
Appeal Decision

Hearing held on 1 December 2015

Site visit made on 1 December 2015

by D J Board BSc (Hons) MA MRTPI

Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2016

Appeal Ref: APP/V0510/W/15/3133903

Land Adjacent to 37 St. Johns Avenue, Newmarket, Suffolk, CB8 8DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Flagship Housing Group against the decision of East Cambridgeshire District Council.
 - The application Ref 14/01264/FUM, dated 13 November 2014, was refused by notice dated 6 March 2015.
 - The development proposed is construction of 21 affordable dwellings consisting of four 1-bed bungalows, twelve 2-bed houses, four 3-bed houses and one 4-bed house with associated external works and parking.
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Decision

1. The appeal is allowed and planning permission is granted for construction of 21 affordable dwellings consisting of four 1-bed bungalows, twelve 2-bed houses, four 3-bed houses and one 4-bed house with associated external works and parking at Land Adjacent to 37 St. Johns Avenue, Newmarket, Suffolk, CB8 8DE in accordance with the terms of the application, Ref 14/01264/FUM, dated 13 November 2014, subject to the conditions in Annex A.

Application for costs

2. At the Hearing an application for costs was made by Flagship Housing Group against East Cambridgeshire District Council. This application will be the subject of a separate Decision.

Preliminary Matter

3. The Council has advised that the East Cambridgeshire Local Plan (LP) was adopted in April 2015. This supersedes the Core Strategy. Therefore the Council advised that it is relying on LP policy COM7. The appeal is considered on this basis.

Main Issue

4. The main issue is the effect of the proposal on highway safety.

Reasons

5. The site would be located on St. Johns Avenue. It would have an access taken from this road. It would be opposite the existing Ditton Lodge Primary School

and adjacent to allotment gardens to the north east and existing dwellings in Kings Drive to the south west.

6. St. Johns Avenue is a residential road that is unclassified. It is subject to a speed limit of 30mph. It is part of a network of residential streets that provide access to local surroundings and Newmarket town centre. There are 'keep clear' markings in front of the school but there are no other parking restrictions in place along St. Johns Avenue and the surrounding streets.
7. The school is a primary school with seven form one class entry. There is also a nursery on the site. The Crockfords Park Residents Association (CPRA) also pointed out that the school runs breakfast and afterschool clubs. It has a car park with about 17 spaces and 1 disabled parking space. I heard that this is generally used to capacity and that additional parking does take place along St. Johns Avenue.
8. There is no dispute that there are peaks in vehicular movement and activity associated with 'drop off' and 'pick up' times at the school site. The peak times are identified as being about 0845 – 0900 and 1445 – 1515. In addition there is no dispute that parking by parents takes place along the road, on the verges and spills into some of the surrounding roads.
9. The proposed development would be required to provide adequate parking for the new dwellings, an access point and visibility splays. There is no dispute that the layout of the development would provide an amount of parking that would be policy compliant. The submitted Transport Statement (TS) identifies that the technical aspects of the access could be achieved and that the Local Highway Authority does not object to them.
10. The Council does not dispute that the visibility splays could be provided to an appropriate dimension. The concern relates to their obstruction by parked cars, in particular where the road bends to the north of the site. The main instance would be during the periods in the morning and afternoon during school 'drop off' and 'pick up' times. However, this is generally limited in duration to these 'peak' times. Furthermore, the appellants have demonstrated that speeds in the area are not high and typical of a busy urban/suburban location. They also submit that the presence of parked cars and associated activity with the school would further attenuate vehicle speeds during these periods.
11. The formation of the new access point and development of the site would change the existing verge area opposite the school. A footway would be formed in front of the new dwellings that would face the road. It was agreed that the worst case scenario would be that this would displace parking used for school 'drop off' and 'pick up' in the region of about 6-8 vehicles. Furthermore, footway widening, a dropped kerb and crossing points would be provided.
12. There is no requirement within applicable planning policies for the proposed development to make provision for parking for existing users of the school. I understand that the Council consider that future residents would use the on street parking in the new estate road. Nevertheless, the appellants point out that, in the same way the existing unrestricted side roads can be used, the new road could be used for parking at school 'drop off' and 'pick up' times. Given that adequate on plot parking is provided there is no evidence that residents would use all available on street parking. Furthermore, there are not parking

- restrictions on the surrounding roads. Therefore there are other choices for people dropping off and picking up from the school site.
13. The TS identifies that there would be no more than 9 additional two way trips resulting from the development during the peak periods identified. This is expressed as less than a vehicle every 6-7 minutes. In particular the appellants drew a distinction between the AM and PM peak. That is that the main convergence of movements from the development with those associated with the school would be in the morning. Whilst I appreciate that peaks in activity exist in the locality I have no substantive evidence that the movements from the development would exceed the stated amounts.
 14. The reason for refusal describes the area as congested. Taken in its ordinary sense this would mean that the area is too full with vehicles. I appreciate that there are peaks of traffic at the 'drop off' and 'pick up' times and that the area is a busy suburban location. However, I have no firm evidence that the area suffers from congestion in the form of slow speeds and regular vehicular queuing.
 15. The new access point would be close to the access to the school car park and the pedestrian and emergency access points. However, it would not be directly opposing the school access point, it would be staggered. I was told that users of the school access are limited primarily to staff not parents. As such the movements associated with this access are likely to be before and after the peak times referred to. In addition the appellants have demonstrated that the level of movements from the new access would be low overall, would be undertaken in a forward gear and spread throughout the day rather than 'peaked'.
 16. I understand that the CPRA are concerned about the number of recent 'near misses' in the location. I also appreciate that the one location where movements could not all be undertaken in a forward gear would be the access to plot 1 from St. Johns Avenue and its 'tandem' parking arrangement alongside the existing allotment parking. However, the appellants have provided information regarding accidents. The location is not a known accident 'black spot' and there are not any recorded clusters. The information available shows that since 2009 there were only 2 personal accidents outside of school hours.
 17. The locality experiences peaks in traffic volume and flow when at school 'drop off' and 'pick up' times. However, outside of these times I have no firm evidence that the area could be described as congested or that parking is under stress. The appeal proposal makes adequate provision to meet its own parking needs without spilling onto the surrounding streets. Furthermore, the access and visibility proposed would meet the technical requirements. In addition there is no evidence that there would be severe vehicle conflicts between the two access points. Whilst some parking would be displaced at the school 'drop off' and 'pick up' times this could be accommodated within the surrounding area.
 18. I understand that residents are concerned about the existing activity of the school. I have some sympathy with the concerns expressed by residents. However, many of the issues identified relate to impacts from the existing use of the school. Overall, based on the information before me, I consider that it is fair to say that the transport impacts of the proposal would not be severe. In

this regard their impact on the highway network in the area would be acceptable.

19. I therefore conclude that the proposal would not have a harmful effect on highway safety. Therefore it would not be in conflict with LP Policy COM7 which amongst other things seeks to and the National Planning Policy Framework (the Framework) which seeks to resist proposals where the residual cumulative impacts of development are severe.

Other matters

20. Whilst not reasons for refusal I have carefully considered the comments from local residents. In particular issues have been raised regarding civil limitations on properties, the location of the site, the allotment land, loss of green space and ecology, servicing of the development and the entrance to the play area from the proposed open space.
21. The Council advise that since 1994 the land that forms the appeal site has been rented out for grazing and was then sold in 2004. In this regard the status of the land is a separate legal issue. The site is located close to the station and the town centre. I understand the residents' point that occupiers of the new dwellings would need to use a car for some day to day activities. However, the site would be no less sustainable than the existing residential dwellings and other choices would be available. Therefore the sites location would not weigh significantly against it. The site is not subject to any formal designations and a phase one ecology survey has been undertaken in a proportionate manner. This includes mitigation measures that would be incorporated within the landscaping of the site. There is no objection to the width of the road from the highway authority. Furthermore, I have no substantive evidence that the road would not accommodate the servicing requirements of the proposal. I heard that the appellants no longer intend to access the existing play area directly from the appeal site. This can be addressed through the condition regarding the layout of the open space. Overall, none of these matters alters or outweighs my findings on the main issue.
22. The Framework sets out policy tests for the seeking of planning obligations and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Regulations (2010) (CIL) which must be met for obligations to be given weight. These tests apply to the submitted obligation. The Council's Supplementary Planning Document on Developer Contributions (2013) (SPD) provides the relevant basis for consideration of the obligation.
23. There is a requirement for the provision of public open space on the site. The layout includes an area of 0.082ha. The submitted obligation includes an additional commuted sum. This would be for facilities 'off site'. I appreciate that the SPD identifies the appropriate sum based on dwelling size and occupation. However, I have no evidence regarding the need for this facility in this part of the district or where the payment would be spent. Therefore whilst this obligation directly relates to the development and is fairly and reasonably related to it in scale and kind, based on the evidence before me, I cannot be satisfied that it would be necessary to make it acceptable. Therefore I have not taken the obligation into account.

Conditions

24. The statement of common ground contains a number of suggested conditions which are considered to be appropriate were I minded to allow the appeal. I have considered these in light of the Framework and Planning Practice Guidance and for clarity some of the proposed wording is amended. Conditions are necessary that relate to the standard time limits and a condition regarding the identification of the approved plans is required for the avoidance of doubt.
25. In the interests of the character and appearance of the area conditions requiring materials to be submitted, the details of hard and soft landscaping and lighting and the layout of the open space are both necessary and reasonable. Furthermore, to protect the open character of the road frontage in the locality it is reasonable to restrict permitted development for frontage boundary treatment.
26. To ensure proper drainage of the site conditions relating to surface water and foul drainage strategies are also necessary. In the interests of highway safety conditions requiring the provision of details of the access and on site parking, tactile paving and crossing points would be reasonable and necessary. In the interests of protected species conditions are necessary to ensure that the appropriate mitigation would be carried out.
27. To protect the living conditions of near neighbours conditions to require details of external lighting, construction works and delivery times would be necessary. Conditions would also be necessary to ensure that adequate measures for dealing with contamination are in place. In accordance with the requirements of LP policy ENV4 a condition requiring a scheme for renewable energy is necessary. A condition to secure a programme of archaeological work is also necessary.
28. The development is proposed as affordable housing in its entirety. The Council's Housing Section identify that the types and size mix would be suitable to meet a local need identified by the Common Housing Register and Strategic Housing Market Assessment. The appellants and Council are in agreement that a scheme for the provision of affordable housing should be required by condition in accordance with LP policy HOU3. This would be both necessary and reasonable in this case.
29. The submitted plans show provision of four parking spaces along St. Johns Avenue. The appellants consider that the provision of these spaces would not be necessary or directly related to the development. The Council expressed doubt about the enforceability of the provision as it would be within highway land. The spaces would not be required for the vehicles associated with the development. As such I do not consider that the provision of these spaces would be necessary. As such I have included the suggested condition to remove these from the layout.

Conclusion

30. For the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

Annex A - Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: F-586-P01 C; F-586-P02; F-586-P03; F-586-P04; Phase 1 Habitat and Reptile Survey dated September 2014; Transport Statement dated October 2014.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until an 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. The investigation and risk assessment must be undertaken by competent persons, and a written report of the findings must be submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:
 - i) A survey of the extent, scale and nature of contamination;
 - ii) An assessment of the potential risks to: human health or property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; archaeological sites and ancient monuments;
 - iii) An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11'. Any remediation works proposed shall be carried out in accordance with the approved details prior to any development taking place.

- 5) In the event that contamination that was not previously identified is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. All development shall cease and shall not recommence until: (a) a report shall be submitted and agreed in writing by the Local Planning Authority which includes the results of an investigation and risk assessment together with proposed remediation scheme to deal with the risk identified and (b) the agreed remediation scheme has been carried out and a validation report demonstrating its effectiveness has been approved in writing by the Local Planning Authority.
- 6) No development shall take place until the applicants or their successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 8) Demolition or construction works shall not take place outside 0800-1800 hours Mondays to Fridays and 0800-1300 hours on Saturdays nor at any time on Sundays or Bank Holidays. No deliveries shall be made during the construction phase outside of the following hours 0900-1445 and 1515-1800 Monday to Friday, 0800-1300 on Saturdays and at no time on Sundays or Bank Holidays.
- 9) Prior to the commencement of development details of the provision of fire hydrants or equivalent shall be submitted to and agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 10) No works shall commence on the site until such time as detailed plans of the proposed private driveways, including drainage measures for surface water run off and surface water drainage scheme for the site based on sustainable drainage principles have been submitted to and approved in writing by the Local Planning Authority. All works shall be carried out in accordance with the approved plans and shall thereafter be retained in the agreed form.
- 11) The development hereby permitted shall be carried out in accordance with the Mitigation Proposals set out in section 7 of the Phase 1 Habitat Survey and Reptile Survey Report produced by Wild Frontier Ecology, dated September 2014.
- 12) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; details of the design, materials and type of the means of enclosure in accordance with the positions on drawing F-586-P01 C; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating

- lines, manholes, supports etc.); where relevant. Development shall be carried out in accordance with the approved details.
- 13) Soft landscape works shall include planting plans in accordance with the Site Enhancement Recommendations of the Phase 1 Habitat Survey and Reptile Survey Report; a written specification; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; the details shall also include all existing trees and hedgerows on the land and details of any to be retained. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority
 - 14) No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.
 - 15) No development shall take place until a scheme for generating a minimum of 10% of the predicted energy requirement of the development from decentralised renewable and/or low carbon sources for the dwellings shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the agreed strategy has been implemented in so far as it related to that dwelling. The approved scheme shall remain for the lifetime of the development.
 - 16) The dwellings shall not be occupied until a means of vehicular access including drainage measures for surface water run off has been constructed in accordance with details that have previously been submitted to and agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 17) Prior to the occupation of the dwellings a scheme for external lighting shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) no fences, gates or walls shall be erected within the curtilage of the dwellinghouse in front of any wall of the dwellinghouse which fronts onto a road.
 - 19) No development shall take place until a scheme for the provision of dropped kerbs and tactile paving to provide crossing points on St. Johns Avenue shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented prior to the occupation of the first dwelling.
 - 20) Notwithstanding the details shown on drawing F-586-PO1 Rev C, no development shall commence until a scheme has been submitted to and agreed in writing for the removal of the four parking spaces shown on St. Johns Avenue. The approved scheme shall be occupied prior to the occupation of plots 16 to 21.
 - 21) No dwelling shall be occupied until:

- i. a scheme for the laying out of the open space shown on site plan drawing F-586-PO1 Rev C, to include landscaping, boundary treatment and provision for future maintenance has been submitted to and approved in writing by the Local Planning Authority; and
 - ii. the open space has been laid out in accordance with the approved scheme.
- 22) No development shall take place until a scheme for the provision of affordable housing has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - i. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units/bed spaces;
 - ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of any market housing;
 - iii. the arrangements for the transfer of the affordable housing to any affordable housing provider or the management of the affordable housing;
 - iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers; and
 - v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

APPEARANCES

FOR THE APPELLANTS:

Paul Wootton	Hawes Percival
Beccy Rejzek	Bidwells
Adam Broadway MRTPI	Flagship Housing Group
Lee Webster	Flagship Housing Group
Stephanie Callen	Flagship Housing Group
Luke Fairall	Rossi Long Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Alison Hutchinson	Hutchinsons
	Consultant on behalf of East Cambridgeshire
	District Council

INTERESTED PERSONS:

Graham Robertson	Crockfords Park Residents Association
Karen Shinedling	Near neighbour
Valerie Barwell	Near neighbour
Rosemary Barham	Near neighbour
Clive Barham	Near neighbour
Barbara Wiseby	Near neighbour
Roger Barwell	Near neighbour
Cllr Peter Cresswell	Near neighbour

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Agreed Statement of Common Ground
- 2 Unilateral Undertaking prepared by Howes Percival
- 3 Costs application on behalf of the appellants
- 4 Rebuttal on behalf of the Council
- 5 Photographs from Crockfords Park Residents Association
- 6 Email from Cambridgeshire County Council Place Planning and Sufficiency Officer dated 4 March 2015
- 7 Photograph from Crockfords Park Residents Association