



Appeal Decision

Site visit made on 19 January 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Appeal Ref: APP/F1040/W/20/3258632

95 Bretby Lane, Bretby, Burton-on-Trent DE15 0QP

- 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 and Mrs Brian and Jean Mears against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2019/1430, dated 12 December 2019, was refused by notice dated 2 April 2020.
 - The development proposed is described as "outline development of an entry-level exception site for six wholly affordable starter homes for first time buyers (all matters to be reserved except for access) on land at SK2823 3536 (rear of 101 to 119) Bretby Lane, Bretby".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Brian and Jean Mears against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development in the banner heading above is taken from the planning application form, although I have omitted additional wording which related to a previous refused planning application as this was not descriptive of the proposed development.
4. The application was submitted in outline, with only access to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters. I have consequently treated the submitted drawings as being for illustrative purposes only, insofar as they imply matters other than access arrangements.
5. A signed and dated Unilateral Undertaking ("UU") relating to the provision of affordable housing, dated 15 December 2020, was submitted by the appellant during the course of the appeal, and commented on by the Council. I return to this matter below.
6. A Written Ministerial Statement ("WMS") made by the Minister of State for Housing on 24 May 2021 set out an update on the Government's approach to

affordable housing and introduced the First Homes scheme¹. The Planning Practice Guidance ("PPG") was updated at the same time to reflect the WMS. I sought both main parties' views on the relevance of the WMS to this appeal, and their comments have been taken into account in my reasons below.

7. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issues

8. The main issues are:

- Whether or not the site is an appropriate and sustainable location for the proposed residential development, having regard to the Council's housing strategy, and local and national planning policies in respect of affordable housing; and
- The effect of the proposed development on the character and appearance of the area.

Reasons

The location of residential development

9. The appeal site is part of a grassed paddock lying to the rear of Nos 101 to 119 Bretby Lane, with an access way between Nos 111 and 119 (there are no Nos 113 or 115). The site lies within the larger parcel of land attached to the appellants' dwelling No 95 Bretby Lane; this is a detached house with an assortment of sheds and small outbuildings (which I understand from the appellants' evidence includes dog breeding kennels) set some way behind the other dwellings on Bretby Lane and accessed by a driveway between Nos 93D and 97.
10. The site lies some 850m or so west of what might reasonably be considered to be the heart of Bretby around St Wystan's Church. In fact, Bretby is a somewhat dispersed settlement principally consisting of small groups of dwellings, with little in the way of day-to-day community or commercial services. The appeal site lies to the rear of a ribbon of residential development extending north-eastwards along Bretby Lane into the countryside from Winshill, a neighbourhood of Burton-on-Trent within the neighbouring borough of East Staffordshire.
11. The proposal is the development of six affordable dwellings for first time buyers, shown as three pairs of semi-detached houses in the indicative drawings provided.

¹ <https://questions-statements.parliament.uk/written-statements/detail/2021-05-24/hcws50>

Relevant local and national planning policies

12. Policy S1 of the 2016 South Derbyshire Local Plan Part 1 ("the LP1") sets out the Council's "sustainable growth" strategy, which in respect of housing indicates that at least 12,618 dwellings will be developed over the 2011–2028 plan period. It recognises that a mix of brownfield and greenfield sites will be used to accommodate this housing, but seeks to "encourage" the reuse of previously developed land.
13. Policy H1 of the LP1 sets out the district's settlement hierarchy, based on the range of services and facilities each settlement offers. The fourth (and lowest) tier of defined settlement is "Rural Villages", and Bretby falls into this category. In these places development of a limited nature will be allowed either within a settlement boundary, or on sites adjacent to the settlement boundary for "exceptions or cross subsidy" developments of no more than 15 dwellings. In rural areas outside the defined settlement boundaries, H1 states that "only development of limited infill and conversions of existing buildings will be acceptable".
14. Policy SDT1 of the 2017 South Derbyshire Local Plan Part 2 ("the LP2") identifies those settlements – not including Bretby – for which a settlement boundary is defined, while Policy BNE5 of the LP2 indicates the circumstances in which development outside defined settlement boundaries will be permitted. These include it is allowed by specified other policies, one of which is Policy H1 of the LP1.
15. Policy H21 of the LP1 sets out the approach to affordable housing development, and as well as seeking to secure affordable housing as part of developments of more than 15 dwellings, it also permits rural exception sites adjoining existing Key Service Villages, Local Service Villages and Rural Villages, subject to their being kept in perpetuity as affordable housing for local people (depending on the nature of the affordable product being proposed). For a rural exception site, proposals must meet a clearly identified local need, provide a majority of affordable homes, address a need which cannot reasonably be met within the development limits of the village concerned or the submarket area the site falls within as detailed in the Strategic Housing Market Assessment ("the SHMA"), and should be of a scale relative to the settlement size and facilities available particularly public transport.
16. National planning policy is primarily set out in the Framework, which states at Paragraph 72² that:

"Local planning authorities should support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home), unless the need for such homes is already being met within the authority's area. These sites should be on land which is not already allocated for housing and should:

 - a) comprise of entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of this Framework; and*
 - b) be adjacent to existing settlements, proportionate in size to them, not compromise the protection given to areas or assets of particular importance in this Framework, and comply with any local design policies and standards."*

² This was Paragraph 71 prior to the July 2021 update of the Framework.

17. The glossary at Annex 2 of the Framework includes in its definition of affordable housing Starter Homes, which it defines as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The Framework is a material consideration which carries significant weight in determining this appeal.
18. The WMS made in May 2021 in respect of First Homes is also a statement of Government planning policy, and like the Framework carries significant weight. The PPG indicates that First Homes are the government's preferred discounted market tenure³, and the WMS set out criteria for First Homes exception sites which are essentially the same as those for entry-level exception sites set out in Paragraph 72 of the Framework.

Exceptions sites development

19. The appellants contend that LP1 Policy H1 is out of date, as it pre-dates the reference to entry-level exception sites introduced in the 2018 revision of the Framework and is thus inconsistent with national planning policy. However, H1 refers to "exceptions or cross-subsidy sites", and the Glossary to LP1 defines an affordable housing exception site (or rural exception site) as being one which "would not normally secure planning permission for housing due to being adjacent to a settlement boundary but is allowed for development solely for affordable housing". To my mind, the broad "exceptions sites" provision in Policy H1 to support the delivery of affordable housing can, and sensibly should, be read to include entry-level exception sites. Although it does not include the specific phrase "entry-level", Policy H1 provides for that type of affordable housing exception site and establishes the policy framework for assessing the locational aspects of such proposals. I therefore find Policy H1 to be consistent with the Framework, and I give it full weight in determining this appeal. Accordingly, I reject the appellants' argument that "primacy should be given to [the Framework] above the Local Plan".
20. Neither the older "core" of Bretby village or the ribbon development extending north-eastwards out of Winshill which includes the appeal site has a defined settlement boundary. In the development plan's terms, the appeal site is therefore in the rural area, and only development of limited infill and conversions of existing buildings will be permitted by LP1 Policy H1. The development of six new dwellings would not, on a site protruding into the countryside, represent limited infilling. I therefore consider that the proposed development is not supported by Policy H1.
21. Unlike the broadly-written Policy H1, LP1 Policy H21 is specifically concerned with rural exception sites. There is no evidence before me that the proposal would meet the very localised housing need which is usually at the heart of rural exception sites proposals, and which is described in the definition in Annex 2 of the Framework. Furthermore, the appellants' evidence makes quite clear at several points that the application was made as an entry level exception site and not as a rural exception site, and that it is "not tied to a narrowly-defined [...] local need or evidence base". As the proposal is not for a rural exception site, by definition it could not be permitted by the relevant part of Policy H21.

³ Paragraph: 001 Reference ID: 70-001-20210524

Accessibility of services

22. Bretby itself has very limited services, and any future occupiers of the appeal site would, in common with existing residents of that part of Bretby Lane, be likely to rely on services either within Winshill or further afield. The appellants have referred to the Institute of Highways and Transportation's *Guidelines for Providing for Journeys on Foot* ("the IHT guidance"), and suggest that facilities in Winshill including a primary school, nursery school, medical centre and convenience shop all lie between within 1,300m and 2,000m of the appeal site, and thus within the "acceptable" and "preferred maximum" walking distance ranges set out in the guidance. In fact, the extract of the IHT guidance submitted by the appellants suggests that for schools the "acceptable" walking distance is around 1,000m with a "preferred maximum" of around 2,000m, and for other services in a non-town centre location the "acceptable" distance is around 800m and the "preferred maximum" around 1,200m.
23. The evidence before me and my observations in the area at the time of my site visit suggest that the Esso petrol station on Ashby Road (which also sells a limited range of groceries and other goods) is the nearest of the services mentioned in Winshill to the appeal site. The appellants state that it is approximately 1,300m from the appeal site. I found the round trip from the proposed site entrance on Bretby Lane to the garage and back to be approximately a half hour walk, and it seems to me unlikely that future occupiers of dwellings on the appeal site would regularly choose to make this journey on foot to pick up day-to-day purchases. Other shops and services in Winshill are further away still, with correspondingly greater walking times. The appellants indicate that the nearest primary and nursery school is around 1,800m from the appeal site, but while this is within the IHT Guidance's "preferred maximum" distance for a school it seems unlikely that, for example, any parent who happened to be at home during the school day would choose as a matter of course to make the 3.6km round trip on foot twice a day to escort a young child to and from school.
24. The appellants have also referred to the "extensive retail, restaurant and commercial services" at Planters Bretby Garden Centre to the east of the appeal site, but while this is a shorter distance away than the facilities in Winshill it seems extremely unlikely that a garden centre would meet local residents' typical day-to-day shopping needs.
25. No information has been provided to me about bus services which serve the appeal site or bus stops nearby. However, based on all of the evidence available it seems likely to me that any future occupiers of the proposed dwellings would be highly likely to be reliant on having use of a private car for access to most services and facilities. On this basis, I consider that the site has limited accessibility to services and facilities by a range of transport options, and in this respect would not represent a sustainable form of development.

Affordable housing need and provision

26. The proposed development would provide six Starter Homes for first time buyers. Both main parties referred in their evidence to the January 2020 Strategic Housing Market Assessment ("the SHMA") prepared for the Council by

GL Hearn⁴. The appeal site lies within the “Derby Fringe” sub-market area identified in the SHMA.

27. In terms of the need for affordable housing, and as the appellants have pointed out, the SHMA identifies a net affordable home ownership need of 25 dwellings within the Derby Fringe area. However, because of a surplus in the Swadlincote and South sub-area the district as a whole has an annual surplus of 22 dwellings⁵. The SHMA suggests that there is therefore not a requirement for the Council to seek any more than the Government recommended 10% delivery in the form of affordable home ownership properties⁶. However, it also suggests that any delivery of low-cost home ownership products should be focussed on the Derby Fringe sub-area because of its identified need⁷, and that while it *should* [my emphasis] focus on shared ownership in light of reduced deposits and the subsidised rent provided⁸, it *could* [my emphasis again] also focus on those offering a straight discount on the open market value of the affordable home⁹.
28. The Council stated that in 2018-19 225 affordable homes were delivered throughout the District, of which 43 (28 within the Derby Fringe sub-area) were affordable home ownership dwellings as defined in Annex 2 of the Framework. In 2019-20 there were 271 affordable homes delivered in South Derbyshire as a whole, of which 66 (31 within the Derby Fringe sub-area) were affordable home ownership dwellings. The appellants comment that the delivery of affordable housing is “almost wholly shared ownership with no Starter Homes and therefore not being representative of the spectrum of NPPF Annex 2 products and neglecting [...] households excluded from the owner-occupied sector”. Neither party has provided me with a more detailed breakdown of the type of affordable home ownership products which have been delivered. However, given the relatively limited need for affordable home ownership in the Derby Fringe sub-area identified by the SHMA, the over-delivery of affordable home ownership dwellings in both the sub-area and the district, as well as the lukewarm support which the SHMA offers for affordable home ownership products other than shared ownership, in my view there is no substantive evidence that the proposal would meet a need which is not already being met either within the local housing market sub-area or in the district as a whole.

Other appeal decisions

29. Both main parties have drawn my attention to several previous appeal decisions where Inspectors considered the interpretation of the development plan in respect of affordable housing, exception sites, and settlement boundaries.
30. The appellant referred me to cases elsewhere in South Derbyshire, adjacent to the settlements of Melbourne¹⁰ and Repton¹¹, in which both Inspectors found that there was a degree of ambiguity about exception sites in the wording of LP1 Policy H1. Those appeals related to proposals for market housing on the

⁴ The original planning application referred to an earlier, now superseded, version of the SHMA published in 2013.

⁵ Paragraphs 5.106 and 5.107

⁶ Paragraph 5.112

⁷ Paragraph 5.117

⁸ Paragraph 5.119

⁹ Paragraph 5.120

¹⁰ PINS Ref APP/F1040/W/17/3171029

¹¹ PINS Ref APP/F1040/W/17/3191604

edge of settlements designated “Key Service Villages” in H1, with defined settlement boundaries applied by LP2 Policy SDT1; neither is therefore directly analogous to the facts of this case. In any event, in relation to the development of sites which are neither within nor adjacent to defined settlement boundaries – as in this appeal – there is no ambiguity within Policy H1.

31. The Council directed me towards other appeal decisions in respect of sites adjacent to the settlements of Hartshorne¹² and Linton¹³, although again neither of these related to a proposal for affordable housing. The Inspector in the Hartshorne appeal followed a similar approach to interpreting Policy H1 to that of the Inspectors in the Melbourne and Repton cases, but in quashing that appeal decision the High Court found that he had erred in his interpretation of policy.
32. In the Linton decision, the Inspector explained why, having regard to the development plan as a whole, he found the approach to affordable housing permitted by Policy H1 (including the requirement for there to be a relationship with a defined settlement boundary, with limits specified for various tiers of settlement, and reinforced by other policies including H21 of LP1 and Policies SDT1 and BNE5 of LP2) to be consistent with the balanced approach to rural development set out in the Framework. The Inspector addressed the perceived policy ambiguities identified in the Melbourne and Repton decisions in a manner which I found compelling. My reasoning set out above is consistent with the Inspector’s decision in the Linton appeal, as well as with the decision of the High Court in respect of the Hartshorne appeal.
33. The appellants also drew my attention to an appeal decision in Wiltshire, which was issued after this appeal was lodged¹⁴, and which granted outline planning permission for a proposed development of up to 20 entry-level affordable dwellings, which would be starter homes for first-time buyers. This decision was provided in response to the Council’s assertion in their appeal statement that as the secondary legislation required to enable the delivery of Starter Homes as an affordable housing product has not been enacted, an application for Starter Homes could not be considered as a valid means of delivering affordable housing in the District. However, the evidence before me suggests that the overall circumstances of that appeal differ considerably from this one – not least because Wiltshire Council could not demonstrate a five year supply of deliverable housing sites, there was an unmet affordable housing need within the local planning authority area, and the main parties agreed that the proposal met the policy tests for entry level exception sites. I have no reason to disagree with the conclusions of the Inspector in the Wiltshire appeal, but given the very different circumstances that decision does not lend more than very limited weight in support of the appellants’ case in this appeal.

Findings in respect of the location of residential development

34. The appeal site is neither within, nor adjacent to, a defined settlement boundary, and therefore is not in a location where exception sites for affordable housing are supported by LP1 Policy H1. The proposed development is for an entry level exception site, and as such would not be permitted by LP1 Policy H21 which specifically addresses rural exception sites.

¹² PINS Ref APP/F1040/W/19/3232081 – decision quashed by High Court on 3 June 2020

¹³ PINS Ref APP/F1040/W/19/3223811

¹⁴ PINS Ref APP/Y3940/W/20/3253180

35. If I had come to a different view and considered that the proposal should be assessed against the provisions of Part C of Policy H21, this would not have altered my overall decision. Although the scheme would consist entirely of affordable homes (and thus would comply with criterion ii), there is no substantive evidence that the development would either meet a clearly identified local need (criterion i) or that any need cannot reasonably be met, or is not already being met) within the housing market sub-area (criterion iii). Furthermore, while a proposed development of six dwellings would be of a scale proportionate to the settlement size (whether this is taken as Bretby village or the ribbon development extending out of Winshill), the site is in an area which has relatively poor access to facilities other than by reliance on private transport (criterion iv).
36. However it is approached, I consider that the site does not represent an appropriate and sustainable location for the proposed development. I therefore conclude that the proposal conflicts with Policies S1, H1 and H21 of the LP Pt1, and with Policies SDT1 and BNE5 of the LP Pt2, which together set out the spatial strategy and settlement hierarchy for the district, seek to preserve and protect the countryside, and which are supportive of the development of affordable housing (including exception sites) where this is of an appropriate size and location in respect of existing settlements. For the reasons set out in paragraphs 19 to 21 above I also conclude that the proposal is not supported by the provisions of paragraph 72 of the Framework in respect of entry level exception sites.

Character and appearance

37. As I have already described above, the appeal site lies to the rear of housing forming a ribbon of development extending from the nearby settlement of Winshill along Bretby Lane into the countryside. The land falls approximately from south to north across Bretby Lane, with a south-west to north-east fall across the appeal site itself. This means that the appeal site is in a relatively open and exposed position relative to the open countryside to the north. Many of the neighbouring rear gardens have tall and mature evergreen trees to their boundaries with the appeal site, which serve to close the appeal site off from some of the nearest housing. The gap created by the appeal site also has the effect of separating No 95 from the other housing on Bretby Lane, so that in many close views it appears to be much more an integral part of the rural area than other housing nearby.
38. The proposed development would fill much of the gap between No 95 and the other dwellings on the north side of Bretby Lane, and would represent an encroachment of built development into the countryside. The appellant has drawn my attention to other housing developments off Bretby Lane (Oldicote Lane and another short private cul-de-sac), but while these break up the general linear pattern of ribbon development they are on the south side of the road and in positions where the lie of the land makes them relatively visually unobtrusive. I acknowledge that, as the appellants suggest, in certain middle-distance views, including from the footpath running from Bretby Lane to Hawfield Lane some way east of the appeal site, the proposed dwellings would be seen against a backdrop of existing housing, and so in these views they would not be especially visually intrusive. However, from other places, including other parts of Hawfield Lane, and from the footpath connecting Bretby Lane to Calgary Crescent some way west of the appeal site, the

topography is such that the proposal would be visible as an intrusion of built development into the countryside.

39. The appellants drew my attention to other appeals in Linton¹⁵ and Hartshorne¹⁶ where Inspectors found that residential developments on the edge of settlements would not be harmful to the character and appearance of the countryside, in particular because they would be seen against a backdrop of existing housing in middle-distance views. However, I do not know the full details of those other cases, while my conclusions in this appeal have been drawn on a detailed site visit and appreciation of the local landscape and topography. I have no reason to dispute the views of my colleagues in those other appeals, but have reached my decision based on the specific facts and situation of this appeal site and its surroundings.
40. I therefore conclude that the proposed development would be harmful to the character and appearance of the area. While the suburban-style development which already stretches into the countryside along Bretby Lane means that the additional harm would not be on a grand scale, there would nevertheless be harm caused by a further intrusion into the countryside. The proposal consequently conflicts with Policies H20, H21, BNE1 and BNE4 of the LP Pt1, and Policy BNE5 of the LP Pt2, which together seek to protect the character of the countryside, and ensure that development is well-designed and respects and responds to the local landscape and built character.
41. The Council's decision notice also stated that the proposal conflicted with paragraph 72 of the Framework in this respect. As the officer report suggests that this relates to the proposed scale of the development, and as I have described in paragraph 35 above I consider that the proposal is acceptable in this regard, I find no further conflict with this provision of the Framework. However, this does not outweigh the other harm I have found.

Other matters

42. A certified copy of a completed unilateral undertaking ("the UU") in respect of affordable housing, signed and dated 15 December 2020, was submitted by the appellants on 22 December 2020. This includes a requirement for an 'Affordable Housing Scheme' to be submitted to the Council for approval to define the affordable housing mix to be delivered on site.
43. While the UU may secure the provision of an affordable housing scheme, I note the Council's concerns about the form of the undertaking, and in particular whether or not it would secure the required discount, whether it would secure the housing as affordable in perpetuity, how eligibility criteria for the housing would be established, and whether there would be a provision for covering the Council's ongoing monitoring costs. However, as I am dismissing the appeal for the substantive reasons described above, it has not been necessary for me to pursue the Council's concerns in this respect further.
44. The appellants indicated they considered that the recent WMS in respect of First Homes had "significant positive implications" in respect of this appeal. They suggested that, if the appeal were to be allowed, the proposal could be amended from Starter Homes to First Homes by imposition of an appropriate condition. The transitional arrangements announced within the WMS indicate

¹⁵ PINS Ref APP/F1040/A/14/2214428

¹⁶ PINS Ref APP/F1040/W/17/3167838

that sites (including entry-level exception sites) with full or outline planning permissions already in place or determined before 28 December 2021 do not need to comply with the First Homes requirements. While the WMS also indicates that local authorities (and presumably therefore, by implication, other decision makers) should allow developers to introduce First Homes to the tenure mix if they wish to do so, this is not a condition which, had the proposal been acceptable in all other respects, would have been necessary.

Conclusion

45. The proposal would result in some benefits, including the provision of six affordable housing units, and potential (though limited) benefits to the local economy which would arise from the construction and occupation of the proposed units. However, these benefits would not overcome the harm in respect of the relatively poor access to services and facilities and the expansion of built development into the countryside, including effects on the character and appearance of the area. Furthermore, the proposal would undermine the plan-led approach to development, which includes provision for affordable housing exception sites, and there would be conflict with the development plan taken as a whole.
46. There are no material considerations, including those of the Framework, which indicate that the decision should be made other than in accordance with the development plan.
47. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector