



Appeal Decision

Site visit made on 6 February 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2024

Appeal Ref: APP/W3005/W/23/3331066

Land south of Tibshelf Road, Fackley NG17 3JD

- 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 Joint Executors to the Estate of the Late Mrs Barbara Keeling against the decision of Ashfield District Council.
 - The application Ref V/2023/0088.
 - The development proposed is outline planning permission for 9 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved. The Council determined the application on that basis. I have therefore taken any indication of reserved matters shown on the submitted drawings to be illustrative.
3. A revised National Planning Policy Framework (the Framework) came into force on 19 December 2023 with a further change published on 20 December 2023. In the interest of natural justice and to ensure neither of the main parties were prejudiced by this matter, I consulted both main parties on the changes to the Framework, and this has informed my determination of the appeal.
4. Both main parties have referred to the Ashfield District Council Draft Ashfield Local Plan 2023 to 2040 (Draft ALPR), which has reached the Regulation 19 Stage and, in that regard is different to the Chatham appeal¹ referred to by the Council. However, I have not been made aware that it has been submitted to the Planning Inspectorate for Examination. Furthermore, both parties have made me aware of outstanding objections with regard to the Settlement Strategy and site allocations. Given the unresolved objections, I cannot be certain if any policies are to be modified. I have therefore given limited weight to the emerging policy document and have determined the appeal in accordance with the current development plan.

Main Issues

5. The main issues are:
 - whether the site is an appropriate location for the proposed housing, having regard to the development strategy for the area and the character and

¹ Appeal reference APP/A2280/W/21/3280915

openness of the area; and

- whether the site is an appropriate location for the proposed housing, having regard to the accessibility of services and facilities.

Reasons

Suitability of location - character and openness

6. The appeal site is a field which lies between the houses which are within Fackley and a small group of semi-detached and detached houses beyond. There are open fields on the opposite side of Tibshelf Road and a field to the rear. Beyond the field to the rear of the site is a raised bank that provides a footpath route from Tibshelf to Teversal. The site has an existing access onto Tibshelf Road, in a gap in the otherwise well-established hedge, and a pavement outside the site.
7. The site lies outside any of the Main Urban Areas or Named Settlements identified within the Ashfield Local Plan Review, adopted November 2002 (ALPR). The site, therefore, falls within land that, in planning terms, should be considered as countryside. However, it is not within the Green Belt.
8. Policy ST4 of the ALPR seeks to limit development in these areas to allocated sites and for development appropriate in the countryside, when assessed against Policies EV1 and EV2 of the ALPR. Policy EV1 is not relevant in this instance as it deals with Green Belt.
9. Policy ST1 of the ALPR is a general policy against which all development proposals will be assessed. Policy ST1 of the ALPR requires, amongst other matters, that developments do not conflict with other policies in the ALPR and do not adversely affect the character or quality of the environment.
10. Policy EV2 of the ALPR sets out exceptions to the general restraint to development in the countryside. Criterion a) to f) of Policy EV2 are not applicable. The appeal site is not located within the village of Fackley and would, therefore, not comply with criterion h) of Policy EV2.
11. Criterion g) of Policy EV2 allows for infill development which would not have an adverse effect on the scale and character of the area. Infilling development is described in paragraph 3.33 of the supporting text to Policy EV2 as normally comprising one or two dwellings in a small gap in existing development and this reflects the definition of an infill site set out in the Glossary of the ALPR. The supporting text also confirms that not all small gaps are appropriate for infilling where, for example, they contribute towards the openness of the countryside.
12. I acknowledge that the definition of infilling is both within the supporting text and also includes the phrase "will normally comprise" which allows for some flexibility. Nonetheless, criterion g) of Policy EV2, by including the need for infill development to not have an adverse effect on the scale and character of the area, seeks to limit the scale of development by only supporting infilling of small gaps, to ensure that any new houses do not harm the prevailing character of the area. The appeal site is located between existing housing. Nevertheless, the appeal site is not a small gap and the proposal for nine dwellings would be significantly more than one or two dwellings. That the site is on the edge of the settlement would not alter the fact that it is not a small

gap or proposing an appropriate scale of development when assessed against the definition of infill. The appeal scheme would, therefore, not comply with Policy EV2 g) in that it would not constitute infill development.

13. Policy EV2 also require all development in the countryside to be located and designed so as not to adversely affect the character of the countryside, and in particular its openness. The site also falls within the area covered by the Teversal, Stanton Hill and Skegby Neighbourhood Plan 2016-2031 (NP). Policies NP1 and NP2 of the NP, taken together, support sustainable development that, amongst other matters, is of high-quality design, respects the existing landscape and local character and seeks to integrate development with the existing settlements. I have given full weight to the NP even though it is over five years old and does not contain any allocations. The criteria, set out in paragraph 14 of the Framework, relate to the weight given to the conflict with the NP when considered against paragraph 11d) of the Framework, which I will deal with in my planning balance.
14. The housing along Tibshelf Road and in the immediate area all have frontages facing the road, accessed off individual driveways. The site is not within the village of Fackley, as identified in the ALPR Policies Map Extract. However, the houses beyond the appeal site do not feel divorced from the village and the appeal site would not have the appearance of being outside the edge of the village due to the other houses beyond. The appeal site is not isolated, physically separate, or remote from other housing in Fackley. In that regard the site is materially different to the two sites at Wild Hill² quoted by the Council which were both further from any settlement.
15. Notwithstanding that the site is not isolated, it is within the countryside. It may be closer to the settlement than the two Wild Hill appeals, but it remains outside the settlement. Although the layout, scale and appearance of the development are all matters that are reserved for later approval, based on the indicative layout and the description of development, I am not convinced that the site could accommodate nine dwellings in a form and layout which would respect the existing character and built form or allow the development to integrate with the existing settlement of Fackley.
16. The presence of the mineshaft and the zone of influence would reduce the developable area in the part of the site closest to the road and would, therefore, impact on how the site would be developed. From the evidence before me the precise location and zone of influence of the mineshaft was not known by the Council in assessing the proposal as part of the evidence base of the Draft ALPR. Now that these details are provided it is clear that the appeal proposal would not reflect the character and settlement pattern of Fackley or comply with the requirements of Policy NP2 of the NP, albeit that this policy was not referenced in the reasons for refusal. Even if the development of the site would not result in unacceptable harm to the living conditions of the neighbouring properties, the development would not be informed by the layout, density, and orientation of the existing settlement. In this regard, the appeal before me is materially different to the site at Heathfield³ which was approved by Planning Committee, contrary to officer's recommendations, on the basis that the development of the front half of that site would not impact the character of the countryside, amongst other matters.

² Appeal reference APP/W3005/W/22/3298079 and APP/W3005/W/21/3272071

³ Council reference V/2022/0810

17. The Tadcaster case⁴ referred to by the Council, albeit related to a development in the Green Belt, advises that openness comprises both spatial and visual elements. Although the appeal before me is not in the Green Belt the adopted policies in the ALPR seek to protect the openness of the countryside. The openness of the site is therefore an important consideration of the effect of the development on the character and appearance of the area.
18. The appeal site is currently open in that it is undeveloped land. Although the site is between housing, it is also between fields to the rear and on the opposite side of the road. Residential development on this site, which currently contains limited built development, would have an adverse effect on its spatial openness. I acknowledge that this would be a consequence of the development of any greenfield site and may be the case with other proposed allocated sites in the Draft ALPR. However, that other development would have a similar effect would not make the development acceptable. I also accept that the site is not a valued landscape or protected area.
19. The existing roadside hedge and trees do reduce the views of the site from Tibshelf Road. However, the site is clearly viewed as open from the footpaths at the side and rear and the development of the site would be visually prominent from these routes.
20. Furthermore, the indicative proposals include laying the hedge in a traditional manner which would reduce its height and open up views of the site from the road, albeit interspersed with trees and reinforced with additional planting. Moreover, the indicative layout shows the houses with their backs facing the road and private gardens between the houses and the road which would likely result in the residents wanting secure fencing along the roadside. These factors, taken together, would harmfully alter the visual openness of the site.
21. Even if I were to accept the appellant's position, that the use of a Green Belt approach to consideration of openness is incorrect, the appeal proposal would result in development on land which is currently undeveloped. The appeal proposal would, therefore, adversely affect the intrinsic character and appearance of the site and the immediate area and, therefore, affect its openness, when considered as part of character and appearance.
22. The proposal would not represent development in a settlement boundary, would not constitute infilling or be any of the other forms of countryside development envisaged by Policies ST4 and EV2 of the ALPR. The development of the site would also have an adverse effect on the character and openness of the area. These factors, taken together, mean that the proposal would conflict with the development strategy for the area set out within Policy ST1 of the ALPR and Policy NP1 of the NP.
23. For the above reasons, the appeal would not be an appropriate location for the proposed housing, having regard to the development strategy for the area and the character and openness of the area as it would be contrary to Policies ST1, ST4 and EV2 of the ALPR and Policy NP1 of the NP which, taken together, seek to limit development outside of the identified settlement boundaries.
24. The proposal would also be contrary to Chapter 2 of the Framework which promotes development which meets the needs of the area through a

⁴ R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3

sustainable pattern of development, Chapter 15 of the Framework which requires development to contribute to and enhance the natural and local environment and recognises the intrinsic character and beauty of the countryside.

Suitability of location - accessibility of services and facilities

25. Fackley is a small settlement with limited services and facilities. There is a public house, community hall and florist shop within walking distance of the appeal site. The nearest bus stop is close to the site and provides a bus service to the adjacent settlement of Stanton Hill where there is a wider array of services. However, based on the evidence before me, the bus service for Fackley would not provide a suitable means of travel for commuting to work or school due to its limited operating times and frequency.
26. The distance between the site and Stanton Hill is less than a mile. However, although it would be walkable, the journey would be likely to take more than 10 minutes. Moreover, albeit that the walk would be on lit footpaths; it would also be uphill from Fackley to Stanton Hill. In this respect and having regard to the documents referred to by the Council, it is unlikely that residents of the development would walk between the site and the nearby settlement for day-to-day facilities or that the residents would be likely to walk to Stanton Hill to catch a bus to facilities in other settlements. Cycling would be a reasonable option for travel between the site and the larger settlement, though residents are unlikely to cycle for shopping trips.
27. The appeal before me is, therefore, materially different to the Skegby appeal⁵ where the footway was an acceptable walking route, where cycle and footpath improvements were proposed, the speed limit would be reduced, where an alternative informal route was also available and bus service improvements were proposed. Overall, the Skegby appeal is substantially different to the appeal before me in that it had adequate connections by a range of transport modes and the anticipated modal shift would be significant.
28. I have not been provided with the full details of any of the proposed allocations referred to by the appellant, New Brinsley (H1Va), Beck Lane (H1Saa and H1Ss) or Bentinck Town (H1Kk), which is referred to in the Regulation 19 document as Land off Laburnum Avenue. I do not have details of the walking routes of the distances quoted by the appellant or whether these sites are connected by public transport or near to other services or facilities which would justify the longer distances to the services quoted in the appellant's evidence. As such, I am not able to give these potential allocated sites any weight in the determination of the appeal before me. I note that one site at Beck Lane has planning permission, however this site is on the edge of Fackley closest to Stanton Hill which would reduce the distance between the site and the settlement.
29. With regard to the Council's recent decision for the site at Heathfield, the evidence before me indicates that the members did not comment on the accessibility of services and facilities. Members were minded to approve the development as they considered it would not impact on the character of the countryside, biodiversity, or highway safety. It is not for me, or the appellant, to reach any assumptions on members' views of the suitability of the site in

⁵ Appeal reference APP/W3005/W/18/3213342

regard to its accessibility to services. I have dealt with the difference between the Heathfield site and the appeal before me in my assessment of character and openness above.

30. The Framework advises that where there are groups of smaller settlements, developments in one may support services in a nearby settlement. I acknowledge that, due to its proximity to Fackley and Stanton Hill, the development would not result in long round-trip distances to the services and facilities in the two nearest settlements. However, for the reasons given above, the occupants of the development would rely heavily on the private car and although the development would allow the village to grow, this would not be in a manner which promotes alternative means of travel. Although the appeal site is closer to the services and facilities than the two sites at Wild Hill, and closer than the Heathfield planning permission, the development of the appeal site would not provide reasonable options for alternative means of travel.
31. I have not been provided with the details as to why the site was scored favourably for travel and accessibility in the SHELAA. The SHELAA extract provided advises that the site has no access to any identified services, is outside core hourly/half hourly public transport network, and has poor accessibility to existing local services, and poor accessibility to existing services by bus. Nonetheless, the scoring matrix is not for the determination of a planning application and the evidence does not clearly show that the site was considered sustainable, as the appellant asserts.
32. I also do not have the full details of the site allocated in the adopted ALPR for twelve dwellings in Fackley and why that site was considered to be appropriate in terms of accessibility to services and facilities. I, therefore, find that the scoring in the SHELAA and the ALPR allocated site do not weigh in favour of the appeal.
33. Notwithstanding the edge of settlement location, there are limited opportunities for sustainable transport modes or for residents to undertake many activities without the use of the private car, as the appellant asserts. In my judgement, the occupants of the future development would be likely to rely on the private car for the majority of journeys. The scheme would not promote sustainable modes of transport or contribute towards reducing carbon emissions.
34. Consequently, I find that the site is not an appropriate location for the proposed housing, having regard to the accessibility of services and facilities and would be contrary to Policies ST1 and EV2 of the ALPR and Policy NP1 of the NP which, taken together, aim to concentrate development in urban areas, maintain the strategic approach to the plan and seek to minimise the environmental impact of development and contribute towards the improvement of public transport services.
35. I also find that the proposal would not comply with the guidance within the Framework and specifically paragraphs 83, 109 and 114 which, taken together, seek to promote sustainable development in rural areas, manage patterns of growth and ensure that appropriate opportunities can, or have been, taken to promote sustainable transport modes.

Other Matters

36. The appellant has sought to place great weight on the allocation of the site in the Draft ALPR. As detailed in preliminary matters, I cannot be certain whether the policies and allocations will be changed before the Draft ALPR is adopted. Furthermore, the site no longer forms a proposed allocation in the latest revision of the Draft ALPR and is, therefore, materially different to the Huthwaite appeal decision⁶ which remained an allocated site.
37. The appellant has referred to an appeal at Billericay⁷ where the evidence base for the draft local plan weighed heavily in favour of the scheme. However, I have not been provided with the details of what evidence was before that Inspector, or the conclusions of the Green Belt Review in regard to that particular site and it appears that the draft local plan was not adopted.
38. The Inspector, in that case, found harm to the Green Belt but neutral effects on the character and appearance of the area and community infrastructure. There were also other benefits identified in the planning balance along with the significant contribution the site would make, as a development of two hundred houses, to the housing land supply. Cumulatively, in that case, the benefits outweighed the harm.
39. Although I note the evidence base for the Draft ALPR, as provided by the appellant, concludes that the site is adjacent to the settlement of Fackley and potentially suitable and potentially achievable, the evidence base does not conclude that the site is suitable for allocation or appropriate for residential development. Although sites may be required outside of the existing settlement boundaries for the forthcoming Draft ALPR this is not uncommon for a local plan review. It is not for me to determine what sites should be allocated and the evidence base has not yet been tested. Moreover, I have no detail of how the decisions were made regarding the suitability of sites or the density of development.
40. In any event, I have identified harm to character and openness and harm in regard to the accessibility of services and facilities. As such, the Billericay appeal is materially different to the appeal before me, and the evidence base for the Draft ALPR would not justify allowing the appeal.
41. Although I have been sent evidence of flooding of the adjacent property it is not for the development of the appeal site to resolve existing flooding issues. The submitted Flood Risk Assessment (FRA) has confirmed that mitigation measures, including the provision of an attenuation pond, would ensure that the development of the site would not increase flood risk elsewhere, including on the adjacent property, and I have no compelling evidence to counter the technical information provided within the FRA. Moreover, neither the Environment Agency nor the Lead Local Flood Authority have raised any objections and a condition would ensure the provision of adequate drainage for the site.
42. I also have no substantive evidence that the highway network is not capable of accepting the additional traffic that would result from the proposed development or that there would be a severe impact on highway safety.

⁶ Appeal reference APP/W3005/W/16/3151018

⁷ Appeal reference APP/V1505/W/22/3298599

43. Sutton in Ashfield footpath 74, which is a public right of way, is not directly affected by the proposal and a new link could be provided from the appeal development to the footpath. Subject to sensitive layout, design, and scale at the reserved matters stage I consider that the development of this site would not result in harm to the tourism use of the public right of way or to any of the other tourist attractions and facilities in the area.

Planning Balance

44. Both main parties agree that the Council cannot currently demonstrate a five-year housing land supply. As the Council's emerging Local Plan is now at Regulation 19 Stage, the latest revisions to the Framework require a four-year housing land supply. However, given the substantial shortfall, of between 2.26 years and 2.93 years as detailed in the main parties' evidence, I find that the Council would not be able to demonstrate a four-year housing land supply. Paragraph 11d) of the Framework therefore applies.
45. The appellant also refers to the Council's failure to satisfy 75% delivery through the Housing Delivery Test (HDT) and refers to a delivery figure of 66%. I have no evidence to counter the appellant's view on this matter and consequently paragraph 11d) of the Framework also applies on the grounds of the HDT results.
46. Policies ST1, ST4 and EV2 of the ALPR and Policy NP1 of the NP are the most relevant in considering the proposal. As per the Gladman case⁸ the acid test of weight to a policy and any conflicts in such circumstances is the degree of consistency with the Framework. Paragraph 225 of the Framework confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Moreover, notwithstanding the appellant's argument, there is nothing within Paragraph 11d) that requires the consideration of the age of the policy when assessing whether to apply 11d).
47. As far as the policies seek to limit development in the countryside to that which protects its character, they are broadly in accordance with the Framework which seeks to ensure that development contributes to and enhances the natural and local environment, by recognising the intrinsic character and beauty of the countryside. Policy EV2 does not seek to prevent all development outside of settlements and would allow certain forms of development which would breach development boundaries. Moreover, the adopted policies are broadly consistent with the Framework as a whole and specifically paragraph 83 in seeking to ensure sustainable development in rural areas by locating housing where it would enhance or maintain the vitality of rural communities.
48. I acknowledge the detailed assessment of the ALPR policies in the Skegby appeal⁹. However, this decision pre-dated the two decisions at Wild Hill where a different approach was taken to the consistency of the ALPR with the Framework, and I have followed this more recent approach. Moreover, the Skegby appeal was assessed under a previous version of the Framework.
49. The NP became part of the development plan more than five years before the date of the decision and does not contain any allocations to meet its identified

⁸ Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Corby Borough Council and Uttlesford District Council [2021] EWCA Civ 104

⁹ Appeal reference APP/W3005/W/18/3213342

housing requirement. As such the conflict with the NP, in itself, would not significantly or demonstrably outweigh the benefits as set out in paragraph 14 of the Framework. However, the age of the NP and lack of allocations does not make the NP out of date and, as far as it seeks to ensure high quality design and development, it is broadly consistent with the Framework.

50. I have given the conflict with the local policies, including the NP, significant weight in this appeal. Consequently, the proposed development would conflict with the development plan as a whole.
51. The proposal would accord with paragraphs 60 and 83 of the Framework which seek to boost the supply of housing and support the rural economy and has the opportunity of providing a mix of size, type, and tenure of housing. Moreover, the proposal would also provide economic benefits both during and post construction and environmental benefits from the area of open space proposed. However, as a development of nine dwellings, and given the extent of the shortfall in housing supply, the proposal would only provide a limited benefit and I, therefore, afford limited weight to the contribution the proposed development would make to addressing the housing shortfall.
52. The appeal has been submitted with a Preliminary Ecological Appraisal¹⁰, which has assessed the potential impact on ecology and recommended mitigation measures and additional landscaping within the development, which would provide biodiversity and ecology improvements to which I give limited weight in favour of the development.
53. The field, at the time of my visit, was in use for grazing of horses and, therefore the loss of the land for food production is not a harm resulting from the development. That the field would no longer be available for the owners of the horses is a disbenefit, but the owner of the field could stop renting it at any time.
54. On the other side of the balance, the proposal would result in environmental and social harm from the impact on the character and openness of the area and due to the lack of accessibility to services and facilities through alternative means of travel other than the private car. These harms are significant and afforded significant weight.
55. The harm when taken together, would, therefore, significantly, and demonstrably outweigh the limited benefits that would arise from the development. As a result, the presumption in favour does not apply.

Conclusion

56. For the reasons given above, the appeal should be dismissed.

K Townsend

INSPECTOR

¹⁰ Elite Ecology Preliminary Ecological Appraisal, dated March 2023