



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: 14 June 2022

Appeal Ref: APP/K2420/W/21/3283890

Land off Higham Lane, Stoke Golding CV13 6EX.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Hallmark Properties (Leic) Limited against Hinckley and Bosworth Borough Council.
 - The application Ref 21/00687/OUT, is dated 25 May 2021.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Hallmark Properties (Leic) Limited against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application is submitted in outline with all matters except for access and layout 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.
4. Since the appeal was made, the submission version of the Stoke Golding Neighbourhood Plan (SGNP) has progressed and following a referendum on Thursday 3 March 2022, has been 'made'. It now forms part of the development plan and I have determined the appeal accordingly.

Main Issues

5. Although there is no formal decision from the Council, it has offered putative reasons for refusal. Based on these, the main issues are:
 - a) whether the site is in a suitable location for housing with regard to safeguarding the character and appearance of the countryside; and
 - b) the effect of the proposal on designated heritage assets.

Reasons

Safeguarding the countryside

6. The appeal site lies adjacent to Higham Lane and comprises an agricultural field and the access to a converted former factory, which lies to the north of the site and is known as The Courtyard.
7. The site lies adjacent to but outside the settlement boundary of Stoke Golding, as identified in the SGNP and for policy purposes forms part of the countryside. Policy SG6 of the SGNP, states that the countryside will be protected for the sake of its intrinsic character, beauty, heritage and wildlife, the wealth of its natural resources and to ensure it may be enjoyed by all. However, this policy does provide a list of types of development that would be acceptable in the countryside, subject to the requirements within Policy DM4 of the Hinckley and Bosworth, Local Plan 2006-2026, Site Allocations and Development Management Policies DPD (Adopted July 2016) (SADMP).
8. Policy DM4 of the SADMP also 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. The proposal before me does not fall within any of the development types specified under Policy SG6 of SGNP or the exceptions under Policy DM4 of the SADMP.
9. Along the western side of Higham Lane, there are dwellings that extend south beyond the appeal site towards the countryside. Accordingly, a dwelling at the appeal site would not be isolated. However, on the same side of the appeal site, development is limited to 'The Courtyard' which is set back from Higham Lane behind a landscaped parking area and is clearly defined from the open countryside to the south by boundary treatments.
10. The appeal site is mainly grassland with a number of mature hedgerow trees. Moreover, it is free of any significant development and has an open, rural and undeveloped character, which positively contributes to the scenic beauty of the countryside and the rural setting of Stoke Golding.
11. Notwithstanding the retention of existing landscaping, the proposed single dwelling would be located centrally within the site. This, along with domestic paraphernalia associated with a new dwelling in this location together with any boundary treatments would extend built form beyond the built extent of Higham Lane out into the countryside. This would significantly and permanently harm the open character and appearance of the site, thereby eroding part of the intrinsic value and beauty of the countryside. Whilst new planting could provide some screening of the development, this would not overcome the encroachment and erosion of part of the countryside.
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 SG6 of the SGNP and DM4 of the SADMP.
13. I also find conflict with the design aims of SADMP Policy DM10, which amongst other things requires that development complements or enhances the character of the surrounding area with regard to layout.

14. The Council has also referred to Policy DM1 of the SADMP. Consistent with the National Planning Policy Framework (the Framework), this sets out the presumption in favour of sustainable development. I shall return to this in my Decision.

Heritage Assets

15. The Stoke Golding Conservation Area (CA) is located immediately to the north of the appeal site. Approximately 200m south-east of the site is scheduled monument 'Hlaew and medieval farmstead immediately southwest of Park House' (National Heritage List for England (NHLE) reference 1017678). The scheduled monument includes two principal features within its protected area. These are a hlaew (an Anglo-Saxon burial mound) in the northern part of the monument and a medieval farmstead within the southern part of the monument.
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. Due to its position and the presence of intervening built form and vegetation, the proposed dwelling would not be visible from the important view south-west from Station Road within the CA. Similarly, the dwelling positioned centrally within the plot, is unlikely to have an adverse visual impact upon the important view and approach to the CA along Higham Lane with the retained hedgerow and mature trees to the western boundary providing a level of visual screening.
18. Because of the position of the hlaew within the northern section of the scheduled monument and intervening field boundary features, including hedgerows to the south of Station Road the hlaew is not visible from the appeal site. Consequently, the proposal would not impact upon this particular feature of the monument.
19. Nevertheless, there are views to the south-east from the site access on Higham Lane over the post and rail fencing. The medieval farmstead enclosures are perceptible in such views in between intermittent gaps within the hedgerow along the western boundary of the monument and from this position the rural setting of the farmstead and its significance can be appreciated, even if this would be in glimpsed views. However, the siting of the proposed dwelling would largely remove the view of the monument from the site access point on Higham Lane, resulting in a subsequent reduction in the ability of the observer to appreciate the significance of the monument.
20. Moreover, the medieval farmstead was a feature of the medieval rural landscape. The site at Stoke Golding includes a house platform, associated fishponds and closes within a defined enclosure. At present, the landscape to the south and west, including the appeal site, consists of agricultural fields. These elements reflect its historic context and the farmstead's relationship with the land it managed, which can still be appreciated by the rural and undeveloped character of the current landscape to the south and west. Therefore, the surrounding land which includes the appeal site, preserve the setting of the scheduled monument and contribute positively to its significance.

21. The appellant has suggested that the Council's concerns over harm to the heritage asset could be addressed by an amended layout. However, such a proposal is not before me.
22. For the above reasons, the proposal would cause harm to the setting and significance of the scheduled monument 'Hlaew and medieval farmstead' in conflict with policy DM11 of the SADMP, which seeks to protect, conserve and enhance the historic environment throughout the borough and Policy DM12 of the SADMP, this requires that development proposals should ensure the significance of a conservation area is preserved and enhanced, and proposals which adversely affect a scheduled monument or its setting should be wholly exceptional and accompanied by clear and convincing justification. The aims of these policies are consistent with the Framework with regard to conserving and enhancing the historic environment.
23. The harm the proposal would cause to the significance of the scheduled monument would be less than substantial. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal, where appropriate, securing its optimum viable use. I shall undertake this balance later in my Decision.

Other considerations

24. 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. 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.
25. I have already found that the proposal would cause less than substantial harm to the setting and significance of a heritage asset. To determine whether the application of policies in the Framework that protect areas or assets of particular importance (in this case the designated heritage asset) provides a clear reason for refusing the development proposed, the Paragraph 202 balance needs to be undertaken.
26. In terms of public benefits, the proposal would deliver a new dwelling which could be designed as a two-bedroom bungalow to meet a local need for this type of accommodation. The addition of further housing within Stoke Golding would align with Framework objective of significantly boosting the supply of homes.
27. The proposal would create employment during the build phase. Thereafter, new residents would provide some support for services and businesses in the area, in accordance with Paragraph 79 of the Framework. These are important factors and social and economic benefits that are of significant weight in favour of the proposal. Subject to the submission of reserved matters, new landscaping at the site would be capable of providing ecological enhancements.

28. Nevertheless, although the social, economic and environmental benefits arising from a single dwelling would be proportionate to the proposal, they would still be modest and therefore only attract limited weight.
29. Despite finding the harm to be less than substantial, having regard to the Framework¹ I still attach significant weight to this. Such harm can be outweighed by public benefits. However, the public benefits in this instance do not outweigh the less than substantial harm that I have identified.
30. As such, heritage harm provides a clear reason for refusing the application and the proposal does not benefit from the presumption in favour of sustainable development set out within Paragraph 11 of the Framework.
31. Turning to the overall balance, I have already identified the benefits of the proposal to which I attach limited weight.
32. Due to the Council's housing land supply position and having regard to Footnote 8 of paragraph 11d of the Framework, the policies which are most important for determining this application are out-of-date.
33. Nonetheless, as already stated, policies DM1 DM11 and DM12 of the SAMDP are consistent with the Framework. Policies DM4 of the SADMP and SG6 of the SGNP seek to protect the intrinsic value, beauty, open character, and landscape character of the countryside and therefore also align with the Framework. Policy DM10 of the SADMP reflects the design aims of the Framework. As such, although these 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 overall balance.
34. 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. 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 policies DM4 of the SADMP and SG6 of the SGNP attracts significant weight.
35. As already set out above, there would also be permanent harm to the setting and significance of a heritage asset. This is a matter which would be a significant drawback of the development and I attribute substantial weight to this harm.
36. The appellant's case is partly predicated on the Council's housing land supply position and the Framework stipulating that the development plan policies which are most important for determining the application are out-of-date in such circumstances. In particular, it is argued, that the settlement boundary as defined for Stoke Golding is considered to be out of date.
37. In this case, the settlement boundary has been defined in the recently 'made' SGNP. Moreover, Paragraph 14 of the Framework also applies because Paragraph 11 d) is engaged. This explains that the adverse impact of allowing

¹ Paragraph 199

development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided that: a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made; b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement; c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and d) the local planning authority's housing delivery was at least 45% of that required over the previous three years.

38. The SGNP is recently made and it identifies sites for the housing numbers agreed with the Council. The Council can demonstrate at least a three year supply of deliverable housing sites and the Housing Delivery Test measurement for 2021 indicates that the authority has delivered well in excess (86%) of its housing requirement over the previous three years.
39. Development of the appeal site would run contrary to community aspirations as expressed through the SGNP. To allow this appeal so soon after the neighbourhood plan is made would significantly undermine public trust and confidence in the planning system. The community has engaged positively with the Government's neighbourhood planning agenda by agreeing a quantum of development with the Council and, through local consensus, identifying housing sites that would cause the least harm to planning interests. The proposal would be contrary to this community-led process. Therefore, the adverse impact of allowing development in conflict with Policy SG6 of the SGNP significantly and demonstrably outweighs the benefits.
40. For the above reasons, the proposal is contrary to Policies DM4, DM10, DM11, DM12 of the SADMP and Policy SG6 of the SGNP. It conflicts with the development plan taken as a whole. 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

41. The appellant has drawn my attention to a number of approved schemes outside the settlement and provided a comparison of these to the appeal site in terms of relationship to the settlement boundary, built development and accessibility to services.
42. On the information before me, I am satisfied that there are sufficient differences between those approved schemes and the proposal before me, in order that I may reach a different decision. Furthermore, those schemes, predate the SGNP being 'made' which changes the local policy context. In any event, each application is determined on its merits and the planning balance in each case is likely to be different, which is a matter of judgement for the decision maker.
43. Matters relating to the processing of the appellant's planning application, including the Council's failure to determine this within the required timescales, do not alter my findings on the main issues and my decision on the appeal.

Conclusion

44. For the reasons given above, I conclude that the appeal should be dismissed and planning permission refused.

M Aqbal

INSPECTOR