



Appeal Decision

Hearing held on 18 September 2018

Site visit made on 18 September 2018

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2018

Appeal Ref: APP/V0510/W/17/3186073

Land east of Marroway Lane, Witchford, Ely

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of East Cambridgeshire District Council.
 - The application Ref 16/01136/OUM, dated 31 August 2016, was refused by notice dated 7 July 2017.
 - The development proposed is the demolition of existing dilapidated farm buildings and erection of up to 55 residential dwellings (including 30% affordable housing), introduction of structural planting and landscaping, informal public open space, surface water attenuation and associated ancillary works.
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Decision

1. The appeal is dismissed.

Procedural matters

2. On 24 July 2018, during the appeal process, the Government published its revised National Planning Policy Framework (the Framework). Both parties have had an opportunity to comment on the revisions where they may be relevant to this case and I have taken their responses into account in reaching my decision.
3. At the hearing the appellant submitted a signed Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990, as amended. The UU contains obligations in respect of the provision and maintenance of open space and a Sustainable Drainage Scheme (SuDs) and the provision of 30% of the dwellings as affordable houses. In addition, financial contributions towards the cost of footpaths, libraries, wheeled bins and secondary education have been included on a formulaic basis, together with a contribution of £5,500, towards footpath connections.
4. A Statement of Common Ground (SOCG) dated 24 July 2018 was submitted prior to the hearing. Within that document the parties agree that, for the purposes of this appeal, the Council is not able to demonstrate a five year housing land supply and therefore on that basis paragraph 11(d) of the Framework is engaged.

5. The application was made in outline form with all matters reserved for later approval. I have considered the appeal on that basis. The application was accompanied by a Development Framework Plan (DFP), submitted for illustrative purposes only.

Background and Main Issue

6. Since the Council made its decision on the application the subject of this appeal, an appeal decision has been issued regarding the site to the east of the appeal site (APP/V0510/W/17/3178635 – referred to hereafter as the previous appeal decision). That appeal against the Council's decision to refuse consent for reserved matters approval for 128 dwellings¹ was dismissed by the Inspector, largely for reasons relating to the quality of the living conditions for future residents, in relation to both noise and outlook.
7. Subsequently, a further application for the approval of reserved matters for 128 dwellings on the land to the east of the site the subject of this current appeal has been considered by the Council's Planning Committee which resolved to delegate authority to officers to grant the application subject to the completion of a S106 agreement (18/00782/RM). Access to the current appeal site is proposed via the site to the east.
8. The layout the subject of the resolution to approve on the site to the east prevents the layout within the DFP in relation to the current appeal scheme from being implemented. Therefore, in response to the Inspector's findings in the previous appeal decision, and the amended layout of the proposed houses on the site to the east, the appellant has produced an amended illustrative masterplan (MP) in support of the current appeal. It was agreed at the hearing, by all parties, that the MP should be the subject of the discussion. There is some discrepancy between the scale bar and the identified scale on the plan. The appellant confirmed that the scale bar is erroneous, and the scale of 1:1250 should be used, and the hearing proceeded on this basis.
9. The MP was submitted prior to the hearing, and shared with the Council and the Parish Council. Both confirmed at the hearing that they had sufficient opportunity to view the MP and comment on it. In this context, and bearing in mind the MP is for illustrative purposes, I am satisfied that no one would be prejudiced by me taking it into account in the determination of this appeal.
10. Prior to the hearing it had also been brought to my attention that the Council has delegated authority to grant an outline application for up to 40 dwellings on the appeal site, subject to the completion of a S106 agreement (18/00778/OUM). At the time of the hearing, the S106 was still awaited and the decision had not been issued. I note, in this regard, as set out in the officer's report, that no objection is raised to the principle of development on this site.
11. The Council refused the planning application the subject of the current appeal for two reasons based on the DFP. The first relates to the living conditions of future residents in terms of both air quality and noise as a consequence of the quantum of development proposed, including required infrastructure, landscaping and open space. It also refers to the effect of proposed boundary treatment on the character and appearance of the area. The second reason for

¹ Outline planning permission reference 14/00248/OUM

refusal relates to the impacts of the proposal on the road network in the surrounding area.

12. The Inspector dealing with the previous appeal concluded, based on the evidence before him, that the development then proposed would provide an acceptable standard of air quality for the future residents of the site, in particular those plots backing onto the A142. On that basis, the Council confirms in its statement in relation to the current appeal, (which, based on the MP, would also be likely to include dwellings backing onto the A142) that it is not seeking to defend the part of reason for refusal 1 which relates to air quality. The appellant's Air Quality Assessment 2016 (AQA) concludes that the proposal would not lead to an unacceptable risk from air pollution. At the hearing the appellant confirmed that PM2.5s, although not modelled independently, are a sub set of PM10s which are modelled within the AQA, and were found to be within the objective levels for both categories. Accordingly, in the absence of any substantive evidence to the contrary and, having regard to the findings of my colleague in relation to the previous appeal decision, I am satisfied that the living conditions for future occupiers of the development currently proposed would not be unacceptable due to air quality.
13. The appellant also submitted further information to the Council regarding the impact of the proposal on the local highway network. That information has been assessed by the Highway Authority who raises no objections to the scheme subject to the imposition of conditions. The Council therefore confirmed that it would not be defending the second reason for refusal on that basis. Whilst there was some discussion on this matter at the hearing, with anecdotal concerns raised by the Parish Council regarding both the speed and amount of traffic using the main road through Witchford, no substantive evidence was provided to support that position. Based on the evidence that was before me, and my observations on site, I have seen nothing which would lead me to disagree with the views of the Highway Authority.
14. Given that context, based on the evidence before me, discussions at the hearing and my observations on site, the main issue in this case is whether or not the site could accommodate the quantum of development proposed in a manner that would provide acceptable living conditions for future residents in relation to noise, outlook and privacy; open space provision including sustainable surface water drainage measures; and the provision of appropriate boundary treatment.

Reasons

15. The illustrative layout shown on the MP does not rely on any form of alternative ventilation for rooms within the houses closest to the A142, with noise mitigation addressed through the internal layout (noise sensitive rooms would be located on the southern elevations of the houses away from the A142) and the introduction of acoustic fencing.
16. The appellant has submitted plans (Nos 101 Rev D, 102 Rev D and 103 Rev D) which show the anticipated noise levels at the facades of the houses. These levels are not disputed by the Council, and I have no reason to take a different view. Although the internal layout required would have implications for the size of the houses adjacent to the A142, that would be a matter for the Council to consider under any future application for reserved matters should the appeal be allowed. All in all, I am satisfied that, in principle, houses located adjacent

- to the A142 could provide an acceptable noise environment for future occupiers without the need to rely on a means of ventilation other than open windows.
17. The Council was also concerned about the distances between properties, in terms of outlook and privacy for future occupiers, and the ability of the layout to provide the required public open space.
 18. The Council's Design Guide Supplementary Planning Document 2012 (DGSPD) indicates that between rear inter-visible windows there should be a minimum of 20 metres. Using the scale of 1:1250 for the MP, it was confirmed at the hearing that these minimum distances could be achieved. Furthermore, the distances between the rear and side elevations of dwellings would be sufficient to ensure that future residents would not be subject to unacceptable overbearing or enclosing impacts. Therefore, I am satisfied that appropriate living conditions would be provided for future residents with regard to privacy and outlook.
 19. The Council's Supplementary Planning Document on Developer Contributions 2103 (SPD) states that the level of public open space (POS) required relates to dwelling occupancy rates. Since this is an outline application a definitive level of POS provision, based on the proposed number of bedrooms, is not possible. At the hearing, based on 55 one bed houses, the Council suggested that the minimum requirement would be 1650 square metres (sqm), increasing to 2612.5 sqm if all the houses had two bedrooms. However, given the Council's aspirations to achieve mixed communities including 3 and 4 bedroom properties, as well as those with 1 and 2 bedrooms (pursuant to Policy HOU1 of the East Cambridgeshire Local Plan 2015 (LP) and the SPD), these are unlikely scenarios, and the figure is likely to be higher than those quoted.
 20. Measuring off the MP at the hearing, it was suggested by the appellant that the largest area of POS shown on the plan would be only 250 sqm short of the Council's 1650 sqm figure, and that any additional area could be found by reducing the size of the proposed drainage basin and employing other drainage solutions. I was also advised, in this regard, of other areas of POS within the appeal site to the north east and south west that together could provide a total area of POS of 2200 sqm.
 21. However, the figure of 2200sqm is still lower than the 2612.5 sqm size of POS that would be required even if all the maximum number of houses proposed were only two bedroom properties. In any event, apart from the area adjacent to the proposed balancing pond, the other areas of POS would be relatively small and of an awkward shape.
 22. The appellant confirmed that the proposed size of the drainage pond had been based on preliminary investigations. While it may be the case that it could be reduced, and other sustainable surface water drainage solutions employed, I have been provided with no evidence to demonstrate that this could be achieved satisfactorily on the site. I recognise that the majority of the POS would be located adjacent to an existing POS outwith the appeal site and that together that would create a large area. However, that other POS is required to serve the needs of existing residents. An *additional* quantum of on-site POS to serve future occupiers of the current appeal site is required.
 23. Provision of the required open space in a practical and useable arrangement would also have implications for the layout in terms of the noise environment

for future occupiers. Whilst I have found that some dwellings close to the A142 could be designed so as to provide an acceptable noise environment without reliance on a means of ventilation other than open windows, I have seen or heard nothing to suggest that that the provision of 55 dwellings on the site with sufficient POS could be achieved without a significant number of future residents having to rely on closed windows, and an alternative method of ventilation to effectively mitigate the noise from the A142.

24. I understand that this is the approved arrangement in relation to a couple of dwellings on the adjacent site (subject to the signing of the S106 agreement). To my mind however, in this rural location, residents would be likely to want to open their windows at night in fine weather (or would wish to do so at least occasionally). Therefore, notwithstanding the advice in the Planning Policy Guidance referred to by the appellant² regarding the use of closed windows to mitigate harmful levels of noise, I am not persuaded that, if a layout included a significant number of houses that would need to rely on having closed windows at all times in order to effectively mitigate noise from the A142, the arrangement would provide acceptable living conditions for future occupiers. This is a view shared by the Inspector on the previous appeal decision.
25. In this instance, in the absence of any indicative layout that is able both to be implemented and provide the required infrastructure, I cannot be satisfied beyond reasonable doubt that the living conditions for future occupiers would be satisfactory with regard to noise or the provision of POS.
26. Whilst the Council had concerns regarding the proposed boundary treatment as shown on the DFP, the revised illustrative layout, as shown on the MP, incorporates a 2 metres high fence within a 7 metres wide landscaping strip which the Council confirmed at the hearing would be acceptable both in terms of any effect on residents living conditions, and the character and appearance of the area.
27. I appreciate that as the individual elements of noise mitigation and boundary treatment are interlinked, there could be scenarios, different from the illustrative layout before me now, where the boundary treatment might not be acceptable to the Council. However, I am content that such detailed matters could be properly considered by the Council in any reserved matters application.
28. There are a number of constraints that impinge on the potential layout of this site, including noise from the A142, the requirement to provide a fairly substantial landscape buffer to the A142 to successfully integrate the development into the area, the relatively fixed point of access from the adjacent site to the east and the requirement to provide sufficient POS for the development, together with sustainable surface water drainage measures. Bringing all of those together, to achieve a well-designed place it is essential to optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space).
29. Within the previous appeal decision the Inspector found that as the proposal provided satisfactorily for all the required amenity, parking and space standards, it could not be considered to be 'over development'. That is not the case here. While the MP addresses some of the constraints, I am not

² Paragraph 005 ID 30 005 20140306 & Paragraph 008 30 008 20140306

persuaded that the level of POS would meet the requirements of the SPD. I am aware that the proposal is for 'up to' 55 dwellings and clearly the Council is of the opinion that the site can accommodate 40 dwellings (as proposed in the most recent planning application). Nevertheless, I have been provided with no alternative plan, illustrative or otherwise, demonstrating how up to 55 dwellings could be achieved on site without causing material harm in some regard. Consequently, based on the information before me up to 55 dwellings on this site would not achieve the Framework's aims for achieving well designed places.

30. For the reasons above, I am of the view that it has not been demonstrated with any degree of robustness that the appeal site would be able to accommodate up to 55 dwellings without causing some material harm in terms provision of POS, sustainable surface water drainage measures and living conditions with particular regard to noise. The proposal would therefore be contrary to policy ENV 2 of the East Cambridgeshire Local Plan 2015 (LP) and the Framework, in particular paragraph 127, which require that development will be designed to a high quality, and introduce appropriate new designs.

Planning balance and conclusion

31. The proposal would deliver social and economic benefits by providing up to 55 new homes in an accessible location at a time when the Council is unable to demonstrate a five year supply of housing land. In this respect, the development would make a useful, significant contribution to meeting the housing requirements of the District, in accordance with paragraph 59 of the Framework, whilst supporting local services and businesses. Within that context I attach significant weight to these social and economic benefits of the proposal.
32. The provision of 30% of the houses as affordable units, secured within the S106 agreement would be in accordance with the requirements of Policy HOU3 of the LP. The Council argues that although that is a benefit of the scheme, it should only attract moderate weight. However, on the basis of the evidence before me there has been a significant shortfall of the provision of affordable units in the district over the last seven years. As a result, in this context, I attach significant weight to the provision of the proposed affordable housing.
33. The proposal would secure some enhancement of biodiversity in the area, secured by a planning condition which would provide a moderate benefit.
34. However, I have found that, based on the proposed illustrative layout (the MP), the site could not accommodate up to 55 dwellings and, at the same time, provide the locally required amount of POS. This would be contrary to the social objective of the planning system which requires a well-designed built environment which incorporates open spaces reflecting current and future needs supporting communities' health, social and cultural well-being.
35. In the absence of any definitive scheme I cannot be sure that a well-designed, appropriate layout for up to 55 dwellings can be achieved without leading to some harm in terms of sufficient POS, sustainable surface drainage measures and future residents' living conditions with regard to noise. Consequently, up to 55 dwellings on the site would not achieve the Framework's aims for achieving well designed places and I attach very significant weight to this.

36. Therefore, the very significant adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

37. Consequently, in the circumstances of this appeal, there are no material considerations that justify making a decision other than in accordance with the development plan. For these reasons I conclude on balance that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Philip Robson, Counsel
Mr John McKensie
Mr Gary Holliday
Mr Mark Dawson

instructed by:
Gladman Developments
FPCR
Wardell Armstrong

FOR THE LOCAL PLANNING AUTHORITY

Mr Andrew Phillips
Mr Richard Fitzjohn

Principal Planning Officer
Senior Planning officer

INTERESTED PARTIES

Councillor Ian Boylett

Witchford Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 List of agreed conditions
- 2 A3 Plan of Witchford showing the wider village and Development Envelope
- 3 A3 copy of the Illustrative Masterplan 7054-L-101-04
- 4 Unilateral Undertaking dated 18 September 2018