



Appeal Decision

Site visit made on 31 October 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/A2470/W/23/3321470

Land north of Main Street, Market Overton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Fred and Anne Hutton against the decision of Rutland County Council.
 - The application Ref. 2022/0778/FUL, dated 6 July 2022, was refused by notice dated 15 March 2023.
 - The development proposed is the erection of 8 dwellings, comprising 5 bungalows and 3 two-storey houses and the formation of a new access onto Main Street.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) came into force in December 2023. The main parties have had the opportunity to comment on the revised Framework and so have not been prejudiced by this change. I have taken account of the comments made by both main parties, and the implications of the revised Framework in my reasoning below.
3. Following the submission of the appeal, the appellant provided a signed unilateral undertaking under section 106 of the Act (the UU). This deals with matters concerning affordable housing and compensatory tree planting, both matters being the subject of the Council's third reason for refusal. The Council has confirmed that it is satisfied that the UU addresses its third reason for refusal and these matters are now no longer in dispute between the main parties. I have dealt with the appeal on this basis, recognising that the UU meets the relevant tests set out at paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Main Issues

4. The main issues are:
 - the effect of the proposal on the living conditions of future occupiers of Plots 1 to 4 with regard to daylight, sunlight and shading from adjacent protected trees; and,
 - whether the proposal would be consistent with the Council's development strategy concerning the location of new residential development.

Reasons

Living conditions for future occupiers

5. The proposed layout shows a short cul-de-sac road positioned generally on a north-south axis with four detached dwellings being located either side of the road. The dwellings identified as Plots 1 to 4 on the plans would sit on the western side of the cul-de-sac, Plot 1 being a bungalow located towards the front of the site, the remaining three plots being two-storey houses.
6. There is a substantial belt of mature, primarily deciduous trees within the western side of the appeal site, and these are protected through a tree preservation order¹. The height of these trees, their collective canopy cover, and the position of the trees relative to the proposed dwellings at Plots 1 to 4 and their rear gardens is such that the majority of those garden areas would be shaded for significant periods of the year directly by the substantial canopies, and by shadows cast by the trees. The extent of this shading would be significant and oppressive. Accordingly, the layout proposed would involve the creation of private garden space that would fail to meet the reasonable expectations of future residents in respect of providing pleasant, useable, private outdoor space.
7. Plots 1 to 4 all have windows to habitable rooms that face directly or obliquely towards the tree belt. The appellant's Daylight and Sunlight Report demonstrates that all rooms assessed meet the Building Research Establishment (BRE) guidance for sunlight exposure, and they meet BRE guidance for daylight provision in winter. However, a total of six rooms across all of the dwellings assessed would fail to meet the guidance for daylight provision in summer.
8. Of the rooms that would fail to meet the guidance, three are secondary bedrooms. Nevertheless, these rooms would fail to meet the guidance by a significant degree with only around a quarter of the area of each of those rooms meeting the required Lux level given in the BRE guidance. The living/kitchen/dining room in Plot 2 would be marginal, but still fails to meet the guidance. The living/kitchen/dining room in Plot 3, and kitchen/dining room in Plot 1, would both fall short of the guidance in respect of summer daylight provision by a considerable margin.
9. I have had regard to the appeal decision² provided by the appellant which also deals with the issue of shading associated with trees. However, the Inspector in that case commented that the canopies of nearby trees were high, and that is not the case with the trees associated with the current appeal.
10. I therefore conclude that the proposed development would fail to create acceptable living conditions for future occupiers of Plots 1 to 4 with regard to daylight, sunlight and shading from adjacent protected trees. Accordingly, the proposal conflicts with Policy CS19 of the Rutland Local Development Framework Core Strategy Development Plan Document (July 2011) (the Core Strategy) and Policy SP15 of the Rutland Local Plan Site Allocations & Policies Development Plan Document (October 2014) (the SAP) which together require, amongst other things, that new development shall not cause unacceptable effects by reason of shading or other adverse impact on amenities, and protect

¹ The No. 9 (Land South of Lodge Trust, Market Overton) Tree Preservation Order 2022

² Appeal Ref. APP/U4230/W/20/3263539

the amenity of occupiers of the proposed development in terms of loss of light. The proposal also fails to comply with paragraph 135 of the Framework, which expects developments to create places with a high standard of amenity for future users.

Location of site

11. The appeal site lies beyond the planned limits for development (the PLD) for Market Overton as set out in Policy CS4 of the Core Strategy. As such, it is in a location where this policy strictly limits development to that which has an essential need to be located there, or that which supports the rural economy or meets affordable housing needs. Policy SP6 of the SAP adds further detail to these limitations by supporting only dwellings essential to the operational needs of agriculture, forestry or an established enterprise, or affordable housing to meet an identified local need.
12. The proposal comprises market housing and, while a financial contribution towards the provision of affordable housing forms part of the UU, there is no evidence before me to demonstrate that the proposal would contribute towards meeting an identified local need for affordable housing. The scheme would provide housing that would be available to rural workers, but there is no evidence that the intention of the proposal is to provide dwellings essential to the operational needs of a rural enterprise.
13. Future occupiers of the proposed development would support the rural economy by using local shops, services and facilities. However, the intention of Policy CS4 of the Core Strategy, in establishing a strategy for the location of development, is to ensure that development in the countryside is restricted to particular types of development that supports the rural economy. In this respect it does not provide a specific justification for market housing beyond the PLD. Overall, the proposal does not meet the requirements of either of these development plan policies.
14. Policy MO1 of the made Market Overton Neighbourhood Plan (the NP) supports development largely for the provision of dwellings with three or fewer bedrooms. However, this is explicitly only to be considered in the context of the spatial strategy and policies set out in the Local Plan. While I acknowledge the support for the scheme provided by Market Overton Parish Council and note that the scheme would meet a locally identified need for smaller dwellings, the proposal nevertheless fails to comply with Policy MO1 of the NP because of the express requirement to read that policy alongside the Local Plan.
15. I agree with the appellant's description of the purpose of Policy CS9 of the Core Strategy inasmuch as that policy supports the allocation and release of greenfield sites within and adjoining PLDs when this is necessary to maintain a sufficient and phased supply of deliverable and developable land for housing. This would be undertaken through the plan making process. While the appellant contends that such a course of action is open to the Council in any event, Policy CS9 gives expression to the Council's intentions in locally specific spatial terms should the need arise for further allocations. This appears to me to be a reasonable approach in respect of providing a mechanism to ensure a sufficient supply of homes over time. The Council does not cite conflict with Policy CS9 in their reasons for refusal and I see no reason to disagree with that approach.

16. The Core Strategy, and therefore Policy CS9, are based on numeric provisions for housing from the now revoked Regional Spatial Strategy, and 2004 household projections. The housing targets are therefore out of date. However, the Council's most recent Housing Land Supply Report (the HLSR) from May 2023³ confirms that the Council can demonstrate a 7.4-year supply of deliverable housing land. Further, the appellant has confirmed that its case is not predicated on the Council's housing land supply position. Therefore, the ability of the Council to demonstrate an adequate supply of land for housing is not a matter in dispute between the main parties and nor do I have reason to question it.
17. In addition, there is nothing in the Framework to indicate that the definition of settlement boundaries is not a suitable policy response to the management of growth in rural areas. I am therefore satisfied that the policy approach adopted in the development plan is consistent with the Framework in respect of managing the delivery of housing in Rutland County.
18. I am therefore satisfied that the development plan policies contained in the Core Strategy and the SAP which are most relevant to the determination of the appeal are not out-of-date. Therefore, the 'tilted balance' as defined at paragraph 11d) of the Framework does not apply in this instance.
19. The appellant contends that the site is well related to the village having good footpath links; and, as a result of the presence of the adjacent Lodge Trust buildings, the immediate setting of the site is not contextually, physically or visually identifiable as open countryside, being more an area of transition between the defined village settlement, The Lodge Trust, and the wider landscape. The appellant also draws attention to the findings of the Council's Landscape Sensitivity and Capacity Study (2012) which identifies the appeal site as being within an area that offers some development potential that would have low wider landscape impacts. These factors are not matters disputed by the Council. Nevertheless, I attribute moderate weight to each of them. However, it remains the case that the site is located in an area where up-to-date development plan policies indicate that housing should only be permitted in a limited range of circumstances, none of which apply to the proposal.
20. Accordingly, I find that the appeal proposal would not be consistent with the Council's development strategy concerning the location of new residential development because it conflicts with Policy CS4 of the Core Strategy and Policy SP6 of the SAP which together seek to limit development beyond the defined PLD of Market Overton to that which has an essential need to be there, or that which supports the rural economy or meets affordable housing needs. In these respects, the relevant development plan policies are consistent with the Framework with regard to delivering a sufficient supply of homes.

Other Matters

21. The appellant has brought to my attention a recent challenge made to another appeal decision⁴ concerning a proposed housing development in the Rutland County Council administrative area. I note that this challenge is at an early

³ Rutland County Council Five Year Land Supply & Developable Housing Land Supply Report 2023/24-2027/28 (May 2023).

⁴ Appeal Ref. APP/A2470/W/23/3323586 – Land to the east of Normanton Road, Edith Weston.

stage, no judgement has been made, thus I attach limited weight to this challenge.

22. I acknowledge that the scheme will deliver a biodiversity net gain and I attribute moderate weight to this environmental benefit having regard to the scale of the proposal and the extent of the gains of over 14% in respect of habitat units and over 41% in hedgerow units that would be achieved.
23. A number of appeal decisions and planning applications concerning schemes in Rutland have been referred to by the appellant. Many⁵ concern cases where a 5-year housing land supply could not be satisfactorily demonstrated, including the Cottesmore scheme. Those circumstances differ significantly from the current position in respect of the case before me.
24. For the other examples⁶, the information I have seen does not show there to be directly comparable circumstances associated with those proposals and the appeal before me. The Ridlington scheme concerned a proposal for one dwelling surrounded by housing within a lower tier 'Restraint Village' where the relevant part of Policy CS4 of the Core Strategy conflicts with the Framework. The Braunston Road scheme involved a site allocated in an emerging Local Plan. The Barleythorpe scheme differed significantly in terms of scale and range of benefits when compared to the appeal proposal.

Planning Balance

25. From the information I have seen, including the HLSR which has been compiled using an appropriate methodology for calculating a housing requirement for Rutland and provides appropriate detail concerning a deliverable supply of land for housing over the period 2023/24 to 2027/28, the Council can demonstrate substantially more than a 5-year supply of deliverable housing land, at 7.4 years. The fact that this supply position includes housing proposals permitted beyond defined PLD does not alter the local housing land supply position. There is therefore no general presumption that the policies in the development plan most relevant to the determination of the appeal are out-of-date. I have therefore assessed the proposal against the development plan unless material considerations indicate otherwise, in accordance with the requirements of section 38(6) of the Planning and Compulsory Purchase Act 2004.
26. I recognise that there would be a reasonable contribution to the Council's supply of homes and the scheme would contribute towards meeting local needs as identified in the NP, and an appropriate contribution would be made towards affordable housing. The scheme would also bring general economic and social benefits through the construction phase and subsequent occupation of the dwellings, and I attribute moderate weight to each of these benefits, recognising the scale of the proposal.
27. Nonetheless, these factors, in addition to the benefits associated with the location of the site noted earlier and the biodiversity benefits, do not outweigh my assessment regarding the substandard living conditions that would be created for future occupiers of Plots 1 to 4 and the conflict with the Council's

⁵ Appeal Refs. APP/A2470/W/22/3301737 and APP/A2470/21/3287674; and Planning Application Refs. 2022/0604/MAF (the Cottesmore scheme), 2021/0794/MAF, and 2022/0336/MAO,

⁶ Planning Application Refs. 2022/1236/FUL (the Ridlington scheme), and 2020/0143/MAO (the land south of Braunston Road scheme); and Appeal Ref. APP/A2470/W/22/3312763 (the Barleythorpe scheme)

spatial strategy for Rutland. Therefore, the proposed development conflicts with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise.

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

David English

INSPECTOR