



Appeal Decision

Site visit made on 3 January 2023

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 15 February 2023

Appeal Ref: APP/M1005/W/22/3300974

Amberley, Old Hillcliff Lane, Turnditch, Belper, Derbyshire DE56 2EA

- 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 Mitchell against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2021/0656, dated 2 June 2021, was refused by notice dated 26 April 2022.
 - The development proposed is 2 detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with only access and layout to be determined at this stage. I have dealt with the appeal on this basis and I have taken the landscaping shown in the submitted 'Site Plan as Proposed' (ref 3073 -003) into account as indicative in relation to my consideration of the principle of the development on the appeal site.
3. The Council published a pre-submission draft local plan for public consultation after the application was determined. As this plan is at an early stage of development it is not a matter in dispute that its policies do not carry weight for development control purposes. I agree with that assessment.
4. The appeal site is located on Hillcliff Lane which together with Old Hillcliff Lane forms the settlement referred to as Hillcliff Lane in the Idridgehay, Alton and Ashleyhay Neighbourhood Plan ('Neighbourhood Plan'). I have therefore referred to the settlement as Hillcliff Lane in this decision.

Main Issues

5. The main issues in this appeal are:
 - whether the proposal would accord with development plan policies relating to the location of development in the Borough; and,
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Location of development

6. Applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for the area includes the Amber Valley Borough Local Plan ('Local Plan') that was adopted in 2006 and the Idridgehay, Alton and Ashleyhay

Neighbourhood Plan ('Neighbourhood Plan') which was made in 2015. The National Planning Policy Framework ('the Framework') is also an important material consideration.

7. The spatial strategy of the Local Plan is to focus housing development on previously developed land within the Borough's urban areas and larger villages, followed by sites on the edges of such settlements to create urban extensions. In relation to other settlements, such as Hillcliffane, new housing is strictly controlled. Within the built framework of such settlements, other than for conversion or the extension or replacement of existing dwellings, policy H4 only supports new housing in the form of infilling small gaps by no more than two dwellings within existing groups of houses, subject to the character of the surroundings. The justified reasoning to this policy defines infilling as the completion of an otherwise substantially built up frontage by the filling of a small gap.
8. The Local Plan and the Neighbourhood Plan predate the publication of the Framework. In such circumstances paragraph 219 of the Framework advises that the weight that should be given to its policies should accord to their degree of consistency with the Framework. This is a matter that I will determine in my overall conclusions.
9. Policy H1 of the Neighbourhood Plan supports well designed new housing in Hillcliffane that reflects and complements the distinctive characteristics of the settlement. The justified reasoning to this policy notes that in relation to Hillcliffane these characteristics include linear development often only occupying one side of the road.
10. No built framework is defined by the development plan for Hillcliffane. As a result, whether a site is located within a settlement's built framework, or located outside of it and within the countryside, is a matter of planning judgement.
11. Hillcliffane is characterised by linear development along its two roads. Whilst such development is present along both sides of Old Hillcliff Lane, it is a feature of the more recent Hillcliff Lane and its large houses that residential development is almost entirely located on the western side of the road.
12. The appeal site is an untended field which the application states had been in use as a paddock. The site is located to the rear of Amberley on the eastern side of Hillcliff Lane close to where it meets the southern end of Old Hillcliff Lane. The site faces Hillcliff Lane and with housing opposite, behind and to the south, and with the outer edge of the vehicular access to Amberley forming its northern boundary, I find that the site is located within the built framework of the settlement and not within the countryside.
13. Whether or not the scheme would constitute infilling as supported by policy H4 of the Local Plan is dependent on whether it would result in the completion of an otherwise substantially built up frontage by the filling of a small gap. Given that the appeal site forms part of a very large gap on the eastern side of Hillcliff Lane, between the residential plot on its southern side and houses a few hundred metres to the north, it would not comply with the definition of infilling contained in the Local Plan. The location of the proposal would therefore be contrary to policy H4 of the Local Plan.

Character and appearance

14. Old Hillcliff Lane and Hillcliff Lane have distinctly different characters. The former is a narrow country lane with limited forward visibility enclosed by detached and terraced dwellings set either on, or close to, the back edge of the lane. As a result, it has an intimate, rural character. In contrast, Hillcliff Lane is a fast, straight road wide enough to accommodate traffic travelling in both directions and the dwellings along it are typically large, suburban style, detached houses set further back from the road.
15. In views from Hillcliff Lane the open undeveloped nature of the appeal site and land on its northern side serves to separate Hillcliff Lane from Old Hillcliff Lane and provides an attractive landscape setting for both lanes in keeping with the sporadic nature of development in this rural part of the Borough.
16. With the control that exists at reserved matters attractively designed and landscaped dwellings that would complement the houses on Hillcliff Lane could be built. However, this would not overcome the significant adverse effect that residential development of the site would have on the character and appearance of the area.
17. The proposed development of two detached dwellings, together with their gardens and associated domestic paraphernalia, would urbanise the site and harm the character and appearance of Hillcliff Lane. This would be contrary to policies LS1(c), LS3 (a) (c) and ENV7(d) of the Local Plan and policy H1 of the Neighbourhood Plan. These policies seek to protect the quality and local distinctiveness of the natural and built environment, including the pattern of settlements. Policy L1 of the Neighbourhood Plan has been cited by the Council in its reason for refusal. However, as the site is within Hillcliff Lane and the settlement does not lie within the special landscape area this policy does not apply to the appeal site.

Other Matters

Local services and local community

18. The two additional households the proposal would add to the settlement would help to support the limited local services and enhance the vitality of the community consistent with paragraph 79 of the Framework. However, as it would do so only by a small degree, I attach limited weight to this consideration in support of the appeal.

Windfall

19. Paragraph 69 (c) of the Framework encourages local planning authorities to support the development of windfall sites. In the context of the development plan though the appeal site is not a windfall site, and given the harm that I have identified would occur to the character and appearance of the area it would not be a suitable site for development. I attach little weight therefore to this consideration in favour of the appeal.

Effective use of land

20. Section 11 of the Framework advises that land should be used effectively. However, this advice relates to land that has been identified as being suitable for housing. For the reasons given above, I have found that this is not the case with the appeal site. As a result, I attach minimal weight to this matter in support of the appeal.

Housing need

21. The uncontested position of the Council is that it has a healthy housing land supply comfortably in excess of 5 years. Based on the Council's figures, which include completed dwellings and new homes anticipated to come forward, the outstanding target for unmet need up to 2028 is approximately 2000 dwellings. The proposed development would contribute to addressing this unmet need and would help boost housing supply as sought by the Framework. As its contribution though in these regards would be very small I attach limited weight to this consideration in favour of the appeal.

Highway safety

22. The highway authority has no objection to the proposal subject to the provision of adequate visibility splays, manoeuvring space within the site to allow a vehicle to enter and leave in a forward gear, and the setting back of any entrance gates into the site. I saw no reason why such requirements could not be complied with and I agree with those conclusions. The proposal would therefore be acceptable in highway safety terms and would comply with policies TP1 and TP6 of the Local Plan. The absence of harm though is a matter of neutral rather than positive weight that weighs in favour of a proposal.

Overall Conclusions: The Planning Balance

23. I have found that the proposed development would be located within the built framework of Hillcliffane rather than outside it and within the countryside. As a result, policies EN1 and H5 of the Local Plan, which are out of date due to the blanket restriction they impose on development in the countryside, are not relevant to the appeal proposal.
24. The most important policies for determining this appeal are policies H4, LS1(c), LS3 (a) (c) and ENV7(d) of the Local Plan and policy H1 of the Neighbourhood Plan. Policy H4 restricts new development within certain settlements to the infilling of small gaps by no more than two dwellings. As this policy relates to sites within the built framework of smaller villages, where the scope for new housing is limited and where housing needs to be in keeping with the character of its surroundings, this policy helps meet housing need whilst protecting the character of such settlements. Consequently, it is consistent with the Framework¹ and is not out of date. Given that policies LS1(c), LS3 (a) (c) and ENV7(d) of the Local Plan and policy H1 of the Neighbourhood Plan seek to protect the character and appearance of an area they are also consistent with the Framework. As a result, although the development plan predates the publication of the current Framework, I find that the most important policies for determining the application are not out of date.
25. The so called 'tilted balance' in paragraph 11 d) ii) of the Framework referred to by the Council therefore does not apply in this case.
26. I have found that the proposed development would not constitute infilling within the meaning of policy H4 of the Local Plan. As a result, the scheme would be contrary to the spatial strategy of the development plan. I have also found that it would harm the character and appearance of Hillcliffane, contrary to policies LS1(c), LS3 (a) (c) and ENV7(d) of the Local Plan and policy H1 of the Neighbourhood Plan. I attach significant weight to the conflict between the proposal and these policies in this

¹ Chapters 5, 12 and 15

appeal. On the basis of this conflict the appeal scheme would be contrary to the development plan considered as a whole.

27. There are other considerations referenced from the Framework that have been put forward in favour of the appeal. These include providing housing in Hillcliff Lane to maintain the vitality of the rural community and to support local services, the benefits of a windfall site in effectively using land and quickly helping address unmet need, and boosting housing supply. These considerations, which I have discussed under other matters, are insufficient though to outweigh the harm that would be caused to the spatial strategy for the area and to the character and appearance of the settlement, and non-compliance with the development plan.
28. Material considerations therefore do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector