



Appeal Decision

Site visit made on 11 September 2018

by **Chris Forrett BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 January 2019

Appeal Ref: APP/V0510/W/18/3195976

Land rear of Garden Close, Sutton, Cambridgeshire CB6 2RF

- 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 Endurance Estates Strategic Land Limited against the decision of East Cambridgeshire District Council.
 - The application Ref 17/01445/OUM, dated 1 July 2017, was refused by notice dated 5 January 2018.
 - The development proposed is an outline planning application for the erection of up to 53 houses on land to the east of Sutton to include public open space and details relating to access.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 53 houses on land to the east of Sutton to include public open space and details relating to access at land rear of Garden Close, Sutton, Cambridgeshire CB6 2RF in accordance with the terms of the application, Ref 17/01445/OUM, dated 1 July 2017, subject to the conditions in the schedule to this decision letter.

Application for costs

2. An application for costs was made by Endurance Estates Strategic Land Limited against East Cambridgeshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal proposal was submitted in outline with the means of access being considered at the outline stage. Notwithstanding that, an illustrative masterplan layout together with other supporting plans and information was also submitted with the application. However, with the exception of the site access, the details shown on the additional particulars are not being considered at the outline stage. I have therefore treated these drawings as being indicative to show a possible way of developing the site.
4. Since the submission of the appeal, the National Planning Policy Framework from 2012 has been replaced, with the new version being published in July 2018 (the 2018 Framework). Paragraph 212 of the 2018 Framework outlines that the policies contained within it are material considerations which should be taken into account in dealing with applications from the day of its publication. I have invited further representations from the Council and the Appellant on

this specific matter and have taken the representations received into account in my decision.

5. In addition to all of the above, the Council have confirmed that they cannot demonstrate a deliverable five year housing land supply. It follows that, in accordance with paragraph 11 of the 2018 Framework a presumption in favour of sustainable development should apply and that where the Development Plan policies which are the most important for determining the application are out of date¹, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the 2018 Framework taken as a whole.

Main Issues

6. The main issues are the effect of the development on the character and appearance of the area and the provision of infrastructure.

Reasons

Character and appearance

7. The appeal site is located to the east of Garden Close and to the south of Station Road. The site largely consists of open undeveloped land with various trees and hedgerows.
8. The majority of the appeal site has been put forward as an allocated site for housing in the emerging Proposed Submission East Cambridgeshire Local Plan (2017). This allocation is included in Policies Sutton 3 and Sutton 5 and is known as site SUT.H2. However, from the information before me the examination of the emerging plan has yet to be completed, and policies within it could be subject to change. I can therefore afford only limited weight to these policies.
9. Notwithstanding that, the Appellant submitted a further application² to the Council for the same development albeit with a different indicative site layout. Both main parties have confirmed that the Council have resolved to approve this subsequent application subject to the completion of a section 106 agreement to deliver various infrastructure requirements and affordable housing. This is a material planning consideration for which I give very great weight.
10. In addition to the above the site is located just outside of the Sutton Conservation Area (SCA) and there are also a number of Listed Buildings nearby including St Andrews Church (Grade I), Rectory Farm and Rathmore (both Grade II).
11. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of these listed buildings. In this case, the development of the site would be sufficiently detached from these building as to have little impact on the setting of these buildings. In coming to that view, I acknowledge that there would be some limited impact on views towards St Andrews Church in

¹ Footnote 7 includes situations where the local planning authority cannot demonstrate five year supply of deliverable housing sites.

² Reference 18/01053/OUM

- particular as a result of the additional development although such harm would clearly be less than substantial.
12. As noted above, the site is also close to the SCA, and the development of this site would have a small impact on views into and out of it, including the possible removal of some of the hedgerows within the appeal site.
 13. However, subject to an appropriate site layout and design of the proposed dwellings, this would not be significantly different from the relationship of any of the existing dwellings which adjoin the historic parts of the village. To my mind the development would not therefore harm such views to an extent that would warrant the withholding of planning permission on this ground.
 14. Paragraph 196 of the 2018 Framework states that where a development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this case, the provision of up to 53 additional dwellings would be a public benefit.
 15. To my mind, the public benefits of the additional dwellings, outweighs the less than substantial harm to the setting of St Andrews Church and the setting of other nearby Listed Buildings such as Rectory Farm and Rathmore. Therefore the proposal would accord with the historic environment aims of the 2018 Framework.
 16. Taking all of the above into account, and given the similarity of the appeal proposal to the subsequent application, I consider that the development would not harm the overall character and appearance of the area.
 17. In coming to that view, I acknowledge that the development of the site would result in the loss of countryside and what is currently undeveloped land. However, this would also be the case should the subsequent application be built out and would not be significantly different to the development of any other greenfield site at the edge of a built up area.
 18. I also acknowledge that the development would not accord with the provision of Policy GROWTH 2 of the East Cambridgeshire Local Plan (2015) (LP). However, given the lack of a deliverable five year supply of housing, I cannot give this policy full weight.
 19. For the above reasons the development would not give rise to any significant harm the character and appearance of the area (including the SCA and nearby Listed Buildings) and would accord with the overall aims and objectives of the 2018 Framework.

Infrastructure

20. The Council has indicated that the development should make provision for affordable housing (30%), together with financial payments towards education provision, library and lifelong learning provision, public open space (including management and maintenance thereof) and a wheeled bin contribution. Reference is also made to the new nature reserve and its long term future (through a Landscape and Ecological Management and Maintenance Plan (LEMP)). With the above in mind, the Appellant has completed a section 106 agreement (dated 21 September 2018) with both the Council and the County Council included as signatories.

21. Notwithstanding that, the Appellant has raised concern over the education and library and lifelong learning provision payments and this is reflected in the completed section 106 agreement.
22. Paragraph 56 of the 2018 Framework (and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations) require that planning obligations should only be sought, and weight attached to their provisions, where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
23. The Council has an adopted CIL schedule and as such the development would be liable for a payment towards the provision of appropriate infrastructure to support the development. The Council has also recently updated its Regulation 123 List (May 2018). This list does not include any library and lifelong learning infrastructure and the only educational project relates to Littleport schools. On this basis, I am satisfied that the requested schemes are not provided for within the current CIL for East Cambridgeshire. In coming to that view I acknowledge that it would be possible to fund these infrastructure types through CIL should it be desired.
24. From the evidence before me, it would appear that the County Council requested the contribution for library and lifelong learning to be towards a new mobile library stop to serve the development, or rent free space in any community building to be built on the site. However, there is not any community building proposed on the site nor is there any substantive evidence on the costs involved in providing a new stop should there be any. Notwithstanding that, the 106 agreement defines the library and lifelong learning contribution as being for the enhancement of the library stock vehicle providing mobile library service to the village of Sutton, plus additional books and shelves for said vehicle.
25. To my mind, it is clear that the development would invariably have some demand for additional library services, albeit not for the reasons which the County Council originally suggested. The completed 106 agreement relates to provision of additional equipment associated with providing the service and in that respect I consider that this aspect of the agreement would be CIL compliant.
26. However, there is no evidence to indicate that the agreement would not exceed the threshold of pooling more than five section 106 agreements (including this agreement) for the enhancement of the library stock vehicle including additional books and shelves for said vehicle. Given this, I am unable to confirm that the library and lifelong learning contribution accords with Regulation 123 of the CIL Regulations and I therefore give this element of the section 106 agreement no weight in my decision.
27. Turning to the education contribution, from the evidence before me there is insufficient capacity at Witchford College to accommodate the likely number of pupils (14) which would arise from the development.
28. However, there is very limited evidence to indicate that the suggested contribution relates to the costs associated with an actual scheme to provide for additional capacity at the College. In this respect, it is unclear as to how

the monies sought are fairly and reasonably related in scale and kind to the development.

29. In summary, neither the library and lifelong learning nor the education contributions would accord with the CIL Regulations and therefore cannot be taken into account.
30. In relation to the other matters within the section 106 agreement I am satisfied that they are necessary to make the development acceptable in planning terms and accord with the CIL Regulations, and the overarching aims of the 2018 Framework and the LP.

Other matters

31. I have also had regard to the representations made in the consultation periods for the application and the appeal. This has included matters such as drainage and surface water, access and highway safety issues, wildlife disruption including great crested newts, the special circumstances relating to the future occupier of 10 Oates Lane under the Public Sector Equality Duty contained in the Equality Act 2010, smells and noise from the adjacent farm, the capacity at the doctors surgery, noise during construction works, and the previous appeal decision from 1988.
32. As part of the development proposals a detailed flood risk assessment and drainage strategy was undertaken. On the evidence before me, subject to the detailed design of the drainage strategy, there would not be any adverse impact on flood risk either on or off the site.
33. In respect of highway issues, the development would be accessed from Garden Close. From my site visit, and the information before me, I saw that the road would be of a sufficient width and capacity to safely accommodate the likely traffic flows as a result of the development. Furthermore, like the Highway Authority, I consider that there would not be any significant highway impacts on the highway network in the village as a result of the appeal development.
34. The appeal proposal was supported by an Ecology Report and an outline LEMP. Whilst it is acknowledged that Great Crested Newts are present in the ponds within the site, this does not include the developable parts of the site. The proposal provides for mitigation measures and habitat enhancement within the nature reserve area. It is also significant that specific and detailed mitigation for Great Crested Newts would need to be set as part of the European Protected Species License. Taking this into account, and the mitigation measures proposed, the presence of Great Crested Newts in the ponds is not a barrier to the grant of planning permission.
35. Turning to matters relating to the future occupier of the (to be redeveloped) 10 Oates Lane, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
36. In this case, it is clear that careful consideration of the relationship between the detailed site layout and 10 Oates Lane must be given. However, given the outline nature of the application, and that the detailed layout and house designs are not yet known, this is a matter which is best dealt with at the

reserved matters stage. That said, the revised illustrative masterplan layout plan³ demonstrates that it would be possible to develop the site in a manner which would provide a suitable separation distance between the new dwellings and the development to be constructed at No 10.

37. Finally, whilst all of the other matters are material planning considerations none of the matters raised provide for a compelling reason why planning permission should not now be granted. Where necessary any required mitigation can be controlled by means of suitably worded planning conditions.

Conditions

38. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
39. Other than the standard reserved matters conditions, it is also necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. For similar reasons it is also necessary to define the maximum number of dwellings proposed.
40. Conditions relating to a Construction Environmental Management Plan (including hours of construction works), biodiversity improvements, an energy and sustainability strategy, foul and surface water drainage details (including on-going maintenance for surface water drainage), and any mitigation necessary in relation to potential contaminated land are necessary for environmental reasons.
41. Given the possibility of archaeological remains conditions are also required to ensure that any findings are properly recorded. In the interests of fire safety, a condition requiring fire hydrant(s) is also necessary. In order to encourage more sustainable transport methods, a condition requiring a welcome travel pack is also necessary.

Conclusion

42. Taking all matters into consideration, I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

³ Drawing CSA/3881/102 revision A Submitted as part of the appeal evidence and the subsequent application

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1690-A119 and 36783_5501_SK02 revision B.
- 5) The development shall consist of no more than 53 dwellings.
- 6) No development shall take place until a scheme for the provision of fire hydrant(s) within the site (including any phasing arrangements) has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details.
- 7) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of the hours of construction (including delivery times), proposed phasing/timescales of the development and mitigation measures for noise, dust and lighting during the construction phase. Construction works shall only be carried out in accordance with the requirements of the CEMP.
- 8) No development shall take place until a detailed surface water drainage scheme for the site (based on the Flood Risk Assessment and Drainage Strategy prepared by Peter Brett Associates Ref: 36783 FRA Rev A) dated August 2017) has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details.
- 9) Prior to the first occupation of any of the dwellings details of the long term maintenance arrangements for the surface water drainage system (including all SuDS features) shall be submitted to and approved in writing by the local planning authority. The submitted details should identify runoff sub-catchments, SuDS components, control structures, flow routes and outfalls, and any access required to be able to maintain each surface water management component. The maintenance of the surface water drainage systems shall be carried out in accordance with the maintenance plan.
- 10) No development shall take place until a detailed scheme for the disposal of foul waters has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details.
- 11) Prior to, or concurrent with, the first reserved matters application, an energy and sustainability strategy for the development, including details of any on site renewable energy technology and energy efficiency measures, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.

- 12) Prior to the first occupation of any of the dwellings a scheme of biodiversity improvements shall be submitted to and approved in writing by the local planning authority. The biodiversity improvements shall be installed prior to the first occupation of the dwelling to which any enhancement feature relates to or the first occupation of the final dwelling where this relates to land not within the curtilage of a dwelling. The biodiversity improvements measures shall be maintained as such for the life of the development.
- 13) No development shall take place until a detailed investigation and risk assessment of the nature and extent of any contamination on the site, whether or not it originates on the site, has been undertaken and has been submitted to and approved in writing by the local planning authority. The investigation report and findings should include:
- (i) A survey of the extent, scale and nature of contamination;
 - (ii) An assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground and surface waters; ecological systems; archaeological sites and ancient monuments; and
 - (iii) An appraisal of remedial options, and proposal of the preferred option(s).
- Any remediation works shall be carried out in accordance with the approved details and within a timeframe as agreed in writing by the local planning authority.
- 14) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise first agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
- 15) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research objectives and
- i. the programme and methodology of site investigation and recording;
 - ii. the programme for post investigation assessment;
 - iii. the provision to be made for analysis of the site investigation and recording;
 - iv. the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v. the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi. the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

The development shall only be undertaken in accordance with the programme of archaeological works and no dwelling shall be occupied

until the site investigation and post investigation assessment has been completed in accordance with the programme as set out in the Written Scheme of Investigation.

- 16) Prior to the first occupation of any of the dwellings details of the form and content of a Welcome Travel Pack (which should encourage residents to travel using sustainable modes of transport) shall be submitted to and approved in writing by the local planning authority. The approved travel pack shall be provided to the first occupants of each new dwelling prior to (or concurrent with) the first occupation of each dwelling.

Richborough Estates