



Appeal Decision

Site Visit made on 28 April 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Appeal Ref: APP/V2635/W/20/3258487

Land between Sunset and Hill Cottage, School Road, Middleton PE32 1SA

- 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 Alan Nuttal, Luna Development against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 20/00823/F, dated 8 June 2020, was refused by notice dated 6 August 2020.
 - The development proposed is Four detached properties.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the appeal site would be in a suitable location for housing, having regard to the development strategy for the area.

Reasons

3. Policies CS01 and CS02 of the King's Lynn and West Norfolk Local Development Framework Core Strategy 2011 (CS) set out the overarching approach to the location of development in the District. Together they seek to direct development to the most accessible locations while preventing the encroachment of development into the countryside. I have not been provided with a map indicating the position of the settlement boundary for Middleton. However, there is no dispute between the parties that the appeal site lies outside of a defined development boundary identified within the Council's Site Allocations and Development Management Policies Plan 2016 (DM) and therefore lies within the open countryside for planning policy purposes.
4. Despite existing development within the immediate vicinity of the site, it nevertheless presents an undeveloped and rural character. The site is part of a parcel of agricultural land which has the appearance of a paddock, separated from the road by mature hedgerow. The appellant refers to the site being surrounded by development of a residential nature on all sides. However, continuous frontage development ceases north of the site on both sides of the road. An agricultural field lies opposite the site, separated from the road by a mature hedgerow for much of its frontage. A lone dwelling is situated to the south of the site, and to the rear of the site's wider parcel of land is an open agrarian landscape.
5. New development within the open countryside is restricted by Policy CS06 of the CS and DM Policy DM2. Policy DM2 lists a number of exceptional

circumstances where development within the open countryside may be supported. The proposal does not fit within any of the defined exceptions.

6. Accordingly, I conclude that the appeal site, being outside of the defined settlement boundary, would not be an appropriate location for housing. The proposed development would conflict with the strategic and rural housing aims of the development strategy and would undermine the spatial strategy for the Borough, which seeks to direct most new housing to the urban areas, with more modest levels of development, appropriate to support the local housing needs and to provide additional support for the viability of local services, being directed to within smaller settlements. Thus, the proposal would be contrary to CS Policies CS01, CS02, CS06 and CS08 and DM Policy DM2 which, together and amongst other matters, set sustainable patterns of development. I give this matter considerable weight.

Other Matters

7. The appellant has referenced Paragraph 145 of the National Planning Policy Framework (the Framework) in support of the appeal. However, this section of the Framework is concerned with proposals affecting the Green Belt and is not, therefore, relevant in this case. Nevertheless, the development plan is not silent on the matter of infilling, which is provided for under Policy DM3. However, this relates to small gaps within an otherwise continuously built up frontage in "smaller villages and hamlets". Policy DM3 does not apply in this case as the site lies within the countryside. In any case, the site does not represent a small gap nor is it situated within an otherwise continuously built up frontage. This matter does not therefore weigh in favour of the proposal.
8. I do not consider paragraph 84 of the Framework to be relevant to this appeal. This is because it is concerned with the identification of sites for the provision of business and community needs in rural areas rather than sites for housing.
9. My attention has been drawn to an appeal decision in the Council's area where the Inspector dismissed the appeal on character and appearance grounds but did not find harm in relation to the site being located outside of the settlement boundary, taking into consideration the accessibility of that site to the particular services and facilities in its vicinity. I note that site was related to a settlement identified as a 'key rural service centre' in the Council's settlement hierarchy. This is a higher order settlement than is relevant to the case before me. Therefore, I do not consider the reasoning applied to the matter of location to be sufficiently comparable as to be afforded weight in my determination of this appeal.
10. I have been referred to a further appeal decision where a proposal for two dwellings was allowed at a site within the countryside. This case was in a different authority area and would have been determined under a different policy regime. This limits its relevance to this appeal. Nevertheless, I acknowledge that the benefit of two dwellings was found to outweigh the harm identified and that this was the case even though paragraph 11 of the Framework was not engaged. I note that the five year housing land supply position was stated as being only fractionally over the five year requirement. The context of that appeal is materially different to the appeal before me, and the weight to be given to both harm and benefits of development proposals will be specific to each individual case. Consequently, that appeal decision has not been determinative.

11. I also note a planning permission for two dwellings granted by the Council. The appellant considers this demonstrates the Council's support for the acceptability of infilling. I do not consider that permission amounts to a precedent that affords weight to the appeal proposal. That scheme comprised two self-build dwellings in a location adjacent to a higher order settlement and does not therefore represent a direct parallel to the appeal proposal, which I necessarily determine on its own merits.
12. The appellant considers that the way sustainable development is defined should be revisited to take account of, amongst other matters, a move towards more home working and increased use of electric vehicles, suggesting that location of development in relation to services and facilities is becoming less important. Whilst this may be the case, I have no evidence to suggest that future occupiers would work from home or would use electric vehicles nor any means by which to require them to do so. Such future potential for a reduction in the need to travel and reliance on greener modes of transport does not therefore weigh in favour of the proposal.
13. The Council's evidence indicates that the development would be likely to effect one or more European sites¹. No detailed information was provided in this regard. However, given my overall conclusions it is not necessary that I consider the effect of the proposal on European sites, as such an assessment would have no bearing on my decision.

Planning Balance

14. The appellant suggests that the Council cannot reasonably demonstrate a deliverable five year housing land supply if the likely consequences of the Covid-19 pandemic (the pandemic) are taken into account. They advocate a reasonable policy response to the pandemic situation would be that of the planning 'hawk', whereby the 'hawkish' approach would be the application of the so called 'tilted balance'. However, I have no substantive evidence before me to indicate that the Council's housing land supply position is in jeopardy, even in the face of the impacts of the pandemic. The Council indicates that it can demonstrate a 7.96 year deliverable housing land supply. This has been calculated following consideration of the 2020 Housing Delivery Test results, published in January 2021, which include an allowance for the impact of the pandemic.
15. The results for the Council reveal that an action plan is required as the authority's housing delivery at 94% falls short of the 95% benchmark. This position is improved from the 2019 results of 83% which resulted in the Council having to undertake an action plan and include a 20% buffer. The 2020 results therefore appear to indicate that the earlier action plan has been effective in improving delivery and a 20% buffer is no longer required, although the Council is required to undertake a further action plan.
16. Whilst I accept that the full impact of the pandemic may yet emerge, support is being provided by Government to the building industry and others to offset the short term effects of the pandemic, and it seems likely that, given the Government's commitment to the supply of housing, it will continue to support provision and delivery. I therefore consider that, although there is greater

¹ Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

uncertainty in the situation than usual, appropriate consideration, in compliance with current local and national policy, has been given to the likely effects of the pandemic. From the evidence before me, and for the purposes of this appeal, I conclude that the Council can demonstrate a deliverable five year supply of housing sites and has met the housing delivery test. Consequently, footnote 7 of paragraph 11 d) of the Framework is not engaged and the relevant policies for the determination of this appeal carry full weight.

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
18. The provision of a deliverable five year housing land supply is not to be considered as an upper limit and the proposal would align with the national aim to boost the supply of housing and support small scale development. Nevertheless, while any contribution is worthwhile, the addition of four dwellings to the supply and mix of housing in the area would be small. While bigger homes may facilitate an increase in desire and need for working from home and access to more outdoor space, there is limited evidence presented to demonstrate that the proposal would enhance or maintain the vitality of the community, or that it would meet an identified local need.
19. The development would not be isolated and would be capable of being built out quickly. In this regard the appellant has indicated willingness to accept a one year time limit condition for implementation, thus providing assurance of a quick start. I consider these benefits to be modest proportionate to the scale of development proposed.
20. The development would be accessible to some services and facilities and would not result in unacceptable harm to the character and appearance of the area. However, an absence of harm is neutral, not a matter to be weighed in favour of the proposal.
21. The appeal scheme's overall conflict with the Council's spatial strategy draws it into conflict with the development plan when read as a whole. The Framework does not seek to prevent the use of defined settlement boundaries within development plans. Given the five year deliverable housing land supply position, there is nothing that suggests that the policies are unduly constraining the delivery of housing within the Borough or preventing sustainable development within settlements. Consequently, in that context, the modest benefits that would arise carry only modest weight and do not justify setting aside the Council's adopted development plan strategy in this case. Accordingly, there are no material considerations which indicate a decision should be made other than in accordance with the development plan.

Conclusion

22. For the reasons given above the appeal is dismissed.

S Tudhope

INSPECTOR