



Appeal Decision

Site visit made on 9 June 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/L2820/W/20/3246936

Kettering Football Ground, Cowper Street, Kettering NN16 9AW

- 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 Harpur Developments Ltd against the decision of Kettering Borough Council.
 - The application Ref KET/2018/0519, dated 13 August 2018, was refused by notice dated 23 January 2020.
 - The development proposed was originally described as erection of 48 no. dwellings including associated access and public open space.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Harpur Developments Ltd against Kettering Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The original proposal on the planning application form was for 48 no. dwellings. A revised site layout was submitted as part of the planning application showing a total of 49 no. dwellings. This is reflected in the description on the Council's decision notice and the appellant's appeal forms. I have therefore considered the appeal on this basis.
4. The planning application was not refused on grounds relating to the provision of a safe and suitable access. However, the Highway Authority objects to the development. Given the substantive nature of the issues raised, I have addressed this under the second main issue. The parties have been provided with an opportunity to comment and I have taken any written representations made into account as part of my assessment.

Main Issues

5. The main issues are:
 - whether the proposal makes adequate provision for any additional need for affordable housing and other necessary infrastructure contributions arising from the development; and
 - whether the proposal would provide a safe and suitable access.

Reasons

Affordable housing and other infrastructure contributions

6. Paragraph 56 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations 2010 (CIL Regulations) set out that planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the development; and fairly and reasonably related in scale and kind to the development.
7. To fully accord with the 30% target under the requirements of Policy 30 (Housing Mix and Tenure) of the North Northamptonshire Joint Core Strategy 2011 – 2031 (2016) (CS), 14 of the proposed units would need to be provided as affordable housing. The policy states amongst other things, that the precise proportion and tenure mix of affordable housing will take into account the viability of the development.
8. Policy 1 (Presumption in Favour of Sustainable Development) states, amongst other things, that where a development is otherwise acceptable but an independent viability appraisal demonstrates that certain policy standards cannot be achieved, the Council will work with the applicant to consider alternative approaches to deliver the desired policy outcomes.
9. Both the appellant's and the Council's appointed viability assessors concur that the development is not viable if policy compliant levels of affordable housing are provided. On this basis, under the terms of the policies in the CS, it is reasonable to consider whether a reduction in affordable housing provision would allow for necessary infrastructure contributions to be made to make the development acceptable in planning terms. The consultation responses received during the application process highlighted the areas where contributions towards infrastructure would be required to support the level of development proposed.
10. The most recent comments of the County Council as Local Education Authority (LEA) before me are dated 16 November 2018 and were updated to relate to a scheme of 49 no. dwellings. They seek financial contributions towards increasing the capacity of local school infrastructure with requests of £181,588 towards primary education and £213,897 towards secondary education. The consultation response sets out that these figures derive from a formula based on the Current Department for Education Cost Multipliers. The signed Unilateral Undertaking (UU) dated 4 May 2020 confirms that the primary education contribution would be towards the construction of a new Primary School at West Hill / Gipsy Lane, Kettering and the secondary school contribution would be towards the expansion and/or enhancement of capacity at Kettering Science Academy.
11. A total contribution of £11,608 has been requested towards library provision. The County Council advises that this figure is based on the National Library Tariff Formula produced by the Museums Libraries and Archives Council (MLA) which they have adopted. The UU confirms that the contribution would go towards the creation of workshop and/or training space for library users, and investment in IT / Digital infrastructure and resources at Kettering Library.

12. Sport England agreed to a contribution of £30,000 to mitigate for the loss of the former pitch on the appeal site subject to the Council providing a full explanation of the reasoning in their report. The Council's Committee Report confirms that the money would be utilised for machinery to improve drainage at North Park and this is reflected in the completed UU. The Council's Grounds Team also confirmed that on site public open space would be a landscaped area and requested £18,000 for future maintenance. There is no dispute between the parties in respect of the acceptability of these figures.
13. A contribution of £35,864.40 towards the cost of providing additional accommodation for 110 patients has been requested by the Health Authority. However, no deficiency in capacity at local health practices has been identified, nor has a specific piece of infrastructure been indicated for the contribution to be directed towards. The Council's Committee report suggests the requested contribution would not meet the tests set out in the Community Infrastructure Regulations 2010. From the evidence before me, I find no reason to disagree with such a view.
14. Taking account of the above, the total level of contributions would be £455,093. This is just below the figure of £457,085 quoted in the Council's Committee Report dated 17 December 2019 which includes reference to slightly higher primary and secondary education contributions of £182,208 and £215,238 respectively. When Officers reported the application to the Council's Planning Committee there was general agreement on these being the requested figures and I am satisfied that the contributions set out above have been adequately justified and would meet the tests in the Framework and the CIL Regulations.
15. The Council contend that a policy compliant scheme would result in a higher level of contributions. However, I have no substantive evidence before me in terms of respective consultee responses or adopted policies or formulas which demonstrate that the infrastructure contributions should equate to a higher figure. The consultation responses include other requirements including a Travel Plan, a toucan crossing for Rockingham Road, natural play equipment, the provision of a fire hydrant and a surface water drainage scheme. All would come at a cost to the developer. It is not clear from the evidence before me whether the Council's suggested higher figure related to these matters. A Travel Plan could be secured by condition. Similarly, the other respective infrastructure requirements could be secured through the Council's suggested conditions to which the appellant has not raised any specific objections.
16. The UU sets out 2 options. Option 1 sets out a reduced offer of 6 affordable housing units to be provided on the site with contributions towards education, libraries, sports pitch mitigation and public open space maintenance equating to £457,085. On this basis, I consider a reduction in affordable housing would be justified as this would facilitate full contributions being made towards the infrastructure required to make the development acceptable. Furthermore, the Framework sets out that decisions for major housing developments should expect at least 10% of the homes to be available for affordable home ownership. Whilst a higher figure is desirable, 6 affordable units would exceed the minimum requirement in the Framework and would add to the housing mix on the site.

17. In contrast, Option 2 would provide 8 affordable units but reduced levels of contributions towards primary and secondary education, £146,931 and £173,564 respectively, and the contribution to open space maintenance would also be reduced to £14,505. These are significant reductions that would jeopardise the ability to ensure the impacts of the proposal on local infrastructure are fully mitigated. Option 2 therefore fails the test in the Framework as the contributions would not be sufficient to make the development acceptable in planning terms.
18. In addition, the Council's committee reports indicate that the Local Education Authority would accept the reduced level of contributions on the condition that a clause be inserted into any associated legal agreement. Such a clause would require that a proportionate pro-rata amount be recovered should there be an improved level of viability as a result of the reduction in affordable housing units. There is no mechanism within the UU to include a review process. This further compounds the probability that the necessary education contributions required to make the development acceptable in planning terms would not be met if Option 2 were accepted.
19. Taking all the above factors into account, I conclude that Option 1 in the UU would ensure the infrastructure contributions, necessary to make the development acceptable would be provided. Consequently, the development would comply with those elements that seek to identify viable solutions to delivering infrastructure requirements in Policies 1 (Presumption in Favour of Sustainable Development), 10 (Provision of Infrastructure) and 30 (Housing Mix and Tenure) of the CS. The development would also meet the relevant tests at Paragraph 56 of the Framework and Regulation 122 of the CIL Regulations.

Safe and suitable access

20. The Local Highway Authority (LHA) has raised objections to the development including reference to their 'Standard Highway Layout Specification November 2016' with a list of 28 requirements. The LHA has not been specific as to the areas that they consider the scheme to be deficient. The Council's position is that there are only minor variances, such as provision of permeable paving for water drainage capacity, which they suggest the LHA would not adopt. I acknowledge that not all points in the list of requirements would be directly applicable to the appeal proposal. However, the appellant has only confirmed that given the tracking, road and pavement widths and general design, that the scheme would not compromise highway safety.
21. Notwithstanding the above, there are other remaining areas of ambiguity. For example, not all properties indicated as being accessed via private drives are shown to have a bin collection point. It is not clear whether levels of off-street parking would be sufficient, for example whether 3 suitable parking spaces would be provided for each of the 4 bedroomed dwellings and whether internal garage dimensions would facilitate their use for parking. There is no cycle parking provision and carriageway gradients have not been provided. In the absence of more detailed analysis of the proposal against the standards, I cannot be certain that the development would function effectively and that there would not be inconvenience for road users and pedestrians.
22. Even if I were to accept the position that there are only minor variances from the LHA standards, the appellant has confirmed that the road would not be

offered up for adoption. In that event, the Council suggests that a planning condition could be imposed requiring, amongst other things, that the development should not be carried out other than in accordance with an approved 'Legal setup of a Management Company'. However, the use of a planning condition would not be appropriate in respect of both establishing a management company and ensuring that the future occupants of the dwellings were bound into an agreement to make on-going financial contributions towards future maintenance of the streets and sewers. Such arrangements could only be secured with precision and enforceability as part of a planning obligation. The UU does not include this important matter and hence this weighs against allowing the appeal.

23. I conclude that it has not been demonstrated that the proposal would provide safe and suitable access arrangements, nor that the long-term future maintenance of streets and sewers would be secured. The proposal would therefore be contrary to Paragraph 127 of the Framework which states that developments should function well and add to the overall quality of the area, not just for the short term but for the lifetime of the development.

Conclusion

24. In accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.
25. The development would make a significant contribution towards meeting the Council's housing requirements, as well as social and economic benefits associated with the contribution occupants of the development would make to local services and facilities. Taking viability into account, there would currently be an appropriate minimal level of investment in local infrastructure through the UU provided (i.e. Option 1).
26. However, it has not been demonstrated that the access would function well, nor that its long-term maintenance would be secured. This is a matter which attracts significant weight and tips the balance firmly against allowing the proposal.
27. Therefore, for the reasons set out, I conclude that this appeal should be dismissed.

M Russell

INSPECTOR