



Appeal Decision

Site visit made on 29 October 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/V2635/W/23/3330378

Manor House, School Road, Walpole Highway PE14 7QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Hillier against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 22/01972/F.
 - The development proposed is a permeable tarmac tennis court and pavilion.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Hillier against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposed development would accord with the development plan where it relates to the provision of new development in the countryside.

Reasons

4. The appeal site is located outside of the settlement boundary of Walpole Highway. It is common ground between the main parties that until 1999 the appeal site formed part of a larger area of land which was used for agricultural purposes, albeit the appellant advises that historically it was land associated with Manor House. Nonetheless it is not in dispute that in 1999 the appeal site was in agricultural use unrelated to Manor House and subsequent to that there has been no planning permission granted to change its use to residential garden land.
5. The appellant advances submissions as to what they consider the lawful use of the land to be at the present time, and I shall return to this matter later in my decision. For the purposes of applying the relevant development plan policies, I proceed on the basis of what can be established with any certainty as being the last lawful use of the land. That is the agricultural use which took place, and which would not have required the benefit of planning permission by virtue of section 55(2)(e) of The Town and Country Planning Act 1990 (the Act).
6. Policy DM 2 of the Site Allocations and Development Management Policies Plan 2016 (SADMPP) sets out a list of development types that will be permitted in

the countryside. Although not a closed list, the appeal proposal is not related to any of the development types listed, and I have not been made aware of any other policies in the development plan which might identify it as suitable on agricultural land in a rural area. The proposal would represent the encroachment of a domestic form of development into the countryside contrary to the strategic aims of Policy DM 2. The introduction of a built domestic form would also fail to accord with Policies CS01 and CS06 of the Core Strategy 2011 (CS) where they collectively seek to protect the countryside and to maintain local character.

Other Considerations

7. The proposition put before me by the appellant is that the appeal site in fact has a lawful use as residential garden land in association with Manor House. Furthermore, although not a use of land and therefore not determinative on whether the appeal site is residential garden land or not, it is suggested that the appeal site falls within the curtilage of the dwelling. There is also a concrete pad for the proposed pavilion already in place along with a couple of courses of brick/blockwork, with an apparent agreement between the main parties that this operational development is lawful. However, the footprint and height of that development means that it has an inconsequential visual and spatial impact.
8. In principle, I concur with the appellant's position that if the lawful use of the appeal site was residential garden land, and therefore the site would remain as currently exists in terms of both its appearance and its stated use, the context of the proposed development would change. Being a small-scale unintrusive development, its presence on an area of land that would remain as residential garden would not represent an encroachment into the countryside and would not cause harm to its character and appearance. It is to my mind the lawful use of the land that is the primary consideration in that respect, as opposed to the consideration as to whether or not the land is within the curtilage of Manor House.
9. Very extensive and detailed submissions have been made to support the appellant's position on the lawful use of the land. I am invited to give weight to the lawful use of the land being residential garden and to weigh this consideration against the conflict with the policies of the development plan I have found. However, within the context of an appeal under section 78 of the Act it is not within my remit to formally determine what the lawful use of land is. If the appellant wishes to ascertain whether the use of the land as residential garden is lawful, they may make an application under section 191 of the Act. Furthermore, the planning application does not seek permission for the change of use of the land to residential garden, which means that the merit of that particular type of development is not before me.
10. This leaves me in a position where I am being asked to give weight to the absolute proposition that the lawful use of the land is residential garden land without any legal certainty that it is. Being a material consideration that would, in my judgement, be determinative on the outcome of the appeal, it is imperative that it be established with certainty as to what the use of the land is before weighing this in the planning balance. This is of particular importance as the Council disputes that the use put forward is lawful, and there are elements of their case that would benefit from further rebuttal from the

appellant. In addition, the Planning Practice Guidance¹ sets out that it may be reasonable for a local planning authority to seek evidence from third parties with respect to an application for a lawful development certificate. Therefore, there could be other interested persons who would wish to offer evidence contrary to that provided by the appellant, if a formal application was made under section 191.

11. All of this feeds into the uncertainty I have outlined. For the reasons I have set out, I am not in a position through this appeal to determine what the lawful use of the land is and thus to resolve this matter one way or another. Doing so could also prejudice the Council's position in terms of any enforcement action it may be minded to take against the use of the land (which is separate from the operational development applied for), and certainly has the potential to cause prejudice to interested parties in that they would be denied any possible opportunity to make their representations via a section 191 application. Therefore, with all of the above in mind, I do not weigh the consideration as to the lawful use of the land suggested by the appellant in favour of allowing the appeal proposal.
12. My attention has been drawn to Policies DM 5 and DM 7 of the SADMPP which refer to extensions within the countryside and residential annexes respectively. However, in an absence of certainty being provided that the use of the land is residential garden, I do not apply either of those policies to my consideration of the appeal. There is also reference in the appellant's submissions to Policies LP04 and LP31 of the emerging local plan, but it would appear that the plan is at an early stage and that examination has been paused. In that context there is no clear steer as to whether there may be a change of emphasis in strategic planning policy, and as such this does not justify the permitting of a proposal which I find to conflict with the policies of the currently adopted development plan.
13. Reference is made to two other properties nearby which are said to also have large garden areas and to the layout of the settlement of Walpole Highway in general. However, these considerations do not overcome the planning policy conflict I have identified in this specific case, nor the harm to the character and appearance of the countryside that would arise from the encroachment of the built development that is proposed.
14. The proposal would provide a facility for outdoor recreation and would promote health and wellbeing. This is a matter which carries moderate weight in favour of the proposed development but is one which does not justify the harm that would be caused by it. Whilst no objections were received from consultees or from members of the local community, this in itself does not provide justification to allow a harmful development.

Conclusion

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

Graham Wraight

INSPECTOR

¹ Paragraph: 008 Reference ID: 17c-008-20140306