



Appeal Decisions

Site visit made on 20 June 2023

Virtual hearing undertaken on 16 November 2023

by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2024

Appeal Ref: APP/W0530/W/22/3311183

Land south of Lanacre, Chrishall Road, Fowlmere

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Colegrove Estates Ltd against the decision of South Cambridgeshire District Council.
 - The application Ref 22/02870/OUT, dated 24 June 2022, was refused by notice dated 28 October 2022.
 - The development proposed is outline planning application for 15 No. self-build dwellings, with details pursuant to access and layout, and all other matters including appearance, scale and landscaping reserved for subsequent approval.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal application was made in outline form with all matters save for access and layout reserved. Consequently, I have treated all details pertaining to the scale, appearance and landscaping of the scheme as indicative.
3. An earlier scheme on the same site was subject of an appeal which was withdrawn prior to the hearing. My consideration has therefore focussed on the appeal scheme detailed above.
4. During the processing of the appeal, the Council identified that the appeal site was also affected by a planning obligation pertaining to another nearby development. I have considered this as a main issue in the appeal.
5. A planning obligation made under Section 106 of the Act was submitted in respect of the scheme. I deal with this below.
6. The National Planning Policy Framework (the Framework) was revised in December 2023. The parties were invited to comment on the implications of these changes and have not been prejudiced by me taking them into account.

Main Issues

7. The main issues in this appeal are:
 - whether there would be any conflict between the scheme and an existing planning obligation relating to part of the appeal site;

- whether the location and nature of development would accord with local planning policies outlining the spatial distribution and requirements for housing growth in the plan area;
- whether the site is a sustainable location;
- the effects on the rural character and appearance of the area;
- the effects of the proposal on Grades 2 and 3a agricultural land;
- whether the scheme would be provided with a satisfactory means of drainage to avoid increased risks of surface water flooding elsewhere;
- whether permission should be granted having regard to the duty set out in sections 2 and 2A of the Self Build and Custom Housebuilding Act 2015 (as amended) (Self Build Act), having regard to demand and supply considerations; and
- whether or not financial contributions can be secured from a scheme for self/custom build housing.

Context and proposal

8. The site is situated to the south of the village of Fowlmere, and currently comprises relatively flat agricultural land in small field parcels which are separated by low vegetated hedgerows. There is an evergreen woodland forming the southern part of the site. The dwelling, Lanacre, sits within its well wooded curtilage to the north of the site and other residential properties adjoin the site to the north. The access to the site is from Chrishall Road on the eastern site boundary. Agricultural land extends away from the site in east, south and westerly directions.
9. The proposal is to construct 15 self-build dwellings on the site, accessed via a single vehicular access off Chrishall Road. The layout plan depicts a low density scheme with 9 of the dwellings (and their garages) in a back-to-back block to the eastern side of the site, and a meandering arrangement of dwellings on the western side, with the woodland block retained and providing some separation between the two areas.

Reasons

Planning obligation considerations

10. A S106 planning obligation dated 1 March 2021 requires part of the appeal site to be provided as "Off-Site Ecological and Drainage Space" in connection with a planning permission¹ for the construction of dwellings nearby.
11. The Appellant has provided evidence, in the form of discharge of conditions decisions from the Council, to confirm that the offsite space for ecological and drainage mitigation and enhancement measures is no longer needed as the requirements have been met in a different way and within the confines of that particular site.
12. The Council agree that a deed of variation to the Section 106 planning obligation would be required to enable the site to be developed, although the formal application for such a process could not be made until five years from the date of the permission, i.e., in 2026. Until then, the Council can either

¹ Planning permission reference: 20/01209/FUL

choose to agree to vary the obligation, or not. Whilst the Appellant suggests that such agreement has been requested in writing, it has not yet been progressed.

13. In any event, the existing obligation does not prevent a new planning permission being granted and its variation would be a matter for the parties to address as necessary.

Location and nature of development

14. The development plan for the area comprises the South Cambridgeshire Local Plan (2018) (Local Plan). Policy S/2 is a high level policy setting out the Local Plan's objectives, including the provision of land for housing in sustainable locations that meets local needs and aspirations, and gives choice about type, size, tenure and cost.
15. Policy S/6 of the Local Plan sets the overarching spatial strategy, indicating that Cambridge itself and the new allocated settlements will be the focus for growth over the plan period. It outlines that development in the rural area will be limited and will reflect the rural settlement policies which provide for windfall developments for different categories of village relative to their level of local services and accessibility to Cambridge by public transport.
16. Policy S/7 of the Local Plan sets out the types of schemes that will be permitted within development frameworks. Otherwise, it indicates that outside of development frameworks, only allocations within Neighbourhood Plans and other agricultural, horticultural, forestry, outdoor recreation and other uses which demonstrate a need to be in the countryside will be supported.
17. Local Plan Policy S/10 sets out that Fowlmere is a 'Group Village', within which residential development and redevelopment up to around 8 dwellings will be permitted within the development frameworks as defined on the Policies Map. Or, alternatively, the Policy exceptionally permits development up to around 15 dwellings where this would make best use of a single brownfield site. The scheme is for 15 dwellings, which the Appellant indicates is capable of being considered acceptable in scale relative to the size of a Group Village, albeit not strictly fitting under the provisions of Policy S/10.
18. The development framework for Fowlmere extends to include the ribbon form of development on the eastern side of Chrishall Road and stops short just north of where the curtilage of 'Lanacre' begins on the opposite side of the road. The Council's estimation is that the distance between the development framework boundary and the closest part of the site is around 100m, which seems a reasonable estimation. Irrespective of the distance, it is clear that the site falls outside of the development framework boundary.
19. The site does not appear to be previously developed (brownfield) land and nor does there appear to be any adopted Neighbourhood Plan for Fowlmere that allocates the site for housing purposes.
20. Policy H/11 of the Local Plan provides for rural exceptions sites of affordable housing to meet identified local housing needs on small sites adjoining a development framework boundary, subject to other considerations. The Policy allows for some market housing on rural exceptions sites to make them economically viable. Though the Policy does not preclude the market element

of rural exceptions schemes being self or custom-build plots, the proposal is not promoted as a rural exceptions scheme under Policy H/11.

21. For the reasons outlined above, the location and nature of development does not accord with, in particular, Local Plan Policies S/6, S/7, S/10 or H/11 which outline the plan's spatial distribution and requirements for housing growth.

Sustainability of Location

22. Local Plan Policies S/2 and TI/2(1) seek to ensure that housing is delivered in sustainable locations where there is access to a range of facilities and services by walking, cycling and public transport to minimise the reliance on private vehicles. They follow the approach outlined in the Framework to optimise sustainable transport modes, accepting that there is a difference between the available solutions in urban locations compared with rural areas.
23. Fowlmere has a range of facilities and services, including a primary school (approx. 1 km away) and nursery (700m away), public house (c. 900m away), restaurant (c. 950m away), large village hall and attached recreation ground/park (around 400m away). There are bus stops either 250m or 850m away and a range of employment sites within 1 – 2km. The primary school and nursery are within the 1km maximum walking distance advocated by the preamble of Policy TI/2, but beyond the optimal 600m distance recommended for such facilities in the District Design Guide Supplementary Planning Document (Design SPD) (2010).
24. The most obvious omissions from the Design SPD checklist are a local shop and post office which are recommended to be within 400m and 800m respectively. Fowlmere does not have either and the closest are around 4km away. Fowlmere does not have a secondary school, although there is an allocated bus pick up for pupils from the village. The nearest doctor's surgery and pharmacies are also in Melbourn, approximately 7km away.
25. The general bus service provision from the stop around 250m from the site are towards Cambridge/Addenbrookes. Whilst it offers some connectivity, its services largely stop short of Cambridge centre itself and offer limited choice for typical commuter journeys at the beginning and end of the day. The bus stop provision from the High Street stops offers connectivity to Cambridge, but the service provision has some limits and offers little in the way of late afternoon/evening provision.
26. An appeal decision put to me about another scheme in Fowlmere² provides an indication that the level of services in the settlement would necessitate journeys out to other local locations and a degree of reliance on private vehicles. Another appeal decision for a South Cambridgeshire scheme acknowledges the rural nature of the district as a whole, albeit that particular site appeared to have access to a greater range of everyday facilities without the need for a car. The recent committee recommendation of approval for the 'Gen Two' scheme³ will create further job opportunities in Fowlmere, with the addition of a publicly accessible gym, café and co-working space.
27. In terms of the pedestrian infrastructure and its ability to support journeys on foot to the local facilities, the scheme would provide a footway extension to the

² APP/W0530/W/22/3313661 dated 2 October 2023

³ 23/02467/FUL

footways on Chrishall Road and an extension of the 30mph speed restricted area. This would be necessary to safely connect the development with the existing pedestrian infrastructure.

28. Taking the above aspects into account, the scheme conflicts with the stated aims of Policies S2 and TI/2 of the Local Plan and fails to strictly adhere to aspects of the guidance in the Design SPD. However, the weight to attach to this conflict is tempered by the moderate level of facilities and services available, including the public transport services, local employment opportunities and the pedestrian infrastructure that would connect to the site.

Character and appearance

29. The site is broadly flat and is relatively exposed in more distant views from Chrishall Road and the nearby London Road due to the fragmented hedgerows and absence of tree screening along the south-eastern and south-western boundaries. In such views, the substantial tree screening surrounding Lanacre and extending along the lane from it to the south-west, appear to demark the built limits of the village.
30. When travelling along Chrishall Road, the edge of the built limit on the eastern side of the road is clear from the abrupt transition between the end of the linear extent of housing and the adjoining relatively open countryside (which is also designated Green Belt). This logically defines the development framework boundary. On the western side of Chrishall Road, the housing development under construction consolidates the built form with the adjoining park home estate, but Lanacre stands well within its densely treed boundaries and does not present itself to the road. Consequently, the character transition between the urban and rural area appears to occur at around the same place on Chrishall Road, a short distance to the north of the appeal site.
31. I have had regard to the submitted Landscape and Visual Impact Assessment⁴ (LVIA). Despite its conclusions that the scheme would sit comfortably alongside existing buildings, my view is that it would not have a particularly strong relationship with them or the urban form of the village. In my view, the introduction of a formal access and new dwellings onto Chrishall Road, beyond the point of the transition between urban to rural area would undermine the character of the village edge. This would be more apparent through the large scale of the site and the spread of the development over a sizeable area, the views to which would be achievable through the site access. Similarly, the urbanisation of open and green farmland in views approaching the village from the South would be substantially harmed at a localised level.
32. The proposed landscaping, subject of a future reserved matters application, could have a role to play to soften the effects of the development, but would take a period of time to establish. I note the Appellant's offer to ensure early and successful establishment of such landscaping by way of planting conditions specifying the maturity of tree whips and shrubs to be planted, but the degree of specificity may not secure the best outcomes. I do however accept that given the flat nature of the site and the verdant nature of the surroundings, a landscaping scheme would have some degree of success in securing visual containment of the site and softening the effects of the proposal over time, less so with integrating the proposal visually with the built form of the village.

⁴ Rev B, November 2021

33. Nonetheless, for the reasons outlined, the scheme would substantially harm the rural character and appearance of the area, with such effects only capable of being partially mitigated after a period of landscape establishment. This harm brings the scheme into conflict with, in particular, Policies HQ/1 and NH/2 of the Local Plan which seek to ensure development preserves or enhances the character of the local urban and rural area and responds to its context in the wider landscape.

Agricultural land

34. Policy NH/3 of the Local Plan seeks to prevent development which would lead to the irreversible loss of Grades 1, 2 or 3a agricultural land unless it is specifically allocated in the Local Plan, or sustainability considerations override the need to protect the agricultural value of the land.
35. The submitted Agricultural Land Classification Report (May, 2022) indicates that around half of the total 3.3 hectare site is agricultural land falling within Grades 2 and 3a, the other areas are either non-agricultural (such as the woodland) or a lower Grade 3b classification. This site-specific report is likely to be more reliable than the Natural England Agricultural Land Classification Map of pre-1988 which classifies the entire site and surrounding area as Grade 2.
36. In my view, the Appellant's *Assessment of Land for Modern Agriculture*⁵ overstates the difficulties with putting the site to agricultural use. For instance, the narrow gateway (which no longer exists in any event) could be widened to facilitate large modern vehicles, and little exists in the way of a hedgerow to the south-east that would prevent it from being farmed along with neighbouring parcels of land. Furthermore, the ownership of the site need not preclude it from being amalgamated under tenancy with other land to form part of a viable enterprise.
37. The scheme would result in some loss of Grades 2 and 3a agricultural land, in conflict with Policy NH/3 of the Local Plan.

Flood risk

38. The submitted documentation indicates that the permeable hardsurfacing would result in pooling of additional surface water during a specific storm event with an allowance for climate change. What was less clear was the overland flow routes of the relatively modest volume of additional water or, if it were to be stored, how and where, relative to the site's post-development topography.
39. However, having regard to the outline nature of the application and the limited risk that the additional run off could not be catered for on site, I am of the view that this matter could be addressed by way of planning conditions to achieve compliance with Local Plan Policies CC/8 and CC/9.

Self and Custom Build Housing

40. The Framework sets out that the needs of groups with specific housing requirements should be addressed and this includes people wishing to commission or build their own homes. Under Section 2A of the Self Build Act⁶, local planning authorities are required to grant a sufficient number of permissions to meet the demand for self and custom-build housing within their

⁵ May 2022

⁶ As amended by the Housing and Planning Act 2016 and secondary legislation

- area. This demand is to be measured by the number of new applicants entered on the local Self-Build Register in each base period; and that number must be matched by suitable new permissions granted within 3 years of the end of each relevant base period. Authorities must have regard to the Register when carrying out their planning functions, such as when deciding applications.
41. Policy H/9 of the Local Plan requires self and custom build plots to be delivered by all schemes with 20 or more dwellings, including in each phase of strategic sites. Therefore, whilst the development plan is not silent on this type of development, exclusive self and custom build schemes such as the proposal are not addressed by a specific policy.
 42. There is a register held by the Council which records the number of new entries per base period on which the main parties agreed: Base period (BP) 1, Apr 2016 - Oct 16 = 69 registrants; BP2 Oct 16 – Oct 17 = 89 registrants; BP3 Oct 17 – Oct 18 = 135 registrants; BP4 Oct 18 – Oct 19 = 204; BP5 Oct 19 – Oct 20 = 157; BP6 Oct 20 – Oct 21 = 189; and BP7 Oct 21 – Oct 22 = 130. The submitted Housing Need Report⁷ also indicates that at the time of its publication in 2020, there were 7 households seeking to build their own home specifically in Fowlmere, although whether these are already counted in the general register or are in support of the proposal is less clear.
 43. Against this, the number of dwellings built to match the entrants on the register are detailed by year, i.e.: BP1 - 69 built; BP2 - 89; BP3 – 14; BP4 – 64; BP5 – 86. The submitted Statement of Common Ground therefore agrees that the shortfall is presently around 332 self-build plots.
 44. The Council indicate that under the current Local Plan and Cambridge City Local Plans 2018, 1 self-build plot would be expected from every 20 dwellings from around 8 No allocated sites, with an expected yield of around 965 self-build plots by 2041. The Council also indicate that the emerging Greater Cambridge Local Plan would deliver a total of around 447 self-build plots by 2041 from 5 strategic allocations (including some cross-boundary sites). The Council's commitment is therefore that the policy requirement under Local Plan Policy H9, or an equivalent in the emerging plan, will deliver large numbers of self-build plots in the future. However, a recent appeal decision⁸ provided to me with the SoCG indicated that the delivery of such plots would be delayed until further into the 2030s. The Council could not offer any evidence to the contrary, and thus, my view is that there is a need for schemes to provide a short-term solution to meet the identified needs, there is a likelihood that such solutions will involve the use of best and most versatile agricultural land.
 45. Both parties acknowledged the Framework's introduction of paragraph 70 (b) which seeks for planning authorities to promote the development of small and medium sized sites and to support *small sites* to come forward for community-led development for housing and self-build and custom-build housing. The Council indicate that 15 dwellings on a site exceeding 2 hectares would not constitute a small site. The Appellant's view is that the support for self-build and custom build need not be limited to those that are community led housing proposals; these parts of the sentence are to be interpreted independently.

⁷ Housing Need Survey Results Report for Fowlmere (Cambridgeshire ACRE, 2020)

⁸ APP/W0530/W/23/3322754 dated 2 November 2023

46. My view is that the site size and number of houses proposed, as a major scale development, would exceed the 'small site' threshold set out in Framework paragraph 70 (b). The proposal is not community led and thus receives no further support under the policy. Nonetheless, even as a development of a medium scale, it would contribute to the supply of housing, which I factor into the planning balance below.
47. I note the Council's unchallenged submissions that it has a robust five-year housing land supply position but that the shortfall in self build properties in the district should be given significant weight in the decision making process. The Appellant opines that the shortfall should attract greater than significant weight and engages the presumption in favour of sustainable development in Paragraph 11(d) of the Framework, otherwise known as the tilted balance. Though I do not consider that the tilted balance is engaged owing to the shortfall in self and custom build plots, the failure of Policy H9 to secure sufficient permissions to meet the statutory duties under the Act is a matter of significance in this appeal. Again, I return to this in the planning balance below.

Financial contributions

48. The submitted S106 planning obligation provides for an extensive range of contributions in lieu of an onsite provision in order to offset the infrastructure demands of the proposal and meet the requirements of the respective Policies of the Local Plan as listed below:
- Outdoor formal sports - £23,254.61 – Local Plan Policy SC/7;
 - Children's play - £34,277.54 – Local Plan Policy SC/7;
 - Allotments - £1,500 – Local Plan Policy SC/7;
 - Indoor community space - £10,557.60 – Local Plan Policy SC/6;
 - Green infrastructure - £17,370 – Local Plan Policy NH/6;
 - Burial provision - £3,150 – Local Plan Policy SC/4;
 - Indoor sports - £8,825 – Local Plan Policy SC/4; and
 - Swimming contribution - £9,832 – Policy SC/4.
49. Cambridgeshire County Council has also sought a number of contributions to offset the impact of the development on local schools and libraries. NHS England have also sought a contribution towards healthcare. None of the contributions are disputed by the Appellant and the respective authorities have provided Community Infrastructure Levy Compliance Statements⁹ to set out the necessity for the contributions relative to the scheme.
50. In respect of affordable housing, for a scheme outside of the development framework, the Council would typically expect a rural exceptions scheme to come forward under Local Plan Policy H/11, starting exclusively with affordable housing tenures. That is not what is proposed, and all of the self-build plots would be available on the open market. Where housing schemes of 11 dwellings or more are proposed otherwise, the Council seek a provision of 40% affordable housing through Local Plan Policy H/10. Policy H/10 (2) provides an exception where if it is not considered appropriate to build affordable homes on-site, a financial contribution towards the future provision of affordable housing of a 'broadly equivalent value' to that which would have been provided

⁹ Under Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended

on-site will be required instead. Following a negotiation process, this agreed contribution amount stands at £718,586.

51. Local Plan Policy TI/8 requires that planning permission only be granted if improvements or provisions of infrastructure are provided that would be necessary to make the scheme acceptable in planning terms. However, the supporting text to the Policy¹⁰ suggests that there are some forms of development "*where contributions will not be sought as set out in Planning Practice Guidance. These include custom and self-build housing schemes as well as starter homes*".
52. The current version of the Planning Practice Guidance (PPG) does not currently state that contributions shall not be sought from self- and custom build housing schemes. Even if it did at the time of the adoption of the Local Plan, para. 10.47 of the supporting text straightforwardly states that the forms of development where contributions will not be sought under Policy TI/8 and others includes self and custom build housing (and starter homes). The closed list of exclusions is clear from the wording and it does not say that reference should specifically be paid to the extant version of the PPG, or the version of the PPG that was relevant at the time of the adoption of the Local Plan. The supporting text does not indicate that this refers only to CIL payments.
53. Policy SC/4 and its supporting text also indicate that tariff style contributions will not be sought from sites under 10 dwellings. As the scheme is for 15 dwellings, this threshold is triggered. However, as Policy SC/4 is to be interpreted in the context of Policy TI/8, the tariff style contributions cannot be sought from self or custom build housing in any event. A recent appeal decision¹¹ concerning an exclusive 9 dwelling self-build scheme also addressed this matter and found that the contributions could not be sought from a scheme of 9 self-build dwellings.
54. Having regard to the above, my view is that the wording of the relevant Policies and their supporting text, when interpreted objectively, prevents contributions from being secured from the appeal scheme which exclusively comprises self-build dwellings. The S106 therefore contains many obligations which would not meet the tests under Regulation 122 of the CIL Regulations.
55. Whilst the Councils' desire to seek the contributions indicates that infrastructure demands would arise from the proposal, this approach conflicts with the words of Policy TI/8 and its supporting text, and therefore, I have not weighed any further harm of this nature against the proposal.

Planning Balance and Conclusion

56. I have found that the scheme would conflict with the development plan in that it is contrary to the spatial strategy for the District, would cause substantial localised harm to the character and appearance of the area and would result in the loss of best and most versatile land. Also weighing against the proposal to a lesser degree is its degree of sustainability, given the absence of a number of key facilities and relatively limited sustainable travel options.
57. The proposal could avoid conflicts with an existing S106 and could provide adequate surface water infrastructure. However, these aspects are of neutral

¹⁰ In paragraph 10.47

¹¹ Appeal decision Ref APP/W0530/W/23/3322754 dated 2 November 2023

- effect on the overall balance. Similarly, where planning conditions and/or the S106 could be used to secure specific infrastructure on or off site, such as the on-site public open space or footway extension to the site, these measures would only serve to mitigate the impacts of the development itself, such as to be of overall neutral effect in the planning balance.
58. Accordingly, the proposal is in conflict with the development plan, when taken as a whole.
59. In terms of the public benefits of the scheme, I find that the provision of 15 self-build dwellings would help to meet the substantial identified shortfall in the area and aid the Council in meeting its statutory duties in this regard. This, and the fact that there would be a boost to the overall housing stock, attracts significant weight in the overall balance.
60. Subject to reserved matters details, the scheme would provide biodiversity net gain benefits in excess of the minimum 10% required¹². This is a minor benefit of the scheme. Similarly, the high sustainability credentials of the dwellings offered by the Appellant would elevate the benefit from the scheme over and above the typical Building Regulations requirements. Though, as some degree of choice would remain for self-builders in this regard, this aspect only attracts limited weight.
61. I also consider that there would be economic benefits, not only from the construction phase, but also from the longer-term occupation of the site by the incoming residents. These longer term benefits would be of particular value to the area which has a range of existing and planned facilities that additional local residents could help to support.
62. However, in my view, when taken collectively, the public benefits still fall short of outweighing the identified harms. Even if I were to take the S106 contributions towards affordable housing and infrastructure provision into consideration, it would not tip the balance in favour of the development in any event. Therefore, there are no considerations of such materiality to indicate that a decision should be made other than in accordance with the development plan.
63. For the foregoing reasons, the appeal is dismissed.

H Nicholls

INSPECTOR

¹² Required by Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021)

APPEARANCES

FOR THE APPELLANT:

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