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## Appeal Decisions

Hearing Held on 16 August 2022

Site visit made on 22 August 2022

**by D M Young JP BSc (Hons) MPlan MRTPI MIHE**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 September 2022**

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### **Appeal A Ref: APP/F2415/W/22/3296353**

#### **Land adjacent to Walton Hall, Chapel Lane, Walton, Leicestershire LE17 5RL**

- 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 Mr & Mrs McGinty against the decision of Harborough District Council.
  - The application Ref 21/01090/FUL, dated 11 June 2021, was refused by notice dated 15 October 2021.
  - The development proposed is a self-build and custom housebuilding development of a two-storey detached dwelling incorporating a home office, associated landscaping and new access formed through the front brick boundary wall off Chapel Lane with new dropped kerb. Trees are proposed to be felled as part of the works.
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### **Appeal B Ref: APP/F2415/W/22/3300240**

#### **Land adjacent to Walton Hall, Chapel Lane, Walton, Leicestershire LE17 5RL**

- 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 Mr & Mrs McGinty against the decision of Harborough District Council.
  - The application Ref 22/00837/FUL, dated 5 April 2022, was refused by notice dated 30 May 2022.
  - The development proposed is a self-build and custom housebuilding two-storey detached dwelling incorporating home office, associated landscaping, felling of trees and formation of dropped kerb and new access through the front boundary wall off Chapel Lane.
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### **Decision**

1. Appeal A is allowed and planning permission is granted for a self-build and custom housebuilding development of a two-storey detached dwelling incorporating a home office, associated landscaping and new access formed through the front brick boundary wall off Chapel Lane with new dropped kerb. Trees are proposed to be felled as part of the works at land adjacent to Walton Hall, Chapel Lane, Walton, Leicestershire in accordance with the terms of the application, Ref 21/01090/FUL, dated 11 June 2021, subject to the conditions set out in the schedule to this decision.
2. Appeal B is allowed and planning permission is granted for a self-build and custom housebuilding two-storey detached dwelling incorporating home office, associated landscaping, felling of trees and formation of dropped kerb and new

access through the front boundary wall off Chapel Lane at Land adjacent to Walton Hall, Chapel Lane, Walton, Leicestershire in accordance with the terms of the application, Ref 22/00837/FUL, dated 5 April 2022, subject to the conditions set out in the schedule to this decision.

### **Preliminary Matters**

3. As set out above there are two separate appeals which relate to identical schemes on the same site. Although there are differences in the supporting information, specifically the assessment of local housing need, the Council opposes both applications due to the site's unsustainable location. Because both appeals involve the consideration of similar issues, I have dealt with them both in a single decision letter.

### **Main Issue**

4. The main issue in both appeals is whether the development would accord with the development plan and if so, would any other considerations indicate that permission should be refused.

### **Reasons**

5. The appeal proposals involve the erection of a two-storey, self-build dwelling. Under Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016), and associated secondary legislation, local planning authorities are under a duty to grant a sufficient number of suitable permissions to meet the demand for self- and custom-built housing within their area. This demand is to be measured by the number of new applicants entered on the local Self-Build Register in each base period; and that number must be matched by new suitable permissions granted within 3 years of the end of each relevant base period. Under Section 2 of the same Act, authorities must have regard to the Register when carrying out their planning functions, including making decisions on planning applications.
6. Paragraph 62 of the National Planning Policy Framework (the Framework) identifies 'people wishing to commission or build their own homes' as a distinct section of the community, for which the size, type and tenure of housing needed should be assessed and reflected in planning policies. It is common ground that the Council has not met its statutory duty to have issued a sufficient number of permissions to meet demand arising from its Self-Build Register in respect of Base Periods 1, 2 and 3<sup>1</sup>. While the Council is looking to redress the shortfall, current policies seem unlikely to prevent the situation from getting worse in the foreseeable future. I therefore find it probable that the demand arising from Base Period 4 will also go unmet. In the light of the shortfall in provision the need to increase the supply of self and custom-build housing is an important planning consideration which must carry substantial weight.
7. A planning obligation contained in the Unilateral Undertaking (UU) would ensure compliance with the self-build and custom housebuilding legislative framework and prevent the dwelling from being built and sold as market housing, something I understand has happened elsewhere in the district. The obligation would also tie the initial occupancy of the dwelling to the Appellants.

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<sup>1</sup> See Statement of Common Ground paragraphs 6.11-6.12

8. The Council rightly point out that the dwelling could ultimately be sold on the open market. However, that argument could be made in respect of any self-build scheme, and it is very clearly not the intention here. There is nothing before me to suggest the Council has sought planning obligations in respect of other self-build permissions it has granted under Policy GD4 of the Harborough Local Plan 2011-2031 adopted April 2019 (the LP) nor has any alternative drafting been suggested which would overcome its concerns. It was accepted at the Hearing that an obligation tying the occupancy of the dwelling to the Appellants for a specified period of time, would almost certainly fail the various legal tests. Consequently, I am satisfied that as far as reasonably possible, the proposed development would not be, in the words of the Council, an 'unfettered' new dwelling.
9. The dwelling would provide much needed accommodation for the Appellants and their two young children who not only have deep-rooted ties to Walton but were also subject to a 'no fault' eviction from their previous rented property in 2021. Since that time, they have resided at a private rented property which is said to be too small to meet the family's current and future needs.
10. Although several development plan policies are listed in the Council's reason for refusal, it was agreed at the Hearing that the determinative policy is LP Policy GD4. This explains that development in locations such as Walton will only be approved, where, amongst other things, it comprises one of six forms of development, set out in sub-sections a-f. Only category (a) is relevant to these appeals which allows for:

*"Housing on small sites of no more than 4 dwellings which are within or physically and visually connected to settlements and which meet a local need for housing of a particular type, including small dwellings for the elderly and Starter Homes, providing this has been evidenced through a rural housing needs survey or a neighbourhood plan"*
11. It was agreed at the Hearing, that the appeal site is '*physically and visually connected*' to the settlement of Walton. It was further agreed that self-build and custom housebuilding would be a '*housing of a particular type*' covered by the policy. In light of the foregoing, the key consideration is whether the need for the proposed self-build dwelling has been properly evidenced through the housing needs surveys<sup>2</sup>.
12. The 2021 Survey was submitted with the first application and at the time was the most up-to-date assessment of housing need across the parish. It found the greatest level of need was for self-build and custom housebuilding with 56% of respondents with an identified housing need specifying their preferred type and tenure as being to build or commission their own home. In refusing the first application, the Council dismissed the findings of the 2021 survey on the basis that it was subjective rather than objective. Accordingly, the Council took the position that it did not supersede the findings of a previous survey carried out in 2019.
13. That survey was carried out by Midlands Rural Housing in connection with a planning application for two bungalows on the site immediately adjacent to the

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<sup>2</sup> 21/01090/FUL was accompanied by the "*Kimcote and Walton Parish Housing Needs Survey*" by Tetlow King Planning (the 2021 Survey). 22/00837/FUL was accompanied by the "*Kimcote and Walton, Harborough District Housing Needs Survey*" by CNB Housing Insights (the 2022 Survey)

appeal site<sup>3</sup>. Unlike the Appellants' surveys it related solely to the village of Walton rather than the wider parish. It found a 'requirement' for six new homes (two of which should be affordable) in order to enable local people to be suitably housed within their community. At the Hearing the Appellants' expert witness detailed a number of deficiencies with the 2019 report which the Council were unable to repudiate with any real conviction. I also note that the 2019 survey will very shortly be out-of-date on the Council's own terms<sup>4</sup>.

14. The 2022 survey was commissioned in order to overcome the Council's concerns with the 2021 survey. It was a more detailed survey of housing needs than its predecessors and carried out by an independent and reputable organisation<sup>5</sup>. It followed established government practice guidance<sup>6</sup> regarding housing needs surveys and assessments as well as relevant aspects of the Framework. It was based on evidence from official data and a household survey. It concluded that of those households identified as being in housing need, four sought self and custom-build housing for which they would be owner occupier. These needs comprised 1 x 3-bed bungalow and 3 x 4-bed detached dwellings.
15. In refusing the second planning application, the Officer Report made the following observations in relation to the 2022 survey:

*'although the provider of the document has no direct connection with the application, it remains subjective, rather than objective, in its purpose. It even states in Paragraph 2.4 that its aim is to gather evidence to support a proposed development within the village of Walton. An objective assessment would ordinarily come before development proposals and be unprejudiced by any specific demand or desire within a particular location'.*
16. When asked to provide examples of where this perceived subjectivity might have manifested itself in the report, the Council were unable to provide any examples. Indeed, under questioning, it became apparent that the main, if not only, reason why the 2019 document was still preferred over the Appellant's more comprehensive and up-to-date surveys, was simply because it was authored by an organisation the Council has previously worked with.
17. There was no cogent explanation why or how a housing needs survey would come to the Council other than to support a planning application and no examples were provided of where this had occurred. There is thus nothing to support the assertion that such surveys "ordinarily come before development proposals".
18. The Council argued that the 2019 survey was treated more favourably because it did not support a proposed development. However, under scrutiny, it emerged that that was simply not the case. The 2019 survey was in fact commissioned by the adjacent landowner in order to support the Chapel Cottage application which was similarly assessed under Policy GD4. Accordingly, I see very little difference in the 'purpose' of the surveys.

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<sup>3</sup> Chapel Cottage LPA ref: 19/01907/FUL

<sup>4</sup> Paragraph 5.6.1 the SPD states that in respect of Local Housing Needs Surveys/Parish Housing Need Surveys, "survey findings are considered valid for three years"

<sup>5</sup> CNB Housing Insights

<sup>6</sup> Local Housing Need Assessment: A guide to good practice (DETR 2000)

19. No substantive criticisms have been made of either of the Appellants' surveys in terms of scope, methodology, analysis, interpretation or conclusions. In short, nothing of any substance that would '*discredit the findings of the surveys*'<sup>7</sup> has been adduced by the Council. To that end, it is not surprising that the Appellants have raised concerns about the lack of consistency in the Council's decision making.
20. Taking all these considerations in the round, I consider that the need for the development has been clearly '*evidenced through a rural housing needs survey*'. There is no suggestion that the identified need can be met from other sites, allocated in the development plan or otherwise.
21. I therefore conclude that the schemes would accord with Policy GD4(1)(a). For the reasons set out above, they would also accord with Policies GD2, GD3, H3 and H5. No other policy conflicts have been alleged or identified. I am thus satisfied that both proposals accord with the development plan taken as a whole. Accordingly, the section 38(6) test is passed and in accordance with paragraph 11(c) of the Framework, the schemes should be approved without delay.

### **Other Matters**

22. The Council have raised the wider issue of locational sustainability and point to a previous appeal decision<sup>8</sup> where an Inspector found that Walton was not '*an appropriate location for new development*'. However, that proposal was for two market houses and not a self-build/custom dwelling. Accordingly, and as the Inspector makes clear, it did not benefit from any of the exemptions set out in Policy GD4. The Kimcote Road decision is therefore of limited relevance here.
23. The supporting text to Policy GD3 (which allows for rural housing in accordance with Policy GD4) explains that the policy aims to strike a suitable balance between encouraging a thriving rural economy, maintaining and where possible, improving the sustainability of smaller rural settlements. In effect matters of sustainability are already inbuilt into Policy GD3 and by extension GD4. Accordingly, there is no policy basis to consider separately the merits of the site's location.
24. Finally, it is also worth noting that issues around the lack of services in Walton were noted in the Chapel Cottage officer's report. Despite Walton being identified as an unsustainable location for development, the Council approved that application on the basis that it met the requirements of Policy GD4(1)(a). I have taken the same approach here.
25. The Council is concerned about the issue of precedent perhaps understandably so. However, my determination must be based on compliance with the development plan taken as a whole. In these cases, I have found there would be compliance with the relevant plan policies with no material considerations indicating that permission should be refused. Should applications for self-build/custom housing come forward in the future, these would equally need to be assessed against the relevant development plan policies. There is no reason why this decision would make it harder for the Council to refuse applications that did not accord with the development plan.

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<sup>7</sup> See Officer Report for 2019/01907/FUL

<sup>8</sup> APP/F2415/W/19/3237885

26. Finally, the Planning Practice Guidance (PPG) states that Inspectors may use their powers to make an award of costs where they have found unreasonable behaviour, including in cases where no application has been made by another party. As is clear from my decision, I have found the Council's approach to these applications to be concerning. I have therefore given serious thought to exercising these powers in this instance.
27. Within the overall legal framework of section 38(6) of the Town and Country Planning Act 1990, it is as much for the Council to make out its case as to why planning permission should be refused as for the Appellant to make out a case that it should be granted. Moreover, for the Council to have acted 'reasonably', it must "*produce evidence to substantiate each reason for refusal*", within a context where those reasons should have been clearly and precisely stated. It should also determine '*like cases in a like manner*'.
28. At the Hearing the Council was simply unable to offer any reasonable explanation as to why it had rejected the Appellants' housing needs surveys nor why its approach was so contrasted to that it took in relation to the Chapel Cottage scheme. There was no satisfactory response to the Appellants' criticisms of the 2019 report nor were the Council able to point to any deficiencies with the 2021 or 2022 surveys. All this means the Council failed to present positive evidence to support its case that the development '*would not meet an objectively assessed need and, consequently, would result in the construction of an unfettered new dwelling in an unsustainable location*'.
29. Because of these failings the Council has come perilously close to crossing the '*unreasonable behaviour*' threshold. Nevertheless, I have exercised my discretion not to initiate an application for costs on this particular occasion. The Council should however take note of these comments to avoid any prospect of such an award being made in the future.

### **Conditions**

30. The parties agreed a list of planning conditions for the schemes which I have considered against the advice in the PPG. In some instances, I have amended the conditions in the interests of brevity or to ensure compliance with the PPG.
31. Conditions covering time limits and the approved plans are necessary to provide certainty and in the interests of proper planning. I have imposed a condition in relation to construction hours to protect the amenity of local residents. However, the suggested condition requiring a Construction Environmental Management Plan would have been disproportionate given the modest scale of the proposed development.
32. Conditions covering landscaping and external materials are necessary to safeguard the appearance of the Walton Conservation Area. A condition requiring the access driveway to be hard surfaced for the first 5 metres is necessary in the interests of highway safety. Finally, a tree protection condition is necessary to retain healthy trees on the sites.
33. Details of the finished floor levels and boundary treatments are shown on the approved plans and therefore captured by the plans condition. Details in relation to the access and alterations to the wall are capable of being dealt with through the landscaping condition. There is no evidence of newts either on or

near the site. Consequently, conditions 4, 6, 7 and 10 all fail the test of necessity.

34. Finally, the PPG advises that *'Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests'*<sup>9</sup>. Although the appeal site is in a conservation area, I am not persuaded that this in itself is a sufficiently strong reason to withdraw permitted development rights. In light of the above, I have omitted condition 12.

### **Conclusion**

35. For the reasons set out above I conclude that the appeals should succeed, and planning permission allowed subject to the conditions set out below.

*D. M. Young*

Inspector

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<sup>9</sup> PPG paragraph 21a-017-20190723

## **APPEARANCES**

### Harborough District Council

Adrian Eastwood MRTPI

Development Manager

Emma Baumber MRTPI

Senior Planning Officer

Rachel Danemann MRTPI CICHCM

Principal Planning Policy Officer

### Appellant

Andrew Moger

Tetlow King Planning

Leonie Stoate

Tetlow King Planning

Chris Broughton

CNB Housing Insights



### **Conditions - Appeal A and B**

- 1) The development hereby permitted shall begin within 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
  
Proposed Site Plan (Drawing No. 1592(2)-P02C)  
Proposed Floor Plans (Drawing No. 1592(2)-P03)  
Proposed Roof Plan (Drawing No. 1592(2)-P04A)  
Proposed Elevations (Drawing No. 1592(2)-P05A)  
Proposed Garage/Home Office (Drawing No. 1592(2)-P06B)
- 3) Construction works shall take place only between 08:00 and 18:00 Monday to Saturday and not at any time on Sundays or on Bank or Public Holidays.
- 4) Prior to construction of any external walls, details of all external materials to be used in the construction of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority, and the development shall only be carried out in accordance with the approved details.
- 5) Prior to the first occupation of the dwelling hereby approved a landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall include full details of proposed hard and soft landscape works, including access, driveway, parking, turning and all other surfacing materials, retained planting/hedges/trees and new planting/hedges/trees; screened bin store area; and a timetable of implementation. Thereafter, the landscape scheme shall be carried out in accordance with the approved details prior to the first occupation of the dwelling. Any trees, shrubs, hedges or plants which, within a period of five years from their date of planting, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written approval to any variation.
- 6) Prior to the first occupation of the dwelling hereby approved, the access shall be surfaced in a bound material (not loose aggregate) for at least the first 5 metres back from the highway boundary. Once provided the surfacing shall be maintained thereafter.
- 7) All trees and hedges to be retained on the site shall be protected by fencing (and ground protection where necessary) which complies in full with "BS5837:2012 Trees in relation to design, demolition & construction - Recommendations". The fencing (and ground protection) shall be installed before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any

excavation be made, unless the Local Planning Authority gives written approval.