
Appeal Decision

Site visit made on 20 November 2024

by **A Owen MA BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 December 2024

Appeal Ref: APP/V2255/W/24/3349574

Land to the North of Lower Road, Teynham, Kent ME9 9EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Guy Osborne of Country House Developments Ltd against the decision of Swale Borough Council.
 - The application Ref is 21/505096/FULL.
 - The development proposed was originally described as the creation of 23 new homes, associated landscaping, parking, relocation of commercial buildings and provision of a PROW cycleway/footpath.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Guy Osborne of Country House Developments Ltd against Swale Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. During the determination of the application, the site boundary was altered such that it excluded land on which the commercial buildings and the public right of way referred to in the description above would be located. The proposal therefore now excludes these works.
4. The Council refused planning permission for four reasons. During the appeal process, the Council confirmed they no longer wished to defend the first and third of these. The first related to the site's location beyond the settlement boundary of Teynham, and the Council's housing land position. The Council now accept that they do not have a 5 year supply of housing. The third related to the absence of a sequential test to demonstrate there were no other sites with a lower risk of flooding. A sequential test has now been provided to the satisfaction of the Council.
5. The fourth reason for refusal related to the absence of a planning obligation to secure a number of financial contributions. A completed agreement has now been provided.
6. During the determination of the appeal, a revised version of the National Planning Policy Framework (the 'Framework') was adopted. The main parties have been given an opportunity to comment on the relevance of the revised Framework to their cases and I have taken all comments made into account.

Main Issue

7. In light of the above, the remaining main issue is whether the development would provide a safe and suitable pedestrian access for its future occupiers.

Reasons

8. The submitted site layout plan shows that the development would be served by two pedestrian access points; one at the east end of the site at the junction of Lower Road with Osier Road, and one at the west end which would connect into the neighbouring development at Selby House, which then provides a direct route to the centre of Teynham and the services and facilities therein. The east access would most likely only be used recreationally to gain access to the wider public right of way network.
9. The pedestrian route through the Selby House site would, at present, pass through grassed amenity space at the rear of the building, cross the car park, and then run down the access road which is partly hardsurfaced and partly unmade. At the point on Lower Road where the access road meets it, there is no pavement and so pedestrians carrying on to the centre of the village would need to walk in the road for a short distance before reaching the pavement by French's Row.
10. Recently, planning permission¹ was granted for a revised site layout at Selby House including alterations to the parking space positions, landscaping areas and position of the bin store. The submitted site layout plan showed the provision of a footpath alongside the building at Selby House which would connect to the path proposed within the appeal site. The planning permission includes a condition (No 1) which requires the development to be carried out in accordance with that drawing. But it also includes a condition (No 9) which requires the submission of a landscaping plan showing the removal of that footpath.
11. The owners of the Selby House site are content for the footpath alongside Selby House to be provided, and a unilateral undertaking has been submitted which would secure the footpath before the first occupation of the proposal, its retention and maintenance in perpetuity.
12. Notwithstanding the legal agreement in place, the conflict between these conditions means there is some doubt that the path could be provided. If there were no footpath here, that would not necessarily prevent pedestrians from accessing the appeal site through the Selby House site, but the route would cross a landscaped area.
13. Even if the footpath were able to be provided, the remainder of the pedestrian route would be through the car park and along an unmade access road. The use of a car park as part of the main pedestrian route serving the proposed 23 houses as well as the existing flats, would create an unsafe pedestrian environment. Any vehicles would be slow moving, but drivers would be concentrating on manoeuvring, parking or reversing around the small car park and so may be distracted from pedestrians in this area. This may lead to a greater chance of pedestrian/vehicular conflicts so would be unsafe.

¹ Ref 23/501073/FULL

14. Also the unmade stretch of the route would be difficult for wheelchair users or those with restricted mobility. In addition, it narrows as it passes the corner of the Old Squash Court building and a garden wall at the Old School House. At these pinch points, there may be room for traffic and pedestrians to pass, but only just and it would feel unsafe.
15. Whilst it is recognised that this section serves the occupiers of the six flats at Selby House, the eight flats at the Old Squash Courts and, in part, the flats in the Old School House, the proposal would potentially more than double the volume of pedestrian traffic. Overall, the pedestrian access would not be reasonable for a route that would effectively serve around 40 dwellings.
16. I note that the Highways Authority commented that this route addressed the concerns they had regarding the pedestrian connectivity of the pedestrian route originally proposed, and that their remaining concerns focussed on the ability of the link to be provided and retained over third party land, which now appears to be secured. Nonetheless, the Council remain to have concerns over the safety of the route through the car park and along the unmade access, which are concerns I share.
17. On Lower Road, there would be a short stretch, of around 20 metres, where pedestrians would need to walk in the road. This stretch is also used by the occupiers of the nine dwellings in Selby Court and Jordan Cottage opposite, as well as those people using the Selby House access. The development would therefore result in the occupiers of about 50 units having to walk along Lower Road. However, due to the wide entrance to Selby Court and the position of French's Row, it is likely that pedestrians, just by crossing the road, would cover this distance and would very quickly be on the pavement on the south side of Lower Road. The pavement thereon into the centre of the village is narrow but is part of the established wider footway network used by many residents of this part of the village. In that context, the additional use of the pavement by the occupiers of the development would be minimal.
18. Alterations to the width of the path and the form of the gate within the appeal site are matters which could be resolved via the submission of further details secured by a condition.
19. Overall, the pedestrian route past Selby House through to Lower Road would not be a safe or suitable pedestrian access for future occupiers of the proposal. The development would therefore conflict with policy CP 2 of the Swale Borough Local Plan (2017) which aims to improve safety and ensure development provides integrated walking and cycling routes to link existing and new communities with local services and facilities; and Local Plan policy DM6 which requires priority is given to the needs of pedestrians and cyclists, including the disabled, through the provision of safe routes which minimise cyclist/pedestrian and traffic conflicts. It would also conflict with Local Plan policy ST 1 by failing to be located so as to achieve safe shared spaces.
20. Reference is made to Local Plan policy DM 26 which seeks to ensure the character of rural lanes is protected. The Council raise no objection to the additional vehicular traffic along Lower Road and so I find there to be no conflict with this policy.

Other Matters

21. The Council suggested during the appeal that they have a 4.1 year supply of housing land which is a modest shortfall against the five year requirement. The recent changes to the Framework, and the related Planning Practice Guidance, may mean the shortfall has increased given the need to add at least a 5% buffer to the housing requirement. In any case it is not disputed between the parties that paragraph 11d) of the Framework applies. This says that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having particular regard to policies relating to design, effective use of land, sustainable locations and affordable housing.
22. The provision of an additional 23 family houses to add to the Council's supply at a time when the Council has a shortfall would be a significant benefit. Furthermore, three of the units would be affordable, which is an additional benefit. This would align with the aims of paragraphs 61 and 66 of the Framework which seek to boost the supply of housing, and provide affordable housing, respectively.
23. It is also not disputed that the development would make an efficient use of the site and would be well designed as supported by paragraphs 129 and 135. Furthermore, the fact that the site is not large, so could be built out quickly, is supported by paragraph 73.
24. There would also be an economic benefit both during the construction phase, and afterwards, to the local community to which I give modest weight given the modest scale of the proposal.
25. The development would provide open space which could be available for the wider community. However as I have no reason to consider access to open space is particularly lacking here, this benefit is of very modest weight. It is suggested that the pedestrian route could be used by those properties on Lower Road south of the site, but in light of my conclusions that it is not a safe or suitable route, I give this no weight.
26. In contrast, the failure of the development to provide a safe pedestrian access would conflict with paragraph 115 of the Framework which requires development to provide safe and suitable access to sites for all users. This conflict is a matter of considerable importance. Paragraph 116 adds that development should be prevented on highway grounds if there would be an unacceptable impact on highway safety.
27. Overall, I consider that the harms would significantly and demonstrably outweigh the benefits. Therefore the presumption in favour of sustainable development does not apply.
28. In addition to securing the affordable housing provision on site, a planning obligation has been provided which purports to make a number of financial contributions including towards education, libraries, social care, waste disposal, open space, medical services and to the North Kent Strategic Access Management and Monitoring Strategy. However these contributions would all be to mitigate the effects of the development and so do not weigh positively in

favour of the proposal. Therefore as I am dismissing the appeal for other reasons anyway, I need not consider these obligations further.

Conclusion

29. The proposal would conflict with the development plan taken as a whole and there are no other considerations, including the application of policies in the Framework, that indicate a decision other than in accordance with the development plan. Therefore the appeal is dismissed.

A Owen

INSPECTOR

Richborough

Costs Decision

Site visit made on 20 November 2024

by **A Owen MA BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 December 2024

Land to the North of Lower Road, Teynham, Kent ME9 9EQ

Costs application in relation to Appeal Ref: APP/V2255/W/24/3349574

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Guy Osborne of Country House Developments Ltd for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for the creation of 23 new homes, associated landscaping, parking, relocation of commercial buildings and provision of a PROW cycleway/footpath.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. It adds that local planning authorities are at risk of an award of costs if they behave unreasonably in relation to procedural matters at the appeal. They are also at risk of an award if they behave unreasonably with regard to the substance of the matter under appeal, for example; by preventing development that should clearly be permitted having regard to its accordance with the development plan, by not determining cases in a consistent manner or by providing generalised or inaccurate assertions about a proposal's impact.
4. In terms of procedural matters, much of the claim relates to matters prior to the appeal. This includes the time taken to go through the pre-application process, the time taken to determine the planning application and the succession of planning officers dealing with the application. However, as set out in the PPG, costs cannot be claimed for the period during the determination of the planning application. Indeed, even if I were to account for the Council's behaviour during the application process and consider it was unreasonable, there is no evidence to suggest the appeal could have been avoided and therefore no expense was unnecessary. Moreover, during the appeal, both parties have worked together proactively to address the reasons for refusal, including to agree matters covered by the unilateral agreement, such that no wasted expense has been incurred by the applicant.
5. The planning application was refused on 10 June 2024. In the officer's report it was stated that the Council had a 5.13 years supply of housing land. The applicant states that prior to the Council's decision, they had suggested that

this position was flawed. Subsequently, an appeal decision¹ relating to Ufton Court, dated 5 July 2024 found that the Council had only a 4.1 years supply of housing land. Following this decision the Council have now accepted they do not have a 5 years supply of housing. However it was not unreasonable for the Council to wait for the outcome of the Ufton Court appeal before reconsidering their housing land supply position. It is understood that a decision on another application by another developer that was being determined by the Council at that time was delayed pending the outcome of the Ufton Court appeal. However as I have no further details of the factors behind that decision, I cannot conclude that the Council were inconsistent in their approach.

6. The applicant contends that the Council refused to entertain a fresh application, which the Council deny. Even if that were the case, I have no evidence to suggest that that has resulted in unnecessary expense.
7. The Highway Authority's concern was mainly around the practicalities of providing and maintaining the pedestrian link through the Selby House site to connect the proposed development to the centre of Teynham, which would now appear to be addressed by the legal agreement provided during this appeal. Notwithstanding that, it was not unreasonable for the Council to remain to have their own concerns regarding the suitability of the pedestrian route through this third party land, as set out fully and clearly in their officer's report.
8. Overall, for these reasons, it has not been demonstrated that the Council behaved unreasonably resulting in unnecessary or wasted expense on behalf of the applicant, as described in the PPG. Therefore, the application for an award of costs is refused.

A Owen

INSPECTOR

¹ Ref: APP/V2255/W/23/3333811