

Appendix A

Appeal by Mr and Mrs C Franczak

Two detached dwellings and Garaes at City Farm, off Dark Lane, Tapton, Chesterfield.

CHE/21/00809/FUL

1. Planning permission was refused on 11<sup>th</sup> November 2021 for a pair of dwellings on land at City Farm off Dark Lane. The reasons for refusal were:

*1. The proposed development is contrary to policies CLP1, CLP2, CLP3 and CLP15 of the Chesterfield Local Plan 2018 - 35 and paragraph 105 of the NPPF. The proposed development would result in an unsustainable form of development, reliant upon the private car for access to services and facilities. It would also be contrary to paragraph 80 of the NPPF as it would result in the development of isolated dwellings in the countryside. The proposal will also conflict with the open landscape character of the defined Strategic Gap introducing a built form which would be an intrusive and incongruous feature in the landscape adversely impacting the rural character and openness of the site and surrounding context.*

*2. Insufficient information has been provided to assess the impact of the required visibility splays and access to Dark Lane considering the potential adverse impact on landscape character and biodiversity. The absence of any visibility splays would not be in the best interests of highway safety contrary to policy CLP20 of the Chesterfield Local Plan 2018-35.*

*3. Insufficient information has been provided to address the archaeological potential of the site and to understand harms proposed by the application. The application therefore does not comply with paragraph 194 of the NPPF and the Chesterfield Local Plan 2018 - 35 policy CLP21 part d and g which requires development proposals to demonstrate appropriate consideration of archaeological impact.*

2. An appeal against the decision has been determined by the written representation appeal method and has been dismissed.

3. The third reason for refusal refers to archaeological potential of the site and harm associated with the proposal. A non-technical summary of the Archaeological Desk-Based Assessment (ADBA) supported the appeal concluding that the potential for the site to yield prehistoric, Roman, Saxon, or medieval archaeological features is negligible (to low) and high for post-medieval and modern periods. The Council accepted these findings and that proposed archaeological mitigation measures could be conditioned. In light of this, the inspector has only concerned himself with the remaining reasons for refusal.
4. The main issue is therefore whether the proposed development would provide a suitable site for housing, having regard to the Council's spatial strategy and:
  - the protection afforded to the functional aim of and openness provided by the Brimington and Tapton Strategic Gap;
  - the effect of the proposed dwellings on the rural character, form and setting of the site and its surroundings;
  - the effect of the proposed access works on biodiversity, and the rural character and highway safety of Dark Lane; and
  - its accessibility to services and facilities.

#### *Policy Background*

5. The appeal site is situated outside of a built-up area, within open countryside in the Strategic Gap between Brimington and Tapton (SG), as defined by policy CLP1 of the Chesterfield Borough Local Plan1 (CBLP). The policy explains the SG prevents these settlements from merging into one another and maintains open space. In such locations, policy CLP3 sets out that new residential development will only be permitted where it meets one or more criteria. There are two criteria relevant to the appeal proposal, namely the redevelopment of previously developed land (PDL), where it would not harm the intrinsic character of the countryside; and demonstration of reasonable access to a range of key services. Policy CLP15 reiterates the status of the SG's function and character.
6. Policy CLP2 also introduces a further exception to the spatial strategy with respect to proposals required to regenerate sites that could not otherwise be addressed. It also supports proposals that maximise opportunities to access key services through their location for cycling, use of public transport, and by walking on safe, lit, and convenient routes.

7. Policy CLP20 also requires adequate and safe vehicle access; and promotes good design that positively contributes to the distinctive character of the borough and expects development to respect the character, form, and setting of a site and its surroundings.

*Strategic Gap and Site and Surroundings*

8. The Landscape and Visual Appraisal (LVA) supporting the appeal identifies that the landscape surrounding the site is close to a bowl shape, incorporating small rectangular fields enclosed by managed hedgerows, interspersed with scattered built form including individual or groupings of farmhouses and agricultural buildings, set against a backdrop of vegetation. These include the appellants' existing home and agricultural buildings northwest of the site. The LVA also stresses the significance of longer views to the south and east over higher ground. Houses to the north and east of the SG also present a significant hard edge to the large areas of generally open and undeveloped countryside.
9. Up until the 1960s, when they were demolished, the site was occupied by two rows of dwellings. Given the prominence of the site, particularly from the north and east, the dwellings would have been perceptible in the landscape for some time prior to their demolition. The Inspector for the previous appeal at the site, for holiday cottages, confirmed evidence of the dwellings but vegetation on the site helped them blend into the surrounding countryside. This has since been cleared and remnants of the former dwellings that remain in situ are clearly apparent. Accordingly, the site constitutes PDL in the context of the definition contained in Annex 2 of the National Planning Policy Framework (the Framework). The remains of the dwellings have not integrated into the landscape, but they do not amount to prominent features and the character of the landscape has changed notably, largely due to the considerable timeframe of their absence.
10. As with the earlier appeal, the site remains prominent within the landscape due to its proximity to public rights of way (PROW) and the views available from higher ground to the north and east. Despite its unkept appearance, it continues to contribute positively to the openness of the SG and the rural character, form and setting of its surroundings.

11. The site is relatively small and the proposal would be unlikely to affect the functional aim of the SG to be able to distinguish the physical separation between Brimington and Tapton. In particular, the site is within part of the SG that the Council's review notes as being of sufficient scale to ensure merging of these settlements would not occur in this direction. Nevertheless, it would be some distance from the settlements so would be read as part of the countryside separate from the appellants' existing house and agricultural buildings. While these are visible within their surroundings, the proposed dwellings would be of greater prominence and less contained within the landscape, particularly in views from higher ground to the north and east and in closer proximity from the PROW. Like the holiday cottages proposed at the site, they would increase the extent of development surrounded by fields which, in turn, would significantly and permanently erode the longstanding contribution made by the site to the openness of the landscape within the SG.
12. Despite claims advanced in the appellants' evidence that they would be seen in the context of the canopy of trees behind them and not against the skyline, there was no substantive evidence before the inspector to demonstrate how the dwellings would relate in this way, including the viewing location. Moreover, the LVA accepts they would be new features that would be perceptible. The appellant has also committed to adding more planting to the site, but this would be unlikely to mature for some time and soften the impact of the development from certain viewpoints. The inspector was also mindful that vegetation is subject to seasonal change and is, in any event, ephemeral.
13. The proposed dwellings have been designed having regard to the architectural detailing of the properties that previously occupied the site, using a traditional palette of materials. While the appearance of the dwellings would not, of itself, be harmful to the rural character and openness of the landscape it would not lessen the effect of their physical presence.
14. The proposal relates to previously developed land and would result in a more efficient use of the site. However, for the reasons identified above, it would not safeguard and improve this particular environment, a key component of the

Framework's objective of making effective use of land. For the same reasons, addressing the visual impacts of decline associated with absence of a use for the site should not be at all costs and should come in the form of development that is responsive to its current context. The evidence before the inspector did not clearly demonstrate that the appeal scheme is required to regenerate the site or that its environmental and visual enhancement could not be addressed by other, less intrusive and cost effective, means including tidying of rubble and a greater extent of planting to boundaries in addition to that already proposed.

#### *Proposed Access Works*

15. The site is accessed from Dark Lane, a curving route with well-maintained mature hedgerows and established trees of varying condition. These conditions mean that forward visibility in either direction is short and contained by the vegetation. Despite gaps in planting to joining roads and accesses to fields and properties, including the domestic appearance of the site access, Dark Lane retains a rural character, to which planting of the appellants' land adjoining it makes a significantly positive contribution.
16. The existing access would need to be improved to serve the proposal through visibility splays in either direction. The appellants undertook speed survey work and recorded 85th percentile speeds in the vicinity of the access of 28.2 mph eastbound and 25.4 mph westbound. The splays shown in the appellants' *Appeal Statement Highway Matters* would terminate within the carriageway, thereby reducing visibility of bicycles or motorcycles travelling east in the edge of the carriageway. However, the appellants own sufficient land either side of the access for safe splays to be provided in either direction to the carriageway edge, in accordance with the highway safety aims of CBLP policy CLP20. Separate evidence from the appellants also provides sufficient assurance of biodiversity net gain (BNG) associated works to implement splays.
17. Notwithstanding these points, hedgerows and trees would need to be removed for some distance in either direction, which would have a significantly detrimental effect on the extent of enclosure of the lane and the contribution this makes to its rural character. The appellants propose replacement planting,

behind the splays but, like other proposed planting, this is likely to take some time to grow to the scale and have the same effect as the existing planting.

#### *Location and Accessibility*

18. The site neighbours the appellants' house and other agricultural buildings but, together, they do not constitute a settlement and are some distance from Brimington and Tapton. It is therefore 'isolated' in the Framework's language and its development would only add to existing development encircled by open countryside beyond these settlements. The proposal would also not be for any of the exceptions to housing referred to in paragraph 80 of the Framework.
19. While the aforementioned settlements offer a very good range of services and facilities, they are not close on foot or by bicycle. The walking and cycling route, along Dark Lane, does not include street lighting or footways and the lane is narrow, curving, and steeply banked on either side. This means there are few opportunities for vehicles to pass one another and limited opportunities for pedestrians to seek refuge clear of the carriageway. I accept that recorded vehicle speeds are less than its upper limit, but it does not guarantee it would be convenient or realistic, particularly for occupants with young children or mobility issues and especially after dark or during inclement weather. There would also be similar issues with the public footpaths available through fields to the north and east, including to bus stops, as these are also unlit, generally on unmade routes and include stiles.
20. Future occupants of the proposed dwellings could cycle to Brimington and Tapton, but it is highly likely they would need to travel regularly by private motorised transport to access their day-to-day needs. Many of the required journeys may be shorter and a greater dependency on car use is inevitable in more rural locations, the inclusion of space in one dwelling for homeworking could also reduce the need to travel to some places of work. Nevertheless, the cumulative effect of allowing developments in locations such as this would be likely to increase the amount of unsustainable journeys made.

#### *Conclusion on the Main Issue*

21. For the reasons outlined above, while the proposed development would not conflict with the functional aim to protect against settlements merging it would reduce openness within the SG. Moreover, even though the appearance of the dwellings would be acceptable, their physical presence would have a significant detrimental effect on the rural character, form and setting of the site and its surroundings. Similarly, safe vehicular access could be provided to serve the proposal, which would result in BNG, but visibility splays for the access would require significant removal of planting along Dark Lane and its replacement would take time to establish. This would result in harm to the rural character of the lane. The site would also be located such that it would be likely to be reliant upon the use of private motorised transport to reach services and facilities.

22. Accordingly, the proposed development would not provide a suitable site for housing, having regard to the Council's Spatial Strategy, the protection afforded to the openness provided by the SG, the effect on the rural character, form and setting of the site and its surroundings, including Dark Lane; and its accessibility to services and facilities. Hence, it would conflict with the aims of the spatial strategy; the principles for locating development, including housing and the SG; and in respect of design, as expressed by CBLP policies CLP1, CLP2, CLP3, CLP15 and CLP20; and paragraphs 80 and 105 of the Framework.

### **Other Matters**

#### Precedents

23. The appellants' Design and Access Statement refers to the appeal decision at *land to the northwest of Northmoor View*. While no location plan of that site is before me, it is described as being adjacent to the northeast built-up edge of Brimington. It therefore appears to be somewhat north of the SG, so is not comparable with the appeal scheme.

24. The site at Oldfield Farm has a closer relationship to the built-up area of Brimington Common and relates to replacement of existing buildings. It is also close to dedicated footways, with streetlighting, in Westmoor Road and there are hard surfaced areas or grass verges beyond either side of the carriageway. This would likely be more palatable to pedestrians. The site

opposite6 for three dwellings also has a footpath serving its access. As such, circumstances of the accessibility of these sites would not be comparable with the appeal before the inspector.

#### Fallback Position

25. The appellants have shown how their existing agricultural buildings could be converted to two separate dwellings. However, prior approval has not been secured and there is no assessment as to how it would meet the conditions set out in Class Q to Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the Order).
26. With cognisance of the caselaw to which the inspector referred, this could potentially amount to a 'fallback' position. In comparing both schemes, the inspector was mindful it is not the intention of the Order to consider accessibility of sites, as Class Q was evidently introduced to increase the supply of housing through the conversion of agricultural buildings in the countryside.
27. In terms of the other issues to be considered under Class Q, the alterations required to convert the agricultural buildings would have very different effects to the appeal scheme, particularly in respect of their size, as the new dwellings proposed would be much taller. Unlike the caselaw, the existing buildings are also situated within a different part of the appellant's land and the proposal would be of significantly greater prominence in the landscape given their proximity to two footpaths and visibility from a greater distance to the east.
28. The inspector had not explored consideration of matters relevant to the existing access from Dark Lane, as he had not been referred to any considerations regarding the extent of movements associated with the agricultural buildings, which could have a bearing on the need for any access improvements for visibility. Even if I were to arrive at a different conclusion regarding comparison of the effect of the schemes, there is no legal mechanism before me to prevent the agricultural buildings being converted under the Order alongside the proposal. The appellant has referred to use of a planning condition to remove permitted development rights but I am not convinced this would



be reasonable regarding something that is completely unrelated to the appeal scheme. In any event, such a condition could only take effect at the point that planning permission would be implemented for the proposal, which would not prevent works to the agricultural buildings taking place before the permission was implemented. The appellants would not be in breach of the condition, as the Council could not enforce it. There would therefore be no means of preventing both schemes from going ahead and the inspector afforded the identified fallback position limited weight.

### **Planning Balance and Conclusion**

29. While the CBLP predates the current Framework, the inspector was satisfied that the policies relevant to the determination of the appeal are in accordance with the aims of the Framework to recognise the intrinsic character and beauty of the countryside and locate housing where it can best be served by facilities and services. The conflict of the proposal with CBLP policies is therefore a significant concern.
30. The inspector had not been referred to a lack of deliverable housing sites in the borough, but the Government is seeking to significantly boost the supply of housing. The proposal would contribute to supply in the borough and greater choice. It would also be a small site that the Framework recognises as more likely to be built relatively quickly. Nevertheless, the magnitude of the contribution to housing supply would be modest, so would attract limited weight.
31. There would be short-term benefits to the local and wider economy from the application of the New Homes Bonus and the purchase of materials and direct and indirect employment associated with construction of the dwellings. Future occupants would support local shops and services through expenditure but would be likely to do so through use of private vehicular transport, which I have identified as being harmful. These would all constitute benefits in social and economic terms, but the magnitude of the proposed development means they would be afforded limited weight.
32. The ADBA submitted with the appeal suggests archaeological evaluation to be undertaken in connection with the proposal would better reveal the historic interest to the construction and

use of the site. However, the inspector was mindful that there is no evidence to suggest archaeology would be at risk of being harmed or lost, were the proposal not to go ahead. This would therefore only amount to a social benefit of limited weight.

33. The BNG that could be achieved through the proposal would amount to an environmental benefit of limited weight given the extent of works to be undertaken and the harm they would cause to the rural character of Dark Lane.
34. Taking the above together, collectively there would be limited benefits associated with the appeal scheme. While the harm to the rural character of Dark Lane would be localised, so the conflict with the development plan would be limited, the other harms that would be caused by allowing development would be of greater significance.
35. The proposed development would be contrary to the development plan and there are no other material considerations that would indicate that the proposal should be determined other than in accordance with the development plan. Accordingly, for the reasons given, the inspector concluded the appeal should be dismissed.