



Appeal Decision

Site Visit made on 6 September 2021

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal Ref: APP/B3030/W/21/3274998

Land adjacent Apple Drop Barn, Low Street, Harby, NG23 7EA

- 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 Lynden Barnard against the decision of Newark & Sherwood District Council.
 - The application Ref 20/01807/OUT, dated 18 September 2020, was refused by notice dated 13 November 2020.
 - The development proposed is an outline application with all matters reserved for residential development consisting of 2 No. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline, with all matters reserved.
3. It is clear from the submissions of the appellant and Council that one of the intended reasons for refusal of the application was missed from the Decision Notice despite being in the Officer Report and recommendation. Nevertheless, the appellant has addressed the intended reasons for refusal on the basis of those set out in the Officer Report. I am satisfied that this is appropriate, that no prejudice arises to any party. My main issues are therefore based on those reasons for refusal set out in the Officer Report.

Main Issues

4. The main issues are
 - whether the appeal site is a suitable location for the development proposed having regard to the built extent of Harby and the setting of Apple Drop Barn,
 - whether the proposal would be safe from flood risk, and
 - whether the proposal would be compatible with the visual amenity and biodiversity of the area with specific regard to its effect on trees and hedgerows.

Reasons

Location

5. The appeal site, in equestrian use, lies immediately to the rear of properties along Low Street, on the western edge of Harby. Spatial Policy 3, Rural Areas, of the Newark and Sherwood Local Development Framework Core Strategy and Allocations Amended Core Strategy (March 2019) (the Core Strategy) sets out that the Council will, amongst other things, address local housing need by focusing housing in sustainable, accessible villages, setting a hierarchy for development locations, and suitability criteria against which to assess proposed sites. As parties agree that Harby is an “other village” for the purposes of this policy, it does not have a designated envelope, and a judgement is required as to whether the appeal site lies within the built extent or beyond it and then subject to policies intended to protect the open countryside.
6. I note the appellant’s argument that because the supporting text to Spatial Policy 3 sets out that the built extent would “not normally include undeveloped land, fields, paddocks or open space which form the edge of built form”, it can be inferred that this means that those types of land could be included within the built extent, and that in any event, the permanent equestrian development on the site has changed it to previously developed land.
7. However, both parties are also clear that whether or not the site lies within the built extent of Harby is a matter of judgment and have provided me with a number of examples and appeal decisions to support their case. Given this, and as this judgement must be made in relation to the facts of the case and the situation of the particular site and its particular surroundings, I do not consider that these examples are relevant to or have any significant bearing on the judgement I must make in this case.
8. I have had regard to the submissions of all parties as well as my own observations during my site visit. I note the relatively open landscape to the west, the sense of which pervades the site even in spite of the natural boundary and the fencing. Similarly, despite the barn to the north, the site retains an open character and clear connection to the open countryside beyond. In my opinion, the houses and converted barns to the east and south of the site reinforce the hard transition at the edge of the site between the open countryside and the built extent of Harby. Indeed, to my mind, the converted barns and their associated outbuildings reinforce the character and appearance of the site as open countryside, as they give the impression of being (former) rural and agricultural development within the open countryside but adjacent to the built extent of the village.
9. Whilst the stables, storage and other equestrian-related development on, and use of the site do have an effect on its character, I find that the dominant and persistent character and appearance of the site is of being open countryside, albeit adjacent to the built extent of Harby. I do not consider that it lies within it.
10. With regard to the wording in paragraph 4.25 of the supporting text to Spatial Policy 3, I do not find anything in the evidence before me, or in my observations on site to suggest why this proposal, or this site is not normal in the terms of that paragraph and in determining whether or not the site lies within the built extent of the village.

11. Turning to the setting of Apple Drop Barn, I do not find it necessary for me to determine whether or not it is a non-designated heritage asset, in light of my findings above on the character and appearance of the site and its nature as open countryside. As I have found that the site is open countryside, and as I have already noted that Apple Drop Barn, even in its current converted and extended condition, with associated outbuildings, contributes to that character, it logically follows that development of the site would harm its setting, by developing a site which is open countryside.
12. I therefore find that the proposal would result in additional dwellings within the open countryside, which would be harmful to the character and appearance of the area and the rural setting of the village. The site is not therefore a suitable location for the development proposed having regard to the built extent of Harby and the setting of Apple Drop Barn.
13. As such, the proposal would be contrary to Spatial Policy 3, Core Policies 9 and 13 of the Core Strategy, and Policies DM5 and DM8 of the Newark and Sherwood Allocations and Development Management Development Plan Document (2013) (the DMDP). These policies seek, amongst other things, to control the location and direction of growth in the Council area, control development in the open countryside and ensure that development is suitable for its setting and surroundings. As set out above, I have not found it necessary to reach a conclusion against Core Policy 14 of the Core Strategy or Policy DM9 of the DMDP, which deal with the effect of development proposals on the historic environment.

Flood risk

14. The site lies partially within Flood Zone 1, and partially within Flood Zone 2. Although the proposal is in outline, indicative plans show that the proposed dwellings would be constructed in Flood Zone 1, with only the existing, upgraded access in Flood Zone 2.
15. Paragraph 162 of the National Planning Policy Framework (the Framework) states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
16. The Planning Practice Guidance (the PPG) is clear that it is for local planning authorities, taking advice from the Environment Agency as appropriate to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The Council consider that as part of the site lies within Flood Zone 2, a Sequential Test should be undertaken.
17. Although I note the comments of the Environment Agency, and indeed, the Flood Risk Assessment produced by the appellant, I remain concerned that without the proper application of the Sequential Test, it is not clear to me if there are any reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
18. Taking the Framework as a whole, I do not consider that the submission of a site-specific Flood Risk Assessment, to address paragraph 167, outweighs the requirement at paragraph 162 for a Sequential Test to establish if there are

any reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

19. As a result, it has not been adequately demonstrated that the site would be safe from flood risk, and the proposal would be contrary to Core Policies 9 and 10 of the Core Strategy, and Policy DM5 of the DMDP which seek, amongst other things, to ensure that it would be. The proposal would also be contrary to guidance on flood risk in the Framework and PPG.

Trees and hedgerows

20. Notwithstanding the potential unauthorised loss of hedgerows on the site, it appears that the Council is now satisfied that, subject to the recommendations in the various relevant reports, and the exercise of appropriate control at reserved matters stage, the proposal would be compatible with the visual amenity and biodiversity of the area with specific regard to its effect on trees and hedgerows. I agree with this conclusion.
21. As such, the proposal would comply with Core Policy 12 of the Core Strategy and Policies DM5 and DM7 of the DMDP, which seek, amongst other things, to ensure that proposals conserve and enhance the biodiversity of the district, are appropriately designed to do so and protect, promote and enhance green infrastructure.

Conclusion

22. Although I have found that the proposal would be compatible with the visual amenity and biodiversity of the area with specific regard to its effect on trees and hedgerows, I have also found that there is significant development plan conflict with regard to the suitability of the site for the development proposed having regard to the built extent of Harby and the setting of Apple Drop Barn, and whether the proposal would be safe from flood risk. As such, I conclude that the proposal conflicts with the development plan and there are no material considerations which indicate that a decision be taken other than in accordance with it.
23. The appeal should therefore be dismissed.

S Dean

INSPECTOR