



## Appeal Decision

Site Visit made on 16 December 2020

**by M Russell BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 January 2021**

---

**Appeal Ref: APP/F1040/W/19/3232081**

**4 Church Street, Hartshorne, Swadlincote DE11 7ER**

- 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 D Cooper – D Cooper Construction Ltd against the decision of South Derbyshire District Council.
  - The application Ref 9/2018/0968, dated 3 September 2018, was refused by notice dated 3 June 2019.
  - The development proposed was originally described as 'Outline application for the erection of four dwellings and alterations to access'.
  - This decision supersedes that issued on 9 October 2019. That decision on the appeal was quashed by order of the High Court.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The number of dwellings was reduced from the originally proposed four, to three during the planning application process. I have determined the appeal on this basis.
3. The proposal is in outline form with all matters reserved except for means of access. I have therefore considered the size and position of the dwellings and associated plots and garages shown on the revised plan (856-01 Revision B) as being indicative only for the purposes of my assessment.

### Main Issue

4. The main issues are:
  - whether the appeal site would be a suitable location for the proposed development, having regard to the development plan and national policy; and
  - the effect of the proposal on the character and appearance of the area.

### Reasons

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.

6. Policy S1 (Sustainable Growth Strategy) of the South Derbyshire Local Plan Part 1 (2016) (LP1) promotes sustainable growth to meet its objectively assessed housing needs. It seeks to ensure that economic, social and environmental objectives are fully addressed including amongst other things that the District's landscape and rural character are protected, conserved and enhanced. This approach is consistent with the sustainability aims of the National Planning Policy Framework (the Framework) which states amongst other things that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

#### *Suitability of Location*

7. There is no dispute between the parties that the appeal site is located adjacent to, but outside, the settlement boundary for Hartshorne and is therefore in the countryside for the purposes of decision making. Policy SDT1 (Settlement Boundaries and Development) of the South Derbyshire Local Plan Part 2 (2017) (LP2) confirms amongst other things that outside settlement boundaries, development will be limited to that considered acceptable by Policy BNE5 (Development in Rural Areas) of the LP2.
8. Policy BNE5 i) states planning permission will be granted where development is allowed for by a specific list of Policies, one of which is Policy H1 of the LP1. Policy H1 sets out a 'Settlement Hierarchy' and identifies Hartshorne as a Local Service Village where sites adjacent to the settlement boundary may be considered appropriate as exceptions or cross subsidy sites.
9. The High Court decision in relation to the quashed appeal decision on the site confirmed that *'When reaching that decision, the Inspector misinterpreted Policy H1 of the South Derbyshire Local Plan Part 1. In Policy H1 4 (Rural villages) i. the reference to "exceptions or cross subsidy site" are to Affordable Housing Exception Site (or Rural Exception Site) and to Cross subsidy Exceptions Site as defined in the Glossary. In order to amount to "development of a limited nature" proposals that are adjacent to the settlement are therefore required to fall within one of these defined categories of site and to be no greater than 15 dwellings.'*
10. Having regard to this High Court decision and given that there is nothing before me to indicate that the dwellings would be for affordable housing or a cross subsidy exception site, the development would not comply with Policy H1 or Policy BNE5 i) in this regard.
11. The development is not essential to a rural based activity. The Council says it can demonstrate a 5-year housing land supply and without evidence to the contrary, housing development is therefore not unavoidable outside settlement boundaries. Therefore, the development would not meet Parts ii) and iii) of Policy BNE5.
12. Rural areas outside of the defined settlements sits at the lowest tier of the hierarchy in Policy H1 and the policy only allows for limited infill and conversions in such locations. Policy BNE5 iv) requires that infill development should be in keeping with the character of the locality and that it should represent the infilling of a small gap for not normally more than two dwellings, within small groups of housing.

13. I have carefully considered the appellant's submissions as to why they consider the development is infill development. Whilst Policy BNE5 iv) allows for some flexibility, it is specific that infill should not normally be for more than two dwellings. Indeed, limited infill more commonly relates to a small number of dwellings in a gap between buildings and in a layout that reflects the pattern of neighbouring development. In this instance, there would be a net increase of two dwellings and it would be physically possible to fit more than two dwellings on the site. Nevertheless, these factors alone do not demonstrate why a quantum of development above the normally accepted levels would be limited infill in accordance with the requirements of the development plan.
14. The site's position next to the settlement boundary means it is not isolated in terms of the definition within the Framework. There are also some services and facilities in Hartshorne including a primary school, a parish church, a Methodist chapel and three public houses. The evidence before me indicates that there is an hourly bus service to larger settlements. However, the nearest larger settlements are not conveniently located so as to encourage walking or cycling. Consequently, it is likely that there would be some reliance on the private motor vehicle to meet day to day needs. This further persuades me that the development proposed and its location outside the settlement boundary would not be sustainable.
15. Taking all the above factors into account, the appeal site would not be a suitable location for the development and would therefore conflict with Policies S1 (Sustainable Growth Strategy), S4 (Housing Strategy), H1 (Settlement Hierarchy) of the LP1, Policies SDT1 (Settlement Boundaries and Development) and BNE5 (Development in Rural Areas) of the LP2 and the Framework.

#### *Character and Appearance*

16. The appeal site and the properties that it shares boundaries with accommodate single dwellings, set well back from the road, within substantial plots with mature landscaping. The spaciousness and greenery that this gives to this part of Church Street provides a distinct low-density character which assists the transition between the closer-knit development within the settlement boundary and the more open landscape character of the countryside.
17. I am conscious that access is specifically applied for in this instance. Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 defines the reserved matters and confirms amongst other things that 'access' relates to 'the accessibility to and within the site, for vehicles, cycles pedestrians...'. Consequently, the single point of access and its angled relationship would be substantively fixed in the event that this appeal were to be allowed. In combination with the quantum of development proposed, this would be likely to result in buildings being positioned both in relatively close proximity to the road and towards the back of the site, thereby precluding an arrangement of buildings that would reflect the more spacious and dispersed pattern of development outside the settlement boundary.
18. I acknowledge that the previous Inspector that dealt with the now quashed appeal decision commented on the potential for achieving spacious frontages and noted the more dense development to the south west. I am mindful that they were assessing the development on the basis of an erroneous understanding that the development plan allowed an 'exception' for the development of sites adjacent to the settlement boundary for up to 15 market

dwellings. However, in the specific context of development in the countryside, I am not persuaded that a more comprehensive development of the site than presently exists would be justified by a comparison with the higher density development within the settlement boundary. Therefore, when all the above factors are considered as a whole, it has not been demonstrated that the development would be in keeping with the spacious low-density character of the locality. This also further persuades me that the development would not appear as limited infill in line with the requirements of the development plan.

19. To conclude, the development and would result in harm to the character and appearance of the area. It would conflict with those provisions which seek to protect the character of the locality and the intrinsic character and beauty of the countryside set out in Policies S1 (Sustainable Growth Strategy), H20 (Housing Balance) and BNE4 (Landscape Character and Local Distinctiveness) of the LP1 and Policies SDT1 (Settlement Boundaries and Development) and BNE5 (Development in Rural Areas) of the LP2 and the Framework.

### **Other Matters**

20. There would be a planning benefit through the provision of three new homes. I also acknowledge that the Council did not identify any harm in respect of highway safety, flood risk and drainage, ecology or relationships with the living conditions of neighbouring occupiers although these are other expected planning requirements rather than matters which would override the considerations under the main issues.

### **Planning Balance and Conclusion**

21. The Council suggests it can demonstrate a 5-year housing land supply and I have no substantive evidence before me to demonstrate this is not the case. The policies of the development plan should therefore be considered up-to-date. Paragraph 12 of the Framework confirms amongst other things that the development plan is the starting point for decision making and where a planning application conflicts with an up-to-date development plan permission should not usually be granted.
22. The development would make a modest but important contribution towards the Council's housing requirements. However, for the reasons set out, the proposal would conflict with the sustainable development aims of the development plan and the Framework and would result in significant harm to the character and appearance of the area. These are matters which attract significant weight and tip the balance firmly against the proposal.
23. No further material considerations have been advanced of sufficient weight to justify a decision other than in accordance with the development plan. Therefore, for the reasons set out, I conclude that this appeal should be dismissed.

*M Russell*

INSPECTOR