



Appeal Decision

Inquiry Held on 29-31 January 2019

Site visits made on 28, 31 January & 11 February 2019

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2019

Ref: APP/V0510/W/18/3208713

Land north of 17-45 Toyse Lane, Burwell

- 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 Barratt Homes Eastern Counties against the decision of East Cambridgeshire District Council.
 - The application Ref 17/01732/OUM, dated 25 September 2017, was refused by notice dated 8 February 2018.
 - The development proposed is Outline planning application for up to 70 units with all matters reserved.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The planning application subject of this appeal is in outline, with all detailed matters reserved for future consideration. Therefore the appeal has been considered on this basis. The inquiry considered two schemes in close proximity, this site and a scheme for 90 dwellings¹ which is the subject of a separate decision. At the inquiry I heard the evidence for both schemes together. However, I have judged each scheme on its individual merits.
3. After the inquiry closed the National Planning Policy Framework (the Framework) was re-issued. In addition the Council formally withdrew its emerging local plan. Policies from the emerging plan were referred to in the Council's decision notice. The main parties were given an opportunity to comment on both issues and I have taken the responses received into account. As the emerging plan has been withdrawn by the Council it has had no bearing on my decision.
4. In support of the appeal the appellants have submitted a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990. This includes a financial contribution toward off site highway works. The statement of common ground (SoCG) confirms that reason for refusal 3 has therefore been overcome. There is also agreement that reason 4 has been overcome. Prior to the inquiry it was confirmed that these reasons would not be contested by the Council given the submission of further information by the appellants.
5. The SoCG also confirms that the Council is unable to demonstrate a 5-year supply of deliverable housing sites as required by the Framework. There is no

¹ LPA Ref 17/01732/OUM & APP/V0510/W/18/3208712

dispute between the parties on the level of supply. It is given in the SoCG as 3.94 years.

6. Accordingly, the main issue is:

- The effect of the provision of dwellings on the appeal site on the landscape character of the area.

Planning Policy Context

7. At the inquiry the view of the Council's planning witness was that the proposal would be contrary to policies GROWTH2 and ENV1 of the East Cambridgeshire Local Plan 2015 (LP).
8. Policy GROWTH2 sets out the locational strategy for the delivery of the adopted housing requirement set out in LP policy GROWTH1. It seeks to direct development primarily to market towns but also sets out that more limited development will take place in villages that have a defined development envelope, thereby helping to support local services, shops and community needs. The policy GROWTH5 was also referred to by both planning witnesses. In keeping with the Framework, LP Policy GROWTH 5 indicates that where relevant policies are out-of-date planning permission will be granted unless material considerations indicate otherwise.
9. Policy ENV1 considers landscape and settlement character and design. In particular it seeks high quality design that enhances and complements local distinctiveness and relates well to existing features, settlement edges and the wider landscape. This policy refers to the Cambridgeshire Landscape Guidelines (CLG) and specifically that proposals for development should be informed by, be sympathetic to, and respect the capacity of the distinctive character areas defined in the CLG. The East Cambridgeshire Design Guide Supplementary Planning Document (SPD) sets out parameters and principles to inform the design process. It is a relevant material consideration.
10. The Burwell Masterplan informed the Local Plan vision for Burwell. I note that it was subject to public consultation and provides the community's vision for the development of Burwell. Nonetheless, there is no dispute that it is not a neighbourhood plan nor does it form part of the development plan. Accordingly it is a relevant material consideration. However, I afford it limited weight.

Reasons

Landscape Character

11. The appeal scheme proposes 70 dwellings on the site. The scheme is in outline form. As such I have a parameters plan and an illustrative framework plan. I note that the detail of the landscaping scheme could be subject to reserved matters and that the appellants are not tied to these plans. Nonetheless, the purpose of illustrative plans is to demonstrate that an acceptable scheme could be advanced at reserved matters stage for the development of the site for 70 units with a landscape buffer providing mitigation. Furthermore, in this case, for the landscaping to provide mitigation I consider that it is a fair assumption that it would be positioned in the zones shown on the illustrative and parameter plans. The site area would extend along part of the length of the existing linear form that has evolved around North Street. It would also wrap around the rear boundaries of Toyse Lane.

12. It is common ground that the site falls within Area 2: Chalklands as defined in the CLG. The general description provided in the CLG of the Chalklands is that *'...it is a broad-scale landscape of large fields, low mechanically trimmed hedges and few trees. The eastern part of this area has a number of woodlands and shelter belts which help to break up the long distant views and give some form and character'*. There was agreement that the baseline for considering the existing landscape character should be the developed area of the settlement as it exists now. This included an understanding of the historical evolution of the settlement and its topography, specifically 'The Ness'. This scheme would be located to the south of 'The Ness' which itself is more pronounced to the north of Howlem Balk. The historic maps appended to Mr Dixon's evidence would appear to show some woodland in the area over time and there is disagreement regarding whether woodland would be a typical characteristic of the landscape. However, taking the position of primarily considering the baseline as existing, I attach very limited weight to this point.
13. The historic maps also showed the development of the Settlement of Burwell. Specifically, that it has developed around a nucleated core and then in linear form along North Street. This site relates primarily to the linear form along North Street. The fields, of which the appeal site is one, wrap around this north and east edge to the settlement. Within this the existing edge creates a transition from the settlement into the open countryside beyond. The trees within the immediate landscape primarily seem to line boundaries, which the appellants point out run east west. In this way they create a character where trees and clusters of trees appear sporadically in the landscape rather than in substantial groups or belts. I appreciate that along the western edge of Burwell a wooded character is more pronounced. However, the appeal site would not be appreciated within this context. I consider that the appeal site sits within a primarily open landscape that provides a transition to the countryside beyond.
14. The appeal scheme would abut the existing settlement edge. This is characterised primarily by 2 & 3 storey dwellings on Toyse Lane, Chestnut Rise and Granchester Rise. When viewing the site area from Howlem Balk these existing dwellings are appreciated within the open and flat landscape around them. The properties of Chestnut and Granchester Rise are prominent when considering this site. Nonetheless the built form is varied and interspersed with trees and garden areas. I do not consider that this edge necessarily appears denuded as was suggested at the inquiry. Therefore, I cannot apportion any significant weight to the appellants' submission that the addition of the appeal scheme would represent a 'benefit' to the landscape in this location. Whether it would be harmful is a point I go on to consider below.
15. The appellants have undertaken a detailed Landscape and Visual Impact Assessment (LVIA). I appreciate that the Council did not undertake its own LVIA nor did it dispute the methodology adopted by the appellants. Nonetheless, I agree with the appellants point that the LVIA viewpoint analysis is a tool to assist the decision maker in assessing the effects of the scheme. In this case the disagreement focussed on the effects of the appeal scheme and the sensitivity of the receptors identified. I appreciate that there is very little between the parties when considering the magnitude of the effects from some of the viewpoints picked up through the cross examination. The LVIA demonstrates that the settlement edge would experience localised significant visual harm in the short term. In the long term once the planting takes effect

it is suggested that the significant effects would be reduced and that the effects on key views from Howlem Balk would in fact be positive. However, it is one part of my overall assessment of character.

16. There are no identified 'important views' associated with the site in the Burwell Masterplan, CLG or the LP. However, the site would be visible from a number of viewpoints along Howlem Balk with some longer distance views from Broads Road and Ness Road. The site would be highly visible to users of the local footpath network with some additional views over a distance from surrounding roads. The extent to which the proposed dwellings would intrude into the countryside would vary over time as the landscaping scheme is established. Matters of scale, appearance and layout are reserved and that the LVIA was modelled on a two storey form. Nonetheless, the built form of the scheme would be visually prominent as shown in the montages that model year three, with the landscape mitigation in front of but lower than the buildings. The montage for year 15 demonstrates that the screen would take effect with limited views of both the proposed buildings and the existing settlement edge². However, even considering these as a 'worst case' scenario the material point is that neither would reflect the existing character where built form is interspersed with trees providing a varied and transitional edge to the settlement.
17. I am mindful that the CLG seeks to minimise the effect of new development and does refer to the 'planting of new mixed woodlands and shelter belts' as one way of improving and managing the landscape. The SPD also sets out that woodland can be used as a screen and should reflect local landscape character through use of appropriate species, pattern, landform and avoid sharp lines. It is clear from both documents that landscape design should be a key part of the design process. The CLG provides guidance regarding how to create a positive edge to new residential development in landscape terms. It offers further guidance through the 'models' such as the one shown on page 19. It also allows for complete screening by a broad hedgerow or woodland belt if it is considered to be an appropriate solution.
18. The CLG section on Chalklands was specifically brought to my attention. In particular that the premise of the use of woodland and shelter belts to enhance the landscape is undertaken in a way that emphasises and adds to the character of the area. I do not doubt that a scheme of appropriate species and density could be put together and managed. In addition, the depth of the area shown could offer some flexibility to create views should the Council consider it necessary and that the planting could be undertaken first to allow it to establish. The LVIA demonstrates that over time (0-15 years) the planting scheme would gradually lessen the views and visual impact of the scheme. The LVIA was based on conservative growth rates and no alternative rates were before the inquiry. Nevertheless, the key aim of the guidelines is that any scheme should emphasise or enhance the character of an area.
19. Overall, it is clear from the CLG that it is possible to use a woodland or shelter belt approach to mitigation of built form in principle. However, this does not necessarily lead to the conclusion that the scheme would be acceptable. Fundamentally, in this case, the belt of woodland would be proposed along at least two edges of the development site. Its position would not correspond to

² BC-003 ZTV Proposed developments year 15 – Mr Dixon's Proof

a landscape feature rather it would be a response to the provision of dwellings on the appeal site. As such, even with the best efforts of the appellants' design team, I consider that ultimately it would appear false and therefore at odds with the landscape character of the immediate locality. Overall, the scheme would create a more prominent artificial edge to the settlement in this location rather than emphasising or adding to the existing landscape character of the area as advocated in the CLG.

20. I therefore conclude that the provision of dwellings in this location would have a harmful effect on the landscape character of the area. It would be in conflict with policy ENV1 of the LP and the CLG. It would also be in conflict with the Framework in so far as it seeks to recognise the intrinsic character and beauty of the countryside.

Other material considerations

21. It is common ground that the Council does not have a five year supply of deliverable housing. The supply is agreed to be 3.94 years. The Council conceded that the delivery of the adopted housing requirement has been poor but submitted that it is taking steps to address the shortfall. However, it was relying on the now withdrawn plan. As such the appeal scheme would contribute to meeting the district's housing need and thereby facilitate the government's aim boosting significantly the supply of housing.
22. Furthermore, within the planning obligation the scheme would contribute to meeting the need for affordable housing in the district. This would accord with the requirements of the LP as well as the aims of the Framework. I consider that this obligation would be necessary to secure the affordable housing proposed in perpetuity, directly related to the development and fairly and reasonably related in scale and kind to the development. There would be no conflict with Regulations 122 & 123 of the Community Infrastructure Regulations 2010 (as amended) (CIL Regs) or paragraph 56 of the Framework. As such the provision of affordable housing would be a significant benefit of the scheme.
23. The scheme would also be likely to give rise to economic benefits. Construction employment and expenditure would be associated with the implementation of the scheme. Thereafter, future residents would be likely to support local services and facilities through direct as well as indirect expenditure. However, these benefits would be limited in scale.
24. The appellants submit that the creation of a more 'resolved' edge to the settlement would be a benefit in its own right. However, as I set out above I do not consider that the existing situation is necessarily harmful. As such, whilst the appeal scheme is judged on its merits as a form of mitigation, I do not agree that this can be considered as a benefit.
25. Having had regard to the Ecological Planning & Research Ltd Ecological Statement, November 2017, which has not been disputed by the Council, I am satisfied that through implementation of the proposed Biodiversity Strategy, secured by condition, it is likely that overall, the scheme would result in net gains in biodiversity. However, it appears to me that the net gains would be limited.

Other Matters

26. Notwithstanding the Council's position on the proposed development concern has been expressed locally, including those who spoke at the inquiry, regarding highway safety. Concerns have been raised that the development would not be accessible for future residents, rely on the private car, present a danger to pedestrians and not provide appropriate mitigation measures.
27. The site would be located close to existing dwellings. There are existing facilities and bus services in Burwell³. As such the appeal scheme would have a similar level of access to these as the existing residential units in the locality. Access to the site is indicated to be taken from Chestnut Rise. The application was supported by a Transport Assessment. This included a review of trip generation for the proposal along with committed developments in the locality and background traffic growth. These found that the junctions within Burwell will continue to operate within theoretical capacity during weekday AM and PM peak hours. Traffic distribution around the remainder of the highway network would be at a similar level. Mitigation was also put forward due to the forecast overcapacity at the A142/B1102 junction. This is identified as funding to improve the A142/Station Road roundabout. These works are identified as being necessary by the Local Highway Authority. I have no reason to reach a different conclusion. In terms of pedestrian safety, the highway submissions note that pedestrian movements from the site would mainly involve crossing quieter streets.
28. I recognise that residents' concerns are based on a local appreciation of the existing conditions on the road network as well as a thorough understanding of the local bus network. Nonetheless, I am satisfied that the traffic impacts of this proposal have been appropriately assessed and that they would not be so severe as to render the proposal unacceptable.
29. Both parties have referred me to the masterplan for a scheme on Newmarket Road (BUR1 of the LP), a site that is supported by the Burwell Masterplan. My understanding is that the Newmarket Road scheme benefits from outline planning permission and it would be to the east of the existing settlement. Comparisons have been drawn between this scheme on matters of landscaping, location and affordable housing. I have carefully considered these points. The appellants consider that the appeal scheme and the nearby Ness Road scheme would offer a preferable location for housing and would offer a higher amount of affordable housing. Nonetheless, the appeal scheme presents benefits that I have considered on their merits. This assessment is not altered by comparison with a different scheme on a different site which due to its background and location is not directly comparable to the scheme before me.
30. I understand that the scheme would be liable for payment of a Community Infrastructure Levy, which has been formulated to fund needs arising in relation, amongst other things, to support strategic infrastructure required to support development in the district.
31. In addition to affordable housing the planning obligation secures contributions for open space, Early Years, primary and secondary education, highways, household waste and libraries. Based on the evidence presented⁴, I consider

³ Appellants Highway Briefing Note dated 30 January 2019

⁴ ID12 - CIL compliance statement

that these contributions are: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind. Therefore, they would meet the tests within the CIL Regs and those in paragraph 56 of the Framework. Overall, having regard to the matters secured by planning obligations and those which could be secured by condition I am satisfied that the scheme would make adequate provision for the infrastructure needs arising from the proposal, consistent with the aims of LP policy GROWTH 3.

32. The appellants have referred me to a number of appeal decisions and judgements⁵ which I have considered carefully. Of the appeal decisions referred to two are in entirely different districts. Another is in the same district but in that case the Inspector found that there would be limited harm to landscape character. In addition, I do not have all the detailed site specific information for these sites. As such I do not consider that the appeal decisions are directly comparable to the scheme before me and I afford them very limited weight.

Planning Balance and Conclusion

33. The appeal site is located outside of the defined development boundary for Burwell. Therefore, for the purposes of the application of planning policies it is located in the countryside. As such it would be in conflict with GROWTH2 in so far as it seeks to direct development to within the development envelope unless specific reasons exist. None of these exceptions was advanced as being applicable to the site. There was agreement that the location of the development would be in conflict with part of this policy. Nonetheless, there remains a point of dispute regarding whether the policy is out of date in other respects.
34. GROWTH 2 was examined when the 2012 Framework was in place. The Revised Framework sets out the need to '*recognise the intrinsic character and beauty of the countryside*' at paragraph 170 (b). There is nothing that would alter the assessment that GROWTH 2 is consistent with national planning policy. The submissions refer to GROWTH 1 setting an amount of housing and GROWTH 2 seeking to direct where it is located. Nonetheless, the policy goes further and seeks to protect the character of settlements and the countryside. As such I consider that this policy would not be out of date when considering the issue of landscape character and the effect of providing housing in this countryside location.
35. In keeping with the 2012 Framework, LP Policy GROWTH 5 indicates that where relevant policies are out-of-date planning permission will be granted unless material considerations indicate otherwise, taking into account whether: any adverse impacts of planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (the tilted balance test); or, specific policies in the Framework indicate that development should be restricted. There is no dispute that the appeal site is not subject to any designations which indicate that development should be restricted for the purposes of footnote 6. Footnote 7 is clear that applications involving the provision of housing where the local planning authority cannot demonstrate a five year supply of housing will render the

⁵ APP/V0510/17/3186785; APP/P2935/W/16/3164573; APP/L2820/W/16/3162430; Core documents 5.01 to 5.14

- most important policies out of date. In this regard GROWTH 1 is out of date and as such the tilted balance test is engaged.
36. The adverse impact relates to the harm to the character of the landscape by virtue of the change from countryside to housing. This would run counter to the core planning principle of recognising the intrinsic character and beauty of the countryside and to designing developments which add to the overall quality of an area. In my judgement, this harm carries substantial weight. In terms of benefits, the construction of up to 70 houses would deliver market and affordable housing in an area where delivery of both has historically been lower than that required to meet need. On the evidence provided to this appeal, the Council is currently not able to demonstrate an adequate supply of housing which adds weight to the social benefits which this proposal might bring through the provision of homes.
37. The appellants suggest that there are other benefits arising from the appeal which I have considered in turn. However, none of these amount to more than limited weight either individually or collectively.
38. There is no dispute that in consideration of the Framework that it is paragraph 170 (b) which is applicable to the appeal scheme. This seeks to recognise the intrinsic character and beauty of the countryside. Furthermore, I have found that the scheme would harm the character and appearance of the area. In this regard it would be in conflict with LP policies GROWTH2, ENV1 and the Framework. These are matters to which I attach significant weight. Whilst this proposal would deliver social and economic benefits they would, to my mind, be significantly and demonstrably outweighed by the adverse effect of the environmental harm identified.
39. The proposal would be in conflict with LP policies GROWTH 2, GROWTH 5 and ENV1. Therefore, it would be in conflict with the development plan as a whole. The proposal should also be assessed on the basis of the tilted balance set out at paragraph 11 of the Framework which is a material consideration. On this point I have found that the harm from the scheme would significantly and demonstrably outweigh the benefits of the provision of dwellings in this case. As such the Framework is a material consideration which also weighs against the proposal. Therefore, in the circumstances of this appeal the totality of the other material considerations does not justify making a decision other than in accordance with the development plan.
40. Therefore, for the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes Of counsel	Instructed by Tim Driver, Solicitor to the Council
He called	
Alison Farmer	Principal, Alison Farmer Associates
Alison Hutchinson	Partner, Hutchinsons
Barbara Greengrass	East Cambridgeshire District Council
Colin Fitzsimons	Cambridgeshire County Council
Ian Trafford	Cambridgeshire County Council

FOR THE APPELLANTS:

Paul Tucker QC Philip Robson	Instructed by Barratt David Wilson Homes
They called	
Jeremy Smith	Director SLR Consulting
Jonathan Dixon	Associate Director, Savills
Chris Webber	Barratt David Wilson Homes
Gareth Watts	Savills

INTERESTED PERSONS:

Cllr Joshua Schumann	Cambridgeshire County Council
Robin Dyos	Burwell Parish Council
Lavinia Edwards	District Councillor
Peter Emmens	
David Brown	
Flora May Waterhouse	
Barry Garwood	
Caroline Smith	
Steve Clarke	
G Jones	

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Masterplan showing gas pipeline
- 2 Felsham Aerial Photograph 1999
- 3 Newmarket Road Masterplan
- 4 Storey height plan
- 5 Extract from Cambridgeshire Green Infrastructure Strategy
- 6 Submission by Miss Waterhouse
- 7 Opening statement on behalf of the appellants
- 8 Opening statement on behalf of the Council
- 9 Letter from Mrs Parker
- 10 Letter from Mr Brooking
- 11 Conditions
- 12 Final CIL compliance statement

- 13 Highways note on behalf of the appellants
- 14 Conditions final signed version
- 15 Site visit itinerary including requests from interested parties
- 16 Closing statement on behalf of the Council⁶
- 17 Closing statement on behalf of the appellants

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- 18 Signed and dated planning obligation
- 19 Council's comments on the withdrawal of the emerging plan dated 6 March 2019
- 20 Appellants' submission regarding the withdrawal of the emerging plan dated 7 March 2019

END

Richborough Estates

⁶ Including *Cumberlege v Communities and Local Govt Secretary (QBD)*; *Gladman Developments v Secretary of State for Housing Communities and Local Government* and *Central Bedfordshire Council*