



Appeal Decision

Site visit made on 11 February 2025

by **R Catchpole BSc (hons) PhD MCIEEM IHBC**

an Inspector appointed by the Secretary of State

Decision date: 24th March 2025

Appeal Ref: APP/G2435/W/24/3348375

White Gables, Lower Moor Road, Coleorton, Coalville LE67 8FL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Darren Betteridge against the decision of North West Leicestershire District Council.
 - The application reference is 23/01272/OUT.
 - The development proposed is described as the “erection of five self-build dwellings (outline - part access only for approval)”.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for a partial award of costs was made by North West Leicestershire District Council against Mr Darren Betteridge. This application is the subject of a separate decision.

Preliminary Matters

3. The application was submitted in outline, with only access to be determined at this stage. This is the basis upon which this appeal has been determined.
4. The appellant submitted a Landscape and Visual Impact Assessment (LVIA) at appeal. The Council has objected to this evidence on the basis of the Wheatcroft Principles. In *Bernard Wheatcroft Ltd v SSE [1982] JPL 37*, the High Court considered the issue of amendments in the context of conditions and established that “*the main, but not the only, criterion on which... judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation*”. I note that the scheme has not been changed and the Council has also had an opportunity to comment on this new evidence. I do not consequently find it contrary to the Wheatcroft judgement, when read as a whole, or the principles of natural justice. I have therefore taken the LVIA into account in the determination of this appeal.
5. The mandatory requirement for 10% Biodiversity Net Gain (BNG) for small sites came into force on 2 April 2024. However, this requirement is only applicable to applications received on or after 2 April 2024 and cannot be applied retrospectively. As the application was submitted on 28 September 2023, the mandatory BNG requirement does not apply in this instance.

6. The Council has an emerging plan that is still in the early stages, with consultation regarding draft policies having only been carried out at the beginning of 2024. As such, it carries little weight and I have determined this appeal in accordance with the extant development plan.
7. As the proposal is in a conservation area and relates to a listed building I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act).

Main Issues

8. The main issues are:
 - the effect of the proposal on the character and appearance of the local area bearing in mind the special attention that should be paid to the desirability of preserving the significance of a Grade II* registered park and garden, known as “Coleorton Hall” (Ref: 1000959) (the Garden) and the setting, as it contributes to the significance, of the Coleorton Hall Conservation Area (the CA);
 - whether the site is appropriate for development having regard to local and national planning policies that seek to manage the location of new development; and
 - whether there would be suitable alternative transport opportunities.

Reasons

Policy

9. The appellant suggests a range of policies that are most important to the determination of this appeal. However, a number of these relate to reserved matters. As a policy must have a real role to play in the determination of an application or an appeal, the basket of policies must be relevant. Bearing in mind the reasons for refusal and the policies relevant to the matters to be considered at this stage, I find the following to be the most important policies:

S2 (Settlement Hierarchy) Identifies the Lower Moor Road area as being a settlement with a limited range of services and facilities where only a limited amount of growth can take place within the defined Limits to Development.

S3(i) (Countryside) Seeks, among other things, to safeguard and enhance the appearance and character of the landscape, including its historic character, as informed by relevant landscape characterisation studies.

He1 (Historic Environment) Seeks, among other things, to conserve or enhance the significance of heritage assets and their settings.

En1(1) (Nature Conservation) Among other things, this policy supports proposals which conserve, restore or enhance biodiversity.

En3(4)(b) (National Forest) This policy applies to all development in the National Forest and seeks, among other things, to ensure that development respects and does not adversely affect the character and appearance of the National Forest or its wider countryside.

En6 (Land and Air Quality) Seeks to ensure that applications for development on land that is contaminated (or suspected to be so) are supported by a detailed investigation and assessment with mitigation measures where appropriate.

IF4 (Transport Infrastructure) Seeks to secure, among other things, the incorporation of safe and accessible connections to the transport network and to enable travel choice, including by non-car modes. It also seeks to maximise accessibility by sustainable modes of transport, having regard to the nature and location of development sites.

Cc2(2)(a) (Flood Risk) Seeks, among other things, to ensure that development is located in an area that is not at risk of flooding with reference to the Environment Agency flood risk maps and the Council's Strategic Flood Risk Assessment.

10. Although Policy D1 is relied upon by both parties and included as a reason for refusal, I do not find it relevant as this is a reserved matter to be determined at a later stage. The policy requires all development to be well designed and, as a minimum, offer a good standard of design. It also requires existing neighbour amenity to be safeguarded. As only indicative details of the site layout have been provided, it is not possible to reach a judgement on this matter at this particular stage. For similar reasons, I do not find Policies Cc3, D2 or IF7 relevant.

Background

11. The appeal site (the Site) is broadly rectangular and measures around 0.66 hectares. It is located to the west of houses fronting onto Lower Moor Road and abuts their rear garden boundaries. The existing access is from this road and a new access point would be formed immediately to the north. The existing access serves a two storey, detached dwelling that is located near the north-eastern boundary of the Site. There is also an extant permission for a replacement dwelling immediately to the southwest of the existing dwelling (Ref: 18/01081/FUL). An existing public right of way (PRoW) follows the line of the access from Lower Moor Road and proceeds in a north westerly direction. A further PRoW, within the Garden, runs parallel to the northwestern boundary of the Site.
12. The majority of the Site lies outside the Limits to Development, as identified in the North West Leicestershire Local Plan (2016-2031) (the LP). However, this is not the case for the existing dwelling and access. The latter is also within the Garden whilst the whole of the north-eastern boundary abuts this asset. This is characterised by two belts of trees with unimproved, wet grassland in between. Ornamental planting associated with the existing dwelling is present in the north-western part of the Site. The land falls to the northwest, towards the Garden.

Character and Appearance

13. Notwithstanding the form and massing of the blank elevation of Birch View, which deviates from the existing building line along Lower Moor Road, I observed that there is a well-defined, common extent to the rear gardens. The Site has an open, verdant quality with formal planting across a limited area nearest to the existing house. Beyond this planting, the Site has the appearance of a mown amenity grassland. A variable belt of mature trees along the field boundaries, as well as a denser belt of trees to the northwest, give rise to a marked visual transition to more

naturalistic landscape features. Consequently, the open, undeveloped nature of the Site acts as a significant visual buffer between the domestic paraphernalia and formality of the Lower Moor Road gardens and the more informal characteristics of the adjoining area. I observed that this is particularly evident from viewpoints 11 and 18, as well as the upper floors of the nearby houses given the clear views of their windows I had from within the Site. I do not find that the Site has a largely domestic character despite the regular mowing that occurs due to its size and degree of openness.

14. Although layout and scale are reserved matters, an indicative block plan has nonetheless been provided. This shows the previously approved, detached dwelling in conjunction with the five additional dwellings specified in the description of development. Whilst subject to change and only illustrative, the proposed detached dwellings would nevertheless represent a significant quanta of development in combination with a spine road that would need to be created as well as the inevitable domestication and enclosure of the individual plots. This would fundamentally alter the appearance of the Site which would become suburbanised and lead to an obvious encroachment into this open, naturalistic area beyond the visual and policy-based Development Limit. The loss of this important visual buffer would not result from the approved dwelling or driveway resurfacing given its proximity to the existing property. Even during the summer months, this change would be clearly visible from viewpoint 11 and the upper floors of the flanking houses.
15. The LVIA places the Site within the 'Wooded Village Farmlands' character type of the East Midlands Regional Landscape Character Assessment (LCA) that was produced in 2010. Although broad-brush it states the following:

"Only limited remnants of semi natural vegetation remain in the agricultural landscape. However, broadleaved woodlands, copses and occasional meadows and unimproved grasslands in parkland are important, as are areas of connective habitats such as species rich grasslands, hedgerows and river corridors".
16. I observed that the adjacent unimproved grassland and copse associated with the Garden, which abuts managed parkland to the northwest, are consequently important landscape features and that the majority of the Site would easily be read as an occasional meadow in the absence of the regular mowing that takes place. The appellant accepts that the surrounding landscape shows some of the characteristics identified in the LCA but suggests that views of the Site are very limited bearing in mind the trees along its north-western side, distribution of existing properties and the trees and woodland associated with the Garden to the northwest, especially during the summer months.
17. My own assessment was carried out during the winter and takes the greater visibility of the Site into account. I accept that the proposed development would be seen within the context of Birch View and the development along Lower Moor Road, particularly from around viewpoints 18 and 19. However, the proximity of the buildings to the northwestern boundary would make them particularly prominent from close distance views from around these viewpoints during the winter months, if they were to be laid out in this manner. Even if this were not the case, their massing would still make them clearly visible and would extend the development envelope by a considerable extent when compared to most of the

existing dwellings along Lower Moor Road. The separation distances from the footpath to the existing dwellings and the undeveloped nature of the Site are such that their visual impact is currently moderated.

18. No such moderation would be present in relation to the proposal during the winter months even if more open areas were retained because the dwellings and their domesticated curtilages would reduce the openness and significantly erode the semi-natural character of the Site. The LVIA suggests that a new hedgerow could limit views from the footpath that crosses the northern part of the Site. However, both this and any planting along the northwestern boundary could be removed or die of natural causes in the longer term if it is not secured via a planning obligation, as is the case in this particular instance.
19. The LVIA finds that the anticipated overall effects of the proposal would be slight to 'moderate adverse' immediately after completion given the change in the character of the Site and the loss of openness. It assumes that it would become 'slight adverse' over time as the proposed planting begins to mature. However, I find that a continuing, adverse moderate impact cannot be ruled out because such planting is currently unsecured and remains a reserved matter.
20. Given the above, I find that overall principle of 5 detached dwellings to be harmful to the immediate landscape character of the Site and that the proposal would result in suburban sprawl beyond the well-defined Development Limit. As such, the Site is not appropriate for the quanta of development proposed and the scheme undermines a plan-led approach. This would conflict with Policies En3(4)(b), S2 and S3(i) of the LP.
21. However, I do not find any conflict with policy S3(ii) because it would not have any physical or perceived effect on the open, undeveloped character of land between nearby settlements. The nearest settlement is Ashby De La Zouch which is located approximately 3 km to the west of the Site. Bearing in mind the limited extent of the development, I find that there would not be any credible erosion.

Heritage

22. The Garden comprises parkland and a range of pleasure grounds, set around a principal house, that were developed in early 19th century. The pleasure grounds and associated listed buildings are some considerable distance from the Site and physically separated by Rempstone Road. The separation distance and lack of any longer distance views are such that I am satisfied that the effect of the proposal would be limited to the parkland which extends to the east of the Hall. This slopes away and forms a park-like grassland known as The Paddock which retains some mature parkland trees. Rempstone Road cuts across this area from south-west to north-east but only has limited visibility due to the fact that it was set in a cutting. The parkland is primarily experienced within an agricultural context which contributes to a sense of Arcadian pastoralism.
23. Pastoral activities are supported by a number of informal tracks which includes the overlapping area of the Garden comprising the current access from Lower Moor Road. It comprises a track of compacted earth either side of a grass strip which forms the central element. The track has an appearance of a regularly used, vehicular access but has an informal construction. This access contributes to the significance of the Garden by providing a farm track and pedestrian route that serves the pastoral landscape which is gradually revealed through the kinetic

views of its users. This functional association and the informal nature of this route contributes to the significance of the asset.

24. Given the above and insofar as this appeal is concerned, I find that the significance of this asset is derived from the informal, functional routes that gradually reveal its pastoral landscape and their associations with its wider agricultural setting.
25. I observed that the parkland nearest to the Site has an open, pastoral appearance but only when viewed from the other side of the dense copse that runs parallel to the northwestern boundary of the Site. The area of the Garden in between this copse and the boundary of the Site is unmanaged and does not contribute to the special interest given the nature of its vegetation and screening from the main parkland area.
26. However, the track which forms part of the Garden would be altered by the proposal which would lead to hard surfacing on the first part of the access, where it joins the highway, as well as further surface treatments along its route into the Site. The proposal would consequently alter the line of the existing track and create a more engineered appearance. The appellant accepts that this would result in less than substantial harm to the Garden. I note that the overt agricultural character of the existing access would be lost and that pedestrians would experience a suburbanised route that would draw the eye into the proposed development rather than into the Garden.
27. The appellant suggests that the proposal would have no impact on the wider registered landscape and I agree. Whilst the density of the vegetation along the eastern edge of the parkland would limit any direct juxtaposition, kinetic views and the way in which the Garden is initially experienced would be fundamentally altered.
28. Turning to the CA, its main interest is concentrated on the historic extent of the pleasure grounds surrounding Coleorton Hall. The overall character is essentially defined by the picturesque landscape of the early nineteenth century period with later additions. Significant literary and artistic associations are also present and the CA includes a number of historically notable buildings or structures that are listed in their own right. The Hall and its pleasure grounds are now largely surrounded by an agricultural landscape, as would have originally been the case. The land to the east and north-east was part of the planned parkland landscape for the Hall, according to the CA appraisal.
29. Given the above and insofar as this appeal is concerned, I find the setting, as it contributes to the significance of the CA, to be associated with the presence of undeveloped agricultural land in the surrounding landscape.
30. Despite the harm to the Garden, I find that the proposal would not harm the setting of the CA. This is because of its densely vegetated eastern boundary and the limited visual juxtaposition between the Site and the open parkland context which serves its historic core. The experience of the arcadian context and the picturesque idyll of its more formal gardens and structures would remain unaffected.

31. Given the above, I find that the proposal would preserve the setting of the CA, as it contributes to its significance, but that harm would nevertheless be caused to the Garden.
32. Paragraph 212 of the National Planning Policy Framework 2024 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 213 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that any such harm should have a clear and convincing justification.
33. Given the limited extent of the asset that would be affected, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposal. In order to do this in a comprehensive manner, the wider planning benefits that coincide with public benefits need to be set out. Consequently, the final heritage balance will be made after I have finished addressing the main issues.
34. Given the above, I find that the proposal would be contrary to policy He1 of the LP and paragraph 203 of the Framework and would not conform to the expectations of the Act.

Alternative Transport

35. The nearest bus stops are located on the Loughborough Road (A512) which is serviced by bus routes 29, 29B and x29. These provide a regular, 30-minute bus service throughout the day between Leicester, Coalville, Ashby De La Zouch and Swadlincote. These are located around 430 metres away from the Site. I observed that existing footways with street lighting are present between the Site and the bus stops.
36. The Council does not find the provision suitable because there is no dedicated crossing point, with pedestrian priority, between the stops. I observed that the northern bus stop can be directly accessed without crossing the A512, via the existing footway, but that it is necessary to cross the road to access the southern stop. Although there is a 50-mph speed restriction, I was able to utilise dropped kerbs, at appropriate points, to safely cross the road whilst observing oncoming traffic for a considerable distance in both directions. As such, I find that this travel option would be readily available to future occupants.
37. In terms of walking, a footway is located immediately outside of the Site which provides easy walking opportunities along the entire extent of Lower Moor Road and which runs from Rempstone Road (B5324) to Loughborough Road (A512). Additionally, there is also a well-established number of interconnecting PRow in the area, including the one that runs through the Site itself. As such, there are significant opportunities for walking.
38. In terms of cycling and although superseded, the Cycle Infrastructure Design Local Transport Note (2/08) states that: "Around 60 percent of car trips are typically under 5 miles". The appellant notes that Coalville, Ashby, Shepshed, Castle Donnington and the edge of Loughborough are all within 5 miles of the Site and

that they would be within easy cycling distance, especially on an electric bike. I find this credible and see no reason why cycling would not provide alternative transport opportunities to future occupants.

39. Given the above, I find that there would be suitable alternative transport provision and no conflict with policy S3(vi) of the LP.

Other Matters

40. The appellant points out that the approved dwelling would utilise the existing access which could be hard surfaced without the need for planning permission under permitted development rights. It is maintained that this is a viable fallback position. In order for this to be the case there needs to be a real prospect of this occurring rather than just a theoretical possibility. In this respect, I note that an extant permission is in place. As such, I find that it can be considered a valid fallback position if the proposed development were not to go ahead.
41. However, I note that it would not have a similar or worse effect than the appeal proposal given that the latter would lead to a more extensive, engineered approach which would sweep into a suburbanised central spine road. I do not find the level of intervention to be comparable given the extent of the proposed changes in the current scheme. Therefore, I do not find the fallback to be more harmful and it consequently carries little weight in favour of the development.
42. The appellant has drawn a recent appeal concerning self-build housing to my attention¹. It is suggested that this determines the weight to be applied to policies S2 and S3 of the LP. I note that the reduced weight the Inspector gave to the conflict related to the fact that the appeal site would be sufficiently accessible via a range of sustainable travel modes. I accept that this is similar to the current scheme but not the same in all respects because the balance of conflict is different. Overall, this scheme conflicts with a greater number of policies which outweigh the ones that can reasonably be deemed to be in accordance. Even if this were not the case, the appellant, unlike the Inspector, has argued that the reduced weight is derived from the absence of a self-build policy, as set out below. In any event, each case must be determined on its individual merits and I do not find this sufficiently similar to be material to my decision-making.

Planning Balance

43. The appellant accepts that the proposal is contrary to policies S2 and S3 but maintains that reduced weight should be given to this conflict because the LP is silent in relation to self-build and custom build housing which is explicitly supported by paragraph 73(b) of the Framework, the Planning Practice Guidance and the Self-Build and Custom Housebuilding Act 2015 (as amended). As the LP is more than five years old, it is subject to an assessment of whether the most important policies in the determination of the application are up to date, having regard for their consistency with the Framework.
44. However, this proposition simply relies on the absence of a policy to make other policies out-of-date irrespective of whether or not the substance of those policies is inconsistent with the Framework. Moreover, I do not find any inconsistency with the Framework in terms of either defining locational requirements or safeguarding

¹ APP/G2435/W/24/3343890

the intrinsic character and beauty of the countryside. As such, the policy conflict I have identified carries full weight, as the Council has also found in relation to other self-build development that it has approved outside Development Limits that the appellant has brought to my attention.

45. However, policies S2 and S3 are not the only conflicting policies. In the round, I have found conflict with policies S2, S3(i), He1 and En3(4)(b) of the development plan. Although there would be compliance with some aspects of the development plan, including policies IF4, En1(1), En6, Cc2(2)(a) and S3(vi), it is not unusual for some tension to be found between and within different policies when applied to a specific proposal. Overall, I find that the proposal conflicts with the development plan as a whole.
46. Bearing in mind the limited extent of the visual harm that would be caused to the surrounding landscape, I give harm to the character and appearance of the area and the associated policy conflict moderate weight. Bearing in mind paragraph 212 of the Framework, I give the harm that would be caused to the Garden and the associated policy conflict great weight. There is no dispute that the majority of the site is beyond the Development Limit. Given that the proposal would undermine a plan-led approach, I give this harm and the associated policy conflict moderate weight.
47. The parties agree that paragraph 11 (d) of the Framework applies in this instance given the absence of a self-build policy. It advises that where there are no relevant development plan policies, permission should be granted, unless i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development. In this instance Footnote 7 applies because the scheme would harm a designated heritage asset. This arm of the test is consequently engaged.
48. The appellant identifies a number of public benefits. I accept that the proposal would potentially meet an unmet need given the Council's estimated requirement for 126 self-build plots in the 31 October 2025 to 31 October 2026 base period and the persistent shortfall that is present. I also note that the appellant is on the self-build register for the local area and the suggested condition that could be used to secure the necessary occupancy as well as a planning obligation. Consequently, I give this benefit significant weight.
49. I acknowledge that there would be some economic benefits from the construction and operational phases in terms of construction jobs and support for the local economy. Given the scale of the development, I only give these benefits limited weight.
50. Turning to increased Council income from the New Homes Bonus and Council Tax, this is no more than required to make it acceptable in planning terms and mitigate the development's impact on Council services. I therefore give these benefits negligible weight.
51. The appellant highlights the delivery of BNG as a benefit. I accept that this would occur but bearing in mind its limited scope, from the Metric calculation, I only give it limited weight.
52. The appellant also highlights the prevention of inappropriate schemes elsewhere. Bearing in mind the hypothetical nature of this assertion and the inappropriate

nature of the proposed scheme I give this no weight. This is also the case for sustainability measures as they are not before me and are reserved matters.

53. I do not find that the public benefits are sufficient to outweigh the harm that I have identified in this instance as this carries great weight and affects an asset of higher importance. As a result, I find that there is a strong reason for refusing the development proposed. This means that it does not benefit from the presumption in favour of sustainable development and paragraph 11(d)(ii) does not apply.
54. There are no material considerations of sufficient weight to indicate that the decision should be made other than in accordance with the development plan. Given the above, I do not find that the benefits are sufficient to outweigh the harm that would be caused not only to the heritage asset but also the character and appearance of the area and the plan-led approach in terms of locational requirements.

Conclusion

55. For the above reasons and having regard to all other matters raised I conclude that, on balance, the appeal should be dismissed.

R Catchpole

INSPECTOR