
Appeal Decision

Site visit made on 12 January 2021

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th April 2021

Appeal Ref: APP/M1005/W/20/3261219

The Nursery, Park Lane, Pentrich, Derbyshire DE5 3RJ

- 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 G R Lowe against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2020/0150, dated 10 February 2020, was refused by notice dated 1 May 2020.
 - The development proposed is 'demolition of existing storage building and the construction of new detached property, on previously developed land.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved. I have considered the appeal on the same basis and have treated submitted plans as being for illustrative purposes only.

Main Issues

3. The main issues are:
 - The effect of the proposal on the setting of designated heritage assets, in particular Wingfield Manor Grade I listed building and the South Wingfield Conservation Area;
 - The effect of the proposal on the landscape character of the area;
 - Whether the proposal would represent a suitable location for housing, having regard to accessibility to services and employment opportunities;
 - The effect of the proposal on highway safety;
 - Whether the proposal would be safe from land instability.

Reasons

Effect on setting of designated heritage assets

4. The National Planning Policy Framework (the Framework) defines the setting of a heritage asset as the surroundings in which an asset is experienced, the extent is not fixed and may change as its surroundings evolve. Elements of a

setting may make a positive contribution to the significance of an asset, may affect the ability to appreciate the significance, or may be neutral. In addition, the Planning Practice Guidance contains advice on how setting should be taken into account in decisions. Although views of or from an asset are important, so too are other environmental factors including understanding the historic relationship between places. It adds that the contribution that setting makes is not necessarily dependent on public access, since the situation may change.

5. The appeal site is located some 1.4km south of the Grade I listed Wingfield Manor, which is also a Scheduled Ancient Monument (SAM). Being Grade I, the building is of national importance and holds exceptional heritage significance. The Manor dates from the 15th century. It is considered by Historic England to be the most important great house to survive from this period. It was a magnate's residence, a high status dwelling for the elite. They are noted as being relatively rare, and provide an emotive and evocative link with the past, especially through their connections with famous historical figures. Here, the quality of the Manor's remains, lack of later alterations or reference to other buildings on the site, and its association with a Lord Treasurer of the period are all factors contributing to its exceptional significance.
6. Historic England has not commented specifically on the proposal, but has deferred to the Council's specialist advice, which states that the Manor occupies an elevated position where its several remaining towers and other structures are visible from distance, including from the appeal site. The Council's heritage consultant indicates that hunting parkland is known to have been laid out around the Manor, the largest area being the southern park, stretching to the Ripley to Ambergate Road and encompassing the appeal site. The landscape of the former park is described as being remarkably unchanged and still reflects the status and origins of the Manor.
7. I saw the surroundings of the appeal site to retain the largely undeveloped, rural character which forms an important part of the setting of the listed building. Development is sporadic and principally located at lower levels of the valley of the River Amber where the undulating terrain, trees and hedgerows provide some screening of the buildings. The site comprises a utilitarian storage building with gravel parking areas to the front and rear. Composed of blockwork and corrugated metal panelling, the building appears similar to modern agricultural buildings, and despite its functional appearance, it does not appear wholly uncharacteristic of its rural surroundings. The Manor can be seen from the appeal site and I am satisfied that it falls within its setting.
8. The proposal for a dwelling is made in outline, but indicative details have been provided showing a possible design for a dormer, stone built cottage located on the site of the existing building. Notwithstanding that details of the materials, layout and scale of the dwelling could be refined at the reserved matters stage, the addition of a dwelling and its associated domestic features and character, in place of a building more agricultural in appearance, would be at odds with the parkland character of the surroundings which form an integral part of the setting of the listed building, and would affect the ability to appreciate the historic relationship between the Manor and its hinterland.
9. The site does not lie within the South Wingfield Conservation Area (the SWCA), with the nearest boundary over 1km to the north. The Council's Conservation Area Character Statement (1996) sets out that South Wingfield developed as

an agricultural village and it derives much of its significance from its association with Wingfield Manor and its wider rural surroundings. Park Lane is also identified as a historic route out of the village through the parkland, and the site as contributing to the established field pattern of the area. I share the view of my colleague in a previous appeal decision¹ that the main aspect of the significance of the SWCA relevant to the proposal is its close association with the Manor, and other aspects, such as the village core, would not be directly affected by the proposal.

10. The Council refers to a Landscape and Visual Impact Assessment (LVIA). However, this related to the previous tourism scheme, and so is not directly applicable to the present appeal. The appellant also makes no reference to the LVIA in his statement of case, and it has not been provided to me in evidence. Nonetheless, the Council indicates that the site is visible from footpaths within the SWCA. From my observations, given the distance, topography and intervening vegetation, a dwelling on the appeal site would form a feature of limited scale and prominence, in contrast to the much larger tourism scheme found to be harmful by the previous Inspector, and as such would have a limited effect on the setting of the SWCA viewed from within it. However, in a similar vein to the Manor, the creation of a dwelling within the area of the historic hunting parkland, and along an historic route through it, would have a small, but nonetheless harmful effect on the setting of the SWCA by altering the historic relationship between the village and parkland.
11. Therefore, I find that the proposal would harm the settings of the Grade I listed Wingfield Manor and the SWCA. In this case, the harm to the significance of the designated heritage assets would be at the lower end of less than substantial. However, the Framework directs that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 196 directs that this less than substantial harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
12. The proposal would provide an additional dwelling for the Borough's housing stock. This would be in line with the Framework aim of boosting the supply of housing, but given the Council's stated ability to demonstrate a five year supply of deliverable housing sites, a position not challenged by the appellant, the single dwelling provided in this case would be a benefit of only limited weight. The scheme would also lead to a small and time-limited economic benefit during the construction phase, which may give rise to extra local employment. These limited benefits would be insufficient to outweigh the less than substantial harm to the significance of the designated heritage assets.
13. For these reasons, I conclude that the proposal would give rise to harm to the settings of Wingfield Manor and the SWCA, contrary to Policies EN24 and EN27 of the Amber Valley Borough Local Plan (2006) (the Local Plan) which require that development should contribute towards the preservation of the setting of listed buildings and conservation areas, and the Framework which requires that heritage assets should be conserved in a manner appropriate to their significance.

¹ Appeal Ref APP/M1005/W/19/3229071

Effect on landscape

14. I have already described the surrounding landscape above, and I note that it is not designated as a Special Landscape Area. Nonetheless, the landscape holds value through it forming part of the setting of Wingfield Manor and the limited extent of development which has taken place.
15. The utilitarian form of the existing building, though of no particular architectural merit, reflects an agricultural character which is consistent with the surrounding landscape. The replacement of this building with a dwelling would create a more domestic character including parking areas and landscaping. I acknowledge that the application was made in outline and none of the details of the dwelling have been finalised. The indicative plans show a dwelling no larger in scale than the existing building and incorporating a cottage design in traditional materials.
16. However, whilst there is scope for the design to be refined at reserved matters stage, the dwelling would still be a visible feature in the landscape which would further the extent and presence of residential development, in contrast to the prevailing agricultural character, including that which exists on the site at present, even if the building is not presently used for agricultural storage.
17. For these reasons, I find that the proposal would detract from the agricultural character of the surrounding landscape. I acknowledge that this harm would be localised in scale. Though not cited by the Council in its reasons for refusal, I find there would be conflict with Policy LS3 of the Local Plan, which requires new development to conserve or enhance the quality and local distinctiveness of the natural and built environment.
18. There would also be conflict with Paragraph 170 of the Framework which states that decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.

Location for housing

19. The site is located outside of any recognised settlement and is within the open countryside for planning purposes. Policies EN1 and H5 of the Local Plan restrict development in the countryside to specific circumstances, none of which are applicable to this proposal for a market dwelling. Accordingly, the proposal would conflict with these policies.
20. The Council concedes that Policies EN1 and H5 are inconsistent with the Framework as they place a blanket restriction on new housing, contrary to the balanced approach of the Framework. Accordingly, I afford limited weight to conflict with these policies.
21. Nonetheless, the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The dwelling is located some distance outside the village of South Wingfield, and though future occupants could support facilities in the village, these are limited in number, and it is likely that future occupants would need to travel regularly to larger settlements such as Ripley to meet most shopping, work and education needs. Such journeys would be mainly made by means of the private car, with little prospect of regular commuting by other means such as cycling or public transport.

22. I acknowledge that the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas; but it also requires development proposals to take account of opportunities to promote walking, cycling and public transport. In this case, the appellant offers no justification for locating the dwelling in the countryside where there would be a lack of viable transport alternatives to the private car. Therefore, I find that the proposal would not be in an accessible location for housing and would conflict with the aims of the Framework to direct development to the most sustainable locations.
23. Consequently, there would be conflict with Policy LS1 of the Local Plan which requires development to be well related to existing patterns of development, minimising the need to travel between home, work and other activities and to provide opportunities for journeys other than the private car.

Effect on Highway Safety

24. The Council's concern relates to the provision of adequate sightlines from the entrance to the dwelling. The local highway authority has commented that a residential use could involve more vehicular trips than the existing storage use. The appellant indicates that 9 vehicles are stored on site, meaning up to 20 movements per day or over 100 per week. I saw at my site visit that the existing facility is capable of accommodating this number of vehicles, but the number of movements suggested is not substantiated by evidence. Equally, the Council's position that a residential use would be more intensively used is speculative. However, based on the indicative scale of the dwelling, I find it unlikely that it would generate noticeably more traffic than the existing facility.
25. I note the previous appeal decision found harm in respect of highway safety, specifically regarding the sightlines to the north in the direction of Wingfield Manor, due to the bend in the road and high hedgerow. However, this related to a much larger proposal for tourist accommodation, which would generate considerably more traffic movements than a single dwelling. As such, the proposals are not directly comparable.
26. I acknowledge that the appellant has not provided a speed survey to determine the required sightlines. From my observations, a sightline of 203m to the north could not be achieved in any case due to the bend in the road. However, the road from this direction is uphill, and traffic must negotiate a T-junction and tight corner just before travelling around the bend. These factors lead me to the view that traffic from this direction is unlikely to be travelling at 60mph, and that a 203m sightline is not necessary. It is also relevant that the existing access has been in place for a considerable period of time, with no evidence adduced that its use is unsafe. Traffic is also sporadic along the lane and given the scale of the proposal, the risk of conflict between vehicles would be low.
27. Ultimately, access is a reserved matter under this proposal. Given the above considerations, there is scope for the Council's concerns to be overcome at reserved matters stage through the submission of a speed survey and consequent agreement on sightlines, such that a safe access could be provided. Moreover, the Framework makes it clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or residual cumulative impacts on the road network would be severe. On the evidence before me, that would not be the case here.

28. I conclude that the proposal would not result in unacceptable harm to highway safety, and no conflict would arise with Policy TP1 of the Local Plan, which requires that satisfactory access can be obtained to the transport network.

Effect on land instability

29. The appeal site lies within a Coal Mining High Risk Referral Area. The site is noted to contain a recorded mine entry. The Coal Authority has commented that the mine entry has no recorded treatment and that its zone of influence takes up a large part of the application site boundary. The Coal Authority does not support new development even where an area has been treated, due to concerns over long term instability and risk to public safety. In this case, despite indications from the appellant that the area will be investigated, the Coal Authority objects on the basis that the development is unlikely to accommodate the proposed dwelling whilst incorporating an appropriate 'no-build' zone in the mine entry's zone of influence.
30. Paragraph 178 of the Framework states that decisions should ensure a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination, including mining activity. The appellant indicates specialist engineers will be engaged to demonstrate how the development can be made safe. However, the concerns raised by the Coal Authority suggest physical constraints which are unlikely to be overcome. Such matters relate to the principle of development, and given the potentially serious consequences of land instability, I am not satisfied that this is a matter which can satisfactorily be dealt with by condition.
31. Therefore, I conclude that the proposal would conflict with Policy EN18 of the Local Plan which supports the reclamation and re-use of derelict, unstable and contaminated land providing remedial or mitigating measures are undertaken. There would also be conflict with the aforementioned section of the Framework.

Other Matters

32. The Council has not raised concern with respect to the effect of the proposal on neighbours' living conditions, land contamination, ecology and protected species, subject to recommended conditions in some cases. On the evidence before me, I have no reasons to conclude otherwise. An absence of harm in these respects is however a neutral factor in the planning balance.
33. I have had regard to other concerns raised by interested parties. Ultimately, the Council does not oppose the proposal on grounds other than those set out in the main issues and, taking account of the evidence before me, I have not identified other matters of such significance as to result in further benefits or harms to be factored into the planning balance.

Planning Balance and Conclusion

34. Policies EN24 and EN27 are not entirely consistent with the Framework in that they do not allow for consideration of public benefits as set out in Paragraph 196. Accordingly, the conflict with these policies attracts moderate weight. For the reasons set out above, Policies H5 and EN1 are not fully consistent with the Framework and the conflict with these policies attracts limited weight. The other policies identified are consistent with the aims of the Framework and conflict with them merits significant weight, including Policies EN18 and LS1.

35. However, although I have found certain policies of the Local Plan to be out of date, the 'tilted balance' of Paragraph 11 of the Framework is not engaged where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Designated heritage assets are one such area or asset, as made clear by Footnote 6. In view of the harm to the settings of the listed building and SWCA identified above, Paragraph 11 does not indicate a presumption in favour of development, but rather points to the refusal of permission.
36. I therefore conclude that the identified harms in this case result in conflict with the development plan, taken as a whole. The other material considerations in this case, including the social and economic benefits of an additional dwelling, do not indicate permission should be forthcoming in spite of this conflict. For the reasons given, and taking all relevant matters into consideration, the appeal should be dismissed.

K Savage

INSPECTOR