



Appeal Decision

Site visit made on 18 September 2023

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.10.2023

Appeal Ref: APP/K2420/W/23/3317828

12 Rodney Gardens, Sheepy Magna, Leicestershire CV9 3SY

- 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 Michael Guilders and Miss Leanne Carter against the decision of Hinckley and Bosworth Borough Council.
- The application Ref 22/00916/FUL, dated 22 September 2022, was refused by notice dated 30 November 2022.
- The development is the change of use of agricultural land to domestic garden.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of agricultural land to domestic garden at 12 Rodney Gardens, Sheepy Magna, Leicestershire CV9 3SY in accordance with the terms of the application, Ref 22/00916/FUL, dated 22 September 2022, and the plans submitted with it, subject to the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting, substituting, amending, extending, consolidating replacing or modifying that Order), no development within Part 1, Class E of Schedule 2, and no gates, fences or walls within Part 2, Class A of the same Schedule, shall be erected on the land, except in the event that a further planning permission is expressly granted for that development.

Preliminary Matters

2. The development has already been carried out. The plans before me appear to reflect the extent of the land to which the change of use has taken place. However, the submitted plans do not include the full extent of the development that has been carried out, including the boundary fence or the building that has been installed, for example. For the avoidance of doubt, I have determined the appeal based on the submitted plans.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site is a long narrow rectangular shaped area of land, located to the rear of 12 Rodney Gardens (No 12), which extends beyond the original rear boundary of the property. The side boundary of the site is coterminous with the side boundary of the rear garden of the neighbouring property at 14 Rodney

Gardens (No 14). The land is bound to the rear and side by the existing agricultural land to the rear of the properties in the remaining part of the row. The surrounding grass fields and mature trees contribute positively to the pleasant verdant character of the area.

5. The appeal relates to the change of use of the land from agricultural use to garden to serve No 12. At the time of my visit, the land, which is enclosed by a timber fence comprised a mowed lawn, a timber outbuilding, and various items of domestic paraphernalia located on the part of the site closest to the rear of the dwelling.
6. Policy DM4 of the Site Allocations and Development Management Policies DPD adopted July 2016 (SADMP) seeks to safeguard the countryside from unsustainable development to protect its intrinsic value, beauty, open character and landscape character. It sets out that development in the countryside will be considered sustainable where it falls within the types listed and where it meets specific criteria, including that it does not have a significant adverse effect on the characteristics it seeks to protect.
7. There is no dispute that the land lies outside the development boundary and is therefore in an area of open countryside, which Policy DM4 seeks to protect. Consequently, as the change of use of land to garden does not fall within the specific exceptions listed, it conflicts with Policy DM4 in that regard.
8. The site is visible in localised views from the rear of the adjoining residential properties and the nearby access track, as well as the adjoining agricultural land and buildings. The size and layout of the garden reflects that of the rear garden at the adjoining property at No 14. Despite its size, the site benefits from a considerable degree of containment in the wider rural context as a consequence of its position in relation to the adjoining garden and mature woodland beyond. This relationship serves to reduce the effect of the change of use in terms of significant visual encroachment into the surrounding agricultural land. Having regard to these matters, the use of the land as garden has a negligible effect on the qualities of the open countryside setting.
9. I note the Council's concern regarding the potential for the siting of domestic paraphernalia, such as furniture, play equipment, hard surfacing or ponds in connection with the use of the land as garden, which would be more difficult to control. Nonetheless, in the event that this does occur, any such paraphernalia would be likely to be small scale and would not be permanent fixtures. Furthermore, permitted development rights for any incidental building, or enclosure, swimming, or other pool as well as walls, fences and other means of enclosure can be controlled by planning condition. Subject to a suitably worded condition removing such rights the development would not give rise to any tangible harm to the visual qualities or open character of the rural area.
10. For the foregoing reasons, I find that the proposal does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside. As such, it does not harm the character and appearance of the area.
11. I therefore conclude that the use of the land as garden is in clear conflict with Policy DM4 of the SADMP insofar as it does not constitute a type of development considered to be sustainable and therefore appropriate in the countryside. Nevertheless, I have not identified any actual planning harm

arising from the change of use of the land. Moreover, the development accords with the aims of paragraph 174 of the National Planning Policy Framework, in so far as it seeks to ensure that developments recognise the intrinsic character and beauty of the countryside.

12. Whilst not referred to specifically in the Council's refusal reason, the officer report also alleges conflict with Policy S1 of the Sheepy Parish Neighbourhood Plan Review: Made May 2022 (SNP) due to the effect on the countryside. However, for the reasons set out above I have found that such harm would not arise.

Other Matters

13. I note the Parish Council's comment that the development conflicts with Policy S10 of the SNP. However, this policy relates to the location of new housing development and is therefore not determinative in the appeal.

Conditions

14. A condition is necessary to remove permitted development rights to safeguard the visual qualities and open character of the countryside. A condition requiring adherence to an approved plan is unnecessary when applying the statutory tests.

Conclusion

15. 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. There is clear conflict with the development plan in that the appeal site lies outside of the settlement boundary for Sheepy Magna. However, as no other planning harm has been identified, the extent of the conflict is limited. Therefore, in the particular circumstances of this case there are material considerations which justify a decision other than in accordance with the development plan.
16. For the above reasons, I conclude that the appeal should be allowed.

E Worley

INSPECTOR