

Appeal Decision

Site visit made on 28 February 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 31st March 2017

Appeal Ref: APP/H0520/W/16/3164860

Chestnut Farm, Oilmills Road, Ramsey Mereside, Cambridgeshire PE26 2TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr Matthew Smith against the decision of Huntingdonshire District Council.
 - The application Ref 16/01427/FUL, dated 23 June 2016, was refused by notice dated 20 September 2016.
 - The development proposed is a dwelling and garage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Matthew Smith against Huntingdonshire District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - Whether the proposal should provide a contribution towards wheeled bin facilities and if so, whether a satisfactory contribution would be provided.
 - Whether the proposal would provide a suitable location for housing having regard to relevant policies in relation to development in the countryside.
 - The effect of the proposal on the character and appearance of the area.
 - Whether the proposal would be an acceptable form of development having regard to the risk of flooding.

Reasons

Wheeled Bin Contribution

4. Policy CS10 of the '*Local Development Framework Core Strategy 2009*' (CS) states that development proposals will be expected to contribute towards the cost of providing appropriate infrastructure and meeting environmental requirements where these are necessary to make the development acceptable. It goes on to state that such contributions may include, amongst other things, waste recycling facilities.
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5. The '*Huntingdonshire Developer Contributions Supplementary Planning Document 2011*' (SPD) sets out the requirements and justification for the Council to secure contributions towards householder waste storage containers on development sites. The SPD makes clear that household waste management is critical in developing sustainable communities to ensure that waste production is reduced and recycling is increased. The SPD also sets out that new housing within the District will trigger a need for the provision of waste storage containers (wheeled bins). As a result, on the evidence before me, I consider a financial contribution towards such facilities would be necessary, directly related, and fairly and reasonable related in scale and kind to the proposed development, in accordance with '*Community Infrastructure Levy*' (CIL) Regulation 122, and paragraph 204 of the '*National Planning Policy Framework*' (*the Framework*).
6. A signed S106 Unilateral Undertaking has been submitted by the appellant which proposes to secure financial contributions of £73.65 towards the provision of wheeled bins for the development. The Council has raised no concerns with the level of contribution proposed and I have no reason to disagree that it is an appropriate sum. However, Section 106(9) of the Act sets four requirements that must be met by a planning obligation. One of those requirements is that it must identify the land in which the person entering into the obligation is interested. In addition, Annex N of the Planning Inspectorate's '*Procedural Guide Planning Appeals – England 2016*' provides good practice advice on the preparation of planning obligations. Paragraph N.6.3 of that document advises that an obligation must identify the land to which it relates and by a plan if necessary. Paragraph N.5.2 is also clear that the planning obligation must give details of each person's title to the land.
7. In this instance, the undertaking does not include the full address of those with an interest in the land nor does it provide details of the owner's title. In addition, the undertaking is not accompanied by a plan nor is the land identified by title number. Moreover, it does not make reference to the application which is subject to this appeal nor the development that is proposed. As a result, I find that the obligation provided would not take effect and would not therefore be an obligation for the purposes of S106 of the Act.
8. Paragraph N.2.1 of the Procedural Guide is clear that a planning obligation a must be executed and a certified copy received by the Planning Inspectorate no later than 7 weeks from the start date of the appeal to be taken into account. That is not the case here.
9. I have considered whether the matter could be dealt with by means of a negatively worded condition. However, the '*Planning Practice Guidance*' (PPG)¹ is clear that no payment of money or other consideration can be positively required when granting planning permission. Such a condition would not therefore meet the tests set out in paragraph 206 of *the Framework*.
10. I conclude, therefore, that the proposal should provide a contribution towards wheeled bin facilities and that a satisfactory contribution would not be provided. The proposal would therefore conflict with CS Policy CS10 and paragraph 204 of *the Framework*.

¹ PPG Paragraph: 005 Reference ID: 21a-005-20140306

Location

11. Policy H23 of the '*Huntingdonshire Local Plan 1995*' (HLP) states that there will be a general presumption against development outside of environmental limits with the exception of dwellings required for agriculture, forestry and horticulture. Policy ENV17 of the HLP similarly seeks to restrict development outside of environmental limits to those associated with rural uses. The appeal site lies outside of the limits and the proposal would not accord with any of the specified uses.
12. Policy CS3 of the CS sets out a settlement hierarchy to manage the scale of housing development on unallocated sites. Ramsey Mereside is designated as a 'Smaller Settlement' in which residential infilling will be appropriate within the built-up area.
13. The approach to defining the extent of settlements within Policy CS3 differs from that within HLP Policies H23 and ENV17. Policy CS3 relies on a more flexible approach, allowing an assessment of each case on its own merits having regard to its relationship with the built form of the settlement. The appellant has drawn my attention to a recent appeal² in which the Inspector considered the compatibility of the CS policies with those of the HLP. In that case, the Inspector found that there was an evident conflict between HLP Policies H23 and ENV17, and CS Policy CS3 such that they were unable to be applied together. The Inspector concluded that where there is a conflict between development plan policies, the most recently adopted must prevail. For the reasons set out above I agree with the previous Inspector's findings on this matter. Indeed, the Council consider the approach in Policy CS3 to be a more appropriate mechanism for dealing with such matters. As a result, I afford the conflict with HLP Policies H23 and ENV17 limited weight.
14. Compliance with Policy CS3 turns on whether the site is considered to be within the built-up area. The policy provides little guidance on what should be considered as the built-up area. Paragraph 5.15 of the supporting text indicates that the definition of the built-up area will be set out in more detail in a '*Development Management DPD*', however, there is no evidence that such a DPD has progressed. Therefore, the only guidance is that contained in paragraph 5.15 which states that the built-up area is considered to be existing areas of built form but excluding: buildings that are clearly detached from the main body of the settlement; gardens and other undeveloped land within the curtilage of buildings at the edge of the settlement where these relate more to the surrounding countryside than they do to the built-up parts of the village; and, agricultural buildings on the edge of the settlement.
15. Ramsey Mereside is a small, linear settlement with built frontage either side of Oilmills Road. Oilmills Road generally runs on a north-west to south-east axis between Ramsey Mereside and a small ribbon of development to the north-west which is largely concentrated on the eastern side of the road.
16. The appeal site comprises a farm building set back from Oilmills Road within an expansive area of open and flat agricultural land which separates Ramsey Mereside from the ribbon of development to the north-west. There is an agricultural field to the south-east which separates the site from the built-up area of the Ramsey Mereside. There are no buildings immediately either side

² APP/H0520/W/16/3025968

- of the appeal site and, whilst there are two dwellings opposite with a third under construction, there are open, agricultural fields to the north of the appeal site with a significant distance to the ribbon development to the north-west.
17. Paragraph 5.20 of CS Policy CS3 sets a threshold of 30 properties as broadly distinguishing between hamlets, groups of houses and individual properties that lie within the countryside. The number of surrounding properties would not meet the threshold within paragraph 5.20 and thus the appeal site cannot reasonably be considered to fall within a distinguishable settlement.
 18. As a result, I find that the appeal site would be clearly detached from the main body of the settlement. Consequently, the proposal would not constitute residential infilling within the built-up area and would therefore conflict with Policy CS3 of the CS.
 19. Nevertheless, paragraph 55 of *the Framework* states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. It goes on to state that isolated new homes in the countryside should be avoided unless there are special circumstances. There is nothing within *the Framework* to suggest that there is a preclusion against development in the countryside or that development should be restricted to the built-up areas of a village. The appellant makes reference to an appeal decision³ in Nottinghamshire where the Inspector found that, as *the Framework* contains no definition of the term 'isolated', it was appropriate to conclude that, despite its visual separation, the appeal site would not be lonely or remote owing to its proximity to the settlement.
 20. In this instance I draw similar findings to the Inspector in that case. Although the appeal site would be visually detached from the main body of the settlement, it would not be a significant distance from it. It would also lie opposite other properties. In my view, such proximity cannot result in the appeal site being considered to be isolated. Furthermore, whilst the development would be modest in its extent, there is nothing before me to suggest that it would fail to maintain the vitality of the local community. As a consequence, the proposal would accord with paragraph 55 of *the Framework*.
 21. I conclude, therefore, that the proposal would conflict with LP Policies H23 and ENV17 as well as Policy CS3 of the CS. However, in my view those policies are not consistent with *the Framework* as they do not allow for housing which would enhance or maintain the vitality of rural communities. Thus, I afford the conflict with HLP Policies H23 and ENV17, and CS Policy CS3 limited weight.
 22. As a consequence, I find that the accordance with the principles of *the Framework* would outweigh the conflict with HLP Policies H23 and ENV17, and CS Policy CS3, and as such, the proposal would provide a suitable location for housing having regard to relevant policies in relation to development in the countryside.
 23. Policy LP26 of the '*Draft Huntingdonshire Local Plan to 2036 (Stage 3) 2013*' (DHLP) states that new homes in the countryside will only be supported where there is an essential need for a rural worker to live at or near their place of work, it would meet an affordable housing need, it would represent the optimal

³ APP/P3040/A/13/2191142

viable use of a heritage asset and the design is of exceptional quality. In addition, Policies LP1 and LP11 of the DHLP seek to make efficient use of land within existing settlements and to ensure that new homes in the countryside will require special justification. The proposal would conflict with the emerging policies however, the plan is at an early stage of preparation and has yet to undergo examination in public. As such, I afford the conflict with emerging policies limited weight.

Character and Appearance

24. The Council are of the view that the proposal would be an unsuitable intrusion of urban built form in a rural location. The appeal site is occupied by a detached barn, with another barn adjacent to the site which would be retained. The proposal would result in the removal of the barn and its replacement with a two-storey detached dwelling and detached garage.
25. I have found that the proposal would not constitute residential infilling within the built-up area and would be clearly detached from the settlement. There would also be a material increase in development on the site and the proposal would be urban in its form, in contrast to the existing rural appearance of the site.
26. However, change in itself does not necessarily mean there would be a significant degree of harm. The appeal site is partially screened by vegetation and already presents as a sporadic element of built form within the landscape. In addition, the dwelling would be of simple architectural detailing, reflecting the rural location and in terms of scale, would be broadly similar to the properties opposite. As a result, the proposal would not unduly detract from the open and spacious character of the wider landscape and would not appear as a harmful intrusion.
27. I conclude, therefore, that the proposal would not have a harmful effect on the character and appearance of the area. As such, it would accord with HLP Policy EN25 which states that new development should respect the scale, form, materials and design of the locality and CS Policy CS1 which seeks, amongst other things, to permit development which respects the character of the surrounding area. The proposal would also accord with Saved Policy HL5 of the Huntingdonshire Local Plan Part One 1995 (HLPP1) and Policy LP13 of the DHLP which seek to ensure a high quality of design.

Flood Risk

28. The appeal site lies within Flood Zone 3 as shown on the Environment Agency flood zone maps. Paragraph 100 of *the Framework* advises that development in areas at risk from flooding should be avoided by directing development away from areas at highest risk. Paragraph 101 of *the Framework* goes on to advise that a sequential, risk-based approach must be taken that steers development towards areas of lower risk. *The Framework* requires a Sequential Test to be applied to all development in high risk areas. Only where a development passes the Sequential Test should the Exception Test be considered.
29. The appellant's Flood Risk Assessment (FRA) indicates that the Sequential Test is met as the development, in contrast to the Environment Agency's maps, is located in Flood Zone 1 of the Council's Strategic Flood Risk Assessment

(SFRA) Maps. Guidance in the PPG⁴ indicates that the flood zones as refined in the SFRA provide the basis for applying the Sequential Test. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). It also states that it is not normally necessary to apply the Sequential Test to development proposals in Flood Zone 1 unless the SFRA for the area, or other more recent information, indicates there may be flooding issues now or in the future. I note the Council's views in respect of housing land supply and the need to steer development away from areas most at risk of flooding, however, on the basis of the evidence before me and having regard to the guidance in the PPG, in my view the Sequential Test has been satisfied.

30. Turning to the Exception Test, as a development for a building in use as a dwelling, the proposal would be classified as a 'more vulnerable use' in Table 2 of the PPG⁵. Table 3 of the PPG⁶ indicates that 'more vulnerable' uses within Flood Zone 1 are appropriate. Since the appeal site lies within Flood Zone 1 under the Council's SFRA, I am satisfied that the development would be appropriate in this instance.
31. The representations of the Environment Agency indicate that the main source of flood risk at the appeal site is associated with watercourses under the jurisdiction of the Internal Drainage Board (IDB) and raise no objection to the proposal. The appellant's FRA indicates that the site is located within the Whittlesey IDB district with the nearest 'main drain' an open watercourse on the north-eastern boundary of the site. It is indicated that land levels at the site are generally '*al zero datum*' whilst existing floor levels vary between minus 0.04m to 0.12m AOD. It goes on to state that the existing standard of drainage for the Whittlesey IDB is 1 in 50 years return period which is compatible with the Department of the Environment Food and Rural Affairs target level of service for rural drainage/flood defence works and urban areas. I have no reason to conclude otherwise.
32. The FRA identifies several potential sources of flooding. Nevertheless it concludes that the probability of flooding from those sources is low due to: the fall of the land levels towards the IDB main drain system; the existing maintenance standards of the IDB system; the 1 in 50 storage capabilities of the main drain system; and, the low probability of failure of the Mereside Pumping Station. In addition, the presence of flood embankments on the River Nene provide a 1 in 100 year return period of protection; Bevills Leam Pumping Station which is designed to discharge floodwaters of a 1 in 100 year event; and flood defences at the Nene Washes and Ouse Washes Barrier Banks which are, respectively, around 8km and 17km from the site. Finally, the existing and proposed surface water soakaway provides a standard of protection before entering the main drain system, whilst the proposed floor level will be at 0.05m AOD which is around 900mm above the lowest adjoining ground level.
33. I conclude, therefore, on the evidence before me that the proposal would be an acceptable form of development having regard to the risk of flooding. It would, as a consequence, accord with CS Policy CS1 which seeks to manage flood risk, as well as Policy CS9 of the HLPP1 and Policy LP6 of the DHLP which seek to prevent development which would affect flood risk management and support development that is not at risk of flooding.

⁴ PPG Paragraph: 019 Reference ID: 7-019-20140306

⁵ PPG Paragraph: 066 Reference ID: 7-066-20140306

⁶ PPG Paragraph: 067 Reference ID: 7-067-20140306

Other Matters

34. I note that the Council is able to demonstrate a 5 year housing land supply. Nevertheless, *the Framework* is clear that it is a priority to deliver a wide choice of high quality homes. The proposal would therefore have a modest benefit towards boosting the supply of housing. Moreover, I have no reason to disagree with the main parties that the appeal site is suitably located in respect of services and facilities. I afford such benefits moderate weight, however, they would not outweigh the harm which I have identified.

Conclusions

35. Although the proposal would conflict with LP Policies H23 and ENV17 and CS Policy CS3, I have found that the proposal would accord with the provisions of the Framework such that it would provide a suitable location for housing having regard to relevant policies in relation to development in the countryside. Moreover, I am satisfied that the proposal would be an acceptable form of development having regard to the risk of flooding and the effect on the character and appearance of the area.
36. However, I have found that a contribution towards the provision of wheeled bin facilities for the development is necessary to make the development acceptable. An obligation to provide such a contribution has been provided but it is incomplete and flawed and would not therefore take effect. Consequently, the proposal would fail to provide a satisfactory contribution to meet the tests within CIL Regulation 122 and paragraph 204 of *the Framework*. The proposal would therefore conflict with CS Policy CS10. That is the prevailing consideration.
37. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Jason Whitfield

INSPECTOR