



Appeal Decision

Site visit made on 18 October 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2022

Appeal Ref: APP/K2420/W/22/3299049

Four Acres, Leicester Lane, Desford, Leicester LE9 9JJ

- 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 and Mrs Kooner against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 21/00159/OUT, dated 4 February 2021, was refused by notice dated 10 January 2022.
 - The development proposed is described as “erection of dwelling (outline-access only) land associated with Four Acres, Leicester Road, Desford LE9 9JJ”.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application leading to this appeal sought outline planning permission as well as approval of access details with all other matters reserved for future consideration. I have assessed the appeal on this basis.

Main Issues

3. The main issues are (i) whether the development would be in a suitable location having regard to development plan policies, the National Planning Policy Framework (the Framework) and access to services, (ii) its effect on the character and appearance of the area, and (iii) the effect on highway safety and capacity.

Reasons

Suitability of location

4. Desford is identified in the Council’s Core Strategy 2009 as a key rural centre and where land is allocated for housing development. However, the appeal site lies a significant distance outside the defined settlement boundary. Instead, the plot is in a sporadic line of properties where roadside grass verges and surrounding fields, hedges and trees create a verdant environment. As such, it is appropriate to define the site as lying in the countryside.
5. Policy DM4 of the Council’s Site Allocations and Development Management Policies Development Plan Document 2016 (the DPD) looks to safeguard the countryside from unsustainable development. The policy goes on to define the types of development that can be considered sustainable. The erection of a dwelling is only permissible if it would provide accommodation for a rural

worker. There is no indication that the proposal would provide such accommodation and so it would not be supported by DPD policy DM4.

6. Moreover, policy H1 of the Desford Neighbourhood Plan 2021 (NP) defines a settlement boundary for Desford and says that areas outside will be treated as open countryside where development will be carefully controlled. Under policy H2, the NP allocates land for residential development but the appeal site lies away from this designated site and is also well outside the defined settlement boundary. NP policy H6 provides support for small residential schemes on infill and redevelopment sites but only where they are within Desford. Therefore, the appeal scheme gains no support from NP policies on the location of development and housing.
7. The appellant suggests that NP policies are inconsistent with national planning policy as they restrict new housing development except where it lies in Desford. Consequently, it is suggested the NP policies limit the opportunity for small windfall housing sites to come forward. However, NP policy H1 only restricts development beyond the settlement boundary in line with national planning policies. Also, NP policy H6 is worded positively and so it does not restrict all development in the countryside as suggested. As such, the referred to NP policies are consistent with the Framework and national planning policy.
8. The Framework looks to ensure that housing in rural areas is located where it would enhance or maintain the vitality of rural communities. The nearest main concentration of services to the residents of the proposal would be in Desford. However, due to the separation distance, these facilities would not be conveniently located for occupiers of the dwelling. Also, it is likely that trips from the development to Desford would be made by car given the lack of public transport links and absence of roadside pavements and cycleways on parts of the route. The public right of way between Leicester Lane and Desford does not significantly shorten the distance. Also, it is unlit and unsurfaced and so it is unlikely to be an attractive route for walkers in the dark or when muddy.
9. As the proposal would not be conveniently located to facilities at Desford, it is likely that occupants of the proposed dwelling would be encouraged to travel to the broader range of facilities in Leicester to meet their day-to-day living requirements. As such, the proposal would not be located so as to maintain or to enhance the vitality of the rural community at Desford.
10. A roadside pavement on Leicester Lane would provide a complete walking link from the development to the A47 Hinckley Road. A pub on this route would be within reasonable walking distance from the proposed dwelling for most people. Also, on the A47 there is a petrol filling station with a shop as well as bus stops that provide fairly frequent public transport links to and from Leicester and other larger settlements. However, the petrol filling station and bus stops would be further away from the house than the pub. Given the separation distances, it is unlikely that residents and visitors to the proposal would be encouraged to walk to and from these facilities. In any event, the pub and petrol filling station site would only provide a limited range of services for occupiers of the proposed house.
11. As such, it is unlikely the location of the proposal would promote the use of sustainable modes of travel as advocated in the Framework. Instead, it is probable that occupants and visitors would be highly reliant upon private car travel to get to and from the development. Even if charging points are provided

as part of the scheme, it cannot be certain that future residents or visitors to the house would use electric vehicles. Therefore, such measures would not address the concerns regarding the lack of realistic sustainable travel options for occupants of the proposal and visitors.

12. Paragraph 80 of the Framework seeks to restrict isolated new homes but as an exception it allows the sub-division of an existing residential building to provide a new dwelling. However, the appeal scheme would constitute the sub-division of a residential plot of land rather than a residential building. Therefore, the proposal would not fall within the list of exceptions set out in paragraph 80.
13. In any event, the proposed house would be near to other properties and so it would not be isolated. However, it does not follow that the development would be in an appropriate location. Instead, I consider it would go against the provisions of the Framework as it would not be located so as to support the vitality of rural communities nor encourage sustainable modes of travel.
14. For these reasons, I conclude the development would not be in a suitable location when having regard to development plan policies. It would be in the countryside and so it would not be permissible under the terms of policy DM4 of the DPD nor policy H6 of the NP. Also, for the above reasons, it would be in an unsuitable location when having regard to accessibility and the Framework.

Character and appearance

15. The site is part of the garden to the side and rear of the house at the appeal property. It is largely grassed towards the front but there is a single storey outbuilding across most of its width towards the rear of the plot. A tall hedgerow lies on the boundary with the highway with a grass verge and a narrow pavement. The site includes mature trees and bushes on the boundary with the neighbouring house, Forest Field.
16. The site lies between 2 dwellinghouses that are set back and are largely screened from the road by the front hedge. Other residential properties on the opposite side of the road are also set back but are more obvious as there is less roadside screening. The verges and roadside vegetation results in a verdant countryside appearance to the local area. However, the road and traffic as well as the lines of properties on both sides of the highway also have an influence. Therefore, the locality has a semi-rural character.
17. Most of the details of the proposal are not before me for consideration. The proposed access would clearly affect the grass verge but it would not appear alien as there are several accesses in the vicinity. Moreover, the access gap would be relatively narrow compared to the width of the appeal site. The appellant has indicated that mature vegetation would largely be retained and this could be secured through the reserved matters process. Therefore, the scheme would only marginally open up views from the road of the interior of the site.
18. Furthermore, the plot is deep and so the proposed dwelling could be positioned in line with Forest Fields and away from the roadside boundary. Such a layout would ensure the house is not unduly prominent and with sensitive design and landscaping it would be largely unseen from the highway.
19. Also, the Council do not dispute that the site forms part of the garden to Four Acres, in which case it could be used for external residential activities and for

associated paraphernalia. As such, the proposal would not lead to a new residential use of the land, as would be the case if the site was a field.

20. In light of the other residences on either side and opposite, the dwelling would not stand out as an unusual feature if sensitively designed. DPD policy DM4 resists schemes that create or exacerbate ribbon development, although this part of the policy relates specifically to rural workers accommodation. In any event, there is already an outbuilding on the site which forms part of the line of development along Leicester Lane. This building is single storey and largely unseen from off the site due to its position and screening. However, the proposal could be positioned and designed so as to have no significant additional visual impact compared to the existing situation.
21. Also, the plot is of sufficient size to accommodate a new dwelling without any obvious loss of openness, particularly if the house is positioned towards the rear. As such, the development would not visually exacerbate ribbon development in the countryside or lead to any increased sense of urbanisation. Instead, it would complement the semi-rural nature of the locality.
22. For these reasons, I conclude the development would not harm the character and appearance of the area. In these regards, it would accord with DPD policies DM4 and DM10 and NP policies H6 and H7. Amongst other things, these look to ensure development complements the character of the surrounding area. The Council's refusal reasons also refer to DPD policy DM1 but this contains no provisions relevant to this particular issue.

Highway safety and capacity

23. The appeal drawings show the position and size of the proposed access and visibility splays in each direction. The Council suggest that further information on surfacing and drainage is required, however it is unclear why this is needed to assess the adequacy of the proposed access. In any event, it would be reasonable to impose a planning condition that requires details of drainage and surfacing to be submitted and approved.
24. Four Acres is already served by a vehicular access off Leicester Lane. However, the Council fails to explain why a separate new access would be unsafe. Leicester Lane at this point is subject to a 40 mph speed limit. From my observations on traffic speeds and road conditions, there would be sufficient visibility from the proposed access in both directions to ensure vehicles leaving the development do not pull out dangerously in front of on-coming traffic. My visit can only provide a snapshot in time but there is no evidence to suggest my observations are unusual or inaccurate.
25. Furthermore, no convincing information is before me that shows the development would generate a level of traffic that would lead to highway capacity issues. Indeed, it is likely the development would generate modest traffic movements that the local highway network would be able to accommodate safely.
26. For these reasons, I conclude the development would not prejudice highway safety nor cause highway capacity problems. In these regards, it would accord with DPD policy DM17 which supports proposals that do not cause a significant adverse impact on highway safety or the transport network.

Other Matters and Planning Balance

27. While I have found no harm in respect of the second and third main issues, the proposal would be contrary to development plan policies that relate to the location of housing development. Therefore, it follows to consider whether sufficient justification exists to grant planning permission contrary to the development plan policies.
28. The Council accepts it is unable to demonstrate a 5 year supply of housing land as required under the Framework. It suggests that of 31 March 2022 it can demonstrate a 4.89 year supply. With reference to an earlier appeal decision¹, the appellant suggests that around a 4.6 year supply can be shown to exist.
29. Irrespective of the actual level of shortfall, it is clear that a 5 year supply can not be demonstrated. In such circumstances, paragraph 11 of the Framework, with reference to footnote 8, indicates that relevant development plan policies should be deemed as out of date. Paragraph 11 goes on to require consideration of the benefits and the adverse impacts of the development against the policies of the Framework as a whole.
30. As identified in respect of the first main issue, the proposed development would not accord with the Framework in terms of its location and accessibility. The adverse effect in these regards counts significantly against the scheme.
31. The proposal would not harm the intrinsic character and beauty of the countryside and it would be sympathetic to the locality. Also, it would avoid an unacceptable impact on highway safety and the road network. The lack of harm in these respects is a neutral factor rather than a benefit to which I attach positive weight.
32. The appellant refers to the aforementioned earlier appeal decision in support of this current proposal. However, this previous decision relates to a much larger scheme on a different site. It is clear that the considerations for this other appeal were significantly different to the proposal before me and so it has little bearing on my assessment.
33. The appellant refers to a potential fallback position of the existing house being replaced with one that is much larger. Also, it is suggested the house could be significantly extended. However, there is limited information to indicate that such alternatives would be carried out if this appeal is dismissed. Furthermore, no details have been provided on these other options and so it is uncertain whether they would be as harmful as the appeal proposal in terms of the suitability of the location and accessibility. Consequently, I attach limited weight to the suggested fallback positions.
34. Having regard to the Framework's definition, the appellant contends the appeal site is previously developed land. Even if this contention is accepted, paragraph 85 of the Framework only encourages the use of previously developed land for local business and community needs in rural areas. As such, the proposal for a new house does not benefit from this support.
35. Also, paragraphs 69 c) and 120 c) of the Framework only support the development of windfall sites and brownfield land in settlements. The proposal would not be isolated but it would be in a sporadic run of properties rather than

¹ Appeal reference number APP/K2420/W/20/3262295, dated 21 May 2021

in any defined or identifiable settlement. As such, the scheme gains no support from paragraphs 69 c) and 120 c).

36. However, the proposed development would add to the housing stock through the reuse of under-utilised land as promoted under paragraph 120 d) of the Framework. The Council's housing land supply and the delivery of housing within the district relies significantly upon development on windfall sites, such as the appeal scheme. Even so, the proposal would provide only a single additional dwelling and so its contribution towards supply when considered on its own merits are limited. As such, these benefits attract only modest weight.
37. Having regard to all material factors, I find that the adverse effects of the development would significantly and demonstrably outweigh the modest benefits of the scheme. As such, the presumption in favour of sustainable development as laid out in paragraph 11 of the Framework does not apply.
38. In arriving at this view, I have had regard to paragraph 14 of the Framework. This is relevant as the NP was made less than 2 years before the date of this decision. Also, it contains policies and allocations to meet its identified housing requirement. The appellant suggests that the housing requirement for the Desford NP area will need to increase but there is no evidence before me that shows a clearly identified housing need other than that set out in the NP.
39. Even if I accept the housing land supply figure from the earlier appeal referred to by the appellant, it is clear the Council is able to demonstrate in excess of 3 years' supply of housing land. Also, the appellant does not dispute that housing delivery is at least 45% of that required over the previous 3 years.
40. Therefore, all the circumstances as set out under paragraph 14 of the Framework appear to apply. The scheme would conflict with NP policies as explained in respect of the first main issue. As such, paragraph 14 dictates it is likely that the adverse impact of allowing the development would significantly and demonstrably outweigh the benefits. This adds support to my view that the presumption of sustainable development is not applicable.

Conclusion

41. The proposed development would be acceptable in terms of the second and third main issues but it would not be in a suitable location for the reasons as set out under the first main issue. Therefore, it would not accord with the development plan when read as a whole. Moreover, there is insufficient justification to grant planning permission contrary to development plan policies. Accordingly, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR