The Planning Inspectorate

Appeal Decision

Hearing held on 3 December 2015

Site visit made on 3 December 2015

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Con IHBC MRTPI

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

Decision date: 04 January 2016

Appeal Ref: APP/Y2430/W/15/3130670
53 Main Street, Kirby Bellars, Melton Mowbray LE14 2EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs J E Dolan against the decision of Melton Borough Council.
- The application Ref 14/00841/FUL, dated 14 October 2014, was refused by notice dated 3 April 2015.
- The development proposed is erection of 3 No. holiday homes on land adjoining Hawthorn House, 53 Main Street, Kirby Bellars.

Decision

1. The appeal is allowed and planning permission is granted for 3 No. holiday homes on land adjoining Hawthorn House, 53 Main Street, Kirby Bellars at 53 Main Street, Kirby Bellars, Melton Mowbray LE14 2EA, in accordance with planning application Ref 14/00841/FUL, dated 14 October 2014, subject to the conditions set out in Annex C to this decision.

Application for costs

2. At the Hearing an application for costs was made by Mrs J E Dolan against Melton Borough Council. This application will be the subject of a separate Decision.

Main Issue

3. Whether the proposed development would be located so as to benefit businesses in rural areas, communities and visitors and provide future users with a choice of transport mode.

Reasons

4. The appeal development would be located outside but immediately adjoining the village envelope of Kirby Bellars, as defined in Melton Local Plan adopted 23 June 1999 (LP) Kirby Bellars Inset Map. It is agreed between the two main parties that the appeal development would be in the open countryside, but would not be isolated due to its close proximity to the village envelope.

5. Relevant policies cited are LP saved Policies OS2 and BE1. LP saved Policy OS2 generally seeks to protect the open countryside but makes certain exceptions including for limited small scale development for tourism which is not significantly detrimental to the appearance and rural character of the open countryside.

6. The Council does not raise concern regarding the effect of the appeal development on the character or appearance of the locality and considers that it would comply with saved LP Policy BE1 which seeks, amongst other things, to ensure that buildings are designed to harmonise with surroundings. On the basis of its location close to the village envelope, its single storey, rural appearance and spacious layout, I have no reason to take an alternative view on this matter. I have based that finding on the evidence before me, including the Landscape and Visual Appraisal carried out by Iain Reid Landscape Planning Ltd, together with my on-site assessment. I have also taken account of the effect of the loss of the open space, note that it does not have any statutory or Development Plan designation and it adjoins open land, thereby making a limited contribution to the open spaces between buildings within the village.

7. As the appeal development would not be significantly detrimental to the appearance and rural character of the open countryside, I consider that it would fall within the exemption set out in saved LP Policy OS2. This accords with the views of the two main parties. Further, in paragraph 4 of the Statement of Common Ground, the two main parties agree that the appeal development complies with all the policies of the Development Plan. In the absence of evidence to the contrary, I have no reason to disagree.

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 indicate that applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 11 of the National Planning Policy Framework (the Framework) advises similarly. I will go on to assess the other material considerations advanced.

9. The Council, in this regard, refers to bullet point three of paragraph 28 of the Framework, to which I accord significant weight. This generally supports a prosperous rural economy including sustainable rural tourism that benefits businesses in rural areas, communities and visitors and which respects the character of the countryside. It also states that this should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.

10. The future occupiers of the appeal proposal would help to support businesses, facilities and services in rural areas. Whilst it is acknowledged that there are limited facilities and services locally, it would benefit those present, such as the local public house, local buses and some delivery services such as milk and meat, although those services would need to be pre-ordered. It would also benefit the wider rural area, such as the shops and facilities in Ashfordby and Frisby on the Wreake, and local tourist attractions and facilities including Eye Kettleby Lakes, attractions in Melton Mowbray and further afield. It would provide short term jobs in the construction industry and some employment in cleaning and servicing the accommodation. In this respect it would contribute to the economic role of sustainable development as defined in paragraph 7 of the Framework.

11. In providing good quality accommodation, suitable for people with limited mobility, in a quiet, attractive rural setting, close to a range of local tourist facilities and attractions, local walking and cycling networks and local bus services, it would benefit visitors to the area. In supporting rural businesses

and services outlined above, and providing some contribution to vitality in the locality, it would benefit communities in rural areas, which would contribute to the social role of sustainable development.

12. Whilst the appeal development would be located in a locality with limited services and facilities, and this would increase reliance on private forms of transport, I acknowledge that rural tourism by its nature is more reliant on private transport, than housing, for practicality in carrying luggage, the requirement for flexibility when people are not in their usual daily routine and site seeing. However, it would be in a location where future users of the appeal development could access the local bus network to larger settlements including Melton Mowbray and Leicester. Even though these do not run every day, they would provide some choice as to transport mode. It would be close to a network of local footpaths across open countryside and providing access to Frisby on the Wreake, Ashfordby and the main road to Melton Mowbray, although I accept that these would not be accessible to future users of the appeal development with limited mobility difficulties and there are places where there is no footpath along the A607. The proposed holiday lets would also be accessible to a network of cycle ways, although access would be via roads, some of which are heavily trafficked, such as the A607. However, all in all, I consider that the appeal development would be located to provide the potential for future tourists to make use of public transport, walking and cycling. In coming to this conclusion, I have had regard to paragraph 29 of the Framework, which indicates that opportunities to maximise sustainable transport solutions will vary from urban to rural areas.

13. It is agreed between the two main parties that, even though the appeal proposal would result in development where none was previously, it would respect the character of the countryside; a matter on which, based on my previous findings, I have no reason to take an alternative view. However the absence of harm weighs neither for nor against the appeal. However, the potential for future users to have a choice of transport mode would generally contribute to the environmental role of sustainable development.

14. The Council raises concern that the proposed development would not support the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres and thereby would not accord with the second sentence of bullet point three of paragraph 28 of the Framework. In this regard, I am persuaded by the evidence of the Melton Borough Council Rural and Economic Affairs Committee Report (Agenda Item 11), dated 2 September 2015, which reports on the Tourism Scarborough Tourism Economic Activity Monitor trend report for Melton 2013-2014 (STEAM report). In paragraph 3.4 it indicates that the focus is to increase the numbers of staying visitors. In paragraph 3.10 it explains that the total visitor number has increased, particularly in respect of non-serviced accommodation, a category into which the appeal development would fall, and due to rising demand thought should be given to increasing this accommodation sector in the area. It goes on to explain, in paragraph 3.12 that the increased spend by staying visitors make them a priority in terms of generating revenue within Melton particularly as the small non-serviced sector increased its economic impact by almost 63% within the year. It concludes, in paragraph 3.15, that the next step is to look at initiatives to support businesses to increase the number of non-serviced accommodation within the area.

15. An extant planning permission relating to development at Frisby Lakes was brought to my attention at the Hearing (Ref 07/00402). I have limited information on that permission. However, even though the lodges permitted have not been built out, I am not persuaded that it provides a case for a lack of demand for the appeal development, as those lodges are proposed for sale and would be for a different market to the appeal development. Further, neither does the fact that a bed and breakfast facility in Kirby Bellars closed in 2006, as that is a different facility to the appeal development. Whilst I acknowledge development at Eye Kettleby Lakes, which includes a touring park, log cabin accommodation, a club house and restaurant, this again provides different accommodation to the appeal development. In the face of persuasive evidence of an unmet demand for non-serviced accommodation, I cannot be convinced that such development or other rural conversions have satisfied the demand for non-serviced accommodation indicated in the STEAM report.

16. All in all, I am satisfied that a persuasive case has been made to demonstrate that the appeal development would support the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres. I have concerns as to whether the test applied by the Council, to demonstrate an identified need for the proposed development, would accord with the purpose of paragraph 28 of the Framework, to support a prosperous rural economy and its first bullet point to support the sustainable growth and expansion of all types of business and enterprise in rural areas. However, as the appeal proposal would pass such a test in any event, I have no reason to consider this matter further.

17. I conclude that the proposed development would be located so as to benefit businesses in rural areas, communities and visitors and provide future users with a choice of transport mode. In this regard, it would generally accord with LP saved policies OS2 and BE1. Further, it would accord with bullet point 3 of paragraph 28 of the Framework.

Other Matters

18. I have noted that the Council cannot demonstrate a five year supply of deliverable housing sites. I am also aware that in such circumstances relevant policies for the supply of housing should not be considered up-to-date, in accordance with paragraph 49 of the Framework. In this context, I note that the Council consider saved LP Policy OS2 to be a policy for the supply of housing and therefore not considered up-to-date. However, as it is not suggested that the proposed development would fail to accord with that policy, this matter does not affect the outcome of this appeal. In addition, as the proposed development is for holiday lets and on the basis of my previous findings, whether the Council can or cannot demonstrate a five year supply of deliverable housing sites also does not affect my decision.

19. I have had regard to the emerging Melton Local Plan (eLP), which at present is at Issues and Options stage (*Emerging Options (Draft Plan) 2011-2036 – January 2016*) and note emerging policies EC2 and EC8. I consider that the appeal proposal would be in general accordance with those policies. However, it is agreed between the two main parties that, as those draft policies are not at an advanced stage of preparation, they should be afforded limited weight and I have no reason to take an alternative view on this matter.

20. In coming to my decision, I have had regard to my Colleague's deliberations in determining an appeal for development at Scalford (Ref APP/Y2430/A/14/2213683). However that appeal was for a different development, in a different location and did not have the same economic benefits as the appeal proposal.

21. The parking and turning space within the appeal site would provide for the proposed development and would not therefore be likely to result in additional on-street parking. Whilst I acknowledge that the A607 which leads into Melton Mowbray is a busy road, the limited number of additional vehicles resulting from the appeal development is unlikely to result in congestion or a reduction in highway safety for any other reason. In this regard, I concur with the views of the Highway Authority, which did not raise concern regarding highway safety.

22. I am aware that Kirby Bellars was identified as neither a rural centre nor a sustainable village in the Melton Local Development Framework Core Strategy (CS). However, that document has been withdrawn and that settlement hierarchy related to the ability of settlements to accommodate housing. I am advised that further work is being carried out to support the eLP, but this is not before me. This proposal is for rural tourist accommodation and its contribution to the tourist economy is a material consideration, to which I attach significant weight in its favour. Further, saved policy OS2 allows such development in the open countryside.

23. As the proposed development would be small scale and sited some distance from the highway, would accommodate parking on-site and would be some distance from the nearest dwellings, it would not have an adverse effect on the living conditions of neighbouring residents with regard to noise and disturbance.

24. If it were intended to use the proposed buildings for residential use, this would require planning permission and would be assessed at that point. As each application is judged on its individual merits, a precedent would not be set as a result of my decision. Further, with the use of a suitably worded planning condition, the proposed development would not interrupt access along the footpath to the north of the appeal site, which would also not require diversion.

25. Evidence of protected species on the appeal site is not before me. If such species were to be identified they would be protected by the Wildlife and Countryside Act 1981.

26. The proposed buildings would be sited to take advantage of the southern aspect in terms of solar gain. Other measures to ensure that they would be energy efficient, along with details of waste and local sewer capacity would be dealt with through the Building Regulations regime.

27. It is suggested that the appeal site has flooded in the past. However, no substantive evidence that the appeal development would be at risk of flooding or increase such risk in the locality is before me. Whilst it is brought to my attention that the site location plan is not up to date, I have found it sufficient to identify the appeal site.

28. I note a previous application (Ref 13/00563/FUL) for development at the appeal site. However, that was for a different development for four holiday

homes and was refused on the basis of its adverse effect on the character and appearance of the locality, amongst other things. These matters differentiate it from the appeal application. In any event, I have determined this appeal on the basis of the evidence before me and on its individual merits.

Planning Conditions

29. A list of suggested planning conditions was agreed between the two main parties at the Hearing. I have agreed with the imposition of most of these subject to refinement to improve clarity and ensure consistency with national policy and guidance.[1] A list of planning conditions to be imposed is set out in Annex C to my decision.

30. Standard time and plans conditions are required to ensure clarity and in the interests of proper planning. A condition to control external materials is necessary to ensure that the development blends into the locality. Conditions to secure and retain the details, including visibility splays, of the shared access drive are necessary in the interest of highway safety, along with details of site drainage. I agree that a condition to prevent new planting near to the northern boundary encroaching onto the Right of Way, along with a condition to provide clarity on the proposed use as holiday lets are necessary for those reasons. A condition to investigate and explore any site contamination is necessary to protect public health. A condition to restrict the hours of working is required to protect the living conditions of neighbouring occupiers. Conditions to ensure remaining archaeology is protected, investigated and recorded are necessary for the benefit of future generations and to further our knowledge and understanding of the past.

Conclusion

31. The appeal development would contribute to the economic, social and environmental roles of sustainable development as set out in paragraph 7 of the Framework. Limited material harm has been identified, relating to the lack of local services and facilities. Taking this into account, the benefits of the appeal development would outweigh the adverse impacts and accordingly I consider that the appeal development would fall within the definition of sustainable development as set out throughout the Framework.

32. Therefore, for the above reasons, and taking all other matters raised into consideration, including those of local residents and other third parties, I conclude that the appeal should be allowed, subject to the conditions listed in Annex C to my decision.

R Barrett

INSPECTOR

1 Paragraphs 203 and 206 of the Framework and PPG paragraphs 21a-001-034

APPEARANCES AT THE HEARING **Annex A**

FOR THE APPELLANT

Chris May LLB LARTPI	Legal Director, Marrons Shakespeares
Iain Reid Dip TP MRTPI DIP LD CMLI	Director, Iain Reid Landscape Planning Ltd
Michael Keyworth Dip Arch RIBA	Principal, FWK Architects
J E And M Dolan	Appellants

FOR THE COUNCIL

Jennifer Wallis BSc Dip TP MRTPI	Planning Officer Melton Borough Council
Sarah Legge Msc	Planning Officer Melton Borough Council

DOCUMENTS SUBMITTED AT THE HEARING — Annex B

IQ1 List of appearances for the Appellant

IQ2 Revised Statement of Common Ground with amendments highlighted at paras 3 and 7

IQ3 Melton Mowbray Bus Map and Guide Sept 2015

IQ4 Application for Costs on behalf of the Appellant

IQ5 Front Cover of Melton Local Plan Issues and Options September 2014

IQ6 Front Cover and extracts from Melton Local Plan Emerging Options (Draft Plan) 2011-2036 (Jan 2016) (policies EC2, EC7 and EC8)

IQ7 Clarification of name for The 6C's Design Guide from Leicestershire County Council web site

IQ8 Archaeological comments on appeal application dated 18 March 2015

IQ9 Council's response to Appellant's costs application

LIST OF PLANNING CONDITIONS **Annex C**

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby approved shall be carried out in accordance with approved plans: location plan title number LT319977; 14-2934-201 Rev A; 14-2934-202 Rev B.

3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) The gradient of the shared access drive shall not exceed 1:12 for the first 5 metres behind the highway boundary and shall be retained in that condition thereafter.

5) The shared access drive shall be surfaced with tarmacadam, concrete or similar hard bound material for the first 5 metres behind the highway boundary and shall be retained as built thereafter.

6) Before the first use of the development hereby approved drainage works shall be carried out in accordance with details to be submitted to and approved in writing by the local planning authority. Works shall be retained as approved thereafter.

7) Before first use of the development hereby approved space shall be laid out within the site in accordance with drawing No 14-2934-201 Rev A for two cars to be parked within each curtilage and for vehicles to turn so that they may enter and leave the site in a forward gear. The parking areas indicated above shall not thereafter be used for any purpose other than the parking of vehicles.

8) Before building works commence, minimum visibility splays of 2.4 metres by 45 metres shall be provided in each direction out of the access on to Main Street. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.

9) The shared private access drive shall have a minimum width of 4.25 metres with 0.5 metres wide clear margins for at least the first 5 metres behind the highway boundary and have a drop crossing of a minimum size as shown in Figure DG20 of the 6Cs Design Guide at its junction with the adopted road carriageway. The access drive shall be provided before the development is first brought into use and shall thereafter be permanently so maintained.

10) Any new trees or shrubs to be planted adjacent to the northern boundary should be set back a minimum of 1 metre from that boundary and should be of a species which does not spread.

11) The accommodation hereby permitted for holiday lets shall not be used other than for holiday letting. For the purpose of this condition 'holiday let' means letting to the same person, group of persons or family for a period not exceeding 28 days in any one calendar year and the accommodation shall not be used as the main residence of any occupant.

12) No development shall take place until an investigation and risk assessment has been completed in accordance with a scheme to assess the nature and extent of any contamination on-site and to identify and control any unacceptable risks to human health or the environment taking into account the sites actual or intended use, whether or not the contamination originates on the site. The investigation and risk assessment must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and must be undertaken by competent persons. A written report of the findings must be produced and submitted to and approved by the Local Planning Authority.

In the event that it is proposed to import soil onto site in connection with the development the proposed soil shall be sampled at source such that a representative sample is obtained and analysed in a laboratory that is accredited under the MCERTS Chemical testing of Soil Scheme or another approved scheme, the results of which shall be submitted to the Local Planning Authority for consideration. Only the soil approved in writing by the Local Planning Authority shall be used on-site.

13) Demolition or construction works shall not take place outside 07:00 hours to 19:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.

14) No development shall take place at the appeal site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

15) No demolition or development shall take place other than in accordance with the written scheme of investigation approved under condition 14.

16) The development hereby approved shall not be used until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under condition 14 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.