



Appeal Decision

Site Visit made on 11 May 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal Ref: APP/K2420/W/21/3266622

Burbage Hall, 1 Aston Lane, Burbage LE10 2EN

- 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 Mr Rich Chapman - Apricot CPS Ltd against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 20/00066/FUL, dated 21 January 2020, was refused by notice dated 14 July 2020.
 - The development proposed is the erection of four dwellings and associated access, parking, garaging, landscaping and external works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has confirmed that the third reason for refusal on its decision notice has since been addressed following the completion of archaeological trial trenching on the site. The Council has therefore confirmed that this reason for refusal is withdrawn for the purposes of the appeal and I have therefore taken this into account in defining the main issues.
3. The text under the fourth reason for refusal on the Council's decision notice, which relates to the effect of the proposal on protected species is incomplete. However, the missing text is set out within the accompanying Officer report and the appellant has acknowledged this. Accordingly, I have included this important matter under the second main issue.
4. The Council's decision refers to the 'emerging Burbage Neighbourhood Plan'. Following submission of the appeal, the Council has confirmed its decision to 'make' the Burbage Neighbourhood Plan (BNP). Therefore, the BNP now forms part of the development plan for the area. In this regard, the parties have provided me with comments in respect of Paragraph 14 of the National Planning Policy Framework (the Framework) and I have taken the responses received into consideration in my planning balance and conclusion.
5. A direction has been issued that an Environmental Impact Assessment is not required. This is because the scale and nature of the development applied for does not trigger the need for one.

Main Issues

6. The main issues are:
 - i) Whether the proposal preserves the character or appearance of the Burbage Conservation Area (CA) and the effect of the development on

the settings of the Grade II* Listed 'The Old Grange and attached stable wing' and Grade II Listed 'Burbage Hall'; and

- ii) The effect of the proposal on protected species.

Reasons

Character and appearance of the CA and the setting of listed buildings

7. The significance of the CA lies in the historic spatial pattern of its streets and spaces and the distinct traditional character and appearance of many of its buildings some of which are listed. The Grade II Listed 'Burbage Hall' is an impressive two-storey detached, early C18 dwelling. Its grounds are identified as forming part of a 'Key Space' within the Burbage Conservation Area Appraisal (2011). The Grade II* listed 'The Old Grange and attached stable wing' which is situated in close proximity to the site fronts the pavement on Aston Lane and is an attractive two-storey C16 or early C17 timber framed dwelling with important historical features including an oriel window and bow window as well as a C19 red brick stable range.
8. The expansive open character of the grounds serving Burbage Hall and the abundance of mature soft landscaping that exists within them are appreciable through the appeal site entrance and above the high wall to the boundary with Aston Lane. As a result, the grounds provide a verdant and spacious character to this end of Aston Lane and to the grounds of Burbage Hall, adding to the grandeur of this listed building. They also allude to location of the identified listed buildings towards the periphery of the settlement and give the eastern edge of the CA a semi-rural character. Consequently, the appeal site makes a positive contribution to the setting of these heritage assets and adds to their significance.
9. Taken in isolation, the design of the buildings would not be unattractive. However, the development would significantly curtail the grounds associated with Burgage Hall. The scale, mass, density and layout of the dwellings and the hard-surfaced shared access drive serving them would form an intensive developed border to the resultant rear garden serving this listed building. The proliferation of window and door fenestration in combination with the subdivision of the proposed plots, associated boundary treatments and the hard-surfaced access drive would be overtly residential. Consequently, the development would domesticate and fragment the southern and eastern perimeter of the grounds and would be harmful to the setting of Burbage Hall.
10. The development would necessitate significant removal of existing trees and vegetation. This would not be limited to but would include mature trees identified as Category B in the appellant's tree survey (T13 and T11) and the conifer groups (G6 and G7) close to the southern and eastern boundary. Whether or not some of the trees to be removed are non-native or ornamental, collectively they form part of the soft landscaped character of the grounds. The removal of planting, particularly that which is close to the wall along the boundary with Aston Lane would be likely to increase perception of the development from outside the site, particularly where heights of the buildings would exceed the height of the wall. The close position of buildings and brick boundary treatments towards the more open eastern boundary would also increase the presence of domestic built form in views towards the CA from the countryside to the east.

11. Consequently, the development would erode the spacious and soft landscaped setting that is intrinsic to the semi-rural character of the street scape to this end of Aston Lane and to the eastern edge of the CA.
12. Any benefits that might result from the removal of some of the conifer planting for the stability of the listed boundary wall are unquantified and would in any case be somewhat diminished by the harmful visual impacts identified above. Any replacement planting would take time to establish and given the collective bulk and mass of the built form would be unlikely to fully assimilate the proposals into its sensitive surroundings. Furthermore, the proposed tree planting shown on the 'Landscape Strategy' within the adjacent field to the east of the site is located outside the appeal site and therefore could not be reasonably secured by condition.
13. The appellant suggests that the design of the dwellings and the materials to be incorporated are issues that can be easily be resolved. However, the proposal seeks full planning permission and I must therefore consider matters of detailed design on the basis of the information before me.
14. Whether or not the areas of the site proposed to be developed historically formed part of the formal gardens associated with Burbage Hall does not alter my view that the extensive soft landscaped grounds contribute positively to the setting of the identified listed buildings and the CA. Furthermore, whether or not the grounds of Burbage Hall have become unkempt does not mean that this land could not be well maintained and continue to positively contribute to the setting of these heritage assets.
15. For the above reasons, and taken together and in the context of paragraph 196 of the Framework I consider that the development would result in less than substantial harm to the character and appearance of the CA and the settings of the identified listed buildings. The Framework does not require me to look at less than substantial harm on a spectrum. In accordance with the Framework this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
16. The Council has acknowledged that it does not have an up-to-date supply of deliverable housing land. The provision of 4 dwellings within the settlement boundary would make a modest but important contribution towards the Council's housing requirements. I also attract some positive weight to the social and economic benefits that would derive from the development of the site and the subsequent contribution of future occupiers to the local economy and community. However, I must attach great importance and weight to the desirability of preserving the character or appearance of the CA and the settings of the identified listed buildings. I find therefore that the public benefits identified do not outweigh the less than substantial harm to these heritage assets.
17. For the foregoing reasons, the proposal would not preserve the character or appearance of the CA or the setting of the identified Grade II* and Grade II listed buildings. Consequently, in that regard, the development would be contrary to the requirements to complement the character of the surrounding area, to protect, conserve and enhance the historic environment and to seek to avoid the loss of trees with significant amenity value in Policies DM10 (Development and Design), DM11 (Protecting and Enhancing the Historic Environment) and DM12 (Heritage Assets) of the Hinckley & Bosworth Borough

Council Local Plan – Site Allocations and Development Management Policies DPD (2016) (LP), Policy 12 (Important Trees) of the BNP and the Framework.

18. The Council's decision refers to conflict with Policies 10 and 11 of the BNP. These policies refer to a 'Landscape Setting and Key View Map' and designate an area of open countryside as an area of landscape sensitivity. The associated map has not been provided. However, the evidence before me does not indicate that the proposal would sit within the designated area. Therefore, these policies have not been determinative in my conclusion on this main issue.
19. The decision also refers to Policies 3 and 13 of the BNP. A copy of these policies has not been provided and the Council has advised that the BNP has been updated in respect of these policies since its decision. Therefore, whilst I have not identified specific conflict with these policies, this does not diminish the conflict with other policies of the development plan and the Framework identified above.

Protected species

20. The Framework seeks amongst other things to avoid significant harm to biodiversity. Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System) states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it, "... is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision".
21. During the application, the County Ecologist raised concerns as to the potential impact of the development on a species rich hedgerow to the south and great crested newts (GCN). Paragraph 4.1.5 of the first Preliminary Ecological Appraisal (PEA) (Wharton)¹ provided by the appellant identifies the species rich hedge as being located c10m to the south of the site and outside of the site boundary. Therefore, I consider it unlikely that the development would result in the loss of this hedgerow.
22. There are three ponds, two of which are on the appeal site and relate to a small garden pond and a disused swimming pool. There is a third pond located just off the site to the north. Only one of the three different ecologists appointed by the appellant assessed the small garden pond and identified it as being 'poor' in terms of its suitability for habitat for GCNs (Wharton). The same ecologist also identified the disused swimming pool as poor. However, a more recent PEA² (Bodnar) assessed this feature as 'average' and, considered it possible that GCNs would be present. Both Wharton and Bodnar recommend within their conclusions that further surveys are undertaken for GCNs.
23. The note provided by the third ecologist³ (Whitcher) only considers the neighbouring pond to the north finding that the presence of a coping stone overhang will prevent amphibians, including GCNs from breeding in this pond. However, whilst the PEA by Wharton references concrete blocks to the northern

¹ Wharton Nature Infrastructure Consultants January 2020

² Dr Stefan Bodnar February 2020

³ Whitcher Wildlife Ltd Ecological Consultants December 2020

bank of this pond, it also notes the east, south and west banks to this pond 'were steep and vegetated' and identified this pond as having 'Good' habitat suitability for GCNs. Even if Whitcher's findings are more accurate, this does not resolve the discrepancies in respect of the habitat potential of the swimming pool or the recommendations of both of the PEA's for further survey work to be undertaken.

24. From the evidence before me there is a possibility that GCNs could be present. Given that GCN are a protected species under The Conservation of Habitats and Species Regulations 2017 I consider a precautionary approach should be taken. The absence of detailed surveys means I am unable to assess the extent to which GCN might be affected and any avoidance or mitigation measures necessary. This conflicts with the requirements of Circular 06/2005.
25. Notwithstanding the above the appellant has indicated that they have applied to Natural England (NE) for a district-level GCN licence. However, I am not aware that a licence has been issued or that any financial contributions towards the management of GCN habitat have been made. In line with the findings in *Morge*⁴ and the requirements in Circular 06/2005 I am required to consider whether there is any reason in principle why a licence would not be granted. In the absence of the further survey work required to demonstrate the extent to which GCNs would be likely to be affected, I cannot conclude with absolute certainty that a district-level licence would be likely to be issued in this instance. For the same reasons, a condition requiring evidence that the developer has joined the district level licensing scheme would also be inappropriate.
26. I conclude that it has not been demonstrated that the development would not result in harm to protected species. In that regard the proposals would conflict with the nature conservation aims of Policy DM6 (Enhancement of Biodiversity and Geological Interest) of the LP and would also be contrary to the clear intentions of the Framework and Circular 06/2005 to avoid significant harm to biodiversity and to establish the extent to which protected species may be affected before planning permission is granted.
27. Notwithstanding the above, even if the district licence was to be granted this would not in any case outweigh my conclusion on the first main issue.

Planning Balance and Conclusion

28. The Council acknowledges that housing policies in the development plan are out-of-date as they focus on delivery of a lower housing requirement than required by the up-to-date figure and therefore a 5-year housing land supply cannot be demonstrated. Having regard to Paragraph 14 of the Framework, the Council has also confirmed that the BNP does not include allocations to meet its identified housing requirement. In the circumstances paragraph 11(d) of the Framework is engaged.
29. I have found that the less than substantial harm to heritage assets would not be outweighed by the public benefits of the proposal. The development also has the potential to harm protected species. Consequently, this is a case in the context of paragraph 11(d) of the Framework where the application of policies in the Framework that protect areas or assets of particular importance provides

⁴ *Morge v Hampshire County Council* [2011] UKSC 2

a clear reason for refusing the proposed development. The benefits of the scheme, whether considered individually or cumulatively, are not such to outweigh the harm I have identified. The proposal conflicts with both the development plan and the Framework when each is considered as a whole. There are no other material considerations that suggest the decision should be taken otherwise than in accordance with the development plan. Consequently, irrespective of the absence of a five-year supply of housing land, the proposal would not represent sustainable development and permission should be refused.

30. Therefore, I conclude that the appeal should be dismissed.

M Russell

INSPECTOR