



Appeal Decision

Hearing Held on 10 October 2018

Site visit made on 10 October 2018

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2018

Appeal Ref: APP/F2605/W/17/3186096

Land north of Dereham Road, Mattishall, Norfolk

- 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 Tesni Properties Limited against the decision of Breckland District Council.
 - The application Ref 3PL/2015/0589/O, dated 15 May 2015, was refused by notice dated 5 April 2017.
 - The development proposed is described as a residential development of up to 16 dwellings including access with all other matters reserved.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the determination of the planning application the Mattishall Neighbourhood Plan (NP) has been made and at the time of determining this appeal forms part of the development plan. In addition, the revised Framework¹ has been published. Comment on the two documents has been made in the written evidence and orally at the hearing. I have taken these documents as well as the representations thereon into account.
3. The appellant presented a completed planning obligation at the hearing in the form of a Unilateral Undertaking (UU) which seeks to secure the provision of affordable housing. As part of discussion, the Council queried the trigger percentages which restrict the occupation of the open market element of the scheme until such a time that the affordable units are provided or unconditional contracts are exchanged therefore. The Council expressed a desire, through their strategic housing function, to not permit the occupation of any of the development until the latter has been confirmed and to not occupy 50% of the open market element until the former has been provided.
4. The Council explained this was due to the small scale of the development. The appellant set out that the triggers were taken from the agreed situation for the recently allowed appeal for land south of Dereham Road (land south)². Whilst I appreciate the reasoning behind the Council's request it was essentially nothing

¹ The National Planning Policy Framework 2018

² Planning Inspectorate Reference AOO/F2605/17/3185918 – Erection of up to 50 residential dwellings with associated infrastructure

more than that. It was explained there was no grounding for such a request in adopted policy or supplementary guidance. Whilst the scale of the schemes do differ, there is nothing to suggest that there would be problems with the delivery of the appeal scheme taking into account the site and the proposed development such that there would be a need to reduce the triggers set out in the agreement. I have therefore taken the agreement into account in determining this appeal, in respect of the triggers expressed.

Application for costs

5. At the hearing an application for costs was made by Tesni Properties Limited against Breckland District Council. This application is the subject of a separate decision.

Main Issues

6. There are four main issues in the determination of this appeal. These are:
 - The effect of the proposed development on the character and appearance of the area;
 - Whether or not the proposed development would be at an unacceptable risk of flooding;
 - The effect of the proposed development on highway safety with particular regard to the suitability of the access; and
 - Whether or not the appeal site is an appropriate location for new housing having regard to the development plan and the Council's supply of housing sites.

Reasons

Character and Appearance

7. The appeal site is a roughly rectangular parcel of relatively flat agricultural land on the edge of Mattishall. It is outside of the Settlement Boundary (SB) as it is defined by the Local Plan³. Located to the north of Dereham Road, it extends northeast, with the wider field terminating at a tree belt. Other planting occurs at the eastern boundary in the shape of more trees and some denser hedging. Trees also line the western boundary although not to its southern extent. The road facing boundary is open save for a much lower hedge set back from the edge of Dereham Road. Despite being somewhat enclosed by landscaping the appeal site shares common characteristics with the varied field pattern to the north and south as it extends to the western end of the village.
8. The field is beyond the last house that makes up a ribbon form of built development fronting the north side of Dereham Road. As a self-contained, nucleated and comparatively high density estate of some noticeable depth, the proposed development would not reflect and thus jar with the low density and rural ribbon nature of this edge of the settlement. The ribbon development form contributes to a character of 'petering out' into open and undeveloped fields, reinforced by more scattered and agrarian development further west towards Yaxham.

³ Core Strategy and Development Control Policies Development Plan Document 2001-2016 (2009)

9. I accept there are some examples of contained back land style development in the form of The Beeches and a number of dwellings at the rear of Number 123 Dereham Road. Be this is at may, the appeal site is located a clearly discernible distance beyond these and its own surroundings would be distinctly rural rather than built up as in the other two cases. Moving clustered development such as this noticeably beyond the edge of the settlement would have an encroaching effect on the open countryside and blur how the village blends more naturally into the wider rural area.
10. The Framework's stance on protection and enhancement relates to valued landscapes, which it seems clear from the evidence the appeal site is not part of. On the matter of the countryside as an entity, the Framework does say that the intrinsic character and beauty of it should be recognised. If one is to recognise something, there is an inference it is recognised for a purpose and in the case of the countryside, this purpose is for what it is and what it does.
11. Relating this to the appeal site, and along with the network of fields to the north and south, it acts as part of the soft edge to the village, containing the built form and cocooning it in a predominately open, wide and rural area. It is associated with sparse and low density development. The use of the appeal site for higher density estate like development would run contrary to this established character in both built form and open space terms as I have said. The contribution the appeal site makes to the edge of the village at this point is therefore recognised both for what it is and the function it serves.
12. As I have alluded to above, the appeal site is relatively enclosed by trees and planting. This relates to most of the east and northern boundaries as well as part of the west. That said I do not subscribe to the notion that development that would cause harm to character would be acceptable it can be hidden. In any event, clear views of the appeal site are available from the road as it passes to the south and a public right of way that runs east across a field to the south of the road, from Old Hall Farm that I was able to walk as part of my site visit. The view from the road would be, I accept, a fleeting one since there is no defined footway. The one from further south however would give a clear indication of a development in noticeable depth, against its wooded backdrop. It would be seen as being clearly beyond the built limits of the lower density ribbon development it would abut. The adverse character effects that I have outlined above would therefore be clearly discernible as visual ones.
13. In coming to a conclusion on this main issue I am mindful of the allowed appeal for land south that I referred to earlier. There seems little doubt that up to fifty dwellings would cover a substantial swathe of land. However, there were clearly matters prevalent in that appeal that are not directly comparable to the scheme before me. Mainly the scale of the development and the contribution it would make to housing supply as well as affordable housing. Indeed, in the case of land south, my colleague maintained that harm would be caused to character and appearance but that other factors outweighed it.
14. Whilst I shall come onto matters of balance later I would advance that the land south scheme would be contained within and closely associated to the fringes of the settlement. It would not project as far as the outer edges of the ribbon form to the north. In terms of development patterns to the south of the road more generally, its scale and clustered layout would be read against how development as evolved around Rayner's Way. This siting of it off to the right

of views from the south would lead to continued appreciation of the defined soft edge of the village in the event land south comes forward. For want of a better way of comparing the two, land south would have more of an integrated effect, the appeal scheme would be more of an awkward bolt on to the edge.

15. With these factors in mind, I am not persuaded that the effects of the building out of the land south scheme would sufficiently lessen those of the appeal scheme to the extent that it would be acceptable. Accordingly, and as a result of the above, the proposed development would fail to comply with Policies CP11, DC1 and DC16 of the Local Plan and Policy HOU4 of the NP. Amongst other things, these policies seek to ensure that new development (and new housing development) should be of the highest quality and fully consider the context within which it sits. It should also preserve or enhance the existing character of an area with particular regard to reinforcing locally distinctive patterns of development and important features.
16. There was discussion at the hearing as to the weight to be attributed to CP11 insofar as how consistent it is with the Framework. I note my colleague's findings in this respect with regard to land south but equally note this was in respect of the Framework's 2012 iteration. There still however remains some inconsistency since CP11 seeks to protect and enhance the landscape for the sake of its own intrinsic beauty. The Framework addresses this but sets out that intrinsic beauty should be recognised, reserving protection for valued landscapes, a matter I have alluded to above.
17. The inconsistency in this case is however minor. As I have also alluded to above something being recognised for what it is infers some degree of protection to maintain what it is, for the sake of what it is. Whilst one may perhaps reduce weight to CP11 due to this minor inconsistency, I would not say weight to it would be reduced to the extent its intentions are not applicable since it also seeks to ensure new development is of the highest quality and appropriate for its context which as I have set out above the appeal scheme would not be. In any case, if I were to remove reference to CP11 altogether, the appeal scheme would still result in conflict with the other policies I have referenced. The consistency of such with the Framework is not in question.

Flood Risk

18. The appeal site is not in a flood zone as defined by the Environment Agency mapping. However, from the written evidence and discussion at the hearing there appears to be a problem (and an historical one) associated with the watercourse that runs along the eastern boundary of the appeal site and in a northeasterly direction from a culvert that runs under Dereham Road and Old Hall Lane. Both parties as well as local residents have referred me to photographs from events that have left standing water on the site and adjacent road surface as recently as 2016.
19. The proximity of the watercourse, the lie of the land and the capacity of the aforementioned culvert all combine to result in a risk of flooding across the site. There is some debate as to whether the risk covers all or some of the site but it is the case that the watercourse in question runs the majority of the length of the appeal site's eastern boundary. There is also a pumping station located on the western boundary of the appeal site, accessible from Howes Lane. Anecdotal evidence suggests that the formation of the station

and the land parcel with it has interrupted the flow of a second watercourse that lines the western boundary of the appeal site. The general consensus is however that the site is at risk of flooding, from an adjacent watercourse.

20. The aim of a Sequential Test (ST), according to the Framework⁴, is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas at a lower risk. If this is not possible, the Exception Test (ET) may have to be applied. The ET considers whether a development can be made safe against the effects of flooding for its lifetime and would provide wider sustainability benefits to the community that may outweigh the risk. The Framework is explicit that both elements of the ET should be satisfied for development to proceed.
21. The appeal site is an undeveloped and unallocated greenfield site that is part of an agricultural field. The appellant has restricted the consideration of other reasonably available sites to Mattishall and specifically those identified as part of the 2015 SHLAA study⁵, part of the evidence base for the Emerging Local Plan. There are a number of reasons why I feel the scope of this ST was somewhat short sighted.
22. There is no compelling evidence to suggest that the proposed development, as one for a mix of open market and affordable dwellings, needs to be in Mattishall. Indeed, I have not seen any arguments that the appeal site is in an area of specific housing need. The scheme is not connected to the land in the sense that it is for a specific purpose associated with it such as the redevelopment of a brownfield site or a scheme specific to and for the benefit of the area that it would serve. In essence, and looking at the district as a whole, I cannot see why specifically 16 dwellings in a field have to be on the edge of the settlement on the appeal site. The limited nature and scope of the ST in this case therefore does not give me sufficient faith that all reasonable alternatives at a lesser risk have been considered before looking at a site that is known to be at risk of flooding.
23. The appellant has proposed a number of measures to alleviate the risk. Whilst there was some debate at the hearing as to modelling input to ascertain the actual risk for which alleviation would be necessary it does not strike me as being an impossibility based on what I have seen and heard to be able to safeguard future occupants of the site from the risks of flooding. In addition to this, and with regard to the other string to the ET, the proposed development seeks to improve drainage on the site which would not only address the existing problem but assist in the handling of water for the immediate area going forward. In effect, there is clear indication through the mitigation measures suggested that betterment is possible subject to consideration of the detail of any final design.
24. Even so, it may always be possible to alleviate any effects of flooding and design a handling and management system in such a way that a site could be developed. This is only however part of the story and in any event consideration of such measures should take place after asking the question as to whether the proposed development should be there in the first instance.

⁴ Paragraph 158

⁵ Strategic Housing Land Availability Assessment

Referring then to my findings on the matter of the ST, I can only conclude that the answer to that, based on the available evidence, is no.

25. The proposed development would therefore be at an unacceptable risk of flooding. Such that it would fail to accord with Policy DC13 of the Local Plan and the relevant paragraphs of section 14 of the Framework. Together, and amongst other things, these policy approaches seek to ensure that new development should be located in areas at least risk of flooding.

Highway Safety

26. Whilst outline planning permission is sought for the proposed development, access is fixed for consideration at this stage. The crux of the Council's case in respect of this main issue is that the appeal scheme would not be able to provide visibility commensurate with requirements and that it would, as a result, fail to be acceptable in highway safety terms.
27. The key area for debate in the evidence and at the hearing was the correct guidance to be applied for the purposes of calculating the visibility required at the new access point. A demonstration of the available visibility was made as part of the site visit, with measurements marked by the appellant's highway specialist and confirmed by an advisor from Norfolk County Council (NCC). It remains the Council's view that the access would not be able to provide the visibility required under the Design Manual for Roads and Bridges (DMRB). At the hearing the Council's highways advisor explained the reasoning behind application of this guidance in that it is set out in NCC's approach how they have defined the road to which the access would connect as a road rather than a street. There is some logic to this reasoning.
28. The appellant's specialist set out that in terms of both DMRB and Manual for Streets (MfS) one is dealing with guidance and guidance is not policy. This is a reasonable conclusion. There is therefore room for consideration of alternatives on understanding of matters such as accident data, road conditions and speed limits. I note the accident data referred to by the appellant but would exercise caution with applying it stringently given that whilst an accident may not have been regular in the past, it does not eliminate the possibility of it happening in the future.
29. With this in mind, I refer to the speed surveys undertaken by the appellant. Given that the appeal site fronts a stretch of road carrying vehicles at a 40mph speed limit on approach to a 30mph limit in one direction and the opposite in the other the average recordings for the 85th percentile seemed on the whole to be where one would expect. I.e. between 30 and 40mph with some anomalies. It certainly seemed to be the case that, on the whole, vehicles travelling towards the village observed the reduction and did not appear to be exceeding 40mph. The sweeping bend in the carriageway to the west of the appeal site's proposed access, from personal experience, has a reducing effect on approaching vehicle speed. Generally, the carriageway is flat, free from other obstructions and is relatively straight to the east.
30. The Parish Council (PC) undertook their own speed surveys through the use of a Speed Awareness Message (SAM) sign sited within the 30mph limit on the south side of Dereham Road. The evidence provided does not say when

this sign was sited, but it was for a period of eight weeks, longer than those undertaken by the appellant. Of the total number of recorded movements it seems the percentage travelling over the speed limit for east bound vehicles was low, around 3%. The PC's results also state that 40% of west bound vehicles were travelling in excess of the speed limit but this figure is confused slightly by mention of it including vehicles travelling in either direction.

31. What I can glean from the PC's results is that, given the longer time period the SAM sign was sited it is perhaps not surprising it recorded a higher total number of vehicle movements (some 106,922). Probability states that, consequently, there would be more instances of higher speeds. Given the comparatively low percentage of vehicles travelling in excess, that I could make a reasonable conclusion on based on what I have seen, this would naturally mean the average speed would be closer to what the appellant's results revealed.
32. It has been demonstrated on submitted plans and on site that the access point would be able to accommodate a visibility splay that would be in excess of the requirements of MfS for the recorded average speeds but not the minimum expected standard for DMRB. That said, I observed on site that visibility to the east of the access of oncoming traffic on the off side of the road would be in excess of the onsite measured distance and very close to that required by DMRB. The majority of the eastern section of the splay would be within the 30mph limit and used by vehicles travelling in and out of obstructing parked cars which has a further limiting effect on approach speed.
33. The appellant has suggested moving, and securing by reasonably worded planning condition, the existing 30mph limit to a point west of the appeal site's proposed access. This is endorsed by the PC in light of their own findings. Whilst it seems from the evidence that a MfS compatible visibility splay could be provided at this point regardless, such a suggestion to my mind seems eminently sensible and would have a further reducing effect on reducing approach speeds from the west.
34. The Council, in their reasons for refusal on highway safety matters, refer to Policy CP4 and specifically sub section e. This sets out that access and safety concerns are resolved with all new developments. This is a general assertion but not one that points to specific guidance. There is mention of arrangements for the provision or improvement of infrastructure being made to the required standard but not which standard. With this and the above factors in mind I am not persuaded that the application of the guidance set out by MfS would necessarily be flawed. The provision of visibility in accordance with its requirements and measured average speeds would be more than sufficient to meet the needs of the development. To the point that, along with the relocation of the 30mph limit, it would be acceptable in highway safety terms and accordingly not conflict with CP4.

Appropriate Location

35. As I have alluded to above, the appeal site is located outside of the SB as it is defined by the Local Plan. It is therefore in the countryside. In terms of the status of Mattishall, it is identified by Policy SS1 as a Service Centre Village which are capable of supporting some, if limited, growth. Along with Policy

DC2, CP14 sets out that new housing development in villages should be directed towards sites inside the SB. SBs, according to the Local Plan, are defined for the purposes of, amongst other things, focusing new development to sustainable locations where there are key local services and to protect the form and character of a settlement.

36. With the status of the settlement in mind, and the breadth of services on offer to support the incumbent population, it does not strike me that the scale and location of the proposed development relative to them would lead to excess car journeys. Indeed, the centre of the village is walking distance from the appeal site and there is suggestion a connected footway could be provided. What would be clear from my earlier findings however is that the proposed development would result in demonstrable harm to the character and appearance of the area, something that the aforementioned policies seek to protect. I can only conclude in terms of the development plan therefore that the appeal scheme would be contrary to both DC2 and CP14.
37. In terms of the current housing supply situation, the Council have confirmed that they are unable to demonstrate the supply of sites as required by the Framework. If I were to therefore treat the most important policies accordingly (relevant to the supply of housing in this particular case) and consider the proposed development in light of the so called tilted balance set out by paragraph 11 (d) (ii) of the Framework, I would make the following conclusions.
38. The proposed development would provide 16 new dwellings. Alongside the associated affordable housing contribution this would make for a social benefit albeit a limited one given the overall scale of the development and the degree of the Council's current shortfall. There would also be economic benefits in terms of jobs in construction, additional expenditure as well as income from the new homes bonus and Council Tax. These would however be equally limited given the scale of the proposed development.
39. The location of the site relative to services and how accessible they thus may be is a matter that would make the appeal scheme acceptable in these terms. It would, for want of a better way of putting it, be expected. One cannot therefore consider it a benefit. Habitat enhancement and improved drainage would be positive but generally as a means to offset an impact. These matters are therefore with the location of the appeal site in the neutral section of the balance.
40. Set against these limited benefits are the harms or adverse impacts as explained by paragraph 11. These are of an environmental nature and would arise out of land being at an unacceptable risk of flooding and development causing harm to the character and appearance of the area in the terms I have explained above. I can only therefore conclude that the benefits would be significantly and demonstrably outweighed. For the purposes of the Framework therefore, the appeal scheme would not represent sustainable development for which the presumption in favour applies. Concluding on this main issue, and having regard to the development plan and the Council's supply of housing sites, it is my view that the appeal site would not be an appropriate location for new housing.

Other Matters

41. There was discussion at the hearing concerning the quantum of new dwellings for Mattishall as set out by the NP in the context of the number of commitments (including the appeal site and the extant land south). Policy HOU1 suggests that the area will deliver a minimum of 141 dwellings for the plan period. It is sufficiently clear to me that this quantum is expressed as a minimum. The additional number provided by the appeal scheme would therefore not conflict with this Policy.

Conclusion

42. Whilst I have found that there would not be any harm in respect of highway safety this, along with the other matters I have explained above, would not be sufficient to overcome the harms that would arise to the character and appearance of the area or that the proposed development would be at an unacceptable risk of flooding. Accordingly, and whilst having had regard to all other matters raised, it is for these reasons that the appeal is dismissed.

John Morrison

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr Alan Davis	DTPC (Highways)
Mr Kit Patrick	TPM (Landscape)
Mrs Lauren Whitworth	Tesni Properties (Planning)
Mrs Aled Williams	Waterco (Flood Risk and Drainage)

FOR THE LOCAL PLANNING AUTHORITY:

Miss Fiona Hunter	Breckland District Council
Miss Debi Sherman BA (Hons) MA MRTPI	Breckland District Council
Miss Elaine Simpson	Norfolk County Council (Flooding)
Mr Graham Worsfold	Norfolk County Council (Highways)

OTHER PARTIES:

Professor Robert Eady	Local Resident
Mr Nathan Harris	Norfolk County Council (Highways)
Mr Michael Nunn	Local Resident
Mr Robert Nunn	Local Resident
Mr David Piper	Mattishall Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

- Signed copy of Unilateral Undertaking
- Plan showing extent of approved site for land south of Dereham Road
- Plan showing Mattishall settlement boundary
- Summary of Parish Council speed survey results and accompanying plan