



Appeal Decision

Site visit made on 1 March 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/K2420/W/22/3307030

Land north 258 Ashby Road, Hinckley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Mr R Edwards, J A & F Edwards Ltd, against Hinckley and Bosworth Borough Council.
 - The application Ref 22/00572/OUT, is dated 14 June 2022.
 - The development proposed is erection of up to 5 no. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was in outline with all matters reserved except for access. I have therefore dealt with the appeal on the same basis.

Main Issues

3. The Council has submitted an Appeal Statement which indicates that if they had been able to make a decision on the application, it would have been refused. The Council set out the proposed reason for refusal and based on that, the main issues in the appeal are:
 - whether the site is an appropriate location for residential development having regard to the development strategy; and,
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Appropriate location

4. Paragraphs 4.14 and 4.15 of the Hinckley and Bosworth Borough Council, Local Development Framework, Core Strategy (CS), December 2009, outline the settlement hierarchy for the borough. Hinckley is identified as a sub-regional centre, where the majority of development should be focused. It is also acknowledged that the four settlements within the borough act together as an 'urban area' with clear linkages between them.
5. The appeal site is located beyond the settlement boundary for Hinckley, it is therefore in the countryside for the purposes of the development plan. Policy DM4 of the Hinckley and Bosworth, Local Plan 2006-2026, Site Allocations and Development Management Policies DPD (SADMP), July 2016, advises that to

protect its intrinsic beauty, open character and landscape character, the countryside will be safeguarded from unsustainable development. SADMP Policy DM4 provides a small number of exceptions where development in the countryside would be accepted. It is not disputed by either of the parties that the proposed development does not meet one of the identified exceptions.

6. I conclude that the site is not an appropriate location for residential development having regard to the development strategy. The appeal scheme would therefore be contrary to SADMP Policy DM4 as it does not meet any of the exceptions for development in the countryside. The appeal scheme would also be contrary to paragraphs 79 and 80 of the National Planning Policy Framework (the Framework) which promote sustainable rural development and only allow development in the countryside in limited circumstances.
7. Notwithstanding that, future residents would be able to access services and facilities, conveniently and safely, by walking, cycling or using public transport. As such, the appeal scheme would comply with SADMP Policy DM17.
8. Whilst the appeal scheme would not conform with the development strategy, it is in an accessible location close to the settlement boundary. Given the above, I ascribe only minor weight to the harm caused by the appeal scheme being in an inappropriate location for residential development.

Character and appearance

9. The appeal site is set down from Ashby Road and is immediately adjacent to 258 Ashby Road (No. 258). It is largely free from development, other than street lighting and telegraph poles fronting the road. Mature hedgerows dissect the appeal site and provide a dense, verdant border with No. 258. The appeal site is in a highly prominent location on an entrance into Hinckley and is part of several parcels of land, which are largely free from development, that provide a visual break between Hinckley and Barwell.
10. Neighbouring properties are relatively large and either detached or semi-detached and set within large plots which are directly accessed from Ashby Road. There is a small number of properties, named Ashby Grange, which are accessed by a long narrow driveway behind the houses opposite the appeal site. However, the prevailing pattern of development could be described as ribbon development, aligning Ashby Road.
11. Given the lack of development on the appeal site, the orientation and nature of surrounding development and the presence of the mature hedgerows, the site provides a clear break in development between the built-up area of Hinckley and the countryside towards Barwell. The appeal site is open and verdant in character.
12. The appeal scheme would introduce a significant amount of development into an area that is largely free from development. Moreover, whilst the proposal would continue the ribbon pattern of development, the development would encroach into the green wedge diminishing its purpose to keep the settlements visually separate. A landscaping scheme would not overcome the identified harm as it could only screen the proposed development and the existing character is founded upon the appeal site being largely free from development and forming part of the green wedge.

13. It has been put to me that the appeal scheme could be supported for the same reasons as the appeal, Ref. APP/K2420/W/21/3284379, allowed for up to 25 dwellings at Crabtree Farm, Barwell. The extent of the harm caused by the Crabtree Farm scheme's appearance was considered to be marginal. The Inspector concluded that the scheme would be "...well contained within its boundaries...". The Crabtree Farm site is surrounded by extensive residential development on Hinckley Road, Crabtree Road and Powers Road; therefore, its surrounding context is materially different to the appeal site.
14. The Inspector concluded that the Crabtree Farm site was characterised as "peri-urban" due to the audible sound of fast moving traffic from the A47 and its relationship with the ribbon development on Hinckley Road. Given the differing context, specifically the relationship with neighbouring properties, the appeal site is not "peri-urban". In any case, harm was still found in relation to character and appearance at Crabtree Farm.
15. I conclude that the proposed development would have a harmful effect on the character and appearance of the area. The appeal scheme would therefore be contrary to SADMP Policy DM10 and CS Policy 6 which indicate that development will be permitted if it complements or enhances the character of the surrounding area and any development in the Green Wedge should retain the visual appearance of the area. The appeal scheme would also be contrary to Paragraph 130 of the Framework which advises that planning decisions should ensure that developments are sympathetic to local character.
16. Given the permanence of the proposed development and its prominent location, alongside the reduction in the visual break between Hinckley and Barwell, I ascribe significant weight to the harm which would be caused to the character and appearance of the area.

Other Matters

17. The conduct of the Council during the determination of the planning application has little to do with the planning merits of the scheme and so does not weigh in favour of the proposal. A lack of objections from technical consultees is considered to be a neutral factor.
18. Benefits associated with the appeal scheme includes improving the viability and vitality of local services through an increase in population and the economic benefits related to construction. Given the modest scale of the development these benefits are limited. The appeal site being in an accessible location for services and facilities also weighs in favour of the scheme.
19. The appeal scheme would be considered windfall development and based on the evidence provided the Council is increasingly reliant on the delivery of windfall development outside of the settlement boundary to demonstrate a five year housing land supply. Paragraph 69 of the Framework advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. I therefore ascribe moderate weight to this benefit.
20. The Council recommending an application, Ref. 22/00648/OUT, for up to 75 dwellings at land to the South of Markfield Road, Ratby for approval at committee does not lead me to conclude that the appeal scheme is sustainable development. The Council acknowledged that the Markfield Road scheme is

outside of the settlement boundary and does not meet the exceptions for allowing development identified in SADMP Policy DM4. However, the scheme allows for development of up to 75 dwellings which would make a substantial contribution towards housing delivery and help address the identified shortfall, that scheme therefore provides a significant benefit. Given the scale of the development that proposal is materially different to the appeal scheme before me. In any event, I have dealt with the appeal on the basis of the evidence before me and my own site observations.

Planning Balance

21. As there are no policies in the development plan that positively favour development of this nature in this location and the appeal scheme is contrary to the policies listed above, there would be a conflict with the development plan when considered as a whole.
22. It is acknowledged by both parties that the Council cannot demonstrate a five year housing land supply of deliverable housing sites. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are out-of-date. Also, the application of policies, detailed within footnote 7, in the Framework that protect assets of particular importance do not provide a clear reason for refusing the development. As such, Paragraph 11dii) falls to be considered.
23. The Framework does not restrict all development in the countryside. However, within Paragraph 174, it recognises the countryside's intrinsic character and beauty. Likewise, Paragraph 80 of the Framework limits residential development in the countryside, similar to the appeal scheme. Within Paragraph 84 of the Framework, it indicates that planning decisions should enable sustainable rural development. Paragraph 130 of the framework requires planning decisions to ensure that proposals are sympathetic to the local character. The proposal would be contrary to the Framework in regard to these matters. Also, as SADMP policies DM4 and DM10 and CS Policy 6 are largely consistent with the Framework, weight can be given to the conflict with these policies.
24. As detailed above, paragraph 69 of the Framework identifies the important contribution small and medium sites can make to meeting the housing requirement of an area. There would also be economic benefits associated with the construction of the development and an increase in population to support the vitality of services, as supported by paragraph 86 of the Framework. Paragraph 130 of the Framework indicates that planning decision should ensure that developments create places that are accessible and which promote health and wellbeing, the appeal site is in an highly accessible location. However, these benefits can only be afforded moderate weight due to the modest scale of the development.
25. Paragraph 11 of the Framework advises that decisions should apply a presumption in favour of sustainable development; for decision-taking this means where the policies which are most important for determining the application are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. This presumption is also reflected in the wording of SADMP Policy DM1. In this instance the harm that would be caused, significantly and demonstrably

outweighs the benefits of the appeal scheme. Therefore, the presumption in favour of sustainable development does not apply.

Conclusion

26. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations including the provisions of Paragraph 11 of the Framework, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
27. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR