



Appeal Decision

Hearing held on 13 August 2013

Site visit made on 13 August 2013

by Susan Holland MA DipTP MRTPI DipPollCon

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 September 2013

Appeal Ref: APP/P1045/A/13/2195508

Land off Thatchers Croft, Tansley, Matlock

- 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 Mr James Neville against the decision of Derbyshire Dales District Council.
 - The application Ref 12/00781/OUT, dated 21 December 2012, was refused by notice dated 21 March 2013.
 - The development proposed is the construction of 16 dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed development (a) upon the character and appearance of the surrounding area and (b) upon the housing supply in the light of national planning policy.

Reasons

3. **Issue (a):** Passing through the village of Tansley, the A615 Matlock Road follows the valley of a stream, with rising ground to north and south. The village is concentrated around Church Street to the north of the A615, with only a narrow belt of development to the south of the main road. Beyond the village, open fields extend up the valley sides. Many field boundaries are marked by mature trees. To the south, the combined effect of perspective and slope is to merge these, seen from below, into areas of woodland.
4. The appeal site represents the sizeable remnant of a once more extensive field. Along a narrow strip of land, close to the northern boundary of the field with the stream and the A615, a rural 'exception' site for affordable housing has been developed as an extension to Thatchers Croft (which lies within the settlement boundary). The appeal site itself, however, lies outside the *settlement framework boundary* for the village of Tansley, and so is to be regarded as open countryside for local plan policy purposes. The effect of the 'rural exception' development has been to shrink to a narrow pinch-point, at the children's play area off Thatchers Croft, the belt of open land which runs through Tansley village from north-west to south-east. However, immediately above the play area the open belt widens and continues through the appeal site, expanding further into open countryside above Thatchers Lane.

5. As seen on the southward descent along Church Street, particularly on foot, the appeal site merges seamlessly with the open land above and to the south. From those publicly accessible locations in the main part of the village which take in the appeal site, very little is seen of the built development to the south of the A615. The lower reaches of Alder Lane are flanked by houses, but these are heavily screened by mature tree cover in and around their gardens. Intermittent mature trees largely screen houses in Thatchers Lane. The steep bank immediately above the stream includes young tree cover which obscures the site itself.
6. The appeal proposal would result in the marked consolidation of the loose built development south of the A615, and in the loss of the open visual connection, through the village, with the countryside beyond. Thatchers Lane marks the upper boundary of the appeal site and currently permits views northward across the village to the open countryside beyond. This open prospect would be blocked by housing on the site, and the visual impression of the village and its rural setting would be lost from this viewpoint.
7. In conclusion, therefore, the appeal proposal would have a materially harmful effect upon the character and appearance of the surrounding area. The proposal would conflict with (saved) statutory Policy SF4 of the Derbyshire Dales Local Plan adopted in 2005, in that it would not *preserve or enhance the character and appearance of the countryside* and would not *minimise any adverse impact on the local environment* in the terms of that policy. The appeal site contributes significantly to an important element of green space incorporated within the village as part of its development over time. For this reason, and because its development as proposed would not respond to local character, the proposal would not accord with the provisions of the National Planning Policy Framework (the Framework) at paragraph (¶) 58 for the *incorporation of green space as part of developments*, and for *response to local character and history*.
8. **Issue (b):** The Framework states at ¶47 that *to boost significantly the supply of housing, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land*. There is no suggestion that the Council has, in the terms of the Framework, a *record of persistent under delivery of housing* such that a buffer higher than 5% (the Framework specifies 20% in such cases) should be brought forward. Past records demonstrate that the Council has consistently been able to meet (or exceed) the housing requirement set by the Structure Plan and subsequently by the East Midlands Regional Plan until its recent revocation. This has been achieved through the high rate of windfalls which has been characteristic of the Derbyshire Dales housing supply, and the 'old-style' Derbyshire Dales Local Plan did not allocate any housing sites at all.
9. The Framework states at ¶48 that *local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply*. The emerging Local Plan (on which the Council is currently considering responses to the Consultation Draft) does not place reliance upon windfalls but includes specifically allocated housing sites. However, the Framework clearly allows

windfalls to be considered as part of the 5-year housing supply in circumstances where (as in Derbyshire Dales to date) such sites have made a significant contribution to the supply. The Framework makes no assumption that windfalls could not continue at high past rates, but simply states that *any allowance should be realistic having regard to ... historic windfall delivery rates and expected future trends*. The Council expects windfalls to continue to come forward at a high rate. Nevertheless, the Council has not included an allowance for windfalls within its 5-year supply calculation as presented in evidence in this appeal.

10. The housing requirement to which the Council is working continues to be that of the East Midlands Regional Plan: that is, 4000 dwellings for the period 2006-2026, at a rate of 200 dwellings per year (including 50 per year for that part of the Peak National Park which lies within the local authority area). That figure represents a considerable increase over the 3100 set by the Structure Plan on which the Derbyshire Dales Local Plan 2005 was based. No evidence has been submitted in respect of this appeal to demonstrate, or to suggest, that an alternative housing requirement figure should be used. The housing supply position in its entirety will be tested in the course of the forthcoming Examination of the local plan.
11. The Appellant maintains that among the sites on which the Council currently relies for its 5-year housing land supply are a number of specific sites on which it is unlikely that sufficient dwellings will come forward during the 5-year period to maintain the supply at the required level. Whilst the Framework states that the 5-year supply of sites which it requires should be *deliverable*, Footnote 11 to ¶47 explicitly states that *sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans*. A site which does not yet have planning permission may or may not prove to be *deliverable*: its deliverability is to be determined via the local plans process: and some sites considered for inclusion in the local plan as housing allocations, and confirmed via examination, will not at that stage have planning permission and yet will be judged to be deliverable.
12. All the sites criticised by the Appellant have an extant planning permission which could be implemented; and on some of them, development has commenced and a number of dwellings have already been completed. The Appellant argues that at Cawdor Quarry, on which there is planning permission for 432 dwellings, only 12 dwellings have so far been built, the bulk of the site is contaminated and remediation has yet to be carried out, making it a 'difficult site'. However, the Council only calculates 199 dwellings as contributing to the supply to 2018; there is evidence that the remediation scheme required by S106 agreement was submitted to DDDC and the Environment Agency in February 2013, and that 40 dwellings per year would be completed from (and including) 2014. Past delays in the implementation of the Cawdor Quarry planning permission (which dates back to December 2001 and has been kept open by means of limited development) can be at least in part attributed to a protracted legal dispute between the current and past owners of the site: that dispute was resolved by a decision of the High Court on 21 March 2013.
13. The Appellant maintains that the planning permission for residential use granted in respect of Audley Court should not be counted as part of the

housing supply because it constitutes in effect a retirement village. However, the apartments created by conversion of the former St Elphins School, and the new dwellings built in the grounds, are freely available (subject to an occupier age restriction as low as 55 yrs) to be bought and sold on a leasehold basis; and though available if required, the care offered ranges from basic assistance with gardening, through to more complex packages, and in any case is not mandatory. In the light of experience, the use could more appropriately be classed under the Use Classes Order as C3 rather than C2 (as it appeared at the time of its consideration by the Planning Committee).

14. The Appellants point to lack of progress on sites including Riber Castle and Tansley Wood Mills and St Oswald's Hospital. Whatever the apparently complicating factors, it is likely on the evidence that to a large extent any slowness in delivery is fundamentally due largely to the current state of the housing market, and only incidentally to delays in overcoming complications such as the execution of S106 agreements.
15. The Appellant argues that the Council supports its claim to a 5-year housing land supply in part by the inclusion of 2 sites which represent draft housing allocations (in the emerging local plan). This has presumably been done on the grounds that planning applications (for 65 dwellings and for up to 40 dwellings, both in outline) have been submitted and on the basis that the Council considered at the time of the Hearing that it would be likely to grant planning permission on these applications (though neither application has at the time of writing yet been determined). The Council has apparently used in its calculations of 5-year housing land supply a gross figure for completions rather than a net figure (taking account of losses through demolition, conversion or change of use); and has not applied its own discount figure of 10% for non-implementation of sites not yet commenced. However, the 5-year land supply calculation has not included windfalls, which according to the Framework can be included if there is evidence on past experience that, as in this case, they have been significant. On the overall evidence, therefore, whilst the 5-year housing land supply (plus 5%) may not be as firm as the Council suggests, neither is it obviously deficient. In conclusion, therefore, the appeal proposal is not required in order to meet the 5-year housing land supply in the light of national planning policy.

Other Matters

16. The proposal includes an executed Unilateral Undertaking to provide 5 dwellings as affordable housing. Whilst affordable housing is always needed, and is a factor in favour of the scheme, this matter is not sufficient to overcome the weight against the proposal arising from its effect upon the character and appearance of the area and in the face of the absence of a need for it in order to meet the 5-year housing land supply.
17. The development plans process has advanced as far as consultation draft stage of the emerging local plan. Previous considerations of possible housing sites, and consultations with the villagers of Tansley and with the Parish Council, have resulted in the identification of a prospective allocation site for housing within Tansley. The agreed preferred site, for 25-30 dwellings, lies at the north-eastern edge of the village, and occupies land in part previously developed, at the former Whiteleas Nursery. Whilst this site has yet to pass examination of the local plan, it represents the considered choice of the Council following professional assessment, public consultation and co-operation with

the residents of Tansley. The appeal site, on the other hand, does not, and is opposed by the Parish Council and by residents. This matter, whilst not on its own constituting a decisive issue, adds weight against the proposal.

18. The southward extent of Tansley village is restricted not only by the terrain but by the A615. Within the village the course of this busy road includes bends, and junctions - with Church Street and Holly Lane to the north, and with Alder Lane and Thatchers Lane to the south. The stream is a complicating factor, preventing the formation of a continuous footway along the south side of the A615 between Holly Lane and Church Lane. Given these restrictions, the provision of a safe crossing to serve the housing on the south side, and also to protect bus passengers alighting on the south side, is problematic and not merely for financial reasons. Though the appeal proposal could bring funds towards a crossing, there is no current agreement on how a crossing could be provided. Whilst highway safety has not been cited as a reason for refusal of the application, the unsatisfactory situation regarding the lack of a crossing to enable safe contact with the main village adds weight against the proposal.

Overall Conclusion

19. Given that the proposed development would cause material harm to the character and appearance of the surrounding area; that it is not on balance needed in order to meet the 5-year land supply in the terms of national planning policy, and that there are additional factors which weigh against the scheme and only the matter of affordable housing in its favour, the overall conclusion is that this appeal should be dismissed.

S Holland

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Richard Pigott	Principal Planning Consultant, Planning Design Practice Ltd, Derby DE1 1UL
Mr Jonathan Jenkin	of Planning Design Practice Ltd
Mr James Neville	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Wilson	Director of Planning & Housing Services, Derbyshire Dales District Council
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INTERESTED PERSONS:

Ms Vicki Raynes	Tansley Parish Council
Ms Kathleen Camm	Local resident
Mr Roger Yarwood	Local resident

DOCUMENTS

Documents submitted by the Council

- 1 Letter of Notification and List of Persons Notified
- 2 Derbyshire Dales Dwelling Completions 2006-2013
- 3 Audley Care – Audley Retirement Villages
- 4 Letter dated 4/3/2013 to DDDC from Savills re timing of Cawdor Quarry development
- 5 Appeal Decision APP/B0610/A/06/2021135 ; Former Hospital Site, Newcastle Road, Arclid nr Sandbach
- 6 Updated SHLAA data and 5-yr Housing Land Supply scenarios 2013-2018

Documents submitted by the Appellant

- 7 Updated Analysis of 5-Yr Housing Supply at 1 April 2013
- 8 Site Notice 12/0808/FUL St Oswalds Hospital – 32 dwellings
- 9 Decision Notice 08/00261/FUL Tansley Wood Mills
- 10 Executed S106 Unilateral Undertaking
- 11 Post-Hearing comments on Council Document 6

Documents submitted by Tansley Parish Council

- 12 Letter dated 21/6/2013 to TPC from DCC Solicitor re adoption of highway, Thatcher's Croft, Tansley

PLANS

- A Application Plans
- B Settlement Framework Boundary for Tansley