 20 affordable homes would meet around an eighth of a year's identified need in the district. Furthermore, the construction phase and subsequent residential occupation would result in some local economic activity. As such, the proposal's benefits carry significant weight. However, these benefits would not outweigh the significant harm identified.

⁵ Paragraph 52.

⁶ As set out in paragraph 54 of APP/R1038/W/18/3216245, which dismissed the appeal against a refusal to grant outline planning permission for residential development at Land east of Little Morton Road, North Wingfield.

⁷ Appeal Refs as per footnotes 1 and 6, and APP/R1038/W/18/3206187.

46. The proposal would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is dismissed.

William Cooper

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Mortonson	AAH Planning Consultants
Stephen Moss	AECOM
Wendy Wright	AAH Planning Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Joanne Edwards	North East Derbyshire District Council
John Jeffcock	Michelle Bolger Expert Landscape Consultancy
Paul Wilson	BWB Consulting Limited
Susan Wraith	4 Planning Delivery Limited

INTERESTED PARTIES:

David Hancock	Councillor, Tupton Ward
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DOCUMENTS SUBMITTED AT THE HEARING

1. Five Year Housing Land Supply Statement 2020, Amended version 22 May 2020, first 4 pages - North East Derbyshire District Council.

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Unilateral Undertaking, dated 22 September 2020, received 6 October 2020.