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## Appeal Decision

Site visit made on 2 January 2024

**by Paul Cooper MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 February 2024**

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**Appeal Ref: APP/B3030/W/22/3302804**

**The Paddocks, Southwell Road, Halloughton, Nottinghamshire NG25 0QP**

- 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 Miss Suzanne Coupe against the decision of Newark & Sherwood District Council.
  - The application Ref 22/00875/FUL, dated 3 May 2022, was refused by notice dated 30 June 2022.
  - The development proposed is erection of a new dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The description of development has changed from that on the application form. I have utilised the description given by the Council as it is far more concise. I have no indication that the description was agreed with the appellant, but it has been used on the appeal form. I am satisfied neither party is prejudiced by this course of action.

### Main Issues

3. The main issues in this appeal are:-
  - whether the site would be a suitable location for a new dwelling having regard to the proposal on the character and appearance of the area, including the Halloughton Conservation Area.
  - The weight that can be attributed to previous approvals on site and lawful development certificates granted as a fallback position.

### Reasons

4. The appeal site is located adjacent to The Paddocks, a detached dwelling located close to the western edge of the hamlet of Halloughton. The area is allocated as one of the "Other Villages" in the Amended Core Strategy (2019) (the ACS). Spatial Policy 3 sets out the criteria for development to take place which have suitable access to the Newark Urban area, Service Centres or Principal Villages.
5. It has been previously established by other Inspectors for appeals on this site that Halloughton has a very limited range of services, but has access and close

- proximity to Southwell and as such can take advantage of other areas to meet day to day needs of local residents.
6. I have no reason to question my colleague (APP/B3030/W/21/3274528) with regard to his findings in Paragraphs 7 and 8 of that decision which found that the proposal was considered to be infill development when the Certificates of Lawfulness were taken into consideration as that answered the criteria set out with regard to the requirements of Spatial Policy 3 as it relates to infill development but not in relation to the character and appearance of the Conservation Area.
  7. The appeal site is located within the Halloughton Conservation Area which is a small village, with strong rural character, with an informal layout of buildings, many of which are historic, with a low density of built development. Greenery is a strong feature between and behind buildings. There is some 20<sup>th</sup> Century development, but the overall character is relatively unspoilt.
  8. The closest properties on that side of the highway occupy a prominent position near the highway and effectively form the western end of the village and the adjacent property (The Paddocks) currently enjoys a large garden area which would be severed if the proposal were to go ahead, this loss of openness would be detrimental to the character and appearance of the Conservation Area as a whole. The proposed dwelling would extend that western edge and be detrimental to the setting of those cottages. Furthermore, the design of the proposal in a more contemporary style, would not reflect the character of the existing dwellings.
  9. However, on the matter of the impact of the appeal proposal when assessed in isolation, I find that by its contemporary design and beyond the western edge of the village location, the proposed development would significantly harm the character and appearance of the area and fail to preserve or enhance the character and appearance of the Halloughton Conservation Area.
  10. The proposal would conflict with Policy DM9 of the Newark and Sherwood Local Development Framework Allocations and Development Management Development Plan Document (2013) (the DPD) and Core Policy 14 of the ACS which, amongst other matters, give great weight to the conservation of dedicated heritage assets and expects proposals to take account of the character and setting of Conservation Areas.
  11. I also find conflict with Core Policy 9 of the ACS and Policy DM5 of the DPD which require development to be of a high standard of design that reflects local character and distinctiveness.
  12. I must give considerable weight to the harm to the Conservation Area. The National Planning Policy Framework (the Framework) states that less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposed development. The proposal would provide a new dwelling to the Council's housing stock and would provide additional support for the services in the nearby villages. I have also taken into account that the proposal would be a self build dwelling that would provide accommodation for the appellant which would enable them to remain in the village. However, there is no substantive evidence before me to suggest that the Council is not meeting the demand for self build plots in the district. The development proposed would also have economic benefits through employment

opportunities created during the construction phase of the development. I have attached some weight to these factors. However, given the modest scale of the development, the weight attributable to these matters is limited and is not sufficient to outweigh the less than substantial harm that I have identified or the conflict with the policies I have referred to.

13. I find that on this matter, the proposal does not comply with the heritage advice as set out in the Framework, which seeks to sustain the significance of heritage assets.

*The fallback position*

14. Despite my findings on the issue of the effect of the proposal on the Conservation Area, the fallback position has to be taken into consideration, as the argument advanced by the appellant is that the proposal should be allowed as the effect of the fallback position, if implemented, would be worse on the Conservation Area than the appeal proposal.
15. The decision of the court in *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314, sets out that for a development to be a fallback position there must be a real prospect of the development being implemented. In this context a "real prospect" means one that is more than merely theoretical. There is nothing in the evidence before me, including in *Mansell*, that places an explicit burden on a developer to demonstrate why a fallback development is not being pursued. In fact, *Mansell* states that there is no legal requirement in every case for a fallback to depend on a planning permission having been granted or a developer stating precisely how any permitted development rights available under the GPDO would be made use of. The evidence needed in each will be a matter of planning judgement for the decision maker.
16. I am satisfied there is a more than a theoretical possibility and a reasonable prospect that the extant Lawful Development Certificates and the implementation of the appellants Permitted Development rights would be utilised to their maximum potential. I appreciate the appellant has expended time and cost over the years in submitting the various previous applications and Lawful Development Certificate Applications and is committed to developing the land for residential use.
17. The works allowed by the Lawful Development Certificates include a wind turbine and an incidental building for the adjacent dwelling. Overall I find that the scope of these works, when taken as a whole, would cause less harm to the Conservation Area than the appeal proposal. As a result, I assign less weight to the fallback position when seen in relation to the harm caused to the character or appearance of the Halloughton Conservation Area.

**Other Matters**

18. There is support for the proposal from third parties, but I have found the appeal proposal to be harmful to the Conservation Area and the support does not outweigh that harm.
19. Again, as per the previous appeal, there is continued concern as to how the Council have dealt with the appeal, but this is a procedural matter that does not impact upon the assessment of the planning merits of the case.

## **Conclusion**

20. The proposal is not in accordance with the Council's development plan as a whole and there is nothing outlined in the Framework, that demonstrates indicate that I should act other than in accordance with this.
21. For the reasons outlined above, I conclude the appeal should be dismissed.

*Paul Cooper*

INSPECTOR