



Appeal Decision

Site visit made on 28 September 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 03 November 2020

Appeal Ref: APP/V0510/W/20/3254295

Land off Station Road, Wilburton, Ely CB6 3RP

- 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 BS Pell Trust against the decision of East Cambridgeshire District Council.
- The application Ref: 19/01464/FUM, dated 10 October 2019, was refused by notice dated 15 May 2020.
- The development proposed is described as 'residential development of 23 dwellings, new accesses, public footpath, parking and associated works (including removal of trees T10, T12, T14, T15, T16, G2 and T24)'.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by BS Pell Trust against East Cambridgeshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant has submitted a number of revised documents and plans, drawing number SK01 Rev E; PP1 REV A 140920; PP2 REV A 14092020; PP3 REV A 14092020; PP4 REV B 14092020; PP5 REV A 14092020; J TANK 140920. These revised documents and plans did not form part of the application and therefore interested people's views have not been sought. I therefore cannot be satisfied that no party would be prejudiced by my consideration of the revised documents and plans in the appeal. Consequently, I have determined the appeal on the basis of the scheme and the plans which were before the local planning authority when it made its decision, namely SK05 REV A; SK06; Highways Ownership Plan; 0101 REV05; 0090 REV01; 0102 REV01; 0103 REV01; 0104 REV01; 0105 REV01; 0106 REV01; 0107 REV01; 0801 REV01.
4. The Council submitted a recent appeal decision¹ in support of their case. This decision was recent and relevant to the appeal before me. As such, I was minded to accept the Council's additional evidence and the appellant was afforded an opportunity to comment upon it. I have taken these comments into consideration for the purposes of this appeal.
5. I have been provided with two different versions of an unsigned section 106 planning obligation. The first is undated, the second refers to a date of the

¹ APP/V0510/W/20/3245551

14th September 2020. Broadly, these planning obligations make provision for affordable housing, additional education infrastructure, open space and maintenance of a sustainable urban drainage system. This matter is considered in greater detail below.

Main Issues

6. The main issues are:-

- i) whether the appeal site is a suitable location for new housing; and
- ii) the effect of the proposal on the integrity and long-term future of trees.

Reasons

Location for housing

- 7. The appeal site is located outside of the development envelope for the village of Wilburton. For the purposes of applying planning policy, the appeal site is located within the countryside. Policy GROWTH 2 of the East Cambridgeshire Local Plan (2015)(LP) sets out the locational strategy for the district having regard to the need to protect the countryside. It seeks to direct the majority of development to the market towns of Ely, Soham and Littleport. Development outside of defined development envelopes is restricted to a number of exceptions and where there would be no significant adverse impact to the character of the countryside.
- 8. In the absence of anything to suggest that the proposed dwellings would be consistent with the specified exemptions, the proposal would conflict with the spatial strategy of LP Policy GROWTH 2. It appears to be the Council's case that by reason of this conflict the proposed scheme would result in a significant adverse impact on the character of the countryside. The Council have provided little information in this regard. Nevertheless, in order to assess the extent of the policy conflict it is therefore necessary to explore this matter further.
- 9. The appeal site is a relatively large, undeveloped and irregular shaped parcel of scrub and woodland with an existing access point from Station Road. The overall character is one of a rural landscape. However, its rural character is also significantly influenced by extensive residential development in close proximity and traffic associated with the use of the highway. The largely built up character of the surrounding land reduces the quality of the appeal site. Nonetheless, the appeal site makes a moderate contribution to the semi-rural character of the surrounding area.
- 10. The introduction of some 23 dwellings would inevitably alter the character and appearance of the appeal site. The scheme would introduce built form where there is presently none thus resulting in a significant urbanisation of this parcel of land.
- 11. However, the site is well contained and enclosed by residential development along its north and west boundaries together with The Burystead and its curtilage barns and outbuildings. Views into the site from the highway are largely screened by dense vegetation and trees which would be mainly retained. Albeit visibility into the site would improve during the winter months when foliage is less dense, the development would be seen in the context of the backdrop of existing development and built form. Therefore, it would not

appear out of keeping with the semi-rural edge of village character. The proposed dwelling to be positioned adjacent to the highway would be set within a spacious and verdant plot that would be characteristic of other development along Station Road.

12. The proposed scheme would fundamentally alter the prospect from the rear elevations of neighbouring dwellings and their garden curtilages. The relative seclusion of adjoining countryside would be replaced by views of suburban dwellings. The proposed dwellings would be perceived as prominent features, albeit this would be limited in part due to the screening effect of intervening vegetation. Consequently, the proposed scheme would have a significantly greater visual impact than the existing parcel of unkempt scrub and woodland. It would be viewed as an encroachment and an unacceptable intrusion into the countryside, albeit the impact is a localised one and therefore this reduces the harm that would be caused by the proposal.

Trees

13. The Arboricultural Report (AR) prepared on the appellant's behalf, identifies that a number of trees that are categorised as low value, would be removed to accommodate the access road and part of the site layout. There appears to be no dispute that the remaining trees are of significant amenity value.
14. By reason of the position of the access road within the root protection area (the RPA) of trees, the construction of the access road and footways to adoptable standard and specification of the Highway Authority would be likely to damage their root systems. The appellant has sought to overcome this issue with a 'no dig' solution which is endorsed² as being commonly used in the construction of new hard surfaces within RPAs. Reference has been made to an example of its successful use elsewhere as a long-term solution. A suitably worded condition would be capable of ensuring the method and type of construction of the access road and footways. Therefore, I am satisfied that its' construction and long-term use would not threaten the integrity and long-term future of the trees.
15. The Council's reason for refusal and its officer report did not expressly mention an issue arising from the sustainable urban drainage system (SuDS). Notwithstanding this, I am required to determine this appeal on the basis of the evidence before me and I note the Council's concerns also relate to the type of SuDS proposed and its method of construction. Two sections of oversized pipes are proposed to provide additional attenuation. These would be routed through the RPAs of a number of trees. As a result, there would likely be a significant adverse impact on the health of these trees.
16. The appellant has sought to overcome this problem and has submitted additional evidence and a revised SuDS strategy drawing. However, for the reasons given above, I am unable to take these into account in the determination of this appeal.
17. I have considered whether a suitably worded condition could be imposed on a grant of planning permission. However, I do not consider it to be acceptable to defer this matter. I must be satisfied that the proposed SuDS is capable of

² By Arboricultural Practice Note 12 and BS 5837 2005

being undertaken without any adverse impact to trees and therefore a precautionary approach is justified in these circumstances.

18. Therefore, I find that the appellant has not satisfactorily demonstrated that the proposal would not compromise a very important part of the tree's root area. There is a clear risk that the proposal would threaten the integrity and long-term future of these trees thereby compromising their significant contribution to the character and appearance of the area. Thus, the proposal would conflict with LP Policies ENV1, ENV2 and ENV7. Among other things, these policies seek to minimise harm to or loss of environmental features such as trees.

Planning balance

19. I have found that there would be conflict with the locational requirements of LP Policy GROWTH 2. As a consequence, there would be some resultant harm to the character and appearance of the countryside, however, the impact would be localised and this limits the harm that would be caused by the proposal. Consequently, I assess the level of conflict with LP Policy GROWTH 2 to be of a moderate weight against the proposed scheme. In addition, I have found that there would be significant harm caused to the integrity and long-term future of trees which would conflict with LP Policies ENV1, ENV2 and ENV7.
20. The benefits arising from the proposed scheme would include the provision of some 23 additional dwellings in a sustainable location with access to local services and facilities including a shop, public house, village hall and social club, garden centre, primary school, church, recreation and play spaces. Future occupants of the dwellings would have access to a regular bus service to Ely and Cambridge and therefore would not be unduly reliant on the use of the private motor vehicle. Future occupants of the dwellings would contribute expenditure towards local services and facilities and to the vitality and vibrancy of Wilburton. Biodiversity gain, CIL payments and council tax would be generated by the proposal. These are limited benefits weighing in favour of the proposal. Expenditure generated during the construction process would be temporary and modest.
21. Reference is also made to the benefits arising from the provision of affordable housing. However, I have not been provided with a completed legal agreement that would secure the provision of 30% of the total number of dwellings as affordable housing units. As such, I cannot be certain that those dwellings would remain affordable to first and subsequent occupiers. For this reason, I cannot be satisfied that the proposed scheme would deliver this benefit and therefore I attach negligible weight to this matter in the overall planning balance.
22. The Council published an interim five-year housing land supply report in April 2020 which stated the Council could demonstrate a five-year housing land supply, in the region of 6.61 years. The appellant disagrees and suggests that the figure is closer to 4.18 years. I have had regard to the arguments advanced by each main party, previous appeal decisions which have been provided in support of their respective cases and the appellant's report (June 2020) which provides a review of the Council's five-year housing land supply position.
23. The appellant also disputes whether LP Policy GROWTH 2 should be considered as up to date by reason of its consistency with the National Planning Policy

Framework (the Framework). However, even if I were minded to conclude in favour of the appellant and apply the tilted balance, this would increase the weight to be applied to the scheme's benefits. Nevertheless, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Other Matters

24. Reference has been made to the appeal site being formerly allocated for housing within the Submitted Local Plan (2017)(SLP). By reason of it subsequently being withdrawn by the Council, it forms no part of the development plan and thus I attribute no weight to it in the overall consideration of this matter.
25. The site lies within the Wilburton Conservation Area and to the side of The Burystead a Grade II* listed Elizabethan manor house and its associated curtilage barns and outbuildings, of which two barns are Grade II listed. The Council identify that there would be "less than substantial harm" caused by the proposal. I see no reason to disagree with that assessment.
26. It is the case for the appellant that the provision of affordable housing would carry significant weight in favour of the development. However, for the reasons explained above, I attach only negligible weight to the provision of affordable housing. Consequently, having regard to the other public benefits of the proposal, as identified above, I find that these would not outbalance the 'less than substantial' harm that would be caused by the proposed scheme.
27. Albeit the Council's reasons for refusal do not cite a conflict with heritage policies, the Framework advises that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to less than substantial harm to its significance. In my view, the harm that would be caused to heritage assets would be a further material consideration that would weigh against the proposal in the planning balance.

Conclusion

28. For the reasons given above and having regard to all matters raised, the appeal is dismissed.

E Brownless

INSPECTOR