



Appeal Decision

Hearing Held on 16 March 2021

Site visit made on 17 March 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021

Appeal Ref: APP/F1040/W/20/3261872

Land to the west of Weston Road, Weston On Trent, Derby DE72 2BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ilke Homes against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2020/0311, dated 16 March 2020, was refused by notice dated 17 July 2020.
 - The development proposed is an outline application including access from Weston Road with all other matters reserved for up to 28 no. dwellings; public open space and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity and precision, I have used the name of the appellant given on the appeal form, as confirmation of the correct name was received from the appellant at the Hearing.
3. Outline planning permission is sought, with all detailed matters reserved for future consideration, except for access. Plans showing possible layout, scale, appearance and landscaping and other supporting technical information have been submitted. However, given that these would largely be addressed at reserved matters, I have treated the plans solely as an indication of how the site might be developed and to which I have regard but only as a material consideration. I have determined the appeal on the basis of the drawings listed in the Statement of Common Ground¹ (SoCG).
4. The appeal is also supported by a section 106 planning obligation, dated 4 March 2021, which would secure open space and recreation provision, a financial education contribution and 9no. affordable units.
5. Following discussions with the main parties at the Hearing, I undertook an extensive unaccompanied visit to Weston On Trent, informed by key site references provided by the Council and appellant. The visit included not just immediate observations of the appeal site itself, but reference to much wider surrounding views and other relevant matters.

¹ Section 2.0 of the SoCG dated 10 March 2021

Main Issues

6. The main issues of this appeal are the effect of the proposed development on:
- i. whether the site is an appropriate location for housing, having particular regard to the effect of safeguarding the countryside and ensuring a viable and sustainable pattern of settlements;
 - ii. the character and appearance of the appeal site and surrounding area; and,
 - iii. the availability of best and most versatile agricultural land.

Reasons

7. The site comprises an irregular parcel of undeveloped land, located off Weston Road, extending approximately to 1.17ha in area, comprising Grade 3a agricultural land. The site is located within Flood Zone One and is at a low risk of fluvial flooding, with a less than 0.1% annual chance of flooding from rivers or the sea.

Location of development

8. It is common ground between the parties that the appeal site is outside of any defined settlement boundary, albeit adjacent, and is therefore located within the open countryside. The Council's sustainable growth strategy is set out in Policy S1 of the South Derbyshire Local Plan Part 1, 2016 (LP1). 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 is consistent with the sustainability requirements of the National Planning Policy Framework (the Framework). The Framework further recognises that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside².
9. LP1 Policy S2 seeks to reflect the presumption in favour of sustainable development as required by the Framework and LP1 Policy S4 outlines the Council's strategy for housing and its commitment to maintaining a deliverable 5-year housing land supply. LP1 Policy H1 sets out a 'Settlement Hierarchy' and identifies Weston On Trent as a Local Service Village where sites adjacent to the settlement boundary may be considered appropriate as exceptions or cross subsidy sites. Policy SDT1 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 LP2 Policy BNE5, which in turn states planning permission will be granted where development is allowed for by a specific list of Policies, one of which is LP1 Policy H1. The proposed development does not comply with any of the criteria listed.
10. I acknowledge the location of the site next to the settlement boundary, which means it is not isolated in terms of the definition within the Framework³. However, this does not outweigh the conflict that I have found in relation to the development plan. I have also been provided with a list of facilities in Weston On Trent including a primary school, church, public house, a village hall and play area, and a regular bus service to Derby and Chellaston School. Whilst

² Paragraph 170

³ Paragraph 79

shops and services could be accessed at Aston On Trent through walking and cycling, it is likely that there would be some reliance on a private motor vehicle to meet day to day needs. This issue surrounding the proposed development and its location outside the settlement boundary raises further concerns to the sustainability of the site.

11. For the above reasons, I conclude that the proposed development would create significant harm as the site does not constitute an appropriate location for housing, having particular regard to safeguarding the countryside and ensuring a viable and sustainable pattern of settlements. Therefore, the scheme conflicts with the strategic housing aims of LP1 Policies S1, S2, S4, H1, LP2 Policies SDT1, BNE5 and the requirements of the Framework.

Character and appearance

12. The appeal site is an agricultural field that lies beyond the settlement boundary of Weston On Trent, which lies between the main settlement and a number of dwellings, located further along Weston Road outside the settlement boundary. This ribbon development is referred to as the 'satellite area of development' (the satellite) by both main parties in their submissions and at the Hearing. The topography of the site gently slopes way from the road, where majority of its boundaries are defined by mature hedgerows and trees. The site forms part of wider national, regional and county level landscape areas.
13. Weston On Trent is identified in National Character Area 69 (Trent Valley Washlands), which constitutes a distinct, broad, linear band of pastoral and arable land, intermixed with urban development, transport routes and localised mineral extraction. At regional level the site is located within Group 5: Village Farmlands, where it notes modern development on the fringes of villages is particularly notable and to protect the character of villages and consider the visual impact of any new development. At county level the site occupies a location within a Landscape Character Type defined as Lowland Village Farmlands (LVF).
14. A key feature of this landscape as defined in the County Council document 'The Landscape Character of Derbyshire' (The LCD) is its nucleated settlement pattern, with villages such as Weston On Trent located on relatively high spots for better drainage. Villages are traditionally compact with the enclosure pattern reflecting a diverse history, where the adjacent fields are medium in size, enclosed by species rich hedgerows. The LCD acknowledges that LVF has had much of its original landscape character impacted upon by modern large scale development, including power stations and the associated pylons. The LCD does not consider the site specifically but defines the wider landscape of which it forms a part.
15. I have carefully considered the Appellant's Landscape Visual Appraisal (LVA), which was also discussed in detail at the Hearing. I note the site is not a valued landscape, as expressed in Paragraph 170 a) of the Framework or that the site also is not rare in the sense that it is typical of agricultural fields in the area. Notwithstanding this, the site has landscape value. It plays a role in providing physical and visual separation between the main settlement and the satellite, therefore retaining their distinct characteristics, settings, and the rurality of Weston On Trent.

16. The introduction of up to 28no. dwellings to the site would represent a substantial character change, mostly associated with the resulting presence of buildings and the wider urbanisation of the site, including the provision of a vehicular access onto Weston Road. At 24no. dwellings per hectare, I accept that the proposal does not represent a particularly dense form of development and that a character change is also an expected consequence of most greenfield development.
17. I viewed the site from the majority of the locations identified in the LVA and am satisfied that I saw everything I need to assess the impact of the development. There was agreement at the Hearing between the main parties that the effects of the proposed development would be generally limited to closer views, particularly along Weston Road and longer views would generally be restricted by the surrounding relatively flat topography and its features. Following my site visit, I agree with this observation.
18. I note the location of the site adjacent to the settlement boundary, which would avoid a notable detachment from the existing main settlement. Nevertheless, the site still forms part of a wider rural landscape of open countryside, making a positive contribution to it. I note the conclusions of the LVA, but I consider that the proposed development would result in visual harm to the character and appearance of the appeal site and surrounding area. Therefore, I am unable to share all of the main findings of the appellant's detailed LVA. Whilst illustrative, the appellant has provided details of green space within the site and additional planting has been suggested, this would not provide suitable or sufficient mitigation to counteract the harm created by the residential development on this site or compensate for the sites existing positive contribution to character and appearance.
19. Although the proposal is for outline permission only, the effect of erecting up to 28no. dwellings on this site, and the associated domestic paraphernalia, that would be associated with a residential development can still be determined. I find that there are misgivings in the illustrative drawings surrounding the potential house designs and layout and consider them to be too urban in appearance for this location. However, as matters such as layout and appearance are for future consideration, I am satisfied that a more appropriate and locally distinctive scheme could be produced through a reserved matters submission, avoiding such an issue. Nonetheless, the site's existing connection to surrounding fields and countryside means it has value in terms of its contribution to the overall landscape and scenic beauty of the area. This would be significantly eroded as a result of any form of residential development. Even though these effects would be relatively localised, there would still be an unacceptable adverse impact.
20. For the above reasons, I conclude that the proposed development would significantly harm the character and appearance of the appeal site and surrounding area. Therefore, the scheme conflicts with the character and appearance aims of LP1 Policies S1, BNE4, LP2 Policy BNE5 and the requirements of the Framework.
21. The Council has cited LP1 Policy BNE1, the Design Guide Supplementary Planning Document 2017 and the National Design Guide on its decision notice. However, as matters of design are not for consideration on this appeal, I find

that the above policy and documents are not directly applicable to the case before me.

Best and most versatile land

22. The Framework requires decisions to contribute to and enhance the natural and local environment by recognising the economic and other benefits of the best and most versatile agricultural land, which is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification. It is common ground between the main parties that the site comprises grade 3a quality land.
23. As such there would be a loss of what is considered to be best and most versatile land, albeit at the lower end of the classification. The appellant has drawn my attention towards an appeal decision⁴ in support of their case and has quoted guidance from Natural England. I recognise that the area of the site in the referenced decision is larger than the site area of case before me and that the site, in the context of the wider District, would likely represent a small proportion of the available best and most versatile land.
24. The Framework does not define what “significant” development might comprise. Therefore, having regard to the amount and quality of the land in question and the relative scarcity of such land as a national resource, I consider that whilst there would be harm from the loss of land from agricultural production as a result of the proposed development, it would not be significant in the context of the wider District. Nonetheless, the proposed development would still result in a further erosion of the best and most versatile land, conflicting with the requirements of the Framework, weighing against the proposed development in the planning balance. Additionally, I note the comments from an interested party, disputing the level of agricultural activity on the land.
25. For the above reasons, the proposed development would moderately harm the availability of best and most versatile agricultural land. Therefore, the scheme conflicts with the agricultural and economic aims of LP2 Policies BNE4, BNE5 and the requirements of the Framework.

Other Matters

Housing land supply

26. The Council during the assessment of the application and subsequently at appeal, considered a variety of documents, reports, appeal decisions and calculations all relating to housing land supply. The details provided often relate to the relevant situation at that time and the information has been revised in subsequent documents to take into account of more recent data and revised guidance, particularly in light of the current pandemic.
27. The Council have provided a variety of figures relating to its 5-year housing land supply. A set of figures relating to the calculations derived from the Standard Method (SM) have been provided by the Council. However, the Council have confirmed that they will not be using this method of calculation until later this year and both main parties agree that the Council’s Local Plan Part 1 is up-to-date until 13 June 2021. Thus, in this instance, the SM figures have little consequence for this appeal. Additionally, the Council have provided

⁴ APP/D0121/W/15/313963

a further 2no. sets of figures arrived from base dates of April 2020 and April 2021. It is agreed by the main parties that the figures using April 2021⁵ involve some assumptions.

28. Whilst I acknowledge that the Council have had a track record of underestimating its figures in recent years and the base date from 2021 represents the most up-to-date assessment, I cannot be certain on this occasion that this would still be the case, especially given the unprecedented situation surrounding the pandemic. Therefore, I consider in this instance that the 5-year housing land supply figure produced from the April 2020 base date is more reliable, as it is derived from more accurate data. Thus, for the benefit of this appeal, I acknowledge that the Council considers that it has a housing land supply of 5.33 years, which equates to a supply of 4610 dwellings, above a requirement of 4325 dwellings. In reaching this figure the Council has removed 266 dwellings from its calculation, although the appellant considers that a further 72 dwellings should be removed from the Woodville Regeneration Area (E6).
29. There are sites which the Council have identified for the 5-year period from 1 April 2020 that are accepted as being deliverable by the appellant. However, there is a dispute about whether there is clear evidence regarding the deliverability of a number of sites which are mainly allocations or have an outline permission. The appellant believes the housing land supply position to be lower at 4.56 years, as some 665 dwellings are not considered deliverable. Accordingly, it is necessary to examine whether the Council can demonstrate a 5-year housing land supply.
30. The Framework states that where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. Further guidance is provided on what constitutes a deliverable housing site in the Planning Practice Guidance⁶. Both main parties have submitted information on a list of individual sites that are in dispute, and I heard evidence on these at the Hearing.
31. It was agreed at the Hearing that the appellant's latest submission⁷ would be used as a starting point for discussions on this matter, thus ensuring that the Council could provide oral comments. Within this submission, a breakdown of the disputed sites is presented⁸, showing clearly the areas of dispute between the appellant and the Council. I have carefully considered the appellant's comments and concerns with each site in dispute and that it is argued, amongst other issues raised, that for many sites at 1 April 2020 there was no or insufficient clear evidence to meet the definition of a deliverable site.
32. The evidence indicates that the Council has reduced its calculations of housing land supply to reflect the definition of a deliverable site in the Framework, and the Council has also been collecting data from site owners, including expected annual construction rates through pro-formas, in addition to visiting construction sites. Upon examining the sites in dispute, I consider that there is,

⁵ Housing Position Paper January 2021

⁶ Paragraph 007 Reference ID:68-007-20190722

⁷ Response to Further Housing Land Supply Evidence dated March 2021

⁸ Table A1; Amended disputed sites trajectory – Base date 1st April 2020

in the majority of these cases, sufficient clear evidence to determine that they meet the realistic prospect of being delivered as specified in the definition.

33. The site at Boulton Moor, Elvaston Phase 3 (H13) has an outline planning application that was granted on 9 July 2020. However, it has conditions imposed on it to aid development on the site at the earliest opportunity, including approval of the first reserved matters application to be approved within two years of the date of outline consent and then for development to commence within one year of the subsequent approval (my emphasis). In respect of Wragley Way Phase 1 and Jacksons Lane, Etwall (E23 B), I note the oral confirmation from the Council to the submission of the reserved matters applications on 3 March 2021. The site at Land West of Mickleover, Phase 3b (H19) I note a further application to amend a condition on the original permission limiting housing delivery has been submitted and that only minor technicalities surround the deed of variation on the planning obligation. I also recognise the wider construction works on phases 1, 2 and 3a that are being undertaken. In the case of all of the above sites, there is sufficient certainty that they meet the definition of being deliverable.
34. In respect of Land to north of William Nadin Way/ West of Depot, Swadlincote Site A (H2), the appellant's agent confirms there is no housebuilder present, as that they represent the landowner on this development. I accept that given this update there is an inability to predict when a reserved matters application would be submitted, amongst other potential delays. Although the site benefits from a Housing Trajectory prepared by Barton Willmore, the site at Boulton Moor, Elvaston, Phase 3 (H13) has no permission, and no developer involvement is noted. Although I do recognise that it is part of the wider development already under construction. Wragley Way Phase 2 (H15) still requires work to be done to satisfy Highways England, with little detail on progress. The Woodville Regeneration Area (E6) has an outline planning application pending subject to minor technicalities on a planning obligation, which I accept should result in its trajectory being pushed back by a year. In the case of all of the above sites, there is insufficient certainty that they meet the definition of being deliverable. Thus, I find that 205 dwellings should be removed from the Council's 5-year housing land supply, resulting in a deliverable supply of 4405 homes.
35. The appellant has referenced the delivery rates on a couple of sites, but has only raised issues that would have implications on the overall number of dwellings delivered in respect of Land to north of William Nadin Way/West of Depot, Swadlincote (Burton Road, Stanton) (H2) Site C. The appellant is disputing the higher rate of dwellings to be delivered from 2021/22. However, taking the 2020 measurement on the Housing Delivery Test, which indicates that the Council has achieved a sizeable delivery rate of 167%, I find it highly likely that the rates suggested by the Council could be achieved and are realistic. In reaching this view, I have also taken into account the delivery rate for the above site in 2020/21 and the associated conditions of the pandemic.
36. It is accepted by both main parties that a lower rate should be applied to 2020/21 due to the pandemic. However, the appellant is suggesting that additional reductions should be applied to 2021/22 resulting in a total additional reduction of 169 dwellings. I consider that whilst the pandemic has had a significant effect on construction sites through them being shut down during the first lockdown in 2020, this was only for a relatively short period

from the end of March until early May. Since this time, construction sites have re-opened, with measures such as social distancing being implemented. Additionally, there is clear support from Central Government in keeping the construction industry in operation. Although, I accept that the longer term effects of the pandemic are generally unknown at this time, I cannot be certain that there is sufficient justification to include further reductions, over and above those already included by the Council in its calculations.

37. The appellant has drawn attention to a Judgement⁹, which I have noted. A number of previous appeal decisions¹⁰ have also been provided in their submission that include housing land supply, the pandemic and other issues, which I have had regard to, as material considerations in the determination of this appeal. Nonetheless, whilst there are some similarities between these schemes and the case before me, I do not consider them to be directly comparable, as they are in different parts of the country and involve varying amounts of development, amongst other things. Therefore, I conclude that the decisions illustrate that every proposal has to be considered on its own particular merits. Accordingly, I find little within these cases which would lead me to alter my conclusions in this case.
38. I appreciate that there will always be a degree of uncertainty over forecasts of housing delivery, and even more uncertainty due to the pandemic. Although I have found some of the disputed sites to not be deliverable, I consider the evidence presented by the Council is well researched and reasonable in most of its assumptions it makes on housing delivery. Based on all the information before me at the present time, I conclude that sufficient sites have clear evidence to demonstrate that there would be a realistic prospect of the housing being delivered within the 5-year period as specified and that a Framework compliant 5-year housing land supply can be demonstrated.

Heritage

39. Whilst not cited on the Council's decision notice, I am informed that the site is potentially within influencing distance of Weston Hall, which is Grade II* listed and the Trent and Mersey Canal Conservation Area. I am required under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. Additionally, whilst Section 72(1) of the Act sets out that in the exercise of planning functions that requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area, this statutory duty does not extend to the setting of a conservation area. I agree with the Council's observations on this matter, but as I am dismissing the appeal, it is not necessary to consider effects on the heritage assets any further.

⁹ East Northants Council v Secretary of State for Housing Communities and Local Government and Lourett Developments Ltd

¹⁰ APP/X0360/W/19/3238048; APP/E5900/W/19/3225474; APP/A1530/W/19/3223010; APP/T2350/W/19/3221189; APP/R3650/W/18/3211033; APP/F1610/W/18/3217856; APP/N1730/W/18/3204011; APP/R3650/W/17/3171409; APP/D0840/W/17/3184721; APP/J2210/W/18/3216104 and APP/Y0435/W/18/3214365.

Planning Balance

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
41. I have found that the local planning authority can demonstrate a 5-year supply of deliverable housing sites and therefore the policies concerning the strategy for delivering housing, particularly LP1 Policies S1 and H1 are up-to-date.
42. The provision of what is likely to be family homes would generate notable additional social benefits, of which, 9no. would be affordable units. In addition, there would be notable economic benefits for the locality, both during construction and occupation of the dwellings. Additionally, a financial contribution to education and open space and recreation provision would be secured through the planning obligation.
43. However, given my findings on the main issues, the proposed development would result in significant harm to the Council's housing strategy, to the character and appearance of the appeal site and the surrounding area. There would also be moderate harm to the availability of the best and most versatile agricultural land.
44. Whilst I acknowledge the factors in favour of the proposed development, those considerations do not outweigh or overcome the harm that I have identified on the main issues. Consequently, the scheme would not accord with the development plan when considered as a whole and the evidence does not indicate a decision other than in accordance with the development plan would be justified.

Conclusion

45. Taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Emily Christie (Appellant)

Jonathan Coombs (Agent) Pegasus Planning Group

Matthew Good (Agent) Pegasus Planning Group

James Atkin (Agent) Pegasus Planning Group

FOR THE LOCAL PLANNING AUTHORITY:

Richard Stewart South Derbyshire District Council

Richard Groves South Derbyshire District Council

Mary McGuire South Derbyshire District Council

Anton Cannell South Derbyshire District Council

INTERESTED PERSONS:

Peter Watson Local Councillor

Derek Hobbs Local Resident

Chris Dodds (observer) Planning Prospects

DOCUMENTS SUBMITTED AT THE HEARING:

- 1) Listing description for Weston Hall (Grade II*)
- 2) Trent and Mersey Canal Conservation Area Character Statement 2014
- 3) Letter from Derek Hobbs, dated 13 March 2021 (provided by the Council)