



Appeal Decision

Site visit made on 20 October 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

Appeal Ref: APP/F1040/W/23/3315984

Land Off Trent Lane, Kings Newton, Melbourne, E 439024 N 326462

- 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 Pallot against the decision of South Derbyshire District Council.
- The application Ref DMPA/2022/0407, dated 6 June 2022, was refused by notice dated 19 October 2022.
- The development proposed is the erection of two 3 bedroomed new build dwellings and creation of orchard.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. In the heading, I have used the fuller site address given on the appeal form.

Main Issues

3. Having regard to the Council's reason for refusal and representations made by interested parties, I consider the main issues in this case are i) whether the proposal represents a suitable location for housing, having regard to the spatial strategy for the area and the effect on character and appearance, including the heritage significance of designated heritage assets; and ii) the effect on neighbouring living conditions, with regard to light and outlook.

Reasons

Location for Housing

Spatial Strategy

4. Kings Newton is categorised as a Rural Village under the fourth tier of the settlement hierarchy of Policy H1 of the South Derbyshire Local Plan Part 1 (June 2016) (the LP1). However, the appeal site is located adjacent to, but outside of, the settlement boundary of Kings Newton as defined under the South Derbyshire Local Plan Part 2 (November 2017) (the LP2). Therefore, the proposal for two market dwellings would not gain support under Policy H1, which only supports housing within the settlement boundary where applicable, or adjacent to it as an exceptions or cross subsidy site as long as not greater than 15 dwellings.
5. Policy BNE5 of LP2 permits development outside of settlement boundaries subject to certain criteria, including where allowed for by other policies. However, with the exception of Policy H1 addressed above, the proposal is not

advanced as complying with any of the listed policies under criterion i). Neither would the proposal gain support under criteria ii) or iii) which relate to essential rural-based activities or development unavoidable outside settlement boundaries.

6. Therefore, the relevant criteria where development would be supported are iv) infill that is in keeping with the character of the locality and represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing; and v) where development will not unduly impact on landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets. These criteria are also reflected in Policies DP1 and DP2 of the Melbourne Neighbourhood Development Plan (July 2022) (the MNDP).
7. Beyond the definition given in Policy BNE5 itself, there is no further defining criteria for 'infill' development within the development plan or national policy. As such, it is a matter of planning judgement having regard to the particular site circumstances. The site comprises open land bisected by an access track leading to an agricultural storage building and stables. Development to the south along Trent Lane is contiguous on both sides of the road as far as Main Street. To the north, there is a dwelling adjacent to the site, No 46, with two further dwellings beyond before the lane crosses over the former railway line. In my judgement, the development to the northern side is sufficiently close to the main built-up area of the village to be read as part of it when viewed on the ground. The gap formed by the appeal site is not significant in length, it is bordered by dwellings on both sides and falls within a small group of housing in Kings Newton. Therefore, in my judgement, the proposal would represent infill development of the type supported under Policy BNE5(iv).
8. The proposed dwellings would be located next to the built-up area of Kings Newton, which is itself contiguous with the larger settlement of Melbourne where future residents could avail of local services. The proposal would not therefore result in isolated development in the countryside, and whilst residents would still require a private car, the proximity of services in Melbourne would mean many journeys would be short and consistent with those of existing residents.
9. This aside, overall compliance with Policy BNE5, and by extension the wider settlement strategy of the development plan, is dependant on the proposal also according with the other aspects of criteria iv) and v), in particular relating to the character of the locality and the effects on heritage assets.

Character and Appearance

10. Trent Lane has an evident rural village character with stone walls, hedgerows and a mix of dwellings ranging from historic, stone built properties to modern detached and semi-detached homes. Development forms a generally linear pattern, albeit with some dwellings standing closer to the road or set further back into their sites. The different ages, styles, materials and sizes of the dwellings reflect a long, organic development of the lane. Towards the northern end, the appeal site represents the start of development becoming more sporadic, with gaps between dwellings and countryside views possible beyond the immediate street scene. In particular, the heavily treed valley of Ramsey Brook and the rolling landscape to the east forms a prominent vista from Trent Lane at the appeal site.

11. The site lies outside, but adjacent to the Kings Newton Conservation Area (the CA), which includes parts of the lane to the front of the site and dwellings immediately to the south and opposite. More recent development further south along Trent Lane is excluded from the CA, with the CA mainly encompassing areas along Main Street and open countryside to the north and west of Kings Newton Hall. The Council's Conservation Area Character Statement (2011) (the CACS) points to the rural character of the northern part of Trent Lane, with the farm complex at Elms Farm and other buildings on the western side of the lane standing above road level and 'standing picturesquely in the landscape setting of the lane.' From the evidence before me, the overall significance of the CA derives from the old-fashioned character, with an historic identity forged around agriculture and lacking influence of the industrial revolution in the 18th and 19th centuries.
12. In addition, the appeal site falls within the setting of two Grade II listed buildings. Elms Farmhouse is an early 19th century farmhouse standing opposite the site, overlooking it and the countryside beyond to the east. 32 Trent Lane, immediately adjacent to the south, is a cottage dating from the 17th century with later additions, including recent permissions to create a free standing garage subsequently converted to a separate dwelling. The CACS notes No 32 as a rare sign of an old settlement on this side of Trent Lane, though it is noted as being listed for its group value only.
13. The proposed dwellings would respect the linear pattern of development by facing the lane and continuing the street scene. The dwellings would appear as single storey from the front but would stand two storeys at the rear due to the steeply sloping topography of the site. The design of the dwellings, incorporating pitched roofs with clay tiles, stone and brick facades, timber joinery, stone cills, chimney stacks and front porches, would respect the rural aesthetic of the lane. The varied size and form of the streetscape means the proposed dwellings would not appear out-of-scale or disruptive of a uniform pattern of development.
14. However, in developing the existing open site, the proposal would erode the existing sense of transition from village to open countryside which begins to emerge at this point on Trent Lane. The clear views over the fields to the east, particularly from Elms Farmhouse, would be lost. Whilst the appellants' heritage statement points to the loss only being to oblique views from the farmhouse, they nevertheless form part of the broad vista that one would expect to take in from such an elevated position. The recent construction of the detached garage to No 32 has inserted further built form into this vista, but the appeal site maintains a direct link to the wider countryside which would be closed off by the development. This would have an adverse effect on the historic relationship between the farmhouse and its rural hinterland, resulting in harm to the setting of the listed building.
15. The effect on the setting of No 32 would be more indirect, given it would retain its existing views to the rear, and in view of the intervening development of the garage, now a separate dwelling. There would however be some minor adverse effect from the extension of the built form on this side of Trent Lane that would further diminish the historically isolated presence of this building along a largely rural lane.

16. The appellants' heritage statement accepts that the proposals would have an adverse effect on the settings of the listed buildings. Whilst I agree that the harm would be less than substantial, I find that in the case of Elms Farmhouse, there would be more than the neutral/slight adverse impact concluded by the appellants, due to the proximity of the dwellings and their direct intrusion into the historic vista from the listed farmhouse. I agree that the harm to the significance of No 32 would be at the lower end of less than substantial.
17. It is also proposed to extend the stone wall along the site frontage, replacing an existing established hedgerow. Interested parties have raised concern over the loss of the hedgerow, which I saw contributes to the emerging rural character to the north of the site. Although the Council's Conservation Officer considered the proposed wall could amount to a public benefit, there is no evidence to indicate this would have a heritage benefit in terms of reinstating a lost feature. Rather, it would result in the unnecessary loss of the hedgerow and its replacement with a more cultivated, domestic garden appearance with spaced field maple trees. This would result in a minor, but nonetheless harmful, erosion of the rural street scene which forms part of the CA that would not be mitigated by an extended stone wall. Together with the replacement of the existing open fields with built development, the proposal would fail to preserve or enhance the character and appearance of the CA or its setting.
18. In reaching a view, I also observed the site from the Cloud Trail, a walking path along the former railway line to the east of the site. From here, the dwellings would be glimpsed through the trees but beyond the more prominent agricultural building and the storage building under construction behind the appeal site, and very much secondary features in these views. Consequently, the dwellings would not harmfully disrupt the rural character experienced along the Cloud Trail.
19. In addition, I have taken into consideration that planning permission has been granted for two holiday lodges and an agricultural store on land to the rear of the site. However, these developments are notably on lower ground which would reduce their presence in views from Trent Lane. The lodges would be located where an existing line of trees provides screening of the stables, whilst the agricultural store, though likely to still be visible from Trent Lane, would be a form of development typical of a rural area and not out of character. I also have an appeal decision¹, but no other details, for a case in Burnaston, as a result of which I can draw limited comparison with the current proposal, which I have considered on its own merits.
20. Therefore, these other considerations do not alter my conclusions above that the proposal would cause harm to the character and appearance, and setting of, the Kings Newton CA, and harm to the settings of listed buildings at Elms Farmhouse and 32 Trent Lane, resulting in less than substantial harm to the heritage significance of the designated assets in each case.
21. Paragraph 202 of the National Planning Policy Framework (the Framework) directs that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The proposal would add two residential units to the district's housing stock but given the Council's stated ability to demonstrate a five year supply of deliverable housing sites, which is not challenged by the appellants, the delivery of housing through this

¹ APP/F1040/W/19/3232095, allowed 10 October 2019

development is beneficial but not crucial, and in light of its small scale, attracts only limited weight in favour of the proposal. There would be economic benefits from the construction of the dwellings, and subsequently from residents working and spending money in the local area, but again at a scale which attracts limited weight.

22. The appellants further argue that the proposal would make effective use of an underutilised piece of land, but given the harm identified, the development of the site for housing would not represent a benefit in this case. Moreover, I have little evidence to demonstrate that the site could not be used for any other purpose, particularly agricultural or other uses suited to a rural environment. As such, this is a matter attracting very limited weight.
23. The proposed benefits arising from the reinstatement of an orchard and with it increased biodiversity are acknowledged, but these would be modest enhancements having regard to the small scale of the proposed orchard and would attract limited weight in favour.
24. The identified benefits, taken cumulatively, would not outweigh the less than substantial harm to the significance of the designated heritage assets, to which the Framework directs I must give great weight. Consequently, the Framework indicates that this provides a clear reason for refusing the proposal.
25. The proposal would therefore conflict with Policies BNE2 of LP1 and BNE10 of LP2, which reflect the Framework in seeking to protect, conserve and enhance heritage assets in a manner appropriate to their significance and weighing the public benefits of the proposal against identified harm. There would also be conflict with the protection of heritage assets under Policy HC1 of the MNDP.

Conclusions on first main issue

26. Given my findings in the above matters, the proposal would not fully accord with criteria iv) or v) of Policy BNE5. Therefore, the proposal would not be a form of development exceptionally supported in rural areas, and by extension would not represent a suitable location for development under the wider spatial strategy for the district articulated under Policies H1, S1 and S2 of the LP1 and Policy DP2 of the MNDP.

Effect on neighbours' living conditions

27. The Council did not make any substantive assessment of the impact on light received to the neighbouring dwelling at 34 Trent Lane, but the neighbouring residents raise concerns regarding the impact of the proposed southern dwelling on No 34 in terms of light. The appellants have had an opportunity to respond at final comments stage. A 'right to light' has been mentioned but I have little conclusive evidence before me regarding the existence or nature of any such legal right, which would have a separate means of redress in law. Planning decisions generally concern land use in the public interest, and I have considered the likely impact on light levels in that context.
28. The appellants point out that not all of the windows in the flank elevation benefit from planning permission but I do not have full particulars of the planning history of No 34 to verify this. However, the proposed southern dwelling would match the height and building lines of No 34 and therefore would stand squarely in front of the flank wall of No 34 at close distance. From my observations, this would lead to a demonstrable loss of outlook to this side,

as well as diminished light to these side facing windows, both of which would undermine the living conditions of neighbouring occupants.

29. This would conflict with Policy SD1 of LP1 which supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.

Other Matters

30. The appellants refer to the appeal site being included in the Strategic Housing and Economic Land Availability Assessment (SHELAA) as a potential housing allocation as part of the ongoing local plan review process. However, the SHELAA is a high level, desk-based assessment of potential suitability for housing, which does not relate to specific development proposals. Moreover, the SHELAA states that the site has a number of suitability criteria that would need to be overcome or require mitigation, and the Council states that the site is not currently proposed to be allocated in an emerging development plan. As such, this is a matter of very limited weight in my considerations.
31. The Council did not refuse permission in respect of highway safety. I have no substantive evidence before me to reach a different view, but an absence of harm in this respect is a neutral factor in the overall planning balance.
32. Neighbouring residents have further raised the issue of disputes over land ownership. Whilst I have noted the concerns raised, these are matters falling beyond the scope of the planning system and as such do not bear directly on my decision making. Any dispute between parties is a separate matter in law.
33. I have noted other matters raised by interested parties, but I have not identified further material benefits or harms which should be factored into the planning balance. Therefore, it is not necessary to address these in further detail as they would not alter the outcome of the appeal.

Planning Balance and Conclusion

34. There would be significant harm arising due to conflict with the spatial strategy for the area, as well as adverse effects on designated heritage assets and neighbours' living conditions. As a result, the proposal would conflict with the development plan, taken as a whole. I afford significant weight to this conflict.
35. I have had regard to the public benefits weighing in favour of the proposal in conducting the heritage balance of the Framework above, the result of which is that, as a material consideration, the Framework directs that permission should be refused. It follows that these benefits would also not be sufficient to outweigh the overall development plan conflict.
36. Consequently, there are no material considerations which would justify a decision being made other than in accordance with the development plan, taken as a whole. Therefore, for the reasons set out, I conclude that the appeal should be dismissed.

K Savage

INSPECTOR