



Appeal Decision

Site Visit made on 1 February 2021

by Robert Walker BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Appeal Ref: APP/R1038/W/20/3262292

Land between Overton Lodge and Brookside Cottage, Fallgate, Milltown S45 0EY

- 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 P Barltrop (Stenfold Resources Ltd) against the decision of North East Derbyshire District Council.
 - The application Ref 20/00166/OL, dated 17 February 2020, was refused by notice dated 28 September 2020.
 - The development proposed is outline application (all matters reserved) for the erection of one dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development given on the planning application form and decision notice differ. The description in the header above is taken from the planning application form, which accurately describes the proposal.
3. The planning application was made in outline with all matters reserved. As such, I have regarded all elements of the drawings submitted as indicative.
4. Although not referred to in the Council's reason for refusal, both parties have referred me to the emerging North East Derbyshire Local Plan (2018) (ELP) and, in particular, Policies SS8 and SS9. The ELP is at a reasonably advanced stage with the main modifications having been published for consultation. However, it is not yet adopted, and the consultation also includes matters relating to housing land supply. Moreover, both Policies SS8 and SS9 are subject to main modifications and I do not know the extent of any further changes. As such, and in accordance with Paragraph 48 of the National Planning Policy Framework (the Framework), I give moderate weight to these policies of the ELP.

Main Issues

5. The main issues are:
 - Whether the proposal would accord with the Council's plan led strategy for housing and growth; and
 - The effect of the proposal on the character and appearance of the surrounding area.

Reasons

Housing strategy

6. The appeal site is an open parcel of land on a steeply sloping site located within Fallgate. Although the appeal site may have historically been used as a garden, I have no substantive evidence of this and, in the context of this appeal, I cannot therefore conclude that the appeal site is previously developed land.
7. Fallgate lies outside of any defined settlement development limits (development limits) within the North East Derbyshire Local Plan (2005) (LP). Policy GS1 and, although not specifically referred to in the reason for refusal, Policies GS6 and H3 of the LP seek to restrict most residential development outside of development limits. The appeal scheme is not for any of the types of development specifically supported by these policies and the proposal would thus, conflict with them.
8. Policy AP2 of the Ashover Neighbourhood Plan (2018) (NP) is also relevant in setting the strategy for development outside of development limits within this area. Despite background work on establishing its own development limits, the NP relies on the Council's development limits and for the purposes of the NP the appeal site is treated as countryside. In the countryside Policy AP2 stipulates, amongst other things, that development proposals will be carefully controlled and limited to specific types. The proposal would not be for any type of development supported by this policy, thus bringing conflict with it.
9. I therefore find that the proposal would not accord with the Council's plan led strategy for housing and would, therefore, conflict with the requirements of Policies GS1, GS6 and H3 of the LP and Policy AP2 of the NP.
10. Fallgate is a level 4 settlement within the settlement hierarchy within the ELP, whereby limited infilling would be supported by Policies SS8 and SS9. In this context, the ELP glossary stipulates that to qualify as infilling it must be a building on a relatively small site, between existing buildings in a substantially built up area.
11. The appeal site is a large spacious plot both in depth and frontage and is of a size that would not, in my view, be considered relatively small. The proposal would develop a gap between 2 houses. In this context the development of the site would be within the broad built-up area of Fallgate. However, the density of housing, the size of the site and extent of undeveloped natural features along Jetting Street (the street), is such that, the appeal site is not within a substantially built up area.
12. There is a tension between the ELP's glossary definition, of 'infill development' as it applies to small settlements, in that it refers to building on what would effectively be a gap in a 'substantially built up area', which in itself is not a characteristic of very small settlements. However, based on the evidence before me and although I give moderate weight to it, the proposal would nonetheless, conflict with the emerging spatial strategy for growth within the ELP.

Character and appearance

13. Fallgate is a small rural settlement within a Special Landscape Area (SLA) characterised by stone houses often set within spacious plots. Its character is

influenced by the steep slopes, mature tree coverage, stone walls and the river running through it. The street, also a public right of way leading into the wider countryside, broadly follows the river.

14. The western side of the street, where stone walling and a small number of houses cut into the slope, contrasts with the more natural, undeveloped qualities on the opposite side. The Council has approved housing along the street which, if built, would extend the built form on the western side. Although some work was being undertaken at the time of my site visit, I do not have full details of these schemes or the stage that they are at.
15. Despite the housing, the street retains a rural character due to its undeveloped eastern side, the width of the carriageway and the lack of footways and streetlights. Moreover, the topography, mature trees and river, along with some views of the broader landscape provide a particularly attractive verdant route into the settlement as it transitions with the wider countryside.
16. As a large, undeveloped gap on the western side of the street, with its stone walling, steep slope and open views to trees on the upper slopes, the appeal site makes a positive contribution to the rural character of this part of the street within the SLA. However, given its size and location its overall contribution to the SLA is modest. As such, I consider the appeal site to have local value rather than being a valued landscape for the purposes of paragraph 170 (a) of the Framework.
17. Although due to the width of the plot there would be gaps retained between the houses either side, the proposed development would result in the erosion of the large open gap. In this regard, the construction of a dwelling, irrespective of the matters to be reserved, would reduce the undeveloped qualities of the appeal site.
18. The original indicative site plan submitted with the application showed the parking largely reflecting that at the adjacent property. However, the revised indicative site plan shows the parking centralised, building pushed back and a broad open frontage to achieve a visibility splay. This opening of the frontage would result in a more formal layout, which would fail to harmonise with the prevailing pattern of the housing and stone walling along this part of the street.
19. Other properties have been historically developed by cutting into the slope and there is variety in the design of houses. As such, a dwelling cut into the slope would not, in itself, appear contrived. However, the positioning of the dwelling, in the revised indicative plan, would be more closely aligned with the house to the north. This is accessed directly onto the street, whereas the proposed dwelling would be raised above the level of the street. Seen together, this stark contrast would appear discordant.
20. Drawing the above together, the proposal would erode the rural character of this part of the street. Moreover, although not determinative in isolation, the indicative plans would not harmonise with the prevailing development in the street scene.
21. I therefore find that the proposal would result in harm to the character and appearance of this part of the surrounding area. In wider views the appeal site is largely screened by the combination of trees, the topography, and other

buildings. Although the extent of harm would be localised within the SLA it, nonetheless, weighs against the proposal.

22. The proposal would therefore conflict with the requirements of Policies GS1, NE1 and NE2 of the LP and Policies AP2 and AP13 of the NP, insofar as they relate to character and appearance. These policies stipulate, amongst other things, that development proposals that would result in the loss of distinctive features that contribute towards and, add value to, the landscape character of an area will not be permitted.
23. The proposal would also conflict with the requirements of paragraphs 127 and 170 of the Framework. These seek, amongst other things, that decisions contribute to, and enhance, the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.

Policy Considerations

24. There is no dispute that the Council can currently demonstrate a 5-year supply of housing, with the Council quoting a figure in excess of 8 years.
25. Be that as it may, the LP was prepared for the time period 2001-2011. The Framework advises at paragraph 213 that policies should not be considered out of date because of the date of their adoption, but that due weight should be given to them according to their consistency with the Framework. Both parties have referred me to several recent appeal decisions that consider this point. Whilst I have had regard to these decisions, none featured the exact same 'basket of policies' and I have come to my own conclusion on the basis of the evidence before me and the specific circumstances of this appeal.
26. I consider that the most important policies for the determination of this appeal are LP Policies GS1, GS6, H3, NE1 and NE2 and NP Policies AP2 and AP13, as these are the policies that directly relate to the main issues in this appeal.
27. Insofar as Policies GS1, GS6, H3 and AP2 seek to restrict development outside development limits, there is some inconsistency with the Framework. Nonetheless, the objectives of focussing housing toward settlements including, rural communities, with adequate access to services and facilities, remain valid and in line with the objectives of the Framework.
28. The SLA designation is not being carried over to the ELP and the designation was originally derived from a now revoked plan. However, the approach within Policy NE2, insofar as it relates to protecting the intrinsic character and beauty of the countryside, is consistent with the Framework. Furthermore, NP Policy AP13 relating to landscape character is fully consistent with the Framework's provisions.
29. As such, whilst there may be elements within the basket of most important policies that are out of date, overall, I do not consider that they are out of date for the purposes of this appeal, due to the high degree of alignment with the Framework. I therefore find that, in this instance, the so-called tilted balance, as established in paragraph 11 d) of the Framework, is not engaged.

Other Matters

30. The proposed ecological mitigation and enhancement measures would cover an area larger than the appeal site and would provide benefits to the local wildlife

site. However, the extent of these benefits and any harm is unquantified with no metrics used in the supporting evidence. As such, whilst there would be moderate ecological benefits, I am unable to conclude that the proposed measures would amount to the overall significant benefits, as advanced.

31. My attention has been drawn to several approvals in the settlement. Although each site has its own characteristics, it is clear that Fallgate has seen growth in the past. Some related to previously developed sites, conversions, lawful development certificates or were granted at a time when the Council did not have a 5-year supply of housing. Consequently, the circumstances in all of the cited approvals are not the same as those before me.
32. However, some were greenfield sites. Of particular relevance to the appeal proposal in terms of the nature of application, location and character are the applications along and off Jetting Street. However, previous permissions do not form a precedent that has to be followed and I do not have the full details of the circumstances that led to their approval, such as whether the Council had a 5-year supply and the policy considerations at that time. As such, these permissions should not be used to set a precedent for harmful development.
33. The appeal site is not isolated in the context of the Framework. However, there are limited facilities nearby and I have little information regarding the frequency of busses. Although the Framework does accept that the opportunities for sustainable rural transport solutions are reduced, given the location of facilities and services, nature of the walking routes and evidence before me, future occupiers would have a general reliance on private vehicles.
34. The government places considerable importance on boosting the supply of housing and the presence of a 5-year supply of housing is not a maximum. As such, although the supply figure is not sufficient to engage the so called 'tilted balance', the proposal would, nonetheless, contribute to maintaining the Council's supply of family housing. The proposal would create short-term employment during construction. Moreover, future occupiers would contribute to the vitality of the local rural community and economy. However, as a single dwelling, the associated social and economic benefits would be limited.
35. The Council does not consider that the proposal would harm the setting of any listed building in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The nearest listed building is Commonbank House and, due to the change in ground levels, I am satisfied that the proposal would not cause harm to its setting.
36. The Council did not make findings of harm with respect to other matters such as living conditions, flood risk, or highway matters and I have no reason to disagree with these findings. However, the absence of harm is a neutral matter which weighs neither for, nor against, the proposal.

Conclusion

37. The proposal would not accord with the Council's plan led strategy for housing and growth and would result in harm to the character and appearance of the surrounding area. The proposal would conflict with the development plan when read as a whole. Moreover, the proposal would also conflict with policies of the ELP.

38. A net gain of a single dwelling would have limited benefits. As such, even taking into account the moderate benefits from the ecological enhancement measures and previous growth within Fallgate, I find there to be no material considerations, that would indicate that the appeal decision should be taken other than in accordance with the development plan.

39. For the reasons given above, the appeal is dismissed.

Robert Walker

INSPECTOR