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## Appeal Decision

Site visits made on 17 May 2021 and 9 November 2021

**by E Brownless BA (Hons) Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 March 2022**

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**Appeal Ref: APP/F2605/W/20/3263062**

**Syers Lane, Beeston, Easting 591080, Northing 315911**

- 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 Toni Townshend against the decision of Breckland Council.
  - The application Ref: 3PL/2019/0835/O, dated 9 July 2019, was refused by notice dated 22 May 2020.
  - The development proposed is described as 'Two detached self build properties'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was made in outline with all matters save for access reserved for future determination. I have been provided with detailed plans including a proposed layout, however, I am advised that these are indicative only and I have therefore determined the appeal on this basis.
3. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021 and the parties have been provided an opportunity to comment on the implications of this for their case.
4. An appeal decision<sup>1</sup> relating to the same appeal site was determined by myself on the 29 September 2021, with the Council submitting a copy of this appeal decision for consideration within this appeal. In light of this, the appellant has been provided with an opportunity to comment on the implication of this previous appeal decision upon their case and I have had regard to the submitted comments in my consideration of this appeal.

### Main Issues

5. The main issues are:-
  - i) whether the appeal site is a suitable location for residential development having regard to the settlement strategy of the development plan; and
  - ii) the effect of the proposed development on existing hedgerow.

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<sup>1</sup> APP/F2605/W/20/3262992

## Reasons

### *Settlement strategy*

6. The appeal site is located outside of the defined settlement boundary for Beeston and therefore, for the purposes of applying planning policy, the appeal site lies within an area designated as countryside.
7. Policy GEN 05 of the Breckland Local Plan (2019)(LP) directs new development to be located within settlement boundaries. Development outside of defined boundaries is restricted and will only be deemed acceptable where it is compliant with all relevant policies in the development plan, including LP Policy HOU 04.
8. LP Policy HOU 04 is permissive of some development outside of village boundaries, including self-build development, subject to the satisfaction of several criteria and it being located immediately adjacent to the settlement boundary. In this instance, as the appeal site is not positioned adjacent to the defined boundary, it would fail this requirement of the policy.
9. Setting aside the qualifying criteria of Policy HOU 04 for a moment, the appeal scheme is described as being 'self-built' which, government policy is strongly supportive of, and for which the Council has a statutory duty under section 2A of The Self and Custom Housebuilding Act 2015 (the Act) requiring it to give suitable development permission in respect of serviced plots of land to meet the demand for self-build and custom housebuilding in the area of the Authority.
10. The Council's evidence suggests that there are 344 individuals recorded within its register and this is set against 378 plots with extant planning permission that are said to be suitable for self-build development. The appellant has not disputed this matter and therefore, I accept that the Council are adequately satisfying the demand for self-build development and thus discharging their statutory duty with regards to the Act.
11. In addition, in order to ensure that a development would be self-built, it would usually be appropriate for this matter to be secured by way of a legal agreement in the form of a planning obligation which would enable the self-build requirement to be binding upon successors in title if ownership of the appeal site were to change in the future. In my view, it would not be appropriate to use a condition attached to a grant of planning permission to control such a matter.
12. In the absence of an appropriate mechanism to secure the provision of self build dwellings, there would be no adequate restriction preventing the scheme from evolving into a different type of development, such as open market housing. Therefore, whilst LP Policy HOU 04 is supportive of self-build development outside of settlement boundaries, on the basis of the evidence provided I cannot be satisfied that the scheme would deliver this type of housing.
13. Furthermore, LP Policy HOU 04 seeks to restrict rural villages from significant growth. The Council's evidence indicates that an additional 20 dwellings have been permitted within Beeston since the adoption of the LP. New housing development is said to already exceed the prescribed 5% growth figure

provided for within the policy and therefore, the provision of two further dwellings would conflict with this policy aim.

14. By reason of the above, as the proposal would not unequivocally provide self-build housing and is not located adjacent to the settlement boundary, the proposal would fail to satisfy the provisions of LP Policy HOU 04. It has not been put to me that the appeal scheme would satisfy any other exceptional category of development within a rural location and thus the appeal site's location outside of the settlement boundary is not a location to which new development should be directed. To do so would conflict with the Council's spatial strategy of the district and the provisions of LP Policies GEN 01, GEN 05 and HOU 04. Among other things, these policies seek to direct new development in accordance with a sustainable settlement hierarchy.

#### *Hedgerow*

15. LP Policy ENV 06 recognises that trees and significant hedge and shrub masses form part of the green infrastructure network and should be retained as an integral part of the design of development. Exceptions to this include, where their long-term survival would be compromised by their age or physical condition or there are exceptional and overriding benefits in accepting their loss. It goes on to state that development requiring the loss of a protected hedgerow will only be permitted where it would allow for a substantially improved overall approach to the design and landscaping of the development that would outweigh the loss of any hedgerow. Where any loss is unavoidable the policy requires adequate replacement provision.
16. The appeal site comprises a dense band of hedgerow towards its front boundary with the highway. It has not been put to me that age or physical health are relevant in this instance and, I observed the hedgerow to be in a good condition at the time of my site visit.
17. There is dispute between the parties as to the extent of the hedgerow vegetation which would need to be removed and/or thinned to provide the required lines of sight at the access with the highway. Whilst the appellant relies upon there being some 1.5 to 2 metres of hedgerow removal to either side of the access, this conflicts with the evidence of the Council's Tree and Countryside Consultant who estimates a 'loss of 10 metres of hedgerow and hard cutting back of further hedgerow to achieve visibility'. The submitted plans show the visibility line is very close to the stems of sections of hedgerow that are proposed to be retained and, based upon my observations at the time of the site visit, it would appear likely that the existing hedgerow would need to be cut back by a significant extent to accommodate the necessary lines of visibility, and/or a greater length of hedgerow would need to be removed.
18. On the basis of the submitted evidence I cannot be satisfied of the extent of the hedgerow that would be likely to be affected. In addition, I cannot make a satisfactory assessment of the harm weighed against any exceptional and overriding benefits of the scheme, which would be largely limited to the provision of two dwellings and its associated social and economic benefits, nor can any proper consideration be given to the proposed fruit trees which are suggested as a replacement for the hedgerow that would be lost.
19. An appraisal of the hedgerow was undertaken by both main parties. There is conflicting evidence between the parties as to whether the hedgerow

constitutes 'important' hedgerow as defined by the Hedgerow Regulations 1997. The conflict appears to have arisen due to each appraisal being undertaken at different times of the year and informed by different sections of hedgerow being assessed. However, even if I were minded to conclude that the hedgerow did not meet the criteria to be considered as 'important' hedgerow, LP Policy ENV 06 nevertheless recognises the importance of hedge and shrub masses and seeks their retention. In the absence of any compelling information as to the extent of the hedgerow to be harmed as a result of the appeal scheme, I find the proposed development would be contrary to the provisions of LP Policy ENV 06, the requirements of which I have set out above.

## **Other Matters**

20. It has been put to me that the Council cannot demonstrate an adequate five-year housing land supply. Albeit reference is made to the Council currently reviewing their housing position, there is no compelling evidence to substantiate the appellant's view. Moreover, the Council's recently published five-year housing land supply statement demonstrates that an adequate supply in the region of 6.95 years is available. There is no clear evidence before me regarding the impact of the Covid-19 pandemic and any implications for the housebuilding industry.
21. My attention is drawn to a similar development on the opposite side of Syers Lane. The Council advise that it was determined at a time prior to the adoption of the current LP. There is little evidence detailing the relevant development plan policies that were applicable at the time planning permission was granted for that scheme. In any event, even if those policies were comparable to policies within the current LP, by reason of the Council not having an adequate five-year housing land supply at that time, the 'tilted balance' would have been triggered. Consequently, the weight attached to any conflict with the development plan would have been different.
22. As the tilted balance is not engaged in the appeal case, the two schemes are not directly analogous with each other and therefore a comparison is of limited relevance. I have noted the appellant's concerns regarding this development being incorrectly described as a brownfield site and erroneously confused with a scheme at Beetley<sup>2</sup>, located some six miles away. I have considered the submitted pre-determination questionnaire for the approved development on the opposite side of Syers Lane. However, the status of the land being brownfield or not does not lead me to a different view on this matter. I have determined the appeal before me based upon the presently adopted local plan and the most recent evidence concerning the five-year housing land supply.
23. Reference has also been made by the appellant to a number of further schemes for housing development outside of the Beeston settlement boundary, some which have been granted planning permission by the Council since the application for this scheme was decided. However, there is little information relating to the particular circumstances of these developments and whether the circumstances are therefore comparable to the appeal scheme. Again, a comparison is of limited relevance in this instance. I have determined the appeal scheme before me on its individual planning merits.

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<sup>2</sup> Planning Reference: 3PL/2019/1062/O

24. My attention has been drawn to the capacity of the local primary school. Whilst I note that the school has experienced fluctuating numbers of students and it is below its capacity figure, there is little evidence to demonstrate that it is at risk of closure for under occupancy as is suggested.
25. Reference has been made to paragraph 149(e) (formerly paragraph 145(e)) of the Framework as providing support to the appeal scheme together with a number of appeal decisions. However, given that the appeal site is not located within an area of green belt, the provisions of limited infilling within the green belt do not apply in this instance.
26. The appeal sites' location in terms of its accessibility to services, facilities, employment opportunities and availability of sustainable modes of transport are not expressly stated within the Council's reasons for refusal nor does it appear to form part of the Council's case. The appellant's evidence demonstrates there are some limited opportunities within Beeston to service the day to day needs of future occupiers, including a primary school and public house that are located a reasonably short distance from the appeal site. Future occupants would therefore provide support for these, and this would contribute towards meeting the Framework's aims to enhance or maintain the vitality of this rural community. The appeal scheme would make efficient use of land and contribute two additional dwellings towards housing supply. However, given the limited scale of the development proposed, the resultant benefits would be limited.
27. I have had regard to the comments of third parties and despite there being some support for the appeal scheme, this does not alter my findings nor lead me to a different view on the main issues.

## **Conclusion**

28. In accordance with s.38(6) of the Planning and Compulsory Purchase Act, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Where a proposal conflicts with an up to date development plan, planning permission should not usually be granted. The proposed development would be contrary to LP Policies GEN 01, GEN 05, HOU 04 and ENV 06 and the appeal scheme's conflict with these policies is not outweighed by the limited benefits of the proposed scheme.
29. For the reasons given above, the appeal is dismissed.

*E Brownless*

INSPECTOR