



Appeal Decision

Site visit made on 24 October 2023

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2023

Appeal Ref: APP/M1005/W/23/3319318

44 Main Road, Lower Hartshay, Derbyshire, Ripley DE5 3RP

- 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 I Hartshorne against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2022/0967, dated 1 November 2022, was refused by notice dated 28 February 2023.
 - The development proposed is residential development.
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Decision

1. The appeal is allowed and planning permission is granted for residential development at 44 Main Road, Derbyshire, Ripley DE5 3RP in accordance with the terms of the application, Ref AVA/2022/0967, dated 1 November 2022, subject to the conditions set out at the end of this decision.

Preliminary Matters

2. The proposal before me has been made in outline with all matters, namely access, layout, appearance, landscape and scale, reserved for a subsequent application. I understand from the appellant's case that the submitted drawings, in these respects, are for illustrative purposes only, I have considered them as such.

Main Issue

3. The appeal site is located within the Green Belt and therefore the main issue is whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.

Reasons

4. Paragraph 147 of the Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 states that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
5. Subject to a number of exceptions, as listed in Paragraphs 149 and 150, the Framework makes it clear that the construction of new buildings should be regarded as inappropriate in the Green Belt. The listed exceptions include limited infilling in villages and, the infilling or redevelopment of previously

developed land, subject to it not having a greater impact on the openness of the Green Belt. As Policy EN2 of the Amber Valley Borough Local Plan (2006, the LP) is silent in regard to limited infilling in villages, it is not, in so far as it relates to the proposal before me, consistent with the Framework.

6. The Framework does not define what it considers to be a village for the purpose of the exception under Paragraph 149(e). The Council have referred to BLP Policy H3, but the list of settlements within this policy is not a prescriptive list of villages within the development plan area. I am also mindful that the appellant's submissions regarding the status of the settlement are primarily anecdotal or circumstantial; largely relating to the way in which residents and other groups talk about the settlement.
7. Lacking any definitive definition for the purposes of planning, I find that an approach reliant upon the common understanding of a village would be necessary. As such, I understand a village to be a small settlement that, in size and access to services or facilities, sits between a hamlet and a town.
8. The development associated with Lower Hartshay is focused upon Main Road and Bridle Lane. Along both roads development primarily consists of linear rows of dwellings against, or close to, the road. There are however some exceptions where I noted dwellings away from the road or off spurs from Bridle Lane. At the junction between the two roads is a public house, The George Inn. From the information before me and my observations on site, this provides the only service within the settlement.
9. Although only supporting one public house, Lower Hartshay is formed of a significant number of dwellings that are largely within one contiguous group. I recognise the gap between development on Bridle Lane, but I do not find that this is sufficient to suggest two separate settlements. Therefore, given the size of the settlement and that there is access, albeit limited, to services, I find it would not be accurate to describe Lower Hartshay as a hamlet. Instead therefore, for the purposes of the Green Belt exception, I consider Lower Hartshay to be a village.
10. Moreover, as the proposal is only for the erection of two dwellings and associated gardens and vehicular parking, I find it to be of a small scale. It would also be sited in a gap between dwellings in an otherwise built-up frontage along Main Road. The proposal would therefore be limited infilling, I note the Council similarly found.
11. Given my findings above, it is not necessary for me to assess this proposal against the redevelopment of previously developed land set out under Framework Paragraph 149(g).
12. The proposal would be limited infilling in a village and would therefore not amount to inappropriate development in the Green Belt. The proposal would therefore comply with Section 13 and in particular, Paragraphs 147, 148 and 149 of the Framework as outlined above.

Conditions

13. The Council have not suggested any conditions but, I have had regard to the conditions suggested by interested parties and the advice on planning conditions set out by the Framework and the Planning Practice Guidance. In the interests of clarity and enforceability, I have made some changes to the wording. The appellant would have been aware of these suggested conditions and so I have not found it necessary to seek comment on them. Although I have also imposed additional conditions these are standard ones that are typically attached to outline planning permissions. Therefore, I similarly found it unnecessary to seek comment on these.
14. For certainty, I have set out the relevant reserved matters, the timescale for their submission, and the timescale for the commencement of works. A condition is also necessary, for certainty and enforceability, requiring that the development is carried out in accordance with the approved plans.
15. It is clear from the submissions before me that the site is within an area of historic coal mining works and that workings are likely present on site. As such I find it necessary that conditions are attached seeking to ensure that any instability or ground gas present is suitably dealt with.
16. It would not, however, be necessary at this stage to attach conditions relating to onsite parking and any vehicular accesses as layout and access are reserved matters and can be dealt with at a subsequent stage.

Conclusion

17. There are no material considerations that indicate that the appeal should be determined other than in accordance with the Framework. For the reasons given above, I therefore conclude that the appeal should be allowed.

Samuel Watson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan numbered JC/H3457/1.
- 5) No development shall commence until:
 - a. A scheme of intrusive investigations has been carried out on site to establish whether recorded mine shafts 438351-001 and 438351-002

are present within the application site, and to establish the risks posed to the development by past shallow coal mining activity; and,

- b. Any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

- 6) Prior to the occupation of the development, or it being taken in to beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 7) No development shall commence until:
 - a. A ground gas investigation and risk assessment has been carried out with a report submitted to and approved in writing by the local planning authority; and,
 - b. Where the approved risk assessment identifies ground gases posing unacceptable risks, a detailed scheme to address the risks has been submitted to and approved in writing by the Local Planning Authority.
- 8) Any remedial actions required by the report submitted in fulfilment of condition 7 shall be undertaken and documented in a Verification Report which shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of any structure.