



Appeal Decision

Site visit made on 28 September 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2022

Appeal Ref: APP/G2435/W/21/3285514

Land Adjacent to 18 Masefield Close, Measham DE12 7EF

- 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 and Mrs D Humphries against the decision of North West Leicestershire District Council.
 - The application Ref 21/00466/FUL, dated 26 February 2021, was refused by notice dated 11 May 2021.
 - The development proposed is new detached dormer bungalow at land adjacent to 18 Masefield Close.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 1. Whether or not the location of the appeal site is suitable for housing with regard to local and national planning policies; and
 2. Whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Suitability of location for housing

3. Policy S2 of the North West Leicestershire Local Plan, adopted March 2021 ('LP') sets out the settlement hierarchy for the District. This is used when assessing the suitability of a settlement for new development, with the general principle being that those settlements higher up the hierarchy will take more growth than those lower down and that the type of development proposed is appropriate to the scale and character of the settlement and its place in the hierarchy. The supporting text to this Policy also advises that the scale and location of most new development that is needed is already committed.
4. Irrespective of the previous local plan boundary, the appeal site is, for the most part, adjacent to but outside the Limits to Development line for Measham on the Proposals map to the LP, which was only adopted last year.
5. Therefore, in accordance with Policy S3 of the LP, the appeal site is identified as countryside where development is controlled, and only defined exemptions which fall within parts (a) – (s) of that Policy are supported, subject to

complying with parts (i) - (iv). On the evidence before me, the proposal does not fall into any of those defined exemptions.

6. The reasoned justification for Policy S3 of the LP advises that the defined Limits to Development around most of the settlements are a means of distinguishing between areas of potential for new development and areas which can be regarded as countryside where development will be considered having regard to the provisions of Policy S3 of the LP, to ensure that proposed development does not unduly impact upon the character and appearance of the countryside. The supporting text to this Policy also acknowledges that the landscape of the countryside varies in character and appearance across the district.
7. Irrespective of whether or not the site is visible from any countryside footpaths and, in part, hard surfaced, the area proposed for the new dwelling is also grassed and forms part of a larger grassed area which extends north west. Moreover, on the ground, the site is, largely separated from the existing built development to the east by substantial boundary treatments. As such, this partly verdant site which is free of any significant development has an open and undeveloped character. This, together with the hedge along the south west boundary of the site and the new woodland planting beyond this, form part of the countryside.
8. Therefore, physically and visually the appeal site has a stronger affinity with the countryside than the extent of built development. In particular, the appeal site contributes to the varied character of the countryside and reinforces the rural setting of Measham.
9. Despite the existence of development opposite and near the appeal site and the proposed dwelling reflecting the scale and design of nearby dwellings, the new dwelling along with domestic paraphernalia associated with it would extend built form beyond the extent of development along the northern side of Masefield Close into a countryside location. Furthermore, an additional dwelling here along with the activity associated with it would harm the open character and appearance of the site, thereby eroding part of the intrinsic value and beauty of the countryside.
10. For the above reasons, the proposal would introduce development in a location where this would be contrary to the Council's settlement hierarchy and also harms the character and appearance of the countryside and therefore conflicts with policies S2 and S3 of the LP.

Flooding

11. Based on the Environment Agency's Flood Map for Planning, as set out in the submitted site-specific Flood Risk Assessment (FRA). The appeal site lies on the right bank of the River Mease and lies in Flood Zones 1 and 2, with the southern boundary extending as far as the River Mease which is classified as Flood Zone 3.
12. Planning Policy Guidance (PPG) and the National Planning Policy Framework (the Framework) aim to steer development to areas with the lowest probability of flooding through a sequential test. In particular, the Framework, states that: 'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or

- future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
13. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable).’ This approach is also reflected under Policy Cc2 of the LP.
 14. Consequently, planning applications, such as the appeal proposal, are required to apply a sequential test to establish whether there are other reasonably available sites for the proposed development in areas with a lower probability of flooding.
 15. The FRA proposes a series of flood mitigation measures (finished floor levels, ground levels, drainage design, use of flood resilient construction and flood warnings) which are supported by the Environment Agency (EA) and the Local Flood Authority. However, as the decision maker I need to be satisfied that there are no other appropriate sites for the proposed development in areas with a lower risk of flooding (Flood Zone 1).
 16. Based on a search for land for sale in Measham, the appellants argue that there were no viable alternative sites in Measham and therefore if a more comprehensive sequential test was conducted it would also be unable to find a site suitable to accommodate the proposed development. However, this information is not a sequential test and, in any event, inconclusive.
 17. Consequently, the scheme has failed to demonstrate that there are no other sequentially preferable alternative sites for the proposed development with a lower probability of flooding.
 18. Therefore, the proposal conflicts with Policy Cc2 of the LP which states that the risk and impact of flooding will be minimized through directing new development to areas with the lowest probability of flooding. In particular, Policy Cc2 (2a) states that a proposal will be supported where it is located in an area that is not at risk of flooding with reference to the EA flood risk maps and the Council's Strategic Flood Risk Assessment, unless a Sequential Test, and if necessary an Exception Test, as set out in the National Planning Practice Guidance on flood risk, proves the development is acceptable.

Other Considerations

19. Although reference is made to part of the site being ‘brownfield’ on the evidence before me, I cannot be certain that the site falls within the definition of ‘Previously Developed Land’ as set out in the Framework. As such this carries little weight in favour of the proposal.
20. Nevertheless, the proposal would support an additional dwelling, this would make a modest contribution towards local housing and aligns with the objective of significantly boosting the supply of homes, as set out in the Framework.
21. Measham is designated a category 1 village (with at least 4 key services) and is therefore considered one of the villages in the District with a better range of services and facilities. Therefore, in terms of accessibility occupiers of the proposed development would have reasonable access to these local services and facilities. As such, a new dwelling in the proposed location would provide

some support for local facilities and community, which is supported by the Framework.

22. However, the benefits arising from a single dwelling would still be modest and therefore only attract limited weight.

Planning balance and Conclusion

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.
24. I have found that the proposal is unjustified for its location and would be contrary to the strategic aims of development plan policies to direct majority of new development to main towns and urban areas and safeguarding the countryside. This includes policies from a recently adopted local plan to which I attach substantial weight. Also, the scheme has failed to demonstrate that there are no other sequentially preferable alternative sites for the proposed development with the lowest probability of flooding.
25. On the other hand, whilst there would be benefits arising from the proposal, these are afforded limited weight. Accordingly, these considerations are not sufficient to mean that the proposal should be determined otherwise than in accordance with the development plan. I, therefore, conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR