



Appeal Decision

Site visit made on 27 February 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/G2435/W/23/3324219

The Warren, 6 Chapel Lane, Osgathorpe, Leicester LE12 9SX

- 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 and Mrs Burrows against the decision of North West Leicestershire District Council.
 - The application reference is 22/01611/FUL.
 - The development proposed is the erection of a 1.5-storey custom-build dwelling for later living along with a detached garage and associated works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs Burrows against North West Leicestershire District Council. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. I have used a slightly amended description of the proposed development in the banner heading above from that on the planning application form; I have removed the reference to the scheme being a resubmission of an earlier proposal which was refused planning permission, as that is not descriptive of the development.
4. The Government published revised versions of the National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the July 2021 version extant at the time the application was determined, and again on 19 December 2023. Both parties' final appeal submissions were made in the light of the updated Framework, and it was not therefore necessary for me to seek comments on them separately. Where I have referred to specific paragraphs of the Framework, the numbering is that of the December 2023 version.
5. A unilateral undertaking ("UU") pursuant to Section 106 of the Town and Country Planning Act 1990 has been submitted as part of the appeal. I address the UU below.

Main Issues

6. The main issues are:
 - Whether the site represents an appropriate and sustainable location for the proposed development, having regard to local and national policy;

- The effect of the proposed development on the character and appearance of the area;
- The effect of the proposed development on the setting of nearby listed buildings; and
- Whether the scheme would make appropriate provision for foul drainage.

Reasons

Location of development

7. The appeal site is on the southern side of the village of Osgathorpe. It is an open area of grassed field or paddock, south of two recently-built dwellings known (at least for the purposes of this appeal) as Plots 1 and 2 Chapel Lane. The site is served by the shared drive giving access to Plots 1 and 2, and other older houses including The Warren, from Chapel Lane. The proposed development is the erection of a single detached dwelling, along with a separate detached garage and other landscaping works.
8. Policy S2 of the 2021 North West Leicestershire Local Plan ("the NWLLP") sets out the settlement hierarchy for the district and the approach to development within settlements, the intention being that those higher up the hierarchy will take more growth than those lower down. Osgathorpe is within the "small village" category; the small villages are described as having "very limited services and where development will be restricted to conversions of existing buildings or the redevelopment of previously developed land [...] or affordable housing".
9. The appeal site is outside defined settlement boundaries, and therefore within an area where Policy S3 of the NWLLP, which addresses development in the countryside, also applies. Policy S3 sets out a list of types of use for which – subject to compliance with a range of criteria – development proposals will be supported. Although the extension and replacement of dwellings, and the re-use and adaptation of buildings for "appropriate purposes including housing" is on the list, new housing (other than affordable housing) is not otherwise supported by that policy.
10. The appellants consider that both policies are, insofar as they relate to this appeal, incompatible with the Framework. Although the NWLLP was adopted in 2021, the evidence before me is that this was only a partial review of the plan, and that Policies S2 and S3 essentially date from the previous 2017 incarnation of the plan. While both include an exception for affordable housing, they do not make any specific provision for self-build or custom-build housing.
11. I address matters relating to the provision, and securing, of self-build and custom-build housing in "other considerations" section below. However, there is nothing in the relevant legislation¹ which provides for or requires the granting of approval for self-build or custom-build schemes regardless of, or as an exception to, the other provisions of the development plan. Similarly, while the Framework advises at paragraph 70 that decisions should support the use of small sites for self-build and custom-build housing, it does not give that type of development special significance in the way it does for (say) affordable housing on rural exception sites at paragraph 73.

¹ The Self-Build and Custom Housebuilding Act 2015 (as amended)

12. Paragraph 225 of the Framework advises that “existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with [the] Framework”. For the purposes of determining this appeal, I consider that the aims of Policies S2 and S3 are highly consistent with the Framework.
13. Notwithstanding that the type of development proposed is not supported by Policy S3 of the NWLLP, were things otherwise the policy also requires that development is accessible, or will be made accessible, by a range of sustainable transport. In terms of facilities within the village the appellants have referred only to the church and a public house, though the latter of these is not currently trading. Osgathorpe therefore contains very little in the way of everyday services; I have not been made aware that there is, for example, a shop selling groceries. Residents would be reliant on travelling to other places for shopping and other services.
14. Opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and the Framework acknowledges at paragraph 83 that “development in one village may support services in a village nearby”. The appellants have described “wide ranging facilities” at Thringstone and Belton, approximately 1.5km and 2km away respectively, though I have not been told the extent of such facilities. While I accept that any services in Thringstone or Belton could be reached on foot or by cycling, the roads leading to them from Osgathorpe have neither footways nor lighting, and they would not provide easily accessible or convenient walking or cycling routes, especially at night or during inclement weather. A bus service between Ashby and Leicester runs through the village, serving a stop around 100m from the entrance to the appeal site; this provides a connection to larger centres but, as it runs only every two hours it is unlikely to be relied on by residents for day-to-day shopping trips and suchlike.
15. Access to day-to-day services by walking, cycling or public transport would be poor, and future occupiers would be likely to be overwhelmingly dependent on the private car for access to shops, services and community facilities. Given this, it is likely that they would often choose to drive to use clusters of shops and services in larger towns in the surrounding area, bypassing the smaller and more limited facilities in other villages. The development would therefore be unlikely to make a significant contribution to maintaining the vitality of rural communities.
16. There is no suggestion, nor do I find, that the scheme would lead to the development of an isolated home in the countryside, in the terms set out in paragraph 84 of the Framework. An absence of conflict with this aspect of national planning policy is a neutral factor in my overall decision.
17. Taking all of this together, the proposed development would be outside a defined settlement boundary, in a small village within the countryside which has limited access to services by a range of sustainable transport options. I therefore conclude that it would not be an appropriate location for the proposed development, having regard to local and national planning policy. The scheme would conflict with Policies S2 and S3 of the NWLLP, the principal relevant provisions of which I have set out above. For the reasons I have set out in paragraph 15 above, the development would not be supported by the

provisions of paragraph 83 of the Framework which seek to promote sustainable development in rural areas.

Character and appearance

18. The proposed dwelling would be 1.5 storeys in height, built on an inverted L-shaped plan, with a gabled pitched roof of grey slate. The front (west-facing) and rear (east-facing) elevations would have dark-coloured timber cladding above a brick plinth; the west-facing gable (at the end of the arm of the "L") would be of the same materials, though with large glazed expanses. The north- and south-facing gable ends would be finished entirely in brickwork. Windows and doors would have grey aluminium frames.
19. The Council's 2017 *Good Design* Supplementary Planning Document ("the SPD") seeks to ensure that new development responds positively to its context, while the National Design Guide ("the NDG") advises that "characteristics such as the pattern of housing, and special features that are distinct from their surroundings [...] can help to inform the character of a new development". The submitted Design and Access Statement suggests that the dwelling has been designed "to reflect the surrounding edge of village context", and that it draws on design elements of the adjacent Plot 1 and 2 dwellings.
20. The Plot 1 house is a large single-storey building with a low-pitched roof, a timber cladding finish to the walls and very large areas of glazing; it represents a neat and well-executed interpretation of a large modern agricultural shed. The house on Plot 2 has two storeys and is brick-built (with timber clad "extensions" at both ends), a steeply-pitched roof, and generally small windows (other than a large glazed doorway, giving the appearance of a one-time cart door perhaps, on the western elevation); it draws its form and stylings from a traditional brick barn or similar building.
21. Rather than largely reflecting the "low profile and simple rural stylings" of the house on Plot 1, the proposed dwelling would appear to me to take the form of a suburban bungalow. The use of a brick plinth and gables would be no more than a nod to the materials of the house on Plot 2. I have no doubt that the materials proposed would in themselves be of a high quality, but this would not prevent the building exhibiting what the Council described as "a mish-mash of styles"; rather than reflecting its surroundings and "unifying" the wider site, its form and detailing would be incoherent and incongruous. In these respects, the proposed development would not have regard to advice in the SPD or the NDG.
22. I conclude that the proposed development would be harmful to the character and appearance of the area. It would therefore conflict with Policies D1 and S3 of the NWLLP; these policies seek to ensure that all development, including in the countryside, is well-designed and responsive to its context. The proposal would also conflict with the provisions of the Framework which seek to achieve well-designed and beautiful places, notably paragraphs 131 and 135 which emphasise that good design is a key aspect of sustainable development, and that development should be sympathetic to local character and maintain a strong sense of place.

Listed buildings

23. The appeal site is close to two listed buildings, the Grade II Manor Farm House² ("the farmhouse"), and the Grade II* Church of St Mary³ ("the church"). The farmhouse sits to the north of the shared track which gives access to the appeal site (though not to the farm house), something close to 100m or so from where the proposed dwelling would be built; the church is a little way to the north east of the farmhouse.
24. I have a statutory duty, set out in Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990, to have special regard to the desirability of preserving the listed buildings, their settings, or any features of special architectural or historic interest which they possess. Paragraph 205 of the Framework also states that "when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be)".
25. The farmhouse is a 16th century two-storey timber framed and brick building, though with later modifications. The church is a building of uncoursed grey rubble construction dating from the 14th century, extensively restored in around 1860. It has a tower, though not an especially tall one, on the south side of the nave which gives it a degree of local prominence. I consider that the special interest and significance of both listed buildings, so far as relevant to this appeal, is principally derived from their age, contribution to the social history of the village, their fabric, architectural features, and plan form.
26. The farmhouse is located among traditional farm buildings which have subsequently been converted to dwellings. These provide a degree of screening, and it is therefore mostly seen in close-range views, though glimpses across the open fields to the south-west (alongside the Plot 1 house) from Snarrows Road also contribute positively to this setting. The village buildings, including the farmhouse and the other converted farm buildings, make a positive contribution to the church's setting in close range views. The church is also seen in certain longer views nestled at the heart of the village, especially from Dawsons Road to the north-west and Snarrows Road to the south; from these places the open fields surrounding Osgathorpe also make a positive contribution to its setting.
27. The proposed dwelling would be visually and physically separated from the two listed buildings by the recent houses on Plots 1 and 2. At close range, it would not intrude into the views or setting of either listed building. While the development would result in the loss of part of the open fields surrounding the village, the dwelling would largely be screened in any longer views from south of Osgathorpe by the dense tree and hedgerow planting along the southern boundary of the appeal site and the fields both to the west and to the east.
28. I consider that the proposed development would not materially alter the ability to appreciate the special interest or significance of either the farmhouse or the church, and I am satisfied the contribution that their setting makes to their special interest and significance would be preserved. The proposed development would therefore comply with Policies HE1 and S3 of the NWLLP

² List entry 1177411

³ List entry 1074377

which, among other things, seek to ensure that development conserves and enhances the district's historic environment, including the setting of heritage assets. As I do not find that the proposal would cause harm to or loss of the designated heritage assets or their settings, it is not necessary to apply the public benefit test set out in Paragraph 208 of the Framework.

Foul drainage

29. Foul drainage would be dealt with by means of a below-ground packaged sewage treatment plant, located a short way from the north-west corner of the proposed dwelling. I acknowledge that any discharge of domestic sewage or treated effluent to ground or surface water would fall within the scope of control regimes outside the planning system. All the same, I need to be satisfied that the development could make satisfactory provision for foul drainage to mitigate its effect on the water environment.
30. The Planning Practice Guidance ("the PPG") advises that for development proposals "the first presumption is to provide a system of foul drainage discharging into a public sewer"; it goes on to state that "where [this] is not feasible (in terms of cost and/or practicality) a package sewage treatment plant can be considered"⁴. The Council acknowledges that the distance from the nearest public sewer is such that an alternative may be appropriate (though it also notes that the two recent dwellings on Plots 1 and 2 discharged foul water to the public sewer), but was concerned about a lack of detail about this aspect of the proposal.
31. The appellants refer to the substantial area of land to the west of the appeal site, also within their ownership but outside the "red line" boundary, which could serve as a drainage field for the system. In response to the Council's concerns about the lack of detail about the ground conditions, which arises in part because of the presence of clay soils in the area, the appellants comment that "package treatment systems are specifically designed to reflect soil conditions and that a solution [...] can always be found". However, there is negligible information before me about the ground and water environment into which the system would discharge.
32. The land levels of the intended drainage field fall slightly towards the north, and there is therefore a risk that discharged water may be directed towards other housing very close by, notably the recent dwelling on Plot 1. I acknowledge that this is by no means a certainty, and it may well be that the provision of further information could address this matter satisfactorily. However, given this lack of clarity it is not a matter which I consider could be left to be addressed by means of a condition.
33. The appellants also suggest, in response to the Council's concerns about the proximity of the treatment plant to the dwelling, that it could be sited within the wider area to the west of the site. I do not disagree; were this the only matter in need of resolution I am satisfied that it could be addressed by a condition. The Council also expressed concern that the vehicle which would need to enter the site to empty the residual waste from the treatment plant (once every approximately 12 to 18 months) would not be able to do so safely. However, swept path diagrams submitted with the appeal indicate that this

⁴ Paragraph: 020 Reference ID: 34-020-20140306

could be done without causing unacceptable harm to highway safety. My findings on these points do not alter my overall conclusion on this issue.

34. The appellants drew my attention to a recent appeal decision in which the Inspector considered a proposal incorporating a packaged sewage treatment plant which would drain to a ditch at a field boundary⁵. In that case, the Inspector concluded that it would be acceptable for further details of drainage to be dealt with by condition. However, there is no suggestion in that appeal decision either that the ground conditions may not be suitable for the proposed method of drainage, or that there could be a risk of harm in respect of nearby dwellings; as I have set out in the preceding paragraphs, that is not the situation here.
35. In the absence of sufficient information, I cannot be satisfied that the scheme would make appropriate provision for foul drainage. The proposed development would conflict with Policy D2 of the NWLLP which seeks to ensure that development does not have an adverse effect on amenity and living conditions, including as a result of pollution.
36. It would also not comply with the provisions of paragraphs 180 and 191 of the Framework which, among other things, seek to ensure that planning decisions contribute to and enhance the natural and local environment by preventing new development from contributing to or being adversely affected by unacceptable levels of water pollution; and to ensure that new development is appropriate for its location taking into account likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
37. For the reasons set out in paragraph 33 above, I find no conflict with Policy IF4 of the NWLLP. That policy seeks to ensure that new development does not have an unacceptable impact on transport infrastructure and the highway network. Again though, this does not alter my overall conclusion on this issue.

Other Considerations

Unilateral Undertaking

38. The UU accompanying the appeal was dated 4 January 2024, and is signed and executed as a deed. The covenants made by the owners (the appellants) are to give the Council notification of the commencement of development and its first occupation, not to occupy the dwelling until such notification has been given, and to make a payment as a contribution towards the Council's legal costs.
39. The UU is intended to secure the construction and occupation of the development as self-build or custom-build housing. However, in the absence of any specific covenants on these matters it would not achieve this, and I have not therefore given it weight in my decision.
40. In my view, relying on the description of the proposed development as custom-build is not in itself sufficient to ensure compliance in an enforceable manner. As such, the proposal falls to be considered as an open-market dwelling, and my decision has been made in that light.

⁵ PINS Ref: APP/C2741/W/22/3308426

Provision of self-build housing

41. Among other things, the Self-Build and Custom Housebuilding Act 2015 (as amended) allows individuals wishing to build their own home to register their interest in acquiring a suitable plot of land. That Act also makes provision for Councils to maintain a register of people who are seeking to acquire a serviced plot, and to have regard to the demand for custom build housing when exercising functions relating to planning. I understand that the appellants are on the self-build register for North West Leicestershire.
42. There is no dispute between the main parties that there is a shortfall in the granting of permissions for self-build and custom-build housing within the district. The Council stated that the shortfall at 21 December 2023 was 19 plots and, though I note that there is some disagreement about the overall scale of need for such plots, it is evident that there will be continuing demand for self-build and custom-build housing in the district in subsequent years.
43. The development plan does not include a policy specifically addressing the provision of self-build and custom-build housing in the district. Given the development plan's silence on this matter, as well as the shortfall in meeting the demand for that housing, both main parties are of the view that the "tilted balance" set out in paragraph 11(d) of the Framework should be engaged. The appellants also drew my attention to an appeal decision in Wyre Forest⁶ in which an Inspector had supported that interpretation of paragraph 11(d) of the Framework.
44. Notwithstanding the agreement between the main parties on this point, the general locational policy framework set out by Policies S2 and S3 of the NWLLP (which I have considered at length in dealing with the first main issue above) would not preclude self-build or custom-build housing in appropriate sustainable locations. Consequently, the development plan policies most important for determining this appeal remain up-to-date. Furthermore, in view of the shortcomings of the UU which I have set out in the preceding section, the custom-build status of the development would not in any event be secured. It is not therefore necessary to engage the tilted balance set out in the Framework in this case.

Other Matter

45. The appellants expressed dissatisfaction with several aspects of the Council's handling of the planning application. These matters are addressed in the separate Costs Decision.

Planning Balance and Conclusion

46. Section 38(6) of the Planning & Compulsory Purchase Act 1990 and the Framework state that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
47. The proposed development would provide an additional unit of housing; it is intended to be an adaptable "later life" home for the appellants on the edge of the village in which they currently live, providing a degree of social benefit. There would be some economic benefits arising from increasing the housing

⁶ PINS Ref: APP/R1845/W/21/3284761

stock, both to local trades and suppliers during the construction phase, and from additional residents supporting local services (limited though they appear to be). Given the small scale of the scheme these benefits would be correspondingly modest; they therefore carry only moderate weight in its favour.

48. The Council has acknowledged that the proposal would be acceptable in several respects, including its effects on trees and ecology, and access and highways. None of the evidence before me, including what I saw during my site visit, leads me to a different view on these points. I have also found that the proposed development would not be harmful to designated heritage assets, as the setting of nearby listed buildings would be preserved. A lack of harm in these respects is a neutral factor in the overall balance.
49. I have, however, found that the appeal site is not a sustainable location for the proposed development, that the scheme would be harmful to the character and appearance of the area, and that it would not make appropriate provision for foul drainage. The proposal would conflict with the development plan in these respects, and I give this conflict significant weight in the overall balance. There would also be conflict with the provisions of the Framework in these respects, as I have set out in assessing the main issues.
50. The proposal would conflict with the development plan taken as a whole. There are no material considerations, including those of the Framework, which indicate that the decision should be made other than in accordance with the development plan.
51. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector