



Appeal Decision

Site visit made on 1 March 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 12 April 2023

Appeal Ref: APP/K2420/W/22/3308717

The Oaks Lodges, Stapleton Lane, Kirkby Mallory, Leicestershire LE9 7QJ

- 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 Graham Penney against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 21/00020/FUL, dated 30 December 2020, was refused by notice dated 4 July 2022.
 - The development proposed is the erection of a two storey house in connection with the applicant's business at the site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I understand that The Oaks Lodges has been the subject of enforcement action. I have not been provided with evidence to state this enforcement action has concluded and, if so, the outcome of that action. However, this appeal decision only concerns the scheme before the Council during the planning application and does not prejudice any ongoing or future enforcement action relating to other uses and development on the appeal site.

Main Issues

3. The main issues of the appeal are:
 - whether the site is an appropriate location for the proposed development having regard to the development strategy and the accessibility of services;
 - the effect of the proposed development on the character and appearance of the area; and,
 - whether the proposed development would provide acceptable living conditions for future occupiers.

Reasons

Appropriate location for development

4. Policy 13 of the Hinckley and Bosworth Borough Council, Local Development Framework, Core Strategy (CS), December 2009, indicates that in rural hamlets, the Council will support housing development within settlement boundaries. Kirkby Mallory is the nearest settlement to the appeal site and is identified as a 'rural hamlet'. The appeal site is located outside of the settlement boundary and is therefore in the 'countryside'.

5. Policy DM4 of the Hinckley and Bosworth Borough Council, Local Plan 2006-2026, Site Allocations and Development Management Policies DPD (SADMP), July 2016, concerns safeguarding the countryside. The Policy signifies that development in the countryside will be considered sustainable in specific circumstances, including the provision of accommodation for a rural worker in line with Policy DM5.
6. SADMP Policy DM5 indicates that the erection of rural worker accommodation is considered an exception to inappropriate development in the countryside where special circumstances can be met. The policy includes criteria that are required to be met to support the construction of rural worker accommodation.
7. Paragraph 13.18 of the SADMP identifies that the term 'rural enterprise' is wide ranging and employees relevant to this policy could include forestry workers, farmer or farm workers, workers relating to equestrian activities, kennel and cattery workers or a fisheries worker. Paragraph 13.19 states the above list is indicative and not exhaustive and each application will be considered on a case-by-case basis to determine whether the application relates to a rural enterprise.
8. It is clear from the explanatory text that 'rural enterprise' is a broad term that could include a number of activities. In this instance, the bed and breakfast accommodation is part of a rural enterprise, as it is part of diverse business offering, including a fishery, in a rural location.
9. Neither party disputes that the appellant has demonstrated points b) to d) of the criteria specified within SADMP Policy DM5. Point a) explains that it must be demonstrated that it is essential for one of more workers to be readily available at most times for the proper functioning of the rural enterprise and the worker is in full time, permanent employment which directly relates to the rural enterprise.
10. The Appellant is the owner of the rural enterprise. Activities that require the presence of staff on site include the registering and changeover of guests of the bed and breakfast accommodation and holiday cabins, and to administer fishing permits. Whilst it has been demonstrated that it would be beneficial for the Appellant to live on site, the Appellant or employed staff could undertake the aforementioned activities from an office located on the site. I have not been provided with substantive evidence that the presence of a member of staff is required for most of the day, including overnight. The business has been operating for 30 years, largely without on-site worker accommodation, and no evidence has been provided to explain what has now changed to necessitate on-site accommodation, other than during times when additional measures were required due to the coronavirus pandemic. As such, it has not been demonstrated that rural worker accommodation is required.
11. The appeal site is located along a narrow, unlit country road with no pedestrian footpath, a significant distance from Kirkby Mallory. From my observations and as detailed with CS Policy 13, services are very limited within Kirkby Mallory and the occupiers of the proposed dwelling would rely upon larger settlements for the provision of goods and services. Given the distance to Kirkby Mallory and other settlements alongside the character of the road, it would be very unlikely that residents would walk or cycle to access shops and services. As such, future residents of the proposed dwelling would be reliant on private vehicles.

12. The appeal site is located close to residential properties and Mallory Park Racing Circuit, it is therefore not in an isolated location. Nevertheless, policies restricting development outside of settlements still apply, even when the proposed development is not isolated.
13. The proposed development at New Park Farm is materially different as it concerns the conversion of redundant, unviable agricultural barns and it therefore does not set a precedent for the appeal scheme. In any event, I have dealt with the appeal on the evidence before me and my observations on site. I accept that allowing the appeal would not set a precedent as it relates to rural worker accommodation; however, this is only a neutral factor.
14. I conclude that the appeal site is not an appropriate location for the proposed development, having regard to the development strategy and the accessibility of services. The appeal scheme is contrary to CS Policy 13 and SADMP policies DM1, DM4, DM5 and DM17. These policies support residential development in rural hamlets inside settlement boundaries; support applications that accord with the policies in the Local Plan; safeguard the countryside and provide exceptions for specific types of development including rural worker accommodation; outline the requirements that need to be demonstrated to support proposals for rural worker accommodation; and support proposals which seek to ensure there is convenient and safe access for walking and cycling to services and facilities.
15. The appeal scheme is also contrary to the aims and objectives of the Framework including paragraph 79 which indicates in rural areas housing should be located where it will enhance and maintain the vitality of rural communities.
16. The proposed dwelling would be remote from the settlement boundary and heavily reliant on private vehicle. It has not been demonstrated that rural worker accommodation is required, as such it is at odds with the development strategy. As the CS and SADMP policies are largely consistent with the framework, I ascribe significant weight to the harmful effect of permitting the construction of a dwelling which is a considerable distance outside of the settlement boundary.

Character and appearance

17. The appeal site is accessed from Stapleton Lane. This section of the road is characterised by tall, dense hedgerows, which open to form wide entrances to properties. These properties are relatively large and detached and of varying design, but they all tend to front the road. These aspects combined to create a verdant character, which is broken sporadically to accommodate large dwellings.
18. The appeal site is located in a wooded area, within a wider development known as The Oak Lodges, and is generally well screened from wider views by trees. The Oak Lodges accommodates several structures including a car port and a boathouse, as well as a number of static caravans. There is no distinct pattern of development within The Oak Lodges, other than the structures tend to be accessed from the main track leading from Stapleton Lane.
19. The proposed development is a modestly sized dwelling that would be sited towards the middle of The Oak Lodges, at the end of the access track. The

proposed dwelling is located on a cleared piece of land and would not lead to the loss of any trees. Whilst some of the surrounding structures are seen from wider views, the proposed dwelling would be largely screened by the surrounding trees and development. Even when viewed from wider areas, the functional design of the proposed dwelling is reflective of the surrounding structures within The Oak Lodges. The appeal scheme would therefore conserve the character and appearance of the surrounding area.

20. I conclude that the proposed development would not have a harmful effect on the character and appearance of the area. The appeal scheme therefore complies with SADMP Policy DM10(c) which indicates that developments will be permitted provided it compliments or enhances the character of the surrounding area. The appeal scheme also complies with Paragraph 130(c) of the Framework which requires planning decisions to ensure that developments are sympathetic to the local character.

Living conditions for future occupiers

21. The appeal site is located close to Mallory Park Racing Circuit but is separated from a large section of the Circuit by a dense wooded area. Whilst the Circuit has previously been issued noise abatement notices by the Council, these have reduced in recent times. Also, I have not been provided with evidence that the Appellant or neighbouring residents have raised a complaint with the Council in relation to the noise generated by the Circuit.
22. During my site visit, I did not observe any activity at the Circuit, and I have not been provided with substantive evidence of the noise levels experienced on the appeal site during event days. However, given the nature of the Circuit I would expect concentrated activity where loud noises would be experienced in the surrounding area.
23. Although the proposed dwelling would include triple glazing, without further evidence I cannot conclude that this would be sufficient to mitigate the effect of noise experienced by future occupiers from the Circuit. Similarly, I cannot determine whether appropriate mitigation is or could be provided within external areas or when future occupiers of the dwelling open their windows.
24. Whilst the Appellant has lived in the area for several years and is therefore more aware of the noise generated by the Circuit, the effect of the noise is permanent and would affect all future occupiers. Notwithstanding, whilst the Appellant may be more accepting of excessive noise levels this would not justify the construction of a dwelling which does not provide acceptable living conditions for its residents.
25. Whilst neighbouring properties are located closer to the race circuit and could be affected to by noise to a greater extent, the existence of potentially unacceptable living conditions elsewhere does not justify allowing poor living conditions for future residents of the proposed dwellings.
26. I conclude that the proposed development would not provide acceptable living conditions for future occupiers. The appeal scheme is therefore contrary to SADMP Policy DM10(b) which indicates that developments will be permitted provided that the amenity of occupiers of the proposed development would not be adversely affected by activities in the vicinity of the site. The appeal scheme is also contrary to Paragraph 130(f) which advises that planning decisions

should ensure that developments create places with a high standard of amenity for future users. The conflict with SADMP Policy DM10 would lead to moderate harm, as it could lead to unacceptable living conditions for residents of the proposed dwelling for relatively short concentrated periods of time.

Other Matters

27. The conduct of the Council during the determination of the planning application is outside of the scope of the assessment of the acceptability of the appeal proposal.

Planning Balance

28. The Council cannot demonstrate a five year housing land supply. As such, the policies which are most important for determining the application are considered to be out of date, as per Paragraph 11(d) of the Framework.
29. Benefits generated by the appeal proposal include the provision of a single dwelling to help address the shortfall in housing land supply; enhancing the vitality and viability of local services; economic benefits associated with construction; the design of the building to maximise solar gain and the inclusion of photovoltaic panels on the roof to reduce the energy demand of the proposed dwelling; and providing disabled access to the dwelling. These benefits would be limited as they are associated with the provision of a single dwelling.
30. A lack of a harmful effect on the living conditions of neighbouring residents, with regard to privacy, and appropriate vehicular access and parking provision are considered to be neutral factors.
31. CS Policy 13 and SADMP policies DM4 and DM5 are largely consistent with the Framework which recognises the intrinsic beauty of the countryside and restricts the development of isolated rural homes except when providing rural worker accommodation. The appeal proposal would lead to a home in the countryside, which is not supported by sufficient evidence demonstrating there is a need for rural worker accommodation. I therefore ascribe significant weight to the conflict with these policies.
32. SADMP Policy DM17 is also in general accordance with the Framework which seeks to promote sustainable transport modes. Future residents of the proposed dwelling would be reliant on private vehicle to access shops and services. However, given the limited scale of the proposed development, the number of vehicular trips is likely to be low, I therefore only ascribe moderate weight to the conflict with SADMP Policy DM17.
33. SADMP Policy DM10 is also largely consistent with the Framework which advocates for creating places with a high standard of amenity for future users. I have not been provided with substantive evidence that the future residents would not be harmfully affected by noise generated by Mallory Park Racing Circuit. I therefore ascribe moderate weight to the conflict with SADMP Policy DM10.
34. The adverse impacts to the housing strategy, increasing reliance on private vehicle and unacceptable living conditions for future occupiers would outweigh the benefits when assessed against the policies in the development plan.

35. Having regard to the provision of footnote 7 of the Framework, the balance outlined within Paragraph 11(d)ii. should be applied. The adverse impacts of the appeal scheme associated with the provision of residential accommodation outside of a settlement, reliance on private vehicle and not providing acceptable living conditions for future occupiers, would significantly and demonstrably outweigh the limited benefits associated with construction, improving vitality and viability of local services and the environmental credentials and accessibility of the proposed dwelling, when assessed against the policies in the Framework, taken as a whole.

Conclusion

36. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
37. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR