



Appeal Decision

Site visit made on 4 May 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal Ref: APP/K2420/W/21/3283898

7 Assheton Lane, Twycross CV9 3QQ

- 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 & Mrs Brooks against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 21/00307/OUT, dated 5 March 2021, was refused by notice dated 2 August 2021.
 - The development proposed is erection of dwelling (outline - access only) land north of 7 Assheton Lane, Twycross, Atherstone, CV9 3QQ (Resubmission).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is submitted in outline with all matters except for access reserved for future consideration. I have dealt with the appeal on that basis, treating any details of other matters shown on the plans as illustrative.

Main Issue

3. The main issue is whether the site is in a suitable location for housing with regard to safeguarding the character and appearance of the countryside.

Reasons

4. The appeal site comprises a largely undulating grassed area enclosed along its southeast and northeast boundaries by field hedgerows and to the northwest by a section of post and rail timber fencing along a public right of way (S96).
5. Access to the site is via Assheton Lane, a single width loose surfaced track that provides vehicular access to a limited number of dwellings. The access forms part of S96 which continues through to the countryside beyond to the north.
6. The site is located just outside the settlement boundary of Twycross which is a Rural Village, as identified in the Hinckley and Bosworth Site Allocations and Development Management Policies DPD 2016 (SADMP). Policy 12 of the Hinckley and Bosworth Core Strategy 2009 (CS) states that to support the existing services in these villages the council will support housing development within settlement boundaries.
7. Because the appeal site lies outside the settlement boundary it forms part of the countryside for planning policy purposes. Policy DM4 of the SADMP seeks to protect the intrinsic value, beauty, open character, and landscape character of

the countryside from unsustainable development. Development will be considered sustainable where it meets one of 5 exceptions in criteria (a) to (e) and complies with provisions in criteria (i) to (v), including the avoidance of significant adverse effects on the countryside. None of the 5 exceptions are applicable to this proposal.

8. The appellants' assert that the appeal site forms part of the private garden to the host property and is therefore previously developed land (brownfield). Even so, the Framework is clear that it should not be assumed that the whole of the curtilage should be developed.
9. Moreover, on the ground, the land proposed for development is separated from the parking, access and other areas associated with the host dwelling by boundary treatments and outbuildings. This land is also free of any significant development and has an open, rural, tranquil and undeveloped character.
10. Therefore, physically and visually the land proposed for development has a stronger affinity with the open countryside to the north than the extent of built development in Assheton Lane. In particular, because of its location adjacent to a public right of way, overall size and character, this land positively contributes to the scenic beauty of the countryside and the rural setting of Twycross. Also, because views of this land are available from along the public right of way, it is prominent and would be highly sensitive to change.
11. The proposal is for a single dwelling which would occupy a substantially larger plot than nearby dwellings. This, along with domestic paraphernalia associated with an additional dwelling in this location together with any boundary treatments would extend built form beyond the built extent of Assheton Lane into a countryside location. Furthermore, an additional dwelling here along with the activity associated with it would significantly harm the tranquil, open character and appearance of the site, thereby eroding part of the intrinsic value and beauty of the countryside. Such an impact would be exacerbated by the site's sensitive and prominent location.
12. For the above reasons, the proposal would introduce development in a location where this would harm the character and appearance of the countryside and therefore conflicts with policies 12 of the CS and DM4 of the SADMP.
13. The Council's decision also refers to Policy DM1 of the SADMP. Similar to the Framework, this sets out the presumption in favour of sustainable development. I shall return to this in my decision.
14. Given that SADMP Policy DM10, largely relates to matters of detailed design which are not before me, this Policy is not relevant to the main issue.

Other considerations

15. The site is located about 25m north of, and within the setting of the scheduled monument known as 'Moated site and fishponds NNW of St James' Church', comprising a medieval moated site and detached fishponds to the northwest of St James' Church (List Entry No. 1012524). The western boundary of the field within which the scheduled monument is located also marks the boundary of the Twycross Conservation Area and the southeast boundary of the appeal site which is therefore also within its setting.

16. Section 72 (1) of the Planning (Listed Buildings and Conservation Area) Act 1990 places a duty to require special attention to be paid to the desirability of preserving or enhancing the special character or appearance of a conservation area, including its setting.
17. On the illustrative layout, the proposed dwelling is shown to the west of the site, away from the conservation area boundary and scheduled monument to the east. Furthermore, on the information before me, the mature vegetation between the site and the scheduled monument would be retained.
18. Accordingly, and despite finding that the proposal would harm the countryside, I am satisfied that only slight glimpses of the proposal would be available from the scheduled monument and that a scheme could be designed at the site which would not harm the significance of nearby designated heritage assets.
19. The Council's information indicates that its supply of deliverable housing sites is about 4.4 years. Therefore, it cannot demonstrate a five-year supply of deliverable housing sites.
20. Paragraph 11d) of the Framework states that in these circumstances where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
21. The lack of a 5-year supply of deliverable housing sites alone triggers the tilted balance in paragraph 11(d). Therefore, due to the Council's housing land supply position, the location of the site outside the Twycross settlement boundary is not determinative in itself.
22. However, Policy 12 of the CS seeks to support the existing services in villages and to this extent is consistent with the Framework, in particular paragraph 79. The aims of Policy DM4 and DM1 also align with the Framework.
23. As such, although the above policies which are most important for this decision can be regarded as being out of date, they are still afforded significant weight. This, and any conflict with these policies, can be taken forward into the application of the tilted balance.
24. The proposal for a single dwelling would assist in boosting the supply of housing in the area. I also acknowledge that in this case windfall sites for minor development, such as this, contribute towards the Council's housing supply. Furthermore, there would be economic benefits associated with the construction and activity of future occupants, and the development would generate some revenue for the area. This would also provide some support for local services and facilities in Twycross and nearby. These are important factors and social and economic benefits that are of significant weight in favour of the proposal.
25. Even so, the extent of the economic and social benefits accruing from a single dwelling would be relatively modest and are therefore afforded limited weight.
26. However, for the reasons already given the proposal would fail to safeguard the countryside. The harm I have identified would be caused by reason of the

incursion of development into the countryside and the permanent erosion of its character. On this basis and given that in general the Framework supports the development of suitable brownfield land, I do not regard the site as being suitable for development. Therefore, even if the site is regarded as brownfield land, this carries little weight in the overall balance. The lack of objections from technical consultees is a neutral factor in the overall balance.

27. The Framework stipulates that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Therefore, the conflict referred to above in respect of Policy DM4 of the SADMP is consistent with the Framework in this regard and attracts significant weight. This is a matter which would be a significant drawback of the development and I attribute substantial weight to this harm.
28. Consequently, I find that the adverse impact of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
29. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. There are no other considerations, including the provisions of the Framework, which outweigh this finding. As a consequence, the proposal would not constitute sustainable development and this weighs heavily against the scheme. Accordingly, I also find conflict with Policy DM1 of the SADMP.

Other Matters

30. Whilst I do not have detailed information on those schemes which the appellant considers support the proposal before me, I have taken these into account. Planning application 20/00551/FUL relates to a dwelling within the settlement boundary of Barton in the Beans and planning application 20/00444/FUL relates to an approval for 5 dwellings. Planning permission 21/00427/FUL, is for the erection of a new workshop and ancillary services building, new wash bay building and change of use of land to create an agricultural machinery display area. The scheme allowed on appeal APP/K2420/W/20/3262295 on land at Wykin Lane, Stoke Golding, was for the construction of up to 55 dwellings.
31. Therefore, I am satisfied that there are sufficient differences between the approved schemes and the proposal before me, in order that I may reach a different decision. I am also mindful that there has been some development near the site. However, the full details and circumstances of these are not before me. In any event, each application is determined on its merits.
32. I am also aware that in accordance with case law policies must be balanced and weighed prior to determination and there should be consistency in decision making. My approach in this appeal decision is not inconsistent with the stated case law. Also, the planning balance for each application is likely to be different which is a matter of judgement for the decision maker.
33. I have also been referred to the Draft Local Plan (2020-2039). This is at an early stage and therefore there is no certainty over its final content and policies. As such, I attach limited weight to this.

Conclusion

34. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR