

Appeal Decision

Hearing held on 21 June 2016

Site visit made on 21 June 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 22 September 2016

Appeal Ref: APP/W0530/W/16/3142834

Land South of Kettles Close, Oakington, Cambridgeshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by C H Neal and Sons against the decision of South Cambridgeshire District Council.
 - The application Ref S/0677/15/OL, dated 3 March 2015, was refused by notice dated 22 July 2015.
 - The development proposed is residential development, extension of access road and provision of open space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline, with the application form indicating that access and scale were for determination. The Council's delegated report stated that all matters were reserved for later approval and this was confirmed at the hearing.
 3. A Statement of Common Ground (SoCG) agreed by the main parties was provided at the start of the hearing.
 4. The plans on which the application was determined indicated a layout comprising eight two-storey dwellings. In its appeal statement the appellant indicated that it would not object to reduce the scale of the development to seven bungalows to ensure that the development would not impair the openness of the Green Belt, and a revised layout plan was provided. However, given the extent of the change, I have determined the appeal on the basis of the plans on which the Council made its decision and on which interested parties' views were sought, in the interests of fairness.
 5. Following the hearing the main parties provided their agreed wording for additional conditions to address matters arising from the hearing, namely affordable housing, permitted development rights and protected species. I deal with these matters below.
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Main Issues

6. The main issues are:

- a) Whether the proposed development would represent inappropriate development in the Green Belt;
- b) The effect of the proposal on the openness of the Green Belt;
- c) Whether appropriate provision is made for affordable housing;
- d) Whether the proposed development would increase the likelihood of flooding in the area;
- e) The effect of the proposal on habitats for protected species; and
- f) If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether Inappropriate Development

7. Paragraph 87 of the National Planning Policy Framework (the Framework) indicates that inappropriate development within the Green Belt is by definition harmful and should not be approved except in very special circumstances. In paragraph 89 it is stated that the construction of new buildings in the Green Belt should be considered as inappropriate subject to a number of exceptions. These include limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development.
8. The appeal site is situated outside of the Oakington village framework and within the Cambridge Green Belt as defined on the South Cambridgeshire Adopted Proposals Map, 2010. Policy ST/1 of the South Cambridgeshire Core Strategy Development Plan Document (DPD), 2007 (the Core Strategy) establishes a Green Belt around Cambridge whilst Policy GB/1 of the South Cambridgeshire Development Control Policies (DCP) DPD, 2007 states that there is a presumption against inappropriate development in the Cambridge Green Belt.
9. The lawful use of the site as confirmed in a Certificate of Lawful Use or Development is for open storage of agricultural and contractors' machinery based on a 50:50 split. A workshop on site is used 20% in association with the farm and 80% associated with a contracting business. Part of the site comprises hardstanding. The outline application proposes the removal of the workshops, machinery and containers and their replacement with residential development.
10. As half of the site is used for agricultural purposes it cannot be considered as previously developed land according to the definition within the Framework. Moreover, as I saw during my visit, much of the storage and machinery is not fixed, and is capable of removal and therefore would not be considered to be

permanent structures. This too would not fall within the definition of previously developed land. As such I find that a significant part of the site would not meet the exception related to brownfield land identified in paragraph 89 of the Framework. Consequently I find that the proposed development would represent inappropriate development that is by definition harmful to the Green Belt and is therefore contrary to Policy GB/1 of the DCP DPD and paragraph 89 of the Framework.

Openness of the Green Belt

11. Paragraph 79 of the Framework states that the essential characteristics of Green Belts are their openness and permanence. The concept of openness relates to the lack of development or built form. The proposal would involve the removal of low level workshops and the open storage of machinery and their replacement with buildings of a greater height. The appellant has indicated that 60% of the site would be kept open and maintained as open space. Notwithstanding the fact that this proportion could change as the proposal is in outline, the bulk and massing of the new dwellings would exceed that of the existing permanent structures on site and therefore would significantly reduce the openness of the site.
12. Existing trees and hedges on the north-east and south-east boundaries restrict views into the site. Proposed landscape enhancement measures adjacent to Oakington Brook would also minimise the visual effects when viewed from the east. However, the lack of visibility does not mean that the openness of the site has not been reduced. Whilst the proposals for open space on the south / east of the site would remove the visual impact of existing structures from this area and the proposed development would have very limited visibility from the countryside beyond the appeal site, in overall terms the openness would be reduced. Additionally, recognising that one of the purposes of the Green Belt is to assist in safeguarding the countryside from encroachment I find that in spite of the significant open space being proposed the residential built form would be an encroachment into the countryside.
13. Policy DP/3 Development Criteria of the DCP DPD which states, among other things, that planning permission will not be granted where the proposed development would have an unacceptable adverse impact on the countryside and landscape character. However, Policy DP/7 which restricts residential uses in the countryside is recognised as a policy for the supply of housing which is now considered out-of-date. Consequently, an assessment of the proposed scheme against Policy DP/3 must consider whether the site itself is within the countryside and whether the proposed development would affect the wider countryside.
14. On the basis of the existing use of the site which includes agriculture, and taking account of its character I consider that the site is within the countryside and that the proposed use being residential would have an unacceptable adverse impact on the countryside. With regard to the landscape character, as the site is surrounded by housing on three sides and the fourth side is generally well screened the sensitivity to development would be low and therefore the impact on landscape character would not be unacceptably adverse.
15. I therefore find that the proposed development would significantly reduce the openness of the Green Belt contrary to paragraph 79 of the Framework which

would add to the substantial harm to the Green Belt by virtue of inappropriateness.

Affordable Housing

16. Policy HG/3 of the DCP DPD states that proposals for housing developments will only be permitted if they provide an agreed mix of affordable housing to meet local needs and the amount of affordable housing sought will be 40%. The proposed development did not make any provision for affordable houses on-site or for contributions to off-site provision to meet local needs on the basis that the proposed development would be in line with the Written Ministerial Statement (WMS) of 28 November 2014. This stated that for developments of 10 units or less, and which have a maximum combined gross floor space of no more than 1000sq.m, no affordable housing or tariff style contributions should be sought.
17. On 13 May 2016 the Court of Appeal overturned the High Court decision in the case of the Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council so that the WMS is now Government policy. This is reflected in Planning Practice Guidance (PPG) – Planning Obligations, paragraph 31.
18. Having regard to this material consideration I find that the WMS needs to be addressed alongside local policy. The local evidence of affordable housing need is substantial and therefore I attach significant weight to this consideration. I regard Policy HG/3 as being compatible with the Framework in that it acknowledges development viability considerations in decision taking and would not impose a level of planning obligation that would prevent development coming forward. In addition I have also had regard to the Council's development appraisal presented prior to the hearing, which the appellant did not challenge, that no evidence was presented to suggest that the level of affordable housing sought would make the development unviable and the appellant's subsequent offer to provide three affordable units. On this basis I find that the proposal would be in line with Policy HG/3 and that were I to allow the appeal this matter could be dealt with through an appropriate planning condition or obligation.
19. As I have found that it is necessary for the proposed development to comply with Policy HG/3 in respect of affordable housing there would be no need to address the situation arising were the development to exceed 1000sq.m. This matter was discussed at the hearing and the parties agreed that it could be addressed through a planning condition were I to allow the appeal.

Flood Risk

20. Policy NE/11 of the DCP DPD states that in relation to flood risk, applications for planning permission will be judged against national policy. The Framework indicates that, in determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Development in areas at risk of flooding should only be considered where, informed by a site-specific flood risk assessment (FRA) following the Sequential Test (and if required the Exception Test), it can be demonstrated that within the site the most vulnerable development is located in areas at lowest flood risk, that the development is appropriately resilient and resistant, including safe access and

escape routes where required, and that any residual risk can be safely managed.

21. The overall aim is to steer new development to Flood Zone 1 (FZ1). The Sequential Test means that only where there are no sites reasonably available within FZ1 should development in Flood Zones 2 and 3 (FZ2 and FZ3) be considered, in which case the Exception Test may also need to be applied.
22. The appeal site is located within FZ3 as shown on the Environment Agency's (EA) Flood Risk Map which assesses the probability of flooding as having a 1 in 100 or greater annual probability of river flooding. Furthermore, the proposed use is classified as a more vulnerable use in the Flood Risk Vulnerability Classification as set out within national Planning Practice Guidance (PPG).
23. The appeal site has not been allocated in the existing development plan nor in the Draft Local Plan through the Sequential Test. In spite of being in close proximity to the centre of Oakington and having potential to address the shortage of housing in the village and to deliver community benefits by reducing the risk of flooding I do not consider that the proposed development would pass the Sequential Test. In addition, the EA has indicated that it does not consider the proposal to have passed the Sequential Test. In failing to pass the test it has not been demonstrated that development could not be located in an area with lower flood risk.
24. The appellant provided an updated FRA as part of the appeal process and the EA has accepted that the proposed measures could reduce the existing risk of flooding on the site and to the wider area. However, concerns remain about how these measures, which include the ongoing maintenance of Oakington Brook, would be secured for the lifetime of the proposed development.
25. As an outline application matters relating to access and egress as well as flood compensation could normally be addressed through planning conditions. However, I share the view of the Council that it is not appropriate to address these matters through conditions when the EA has indicated that floodplain compensation is an issue of principle.
26. Flood storage volume would be compensated and flood water directed to the dredged and de-silted Oakington Brook on land controlled by the appellant and land in other ownerships. In the absence of details of the ownership of the additional land which would be subject to the flood alleviation works and consequently evidence to demonstrate that the maintenance arrangements would be secured for the lifetime of the proposed development there would remain a significant risk that flooding would occur elsewhere in Oakington as a result of the proposed development.
27. A draft condition to address a scheme for improvement works to Oakington Brook was provided by the appellant and discussed at the hearing. However, I do not consider that it would meet the tests of enforceability as required by paragraph 206 of the Framework because it would be dependent upon securing the agreement of neighbouring landowners. Consequently I find that the Exceptions Test has not been passed to demonstrate that the development would provide a benefit through a reduced risk of flooding to the site and surrounding area.

28. I therefore find that the proposed development would fail to address the requirements of paragraphs 100-103 of the Framework and Policy NE/11 of the DCP DPD in respect of safely managing flood risk.

Protected Species

29. Policy NE/6 of the DCP DPD states that new development should aim to maintain, enhance, restore or add to biodiversity. It goes on to state that planning permission will be refused for development which would have an adverse significant impact on the population or conservation status of protected species or priority species or habitats unless the impact can be adequately mitigated or compensated for.
30. An ecology statement submitted as part of the appeal indicates that the site supports or has the potential to support a range of species. Mitigation measures to address the potential impacts on habitats and protected species are generally considered acceptable by the Council. However, the proposed dredging of Oakington Brook could impact upon the habitats of water voles. Some of the works would involve land which is not in the ownership of the appellant and while I have been provided with a draft condition I do not consider that this is an appropriate mechanism to secure a strategy for the conservation of water voles because of the need to involve other parties. There is therefore no guarantee that the proposed works would not have an adverse impact on water voles. Consequently I find that the proposed development would be contrary to Policy NE/6 of the DCP DPD in respect of potential harm to habitats for protected species.

Whether Very Special Circumstances Exist

31. The Framework advises that inappropriate development should not be approved except in very special circumstances. Paragraph 88 of the Framework confirms that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The substantial harm caused by reason of inappropriateness carries significant weight against the proposed development.
32. The appellant has stated that the Council's lack of a five year housing land supply, which the Council accepts, constitutes very special circumstances. Paragraph 49 of the Framework states that housing developments should be considered in the context of the presumption in favour of sustainable development. It goes on to state that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
33. Relevant policies for the supply of housing are Core Strategy Policies ST/2 and ST/6 and DCP Policy DP7. Policy ST/2 sets a housing target for the district whilst Policy ST/6 categorises Oakington as a Group Village and specifies the scale of permitted residential development within the village framework. Policy DP/7 restricts development outside urban and village frameworks to uses which need to be located within the countryside. None of these policies are up to date and therefore the proposed development should be considered in the context of paragraph 14 of the Framework. This states that where the development plan or relevant policies are out-of-date planning permission should be granted unless the adverse impacts of doing so would significantly

and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted. The Framework gives, as an example of situations where development should be restricted, land designated as Green Belt.

34. Additionally, PPG states that unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development on a site within the Green Belt. Nevertheless, as smaller sites can be more deliverable than larger ones, the provision of eight houses towards the Council's shortfall in its five year housing land supply should be afforded limited weight but would not, on its own constitute the very special circumstances necessary to outweigh the harm caused by the inappropriate development in the Green Belt.
35. The appellant acknowledges that the existing site is untidy and potentially adversely impacts on neighbouring residential properties as a result of noisy operations, dust and traffic from heavy vehicles entering and leaving the site. Whilst it is possible that the living conditions of neighbouring residents in terms of noise, disturbance and visual impact could be improved by the cessation of the current use and its replacement with residential development this benefit could be achieved without the development of eight new homes and therefore should be afforded very limited weight and so would not constitute very special circumstances.
36. Additionally, the fact that the proposed development would not harm the distinct characteristics that contribute to the area would not constitute very special circumstances as Policy DP/3 requires that new development should not adversely impact on landscape. Similarly the introduction of new landscaping to reduce the visual impact of the development upon the surrounding landscape would be a mitigation measure rather than a benefit and therefore I attach no weight to these elements of the scheme.
37. Other matters cited by the appellant as constituting very special circumstances include a positive impact in terms of flooding and the potential to enhance the habitats of protected species. I have already found that these considerations weigh against the proposed development and therefore they would not constitute very special circumstances.
38. No very special circumstances, either individually or collectively, have been demonstrated by the appellant which would clearly outweigh the harm to the Green Belt through inappropriateness and other harm identified.

Conclusion

39. In respect of the planning balance which the Framework requires, I give some weight to the fact that although the appeal site is outside of the defined settlement boundary because DCP Policy DP/7, as well as ST/2 and ST/6 are policies for the supply of housing and as the Council cannot demonstrate a five year supply are not up-to-date. Consequently, paragraph 14 of the Framework applies and states that in such circumstances planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole and policies which indicate that development should be restricted.

40. However, paragraph 14 identifies land designated as Green Belt as a restrictive policy. Consequently, I conclude that other considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, so as to amount to the very special circumstances necessary to justify the inappropriate development in the Green Belt. The proposed development is therefore contrary to the advice in the Framework and Policy GB/1 of the South Cambridgeshire Local Development Framework Development Control Policies DPD, 2007 which aim to protect the Green Belt from inappropriate development.
41. For these reasons the appeal is dismissed.

Kevin Gleeson

INSPECTOR

APPEARANCES

FOR THE APPELLANT

David Mead	Partners in Planning and Architecture
David Turner	Prior Associates
Roger Hales	C H Neal and Sons

FOR THE LOCAL PLANNING AUTHORITY

Sarah Ballantyne-Way	SBW Planning
James Fisher	South Cambridgeshire District Council
David Ousby	South Cambridgeshire District Council
Stephen Reid	South Cambridgeshire District Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Agreed Statement of Common Ground.
2. South Cambridgeshire Proposed Submission Policies Map submitted by the Council.
3. Proposed and Current Channel Profile submitted by the Appellant.
4. Aerial Photo and Section through the Channel submitted by the Appellant.
5. Draft Grampian Planning Condition submitted by the Appellant.