



# Appeal Decision

Site visit made on 28 May 2024

by **H Wilkinson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

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**Appeal Ref: APP/P1045/W/23/3329649**

**Land to the North of Gorse Lane, Kirk Ireton, DE6 3JJ**

- 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 Norton Walling against the decision of Derbyshire Dales District Council.
  - The application Ref is 23/00358/FUL.
  - The development proposed is the erection of dwelling with associated access and landscaping.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. However, the policies of the Framework that are material to this case have not fundamentally changed. Therefore, I have proceeded to determine the appeal having regard to the revised Framework.
3. The appeal is accompanied by a revised Preliminary Ecological Appraisal (PEA). Whilst this was not before the Council when the planning application was determined, the appeal procedure has provided an opportunity for the parties to comment on the assessment. As such, I am satisfied that no party has been prejudiced.

## Main Issues

4. The main issues in this appeal are:
  - whether the appeal site would provide a suitable location for housing having regard to the Council's spatial strategy;
  - the effect of the proposal on the character and appearance of the area, and the extent to which it would preserve or enhance the character or appearance of the Conservation Area; and,
  - the effect of the proposal on protected species and biodiversity.

## Reasons

### *Suitability of the site location*

5. Policy S2 of the Derbyshire Dales Local Plan 2017 (Local Plan) sets out the Council's spatial strategy for the area. The settlement hierarchy seeks to distribute development to the most sustainable locations ensuring that

development reduces the need to travel and promotes sustainable communities based on services and facilities that are available in each settlement. For the purposes of Policy S2, Kirk Ireton is defined as a 'Tier 4' settlement. Whilst the appellant submits that the site would be adjacent to the settlement boundary, the physical extent of settlements have been defined to encompass Tiers 1 to 3 only. In Tier 4 locations, Policy S2 indicates that new development should be accommodated through infill and consolidation of the existing built framework or be well related to the existing pattern of development and surrounding land uses, and not lead to prominent intrusion into the countryside.

6. Whilst within proximity of the main settlement, the appeal site is physically distinct from the village nuclear and divorced from the nearest property by a spacious area of intervening garden land. It therefore could not reasonably be described as infill or consolidation of the existing built framework. Moreover, given the site's physical and visual disconnect from the existing built form and relationship with the surrounding fields, it relates more to the countryside. Accordingly, for the purpose of the development plan, the appeal site would be considered countryside. In such areas, Policy S4 indicates that development will be strictly limited to that which has an essential need to be in such a location or where the proposal would accord with Policy S2. For the above reasons, this would not be so in this case.
7. Accordingly, I find that the appeal site would not provide a suitable location for housing having regard to the Council's spatial strategy. It would therefore conflict with Policies S2 and S4 of the Local Plan, the aims of which are set out above.

#### *Character and appearance*

8. The appeal site is located partly within the Kirk Ireton Conservation Area (CA). Originally designated in 1971, the CA encompassed the traditional village core which is formed of traditional stone buildings dating from predominantly the 18th and 19th centuries. These have retained a strong visual integrity owing to construction methods and common use of materials. The CA was extended considerably in 1992 into its current form to include the rural landscape that surrounds the village. In so far as it relates to the appeal, I find the significance of the CA to be primarily associated with its rural setting, including views from the settlement out across an attractive agricultural landscape, and narrow lanes enclosed by hedgerows which provide a 'secretive' approach to the village's traditional core.
9. The main settlement centres along Main Street, a formal linear axis off which narrow, informal lanes including Gorsey Lane lead out into the surrounding countryside. The appeal site comprises a parcel of open, agricultural land which is bordered by a mix of mature hedgerows and trees. There are several timber buildings within the site which are somewhat dilapidated. Given their siting combined with their small scale and extent of existing landscaping, they are not unduly prominent or readily visible from the road. In any case, their agricultural character and appearance is not uncharacteristic of the countryside setting. In approaching the appeal site along Gorsey Lane in the direction of the village, the panorama is principally green, and the overriding character is that of countryside. The verdant and open aspect of the site is an important part of this rural character and positively contributes to the significance of the CA.

10. The appeal development would result in the introduction of substantial built development. Along with the accompanying domestic use of the curtilage and residential paraphernalia including a new vehicular access and area of hardstanding that would ensue, this would result in the undesirable encroachment of development into the countryside, eroding the rural character of the area and the significance of the CA. Moreover, the cumulative scale and massing of the dwelling and garage in the context of the appeal site would read as a visually intrusive and imposing form of development. Whilst the visual effects would be relatively localised and softened by the existing and proposed planting, the abrupt and bulky appearance of the proposal would be readily visible on the approach to the village, particularly as the relocated, engineered access would leave the site more open to views from the lane.
11. In coming to this view, I note that the proposed dwelling and garage would be sited in the eastern part of the site, closest to the main settlement. The proposed building form and courtyard layout would not be wholly discordant, and the design approach would take cues such as the incorporation of a chimney and the pattern of fenestration from the more traditional buildings. Sympathetic external materials, in keeping with the local vernacular would also be used. These factors however would not adequately address the harm arising from the prominent intrusion into the countryside by reasons of its location.
12. In determining the appeal, Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons set out above, I find that the proposed development would harm the significance of the heritage asset. Given that the harm would be relatively localised, the impact on the CA as a whole would be less than substantial within the meaning of paragraph 205 of the Framework. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
13. The proposal would contribute to the supply of housing in the village. There would be some economic benefits from the construction of the development, support of the local economy and additional Council tax income. In addition to the personal benefits which I shall return to later in my decision, the proposal would also have wider public benefits in so far as it would contribute to the provision of adaptable housing. Nevertheless, given the small scale of the development, the public benefits of the scheme are of no more than limited weight. Consequently, these public benefits would not outweigh the less than substantial harm that the proposal would cause to the significance of the CA, to which I attach great weight.
14. For these reasons, I find that the proposal would have a harmful effect on the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA. It would therefore be contrary to Policies PD1, PD2 and PD5 of the Local Plan together with Policies P1 and P2 of the Kirk Ireton Derbyshire Neighbourhood Plan (2021). Collectively, and amongst other aspects, these policies seek to ensure that all development is of high-quality design that respects the character, identity and context of the Derbyshire Dales and conserves heritage assets in a manner appropriate to their significance. It would also be inconsistent with the Framework's design and heritage objectives.

### *Protected species and biodiversity*

15. Amongst other aspects, Local Plan Policy PD3 seeks to safeguard protected species and provide a net overall gain to biodiversity. In addition to the initial ecological survey work, the revised PEA<sup>1</sup> includes an environmental DNA Great Crested Newt (GCN) survey. The analysed data samples indicated a negative result for the presence of GCN within the nearby pool leading to the conclusion that there is a likely absence of this species at the appeal site. The PEA also demonstrates that a 10% Biodiversity Net Gain is capable of being delivered through a scheme of habitat enhancement and creation.
16. Were I minded to allow the appeal, I am satisfied that suitable conditions could be imposed to safeguard protected species during the construction of the development and ensure the protection, management and enhancement of the biodiversity of the appeal site. Thus, the proposal would not be harmful to protected species or biodiversity in accordance with Policy PD3.

### **Other Matters**

17. The appeal proposal would be within walking distance of the main settlement and would contribute to the mix of housing within the area. It would support the local economy and viability of local services in Kirk Ireton and further afield. It would also bring short-term benefits in terms of construction expenditure and employment. However, one additional household would make little meaningful difference to housing supply. The design concept and initial modelling<sup>2</sup> indicates that the proposed dwelling would achieve a high level of energy performance. In addition, the scheme would provide additional habitat for biodiversity which would amount to an overall net gain. Whilst mindful of the above, given the small scale of the development, the economic, social, and environmental benefits would be limited.
18. Whilst it may be the case that the siting of the proposed dwelling responds to the pre-application advice provided by the Council, it does not overcome the overriding concerns expressed regarding the countryside location. Even so, pre-application advice is given without prejudice to any future decision and therefore whilst mindful of the appellant's frustrations, this has no bearing on my considerations of the appeal proposal.
19. The site would be located within an area at low risk of flooding and would not affect any listed buildings. Suitable access would be provided, and the living conditions of nearby residents would not be adversely affected. These however are neutral factors and neither weigh in favour nor against the proposal.

### **Planning Balance and Conclusion**

20. It has been put to me by the appellant that the Council cannot demonstrate a 5-year supply of deliverable housing sites, and there is no evidence before me which would indicate otherwise. Where relevant policies are out of date, paragraph 11 of the Framework directs that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development or that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework

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<sup>1</sup> Preliminary Ecological Appraisal Report, prepared by Elton Ecology dated July 2023

<sup>2</sup> PassivHaus Report – Initial Modelling – dated 9 February 2023

taken as a whole. In this case, I have identified harm to a designated heritage asset. Therefore, whatever the shortfall in housing land supply, this provides a clear reason for refusing the development. The presumption in favour of sustainable development as set out at paragraph 11d) therefore does not apply.

21. The evidence before me sets out that a member of the family has a physical disability, meaning that the dwelling has been designed to be adaptable and capable of fulfilling any accessibility needs which may arise in the future. Accordingly, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not. I have also had regard to the rights conveyed in the Human Rights Act.
22. In respect of the above, a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring that harm to the CA is avoided. Therefore, whilst I acknowledge the personal circumstances of the appellant, I conclude that these are not matters which outweigh the harm that would be caused by the proposal in respect of my aforementioned conclusions on the main issues.
23. For the reasons outlined, the appeal proposal conflicts with the development plan read as a whole and no material considerations including the provisions of the Framework have been shown to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

*H Wilkinson*

INSPECTOR