



Appeal Decision

Site visit made on 7 September 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

Appeal Ref: APP/F1040/W/21/3276565

Land adjacent to 42 Main Street, Repton, Derby DE65 6EZ

- 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 Kimran Khan against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2020/0372, dated 9 April 2020, was refused by notice dated 7 April 2021.
 - The development proposed is the erection of a detached dwelling with detached garage, associated landscaping and retention of works to improve the existing access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address given in the header above differs a little to that provided on the planning application form, which refers to the site being number 42 Main Street. However, as noted in the description of proposed development provided on the application form, and as is clear from the submitted plans, the site is adjacent to No. 42. I have therefore corrected the site address, and my Decision is based on this.
3. The description of proposed development provided above also differs a little to that provided on the planning application form. I have removed references to a previous application and the site address, as neither of these things describe development. I have also been provided with evidence that the appellant agreed to the change of description suggested by the Council. I have made my Decision on this basis.
4. A revised National Planning Policy Framework (the Framework) was published in July 2021, after the appeal was submitted. Parties were given the opportunity to comment on any implications of the revisions for the appeal. I have taken account of the revised Framework in reaching my Decision.

Main Issues

5. The main issues are:
 - whether the site location would be suitable for a dwelling, having regard to relevant local and national planning policies,
 - the effect of the proposal on the character and appearance of the area,

- the effect of the proposal on the living conditions of occupiers of existing neighbouring properties, in particular No. 42 Main Street with regard to noise and disturbance from cars, and
- whether the proposal would have an unacceptable impact on highway safety.

Reasons

Suitability of location for housing

6. Policy S1 of the South Derbyshire Local Plan: Part 1, 2016, (LPP1), outlines the sustainable growth strategy of the plan to meet the objectively assessed housing and commercial needs of the area during the development plan period.
7. Policy H1 of LPP1 outlines the area's settlement hierarchy, which is based on the range of services and facilities available within each settlement. The policy requires the distribution of new development to accord with the settlement hierarchy to achieve the sustainable growth strategy outlined in Policy S1 of LPP1.
8. Although a small section of the site (the access area) lies within the defined settlement boundary of the village of Repton, one of the 'Key Service Villages' in the settlement hierarchy, parties agree that the site is outside of, and adjacent to, the defined settlement boundary. The site is therefore designated as being in a 'Rural Area' for the purposes of the settlement hierarchy.
9. The only development acceptable in 'Rural Areas' is "*limited infilling*" (a matter I shall return to below) and conversion of existing buildings. The proposal is evidently not a conversion of an existing building. Additionally, Policy H1 allows for the development of sites adjacent to the settlement boundaries of 'Key Service Villages' for exceptions or cross subsidy sites. However, I have not been provided with any evidence that the site constitutes an exceptions or cross subsidy site.
10. Policy STD1 of the South Derbyshire Local Plan: Part 2, 2017, (LPP2), reiterates the settlement hierarchy outlined in Policy H1 of LPP1, adding that within 'Rural Areas' development will be limited to that outlined in Policy BNE5 of LPP2.
11. Policy BNE5 of LPP2 extends the types of development in 'Rural Areas' referred to in Policy H1 of LPP1 to include development that is otherwise essential to a rural based activity, or unavoidable outside settlement boundaries. I have not been provided with any evidence to suggest the proposal is essential to a rural based activity, or unavoidable outside settlement boundaries.
12. BNE5 also allows for "*infill development*", subject to it being in keeping with the character of the locality and representing "*the infilling of a small gap for not normally more than two dwellings, within small groups of housing*", and not having an undue impact on landscape character and quality, biodiversity, the best and most versatile agricultural land, or heritage assets.
13. Policy H1 of the Parish of Repton Neighbourhood Development Plan 2016-2028, (2020), (PRNDP), requires development to accord with the settlement boundaries of the villages of Repton and Milton, as outlined in the PRNDP. Outside of the settlement boundaries the only housing development that is

allowed is that solely or primarily for affordable housing. The proposal is not for affordable housing.

14. The parties acknowledge that there is no definition of the term "*infill*" development within local or national planning policies or guidance. The appellant has drawn my attention to several appeal decisions referenced by Council Officers when dealing with "*infill*" development at planning committee. However, as the appellant is aware, each proposal must be considered on its merits taking account of the specific characteristics of the site. I have formed my judgement on this basis.
15. As the proposal is for one dwelling it satisfies that aspect of Policy BNE5 which defines the number of dwellings allowed. I acknowledge that the site is adjacent to the residential plot of No. 42 Main Street. However, the nearest dwelling south of the site on the western side of Main Street is around 80 m away. There are no houses near the western boundary of the site; and the eastern boundary of the site is adjacent to Main Street, the road and footpaths of which separate the site from dwellings on the eastern side of Main Street.
16. Within this context the proposal would not constitute "*infilling of a small gap*" within a small group of houses. Having reached this conclusion, for the purposes of Policy BNE5 of LPP2 it is not necessary for me to consider whether the proposal is in keeping with the character of the locality nor whether it would have an undue impact on landscape character and quality, biodiversity, the best and most versatile agricultural land, or heritage assets. Nevertheless, for completeness and to assist in concluding on the suitability of the location for a dwelling, I am satisfied that the proposal would not have any undue impact on biodiversity, best agricultural land, or heritage assets. I shall return to the issue of character and appearance of the area below.
17. Regarding the effect of the proposal on landscape quality, as noted, except for the access, the site lies within designated countryside. However, the site comprises a piece of vegetated land located on the western side of Main Street at the end of the southern perimeter of the built development of Repton. There are trees and hedges along the eastern, southern, and western boundaries and a hedge between the northern boundary of the site and the plot of No. 42. It is therefore sited between this dwelling, to the north, the access driveway of an employment site to the south, a main road with dwellings to the east and open fields beyond the western boundary. The open fields cannot be seen from the road, and the proposed buildings would not be visible from the fields.
18. The access/entrance to the employment site consists of brick pillars, a brick wall to the side of one of the pillars with a commercial advertisement sited within it, and metal gates. There is a steel, sub-station enclosure located just outside the south-eastern corner of the site and close to the access into the employment site. Outbuildings located within the plot of No. 42 can be seen from the road, the largest of which is highly visible when travelling along the road in a south to north direction.
19. As noted, the nearest dwelling south of the access to the employment site is around 80 m away. The intervening land consists of a landscaped buffer, around 25 m deep, between Main Street and the eastern-most part of the car parking area associated with the employment site, which is screened by trees. On the eastern side of Main Street, the defined settlement boundary and the built-up boundary of the settlement of Repton both end at the southern

boundary of No. 63, which is sited opposite the access to the employment site. The land south of No. 63 and opposite the landscape buffer referred to consists of an open field with trees and hedges around its perimeter.

20. The appellant has drawn my attention to a previous appeal related to the area of land I have referred to as a landscape buffer, Ref APP/F1040/W/18/3207758. Within the Decision my Inspector colleague considered the two stretches of undeveloped land I have described to form a distinctive break in the built form as one travels south out of Repton, adding that development ceases at practically the same point on both sides of the road, ending with the entrance to the employment site on one side and No. 63 Main Street on the other. Bearing in mind the site circumstances I have described above, I share these views.
21. For the reasons outlined, I consider the development of the site for a dwelling would not harm the landscape quality or the character, appearance, or intrinsic beauty of the countryside. As such, the proposal would accord with Policy BNE4 and point 'v' of Policy BNE5 of LPP1, and Policy OS2 of the RPNDP, which seek to protect landscape character and quality, including views of and from the countryside.
22. Paragraph 80 of the Framework advises that planning policies and decisions should avoid the development of isolated homes in the countryside, unless one or more of the circumstances outlined in sub-sections a) to e) apply. In light of the Braintree judgement¹ on the concept of 'isolated' homes in the countryside, given the close proximity of the site to the built-up settlement of Repton, I consider the proposal would not result in an isolated home in the countryside vis-à-vis paragraph 80 of the Framework.
23. As noted, Repton is designated as a 'Key Service Village' within the settlement hierarchy, which is based on the range of services and facilities available within each settlement. Thus, within Repton there is a local convenience store and a few other shops, a post office, a few restaurants and public houses, a primary school, preparatory and public schools, a couple of churches, and some indoor and outdoor leisure facilities. There is also access to public transport, with bus stops located within a kilometre of the site. Buses are available to surrounding urban areas such as Derby and Burton, which provide a full range of services, facilities and employment opportunities. The site is located within walking and cycling distance of the village services and facilities, and it is physically a little closer to them than No. 63 Main Street on the opposite side of the road.
24. Hence, future occupiers of the proposed dwelling would have access to a range of services and facilities that would assist in meeting day-to-day needs. Although it is likely that future occupiers of the proposed dwelling would use private motor vehicles as their primary mode of transport, eg for larger shopping trips, to access employment opportunities and to access services and facilities not available within the village, the proposal does provide the opportunity for modes of transport other than the private motor vehicle. It is recognised within the Framework (paragraph 105) that opportunities to maximise sustainable transport solutions will vary from urban to rural areas, and this should be considered in decision-making.

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610.

25. Considering all the above, as the site is outside the defined settlement boundary and does not represent "*infill development*" as outlined in Policy BNE5 of LPP2, nor does it constitute any of the other types of residential development that local development plan policies allow for, I conclude that the proposal would not accord with policies H1 of LPP1, BNE5 of LPP2 or H1 of the PRNDP. I note that reason for refusal one on the Council's Decision Notice refers to Policy H2 of the PRNDP. However, as this policy relates to development within settlement confines it is not applicable to the proposal.
26. As outlined in paragraphs 2 and 47 of the Framework, planning law requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a significant material consideration.
27. Paragraphs 7 and 8 advise that the purpose of the planning system is to contribute to the achievement of sustainable development, and the achievement of sustainable development has three interdependent, overarching objectives: economic, social, and environmental.
28. Paragraph 60 advises that to support the Government's objective of boosting the supply of homes, it is important that a sufficient supply of land comes forward. Paragraph 69 advises that small and medium sized sites can make an important contribution to meeting the housing requirements on an area; as such, local planning authorities are advised to support the development of windfall sites. The proposal would provide one additional dwelling on a small, windfall site.
29. Paragraph 79 advises that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The provision of one additional dwelling would make an all-be-it minor contribution to enhancing the vitality of rural communities. I have concluded above that the proposal would not result in an isolated dwelling in the countryside.
30. As outlined above, given that Repton is a 'Key Service Village', future occupiers of the proposed dwelling would have access to a range of services and facilities, though not extensive, to assist in meeting day-to-day needs. The proposal would offer some opportunities for future occupiers to use modes of transport other than the private motor vehicle. Additionally, I have concluded above that the proposal would not harm the intrinsic beauty of the countryside.
31. Taking account of the factors outlined above, I consider the proposal would not threaten or undermine the sustainable growth strategy of the plan, outlined in Policy S1 of LPP1, to meet the objectively assessed housing needs of the area. Nor would the proposal undermine the broad aims and objectives of policies H1 of LPP1, BNE5 of LPP2 or H1 of the PRNDP, which, among other things, seek to distribute new housing development in accordance with the sustainable growth strategy in Policy S1 and protect the quality and character of the countryside landscape. Therefore, these other considerations lead me to decide against the development plan and conclude that the site location would be suitable for a dwelling, having regard to relevant local and national planning policies.

Character and appearance of the area

32. As noted, the site is located to the west of Main Street adjacent to the settlement boundary of the village of Repton. As with many of the properties on the western side of Main Street immediately north of the site, the land slopes up from the road. The proposed dwelling would therefore be clearly visible from the road.
33. Residential development within the vicinity of the site is mainly sited on both sides of Main Street fronting the road. The properties immediately north of the site, and the plots within which they sit, are generally larger on the western side of main Street than those on the eastern side. Additionally, the dwellings on the western side are set back at different distances from, and oriented at slightly different angles to, the road.
34. The properties mainly comprise two-storey detached and semi-detached dwellings, of varying architectural styles and sizes. That said, most of the properties, even the more modern detached and semi-detached dwellings opposite the site include variations in form such as porches, canopies, gables, and/or varied roof ridge heights and roof pitches. Additionally, in most cases the size of the window and door openings are modest and proportionate to the size of the elevations within which they are sited. The existing dwellings are constructed of a limited mix of external materials, mainly red brick elevations, though some are rendered or have rendered sections, with tiled roofs.
35. I accept that the siting, orientation, and size of the proposed dwelling would be in keeping with the character and appearance of the surrounding area. However, in contrast with most existing properties within proximity of the site, the proposed dwelling would have a geometric, oblong block form, with uninterrupted elevations and roof slopes. Additionally, it would have a large mainly glazed opening in the centre of the front elevation extending virtually from the ground to eaves level. Furthermore, the window openings on the front and rear elevations would be relatively large, such that the overall extent of glazing on these 2 elevations would cover a disproportionate amount of the elevations. I accept that the rear elevation would be barely visible from public vantage points. However, the front elevation would be very visible from the road. The proposed use of grey timber cladding on the front and rear elevations and a yellow brick on the side elevations would also further emphasise the contrast of the proposed dwelling to properties within proximity of the site.
36. I therefore conclude that the design and external materials of the proposed dwelling would not be in keeping with other dwellings within proximity of the site, which would be harmful to the street scene. As such, the proposal would significantly harm the character and appearance of the area. Consequently, it does not accord with Policy BNE1 of LPP1, Policy H4 of the PRNDP, or design policies in the Framework. Collectively, and among other things, these policies require new development to be of high-quality design and to be sympathetic to and reflect local character.

Living conditions – existing occupiers

37. Vehicle access to the proposed dwelling would utilise an existing access off Main Street and a track which runs between the southern and northern side boundaries of Nos. 40 and 42 respectively, before diverting south along the

- rear garden boundary of No. 42. The existing track passing between Nos. 40 and 42 currently provides access to agricultural fields west of the properties and to a telecommunications site located within one of the fields.
38. As noted, the land comprising the site and No. 42 (and other properties along the western side of Main Street) rises from Main Street to the fields beyond. As such, the section of track that would be adjacent to the rear garden boundary of No. 42 would run along a contour above the rear garden, around the height of the first-floor level of the property.
39. Although I accept that agricultural and telecommunications vehicles can and do use the existing access and track, in the absence of any substantive evidence to demonstrate regular use, and from my observations on site, I consider it likely that the extent of use by such vehicles is very limited. Additionally, and although 24-hour access is required to the telecommunications site, vehicle access to the fields and telecommunications site are likely to occur primarily during the day.
40. As the proposed dwelling would have 4 bedrooms it is not unreasonable to assume that future occupants are likely to have 2 or 3 motor vehicles. The proposal would result in such domestic vehicular traffic regularly passing between Nos. 40 and 42. Moreover, such traffic would also pass the rear garden boundary of No. 42. Such vehicle movements would often occur at night when vehicles would have their lights on. At the time of my visit, the southern and northern side boundaries of Nos. 40 and 42 respectively had relatively high, dense vegetation along them. Whereas the rear western boundary of No. 42 comprised of a low-level post and rail fence with a low, thin hedge behind it.
41. I consider the introduction of domestic vehicular traffic associated with a dwelling of the size proposed, particularly when passing the rear boundary of No. 42, would result in unacceptable noise and disturbance to existing occupiers of No. 42, from vehicle engines, and vehicle lights at night. Occupiers of the existing dwelling would experience such noise and disturbance both from within the dwelling and outside in the rear garden.
42. The appellant suggests that the track could be covered with a material that would produce less noise when vehicles travel along it than the recently laid crushed stone. Additionally, the appellant considers that a boundary treatment could be erected to mitigate against noise and disturbance. However, I have no substantive evidence before me to demonstrate that the track could be covered in a material that would significantly reduce vehicle engine noise. Nor do I have any evidence to demonstrate that a boundary treatment could be erected that would suitably mitigate against the noise and disturbance I have identified.
43. I therefore conclude that the proposal would significantly harm the living conditions of occupiers of the existing neighbouring property No. 42 Main Street, due to noise and disturbance from domestic vehicles. Therefore, the proposal does not accord with policies SD1 and BNE1 of the LPP1 or sub-paragraph 130 (f) of the Framework. Collectively, and among other things, these policies require new development to not have an undue adverse impact on the living conditions of occupiers of existing neighbouring properties.

Highway safety

44. The access is positioned directly off the western side of Main Street, a classified road which is subject to a 30-mph speed limit. The road carries traffic from the south of the Village onto High Street and into and through Repton, and from Repton travelling south. The properties either side of Main Street are accessed off it. The proposal includes retention of works already carried out; crushed stone has been laid from the inner edge of the pavement along the extent of the track. The Council suggest that the gradient of the track is much steeper than the gradient recommended in the Local highway Authority's (LHA) current design guidance. The appellant has not challenged this assertion and I have no justified reason to do so either.
45. Immediately south of the access is the access to No. 42 and the front garden of the dwelling. Immediately north of the access is the front garden of No. 40. Both properties have dwarf stone walls along their respective front boundaries, and in both cases immediately behind the boundary walls the land rises quite steeply. The strip of land at the front of No. 40 is planted with small trees and hedges, and there were overgrown weeds behind the boundary wall at the time of my visit. There is a telegraph pole sited around 2-3 m north of the access, close to the southern end of the boundary wall of No. 40. The strip of land at the front of No. 42 is planted with plants and shrubs.
46. I acknowledge the appellant's reference to Manual for Streets (MfS) and the acceptance of the (x) distance being 2 m from the carriageway edge in lightly trafficked and slow speed situations. However, I have not been presented with any substantive evidence to demonstrate that Main Street is either lightly trafficked or that vehicles travel along the road at speeds below the speed limit. I therefore consider, in accordance with guidance in MfS, that within the context of the site the (x) distance should be 2.4 m and the (y) distance should be 43 m, in both directions.
47. The existing visibility splays in both directions fall well below the recommended 43 m, the northern splay being around 25 m maximum, and the southern splay being around 10 m maximum. Achieving the required visibility splays involves crossing of third-party land, ie the strips of land at the front of Nos 40 and 42 referred to above. The appellant contends that the landowner of No. 40 has agreed to the northern visibility splay crossing their land but notes that the owners of No. 42 have refused. The only way the recommended visibility splays can be provided is by ensuring the required areas of the land associated with Nos 40 and 42 are kept clear of obstructions. At present it appears that the owner of No. 42 does not wish to reach such an agreement and, notwithstanding any communication that may have taken place between the appellant and the owner of No. 40, I have not been presented with any evidence that a legally binding mechanism to secure provision of the visibility splay exists. Consequently, without such a mechanism, I cannot be certain that appropriate visibility splays would be provided and could be retained in either direction.
48. The appellant points out that there has not been a reported vehicular collision at the access junction for 22 years and that there is no severe braking (skid marks) on the road. I appreciate this is the case. However, I concluded above that I consider it likely that the current extent of use of the access is very limited. I therefore consider vehicular use of the access generated by a

dwelling of the size proposed would represent a significant increase in use of the access, which would increase the chances of collision.

49. I have acknowledged that the gradient of the access track is steeper than that recommended by the LHA. However, the appellant has indicated that he is happy for the gradient to be suitably altered and for an appropriate surface to be laid. I am satisfied that the gradient of a section of the track could be reduced to a suitable gradient and that an appropriate surface could be laid, matters which could have been secured by condition should I have been allowing the appeal.
50. Notwithstanding this, given the increased use of the access with its substandard visibility splays, and the lack of any mechanism that would secure suitable visibility splays, I consider the proposal would have an unacceptable impact on highway safety.
51. I note that the appellant has drawn my attention to several appeal decisions where Inspector colleagues have allowed appeals where the recommended visibility splays have not been provided. I accept that there are instances where it is not necessary to require visibility splays to the recommended standard. However, I do not think this is one of those instances. Furthermore, I have not been provided with full details of the cases the appellant refers to, nor have I been to the relevant sites. As such, I cannot be certain of the degree to which any of these cases are comparable to the case before me. Regardless, I must assess the case before me on its merits and the evidence provided.
52. Due to the lack of suitable visibility splays, within the circumstances of the site, I conclude that the access for the proposed use would not be safe when vehicle users egress the site, a situation which I consider would have an unacceptable impact on highway safety. For these reasons the proposal does not accord with Policy INF2 of the LPP1 or paragraphs 110 and 111 of the Framework, which collectively, and among other things, require new development to provide a safe access for all users and to refuse proposals if there would be an unacceptable impact on highway safety.

Other Considerations, Planning Balance and Conclusion

53. I have outlined some other considerations above regarding the suitability of the location for the proposed dwelling, concluding that although the proposal technically does not accord with various development plan policies, it would not threaten or undermine the sustainable growth strategy of the plan or the broad aims and objectives of development plan policies to direct development to areas that provide suitable services and facilities. I have also concluded that the proposal would not harm the quality or character of the countryside landscape.
54. The appellant has suggested in their final comments that, contrary to the Council's view, the Council cannot demonstrate a 5-year housing land supply (5YHLS); therefore, the appellant believes paragraph 11 d) of the Framework is engaged. However, the appellant has not provided any details regarding the matter. Even if the Council does not have a 5YHLS, although the provision of one additional dwelling would be a minor social benefit, it would not make a significant contribution to addressing any shortfall, whatever the level. As such, I attach limited weight to the provision of one dwelling in the balance.

55. The appellant contends that the appeal site could be used for camping for at least 28 days per year, and that such a use would generate vehicle use of the access/track. I have not been provided with details that confirm the feasibility of the contended use and therefore cannot conclude whether it would be possible. Regardless, even if it is theoretically possible, given the sloping nature of the site and lack of any basic domestic facilities, I am not convinced that such a use is more than a theoretical suggestion. As such I attach little weight to the matter.
56. The appellant proposes to install a range of energy saving facilities as part of the proposal, such as a biomass system, ground source heating and solar panels. Although full details have not been presented to me, I accept that such facilities in principle would reduce the use of non-renewable energy. However, given the small-scale nature of the proposal, such benefits would be minor and therefore attract limited weight.
57. The proposal would also provide economic benefits during the construction phase. Again, given the scale of the proposal such benefits would be minor, and I therefore attach little weight to the matter.
58. The appellant has suggested that there are benefits with respect to the site not being in a flood risk area, not being within proximity of heritage assets, and having no detrimental impact on biodiversity. However, these are matters related to the requirements of other planning policies, rather than benefits. As such, I attach no weight to them.
59. Notwithstanding my conclusion regarding the suitability of the site location for a dwelling, I have concluded that the proposal would significantly harm the character and appearance of the area and the living conditions of existing occupiers of No. 42 Main Street, and would result in an unacceptable impact on highway safety. I consider that all other considerations outlined do not outweigh the harms I have identified. I therefore conclude that the appeal is dismissed.

J Williamson

INSPECTOR