

Appendix B

Appeal by Mr K Hearn

5 Detached houses and demolition of redundant dutch barn at
Chesterfield Cattery, Crow Lane, Chesterfield.

CHE/18/00225/FUL
2/1932

1. Planning permission was refused on 28th August 2018 for permission for 5 detached houses at Chesterfield Cattery, Crow Lane for the following reasons:
 - 1. The site the subject of the application is on land allocated under policy EVR2 of the 2006 Local Plan (a saved designation of the Chesterfield Local Plan: Core Strategy 2011 - 2031) as open countryside. Policy CS10 of the Chesterfield Local Plan: Core Strategy 2011 - 2031 states that greenfield led housing development will not be accepted where the Local Planning Authority is able to demonstrate a 5 year housing land supply. On the basis that the Local Planning Authority is currently able to demonstrate a 5 year housing land supply the development would be contrary to the provisions of policy CS10 and EVR2 and the wider provisions of the National Planning Policy Framework 2018.*
 - 2. The site is situated in a rural location and having regard to its specific characteristics, under the provisions of Policy CS1, the new dwellings would not be within walking distance of a centre (the nearest being Chesterfield Town Centre, approximately 1.5km away, with a significant proportion via unlit roads without pavements). On this basis the proposals fail to meet the provisions of Policy CS1 of the Chesterfield Local Plan: Core Strategy 2011 - 2031 and the wider provisions of the 2018 National Planning Policy Framework.*
2. An appeal against the decision has been determined by the hearing appeal method and has been dismissed.
3. The main issues are whether the appeal site represents an appropriate location for housing having regard to national and local policies which seek to protect the character and

appearance of the countryside and whether any adverse impacts would significantly outweigh the benefits of the proposal and whether the Council can demonstrate a 5 year housing land supply.

Location of Development

4. The appeal site is an irregular shaped plot located off Crow Lane, a very narrow country lane with limited places for vehicles to pass. The site comprises a long access drive with buildings set back from the road. They include a dwelling, stables, cattery building and Dutch barn under part of which is a shed type structure which also served the cattery business that operated from the site prior to the licence expiring. The site also includes 3 paddocks and a ménage. To the north of the site is Dobbin Clough Farm with the remaining parts of the site surrounded by a golf course. Generally, the site and the wider area has a rural character.

5. For planning purposes the site is located outside of an identified settlement and as such is located in open countryside. Saved Policy EVR2 of the Replacement Chesterfield Borough Local Plan 2006 amongst other things restricts development in open countryside to that which is necessary for the needs of agriculture and forestry or is related to recreation, tourism or other types of farm or rural diversification. The proposal does not involve any of these uses. There was some dispute between the parties regarding whether the site should be treated as greenfield development. The site contains a mix of previously developed land and greenfield and from the plans it would appear that around half of the development would be located on greenfield. At the Hearing the appellant stated that there was no intention that the scheme would encroach onto the paddock but acknowledged that there may be an error on the plans as a result of the way the driveway has been drawn. Nevertheless, the inspector was required to determine the scheme before her on the evidence she had, along with her observations on site, and was of the view that plot 5 of the development would encroach onto the paddock. At the Hearing the appellant referred to a house in the paddock to the south west of the site, which is shown on a plan from the 1800s. However, the property has long since gone and any remains have blended into the landscape.

6. The parties did not agree on whether the Dutch barn forms part of previously developed land. Whilst it is not currently used for agricultural purposes the Council identified that its construction dates from the time the site operated as a farm. It is clear from the form of the building, with open sides that it is agricultural in appearance. Irrespective of any covenant or licence to run a cattery from the site, there has been no change of use in planning terms and the shed structure sitting under the canopy of the barn is separate to it. The inspector was of the view that the Dutch barn is an agricultural building and therefore under the definition contained in the glossary of the NPPF is not previously developed land.
7. Policy CS10 of the Local Plan: Core Strategy 2011-2031 (Core Strategy) restricts housing led development on unallocated greenfield sites where the Council cannot demonstrate a 5 year housing land supply to sites that accord with the provisions of Policy CS1 and CS2 of the Core Strategy and where a specific housing need in the location proposed can be demonstrated. Even if the site were classified as previously developed land, the development would be required to adhere to Policy CS1 and Policy CS2 of the Core Strategy. Policy CS1 of the Core Strategy sets out a spatial strategy for the Borough which seeks to concentrate new development within walking distance of centres and to locations that need regeneration in areas of multiple deprivation. Amongst other considerations, Policy CS2 of the Core Strategy seeks to locate development where it maximises opportunities for walking and cycling and the use of public transport.
8. At some 1.5km from the nearest centre of Chesterfield town centre, the Council state that the site falls outside the distance and travel times contained in the Highways and Transportation Guidance 'Guidelines for Journeys on Foot'. The appellant says this should be afforded little weight as it is not contained within the NPPF or local policy. Even if this were the case, the inspector considered the quality of the route to be poor. At the Hearing the Council acknowledged that the distance to a centre may not be a determining factor in every development. Nevertheless, the inspector was not convinced in the case of this development that access to

facilities would be via a desirable route for families with young children, older people or those with mobility issues. This is because of the narrow, unlit road which is subject to the national speed limit and has limited forward visibility in places. Even if it is not a congested route, it is unpaved with few places for pedestrians to take refuge from traffic despite the appellant's reference to their own experience of using the route with ease. This is an issue given that what is proposed is family housing.

9. The appellant says the Highways Authority are of the view that the road is safe. However, in the evidence before the inspector they reference the condition of the road, as identified above. Although there are a number of public footpaths in the area, not all of them appear well used from the inspectors observations on site. The inspector acknowledged that maintenance issues of the network are not the responsibility of the appellant but the surrounding footpaths do not offer a route into the nearest centre that would overcome the concerns the inspector identified. The appellant has referenced paragraph 98 of the NPPF which seeks to ensure the protection and enhancement of public rights of way and taking opportunities to add links. However, there is little before the inspector to indicate that the development would make any meaningful contribution on this matter with no improvements to the network proposed. The inspector therefore give this matter little weight.
10. The appellant says that neither distance nor quality should be used as a measure of accessibility to services and facilities. The inspector disagreed. Irrespective of whether the route forms part of the strategic cycle network and the proximity of the site to green infrastructure, the inspector was of the view that the occupants of the dwellings would in all likelihood be reliant on the car as a mode of transport to access services and facilities to meet day to day needs. The inspector did not therefore consider that the proposal would support the provisions of paragraph 103 of the NPPF which states that planning should actively manage patterns of growth to support the use of public transport, walking and cycling. Whilst the appellant has referenced the installation of electric charging points at the properties, it would not compel their use. The

extent to which this would provide mitigation would consequently be limited.

Housing Land Supply

11. Paragraph 1.10.1 of the Planning Appeal Procedural Guide states that a decision should be made under the circumstances existing at the time it is made. Account therefore needs to be made of amongst other things, to any changes to policy, legislation or guidance and matters that are material to the appeal. Since the decision was issued by the Council a revised version of the NPPF has been published and as a monitoring year has passed, the Council has also prepared and published on 29 May 2019 a revised 5 year housing land supply statement for 1 April 2019 – 31 March 2024, in line with paragraph 73 of the NPPF.
12. At the Hearing the Council explained that as the strategic policies in the Core Strategy are more than 5 years old they had used OAN based information in the calculation using Local Housing Need LHN methodology set out in the NPPF. Although the appellant identified a significant shortfall and historical poor delivery of housing numbers in the Borough, the methodology adopted by the Council takes into account under delivery and includes an additional 20% for poor historical performance, as required by the PPG. The Council state that they have a 6.7 year housing land supply. The Council's supply statement sets out the sites that make up the 5 year supply of deliverable sites. Whilst it was acknowledged by the parties that the statement is a reflection of the situation at the time of publication, the appellant maintained that the Council could not demonstrate a 5 year housing land supply, which was also their position at the time of the submission of statements. Whilst conceding on the inclusion of the site referred to as Waterside following the submission of details of planning permissions submitted by the Council, the appellant states that the Council cannot demonstrate a 5 year supply because of the inclusion of sites at Walton Hospital. The inclusion of other sites in the statement was also questioned, although they were not mentioned by name. At the Hearing the Council provided evidence to support the inclusion of the sites, providing copies of emails between the Council and Homes England, the contents of which is summarised in the housing land supply statement. Despite use of subjective

phrases such as 'likely to deliver', the information does provide evidence to support the inclusion of the site within the Council's housing land supply calculation.

13. On the evidence before the inspector in the Council's supply statement and at the Hearing there was little to suggest that the Council has prepared a statement that does not accord with the NPPF definition of deliverable. This led the inspector to take the view that the Council is currently able to demonstrate a 5 year housing land supply.

Other Matters

14. At the Hearing the appellant referenced extensively a site granted planning permission on 11 June 2019 at Oldfield Farm. Despite some similarities to the case, identified by the appellant, the inspector considered the cases to be materially different. The scheme, which is smaller is to be located on a site that has a different relationship to the urban area, being located on the edge of built up development on the boundary of the settlement of Brimington. As such the site has better connectivity despite being further walking distance from an identified centre than Chesterfield Cattery. The inspector also noted the evidence that identifies that the site is within walking and cycling distance of a primary school, pubs, bus stops and a convenience store in Brimington Common which could provide for day to day needs. It is also apparent that there is the fallback of a Class Q conversion which carries weight and which is not applicable in the case before me. In any event, each case is determined on its own merits and the inspectors assessment was based on the information before her.
15. Reference was also made to Pond House Farm in support of the proposal. However, as an allocation in the emerging Local Plan that is subject to notable objection and a refused planning application, the inspector gave this little weight at this time. The appellant identified that there have been huge improvements to the site since it was brought by the current owner and that the development would improve the site further. It is identified that the scheme would lead to the delivery of 5 new gardens which would add to the biodiversity value of the site. However, given that increased biodiversity at the site could be achieved in the absence of the scheme, the inspector gave this limited weight.

16. The site is located adjacent to a Grade II Listed Building, referred to as Dobbin Clough Farmhouse, and attached barn to the south of the house. The property is said to have a mediaeval origin which contributes to its importance and significance. The Council is of the view that the development would not harm the setting of the Listed Building and based on the information before the inspector she had no reason to take a different view. The appellant says the site was omitted from the Council's Land Availability Assessment. Given that a positive appraisal in the assessment does not necessarily lead to the grant of planning permission, exclusion from the study does not weigh against the site in the consideration of the scheme.

Planning Balance and Conclusion

17. The development of 5 dwellings would be an efficient use of land that would generate economic benefits during construction and occupation of the properties thereafter. The scheme would add to the housing land supply, although the scale of the gain would be limited by the size of the development. However, the site is not in an appropriate location for housing development and the Council is currently able to demonstrate a 5 year housing land supply. The proposal would consequently conflict with saved Policy EVR2 of the 2006 Local Plan and Policies CS1 and CS10 of the Core Strategy, the relevant parts of which are outlined above and for the reasons identified, the inspector concluded that the appeal should be dismissed.