
Appeal Decision

Site visit made on 28 February 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 31 March 2017

Appeal Ref: APP/V2255/W/16/3162806

Land at Ellen's Place, High Street, Newington, Kent ME9 7JH.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr P Paulding (Esquire Developments Limited) against Swale Borough Council.
 - The application is Ref 16/505861/OUT, dated 14 July 2016.
 - The development proposed is the erection of nine dwellings with access, garaging, parking provision and other associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of nine dwellings with access, garaging, parking provision and other associated works at land at Ellen's Place, High Street, Newington, Kent ME9 7JH in accordance with the terms of the application, Ref 16/505861/OUT, dated 14 July 2016, subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. The planning application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on that basis, treating the site plan and sections as illustrative.
3. The appeal is made against the failure of the Council to determine the application within the prescribed period. Following the submission of the appeal, the Council provided a Planning Committee Report setting out their concerns in relation to the proposal. The Council's suggested reason for refusal is wide ranging but confirms that had it been in a position to determine the application, it would have been refused for reasons that can be succinctly described as; (1) conflict with local and national policies regarding sustainable development, and (2) insufficient information with regards to noise and land contamination.
4. There is no dispute between the parties that the Council cannot demonstrate a 5 year supply of housing¹ and I see no reason to take a contrary view. In such situations paragraphs 47 and 49 of the "*National Planning Policy Framework*" (the Framework) state that the relevant policies for the supply of housing should not be considered up to date and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

¹ The appellant's figure of 3.17 years has not been disputed by the Council

5. The Council has referred to numerous policies in the emerging LP². Of particular relevance to the appeal scheme is Policy ST3 which places emphasis on the use of previously developed land within built-up areas and sites allocated in the Local Plan. The emerging LP has been the subject of an Examination in Public and the Inspector's Interim Findings were issued in early 2016. Main Modifications have been issued for consultation and a review by the Local Plan Inspector concluded on the 10 February 2017. However, a substantial number of objections were received in response to those modifications. As a result, there is genuine uncertainty about exactly which site allocations and policies will appear in the adopted emerging LP. That being the case and notwithstanding that the plan is at a reasonably advanced stage, I have attached only limited weight to policies in the emerging LP, in accordance with advice in the second bullet of paragraph 216 of the Framework.

Main Issues

6. In light of the above the main issues are:
- (a) Whether the proposed dwellings are appropriate in principle in such a location in light of relevant local and national policy concerning new housing in the countryside and sustainable development;
 - (b) The effect on the character and appearance of the area;
 - (c) The effect on the availability of best and most versatile agricultural land, and
 - (d) Whether sufficient information has been submitted in respect of land contamination and noise issues.

Main Issues

Principle of development

7. The appeal site lies adjacent but outside the built-up area for Newington as defined in the "*Swale Borough Local Plan 2008*" (the LP). Saved Policy H2 states that residential development in the countryside will only be permitted where it meets one of the exceptions listed in Policies E6 and RC3. The provision of 9 open market dwellings does not fall within any of the exempted categories and consequently there would be conflict with the LP in this regard.
8. However, the LP is now time-expired and whilst this does not mean that it cannot carry weight, its policies need to be considered in relation to their consistency with the Framework. In this instance, the approach of seeking to control the principle of development beyond settlement boundaries is not entirely consistent with advice in paragraph 55 of the Framework. Moreover, although the underlying environmental aims of H2 are consistent with those in paragraph 17 of the Framework, Policy H2 as a whole has the effect of constraining the supply of housing land. As such and with regard to the Cheshire East judgement³, it is a policy for the supply of housing. Consequently, although the development would conflict with Policies H2 of the LP, this carries limited weight in the overall planning balance since this policy is out of date.

² Emerging Draft Local Plan: Bearing Fruits 2013 (Publication draft December 2014)

³ Richborough Estates Partnership LLP v Cheshire East, SSCLG [2016] EWCA Civ 168.

9. It therefore follows that the default position identified in paragraph 14 of the Framework prevails and if the development constitutes sustainable development there is a presumption in favour of the appeal scheme unless other material circumstances dictate otherwise.

Sustainable development

10. The Framework states that the presumption in favour of sustainable development should be seen as a golden thread running through both plan making and decision-taking and that there are 3 dimensions to sustainable development: *economic*, *social* and *environmental*. Amongst other matters it seeks to significantly boost the supply of housing and deliver a wide choice of high quality homes. Section 6 sets out the policy in respect of housing in rural areas so that housing provision reflects local needs and is sustainable development.
11. The Council accept that the scheme would make a contribution towards the Council's housing stock. These benefits are indisputable and would be consistent with the *social* dimension of sustainable development. Given the Council's housing land shortfall, these benefits carry significant weight.
12. The development would support the *economic* role through the provision of construction employment, the purchase of materials and services in connection with the construction of the dwellings, an increase in local household expenditure and revenues to the Council from the New Homes Bonus. These factors must also weight in favour of the scheme.
13. In terms of locational sustainability, the Council argue that the site is 'reasonably well located'. When I visited the site I walked along the footway to the village centre where there are shops, community facilities and connections to bus and rail services. I did not find the walk challenging or excessive and therefore I see no reason to dispute the Council's assessment.

Character and appearance

14. The appeal site is an open area of paddock land located on the south side of High Street. It is sited towards the end of a ribbon of development that extends eastwards away from the village centre. It is bounded to the south by open land which rises gently away from the site. To the north is High Street with a large detached property beyond. To the east and west are existing properties and outbuildings.
15. Policy E9 of the LP sets out the relevant criteria when considering the effect of a development on landscape character. Since Policy E9 is concerned with general design considerations, it is not a policy for the supply of housing and its aims and language accord with the fifth bullet of paragraph 17 of the Framework. Accordingly I attach full statutory weight to Policy E9 which states that proposals in the countryside should consider guidelines in the Council's "*Landscape Character and Biodiversity Appraisal SPD 2011*" (the LCA). The appellant points out that the site is within the Landscape Character Area known as '*Newington Arable Farmlands*', which has lost much of its traditional character and is noted for its poor condition and low sensitivity.
16. As I saw when I visited the site, there are a range of house types in the immediate area and although most dwellings address High Street there is considerable variety in their set-back from it. Nonetheless, the low-density and

generous spacing between plots combined with the proximity of open countryside to rear boundaries lend the area a semi-rural quality.

17. The site is accessed direct from High Street via a simple dropped crossing and five-bar metal gate. The site is mainly laid to grass and contains a small bank of conifer type trees close to the southern boundary. It is therefore an intrinsically open and green space which despite the absence of distinctive features, is located at a point where a marked transition from village to countryside begins. Moreover, the low wire fence across the frontage affords significant visual exposure of the site from High Street in the immediate vicinity of the site.
18. The submitted plans show how the site might be developed around a cul-de-sac. I appreciate that it might well be possible to maintain a visual break through the middle of the site to safeguard views of the open countryside beyond. However, it is almost inevitable that whatever form the development takes, the dwellings together with the associated estate road and domestic boundary treatments would all change the open character of the land.
19. I accept the appellant's point that as a result of its location and local topography, the development would be seen against a general backdrop of existing built development when viewed in oblique angles. Furthermore, it would be possible to implement a scheme of structural landscaping particularly to the site boundaries which would provide a degree of visual containment thus helping to reduce the impact of the development on the landscape. Although this would take a number of years to mature and appellant argues that there would be a neutral impact after 15 years.
20. However, irrespective of how the dwellings are arranged and the amount of landscaping, it would be a relatively high-density, physically distinct development. It would effectively introduce a substantial and largely self-contained enclave of development which, in landscape terms, would have little resonance with the more conventional and established arrangement of dwellings along High Street. Although its impact on the wider landscape would be limited, there would still be a significant localised effect and this weighs against the proposal in terms of the balancing exercise to be undertaken.

Best and most versatile agricultural land (BMV)

21. According to the Council, the appeal site comprises around 0.49 hectares of Grade 1 (excellent) agricultural land. Paragraph 112 of the Framework advises that the economic and other benefits of BMV land should be taken into account and that areas of poorer quality land should be used in preference to that of a higher quality where significant (my emphasis) development of agricultural land is demonstrated to be necessary. However, whilst the Framework expresses a preference for development on non-BMV land, it does not preclude development on such.
22. Perhaps the most compelling argument here is that the land is not currently in agricultural use and therefore there would be no loss of BMV. The view expressed by some that the site could potentially be used for arable farming, is not a good one in principle as it could be applied to a wide range of sites to the further detriment of housing supply. Even if the land was in agricultural use, the loss of 0.49 hectares would be relatively small and could not reasonably be described as *significant* in the terms set out in the Framework. Based on the

foregoing, I conclude that the loss of BMV land would not be significant when assessed against national planning policy and does not weigh against the scheme.

Noise & land contamination

23. The Council's second suggested reason for refusal relates to a lack of information in respect of traffic noise and land contamination and appears to be based solely on advice from its own Environmental Protection Officer.
24. When I visited the site, traffic noise from High Street was clearly audible across the northern section of the site. However, given the urban speed limits that are in force across the site frontage I did not find the amount of traffic noise to be particularly excessive. Moreover, based on the site plan, it is likely that the majority of the dwellings would be sited well away from the road. I am therefore satisfied future occupiers would not be subjected to unreasonable levels of noise.
25. In terms of contaminated land, no evidence has been adduced to show that the land is affected by contamination. It would therefore be possible to ensure the necessary investigation and remediation is carried out by imposing an appropriately worded condition.

Other Matters

26. Local residents have expressed a wide range of concerns including but not limited to the following; the loss of wildlife habitats, the effect on the setting of nearby listed buildings, highway and pedestrian safety, the effect on air quality inadequate sewerage/drainage infrastructure and the loss of recreational land. However, it is evident from the Committee Report that these matters were addressed by the various Statutory Consultees. Whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.
27. Various other appeal decisions in the borough have been drawn to my attention but by reason of; site characteristics, location and development proposals, I find none to be directly comparable to the case in hand. In any event, I am required to assess the appeal before me on its own merits in the light of the particular circumstances which apply in this case and this is what I have done.

Conditions

28. Although the Council has suggested 10 planning conditions no reasons have been submitted in support of these. I have therefore considered them against advice in the "*Planning Practice Guidance*" (PPG). In some instances I have amended the conditions provided by the Council in the interests of brevity and to ensure compliance with the PPG.
29. Those conditions suggested covering time limits, the submission and approval of the reserved matters are necessary in the interests of proper planning and to provide certainty. The Council's condition 5 refers to the suppression of dust from the demolition of existing buildings. However, no buildings are to be demolished and I do not consider that the construction of the dwellings alone would give rise to excessive levels of dust. I have omitted the condition accordingly.

30. I have combined several conditions into one requiring the submission of a Construction Method Statement. In addition, I have imposed conditions relating to visibility splays and ecological enhancements. These are necessary in the interests of highway safety, to protect the living conditions of local residents and to secure ecological improvements. Although not suggested by the Council, I have imposed a condition relating to an investigation for contamination and any necessary remedial measures. This is both reasonable and necessary to ensure the land is suitable for the proposed residential use.
31. Finally, The Council has not provided any justification, policy or otherwise, for a condition requiring details of sustainable construction techniques which are usually secured via the Building Regulations. As such, whilst the objectives of such a condition may be laudable, advice in the PPG is clear that a condition must be justified by the nature or impact of the development being permitted. Moreover, the Written Ministerial Statement of 25 March 2015 (the WMS) sets out provision for applying optional Building Regulations (the new national technical standards) in respect of water efficiency and for tighter energy performance standards than those otherwise required by the Building Regulations. The WMS states that where there is an existing plan policy which references the Code for Sustainable Homes, authorities may continue to apply a requirement for a water efficiency standard equivalent to the new national technical standard, or in the case of energy, a standard consistent with the WMS policy, concerning energy performance. As the Council has not directed me to a relevant development plan policy, I cannot be sure the condition would meet the advice in the WMS and the PPG. I have omitted it accordingly.

Overall Conclusions

32. The starting point in weighing the various factors is that the proposal would not conform to the development plan. However, the plan has time expired and the relevant policies for the supply of housing, which includes Policy H2, are out of date, given the Council's inability to demonstrate a 5-year supply of deliverable housing sites. Thus, if the development constitutes sustainable development permission should be granted unless any adverse impacts of doing so would significantly and demonstrably (my emphasis) outweigh the benefits.
33. I have identified *social* and *economic* benefits consistent with the aims of the Framework. Collectively these carry significant weight. In *environmental* terms, the scheme would incur loss of an open parcel of land close to the edge of the village resulting in landscape harm and conflict with Policy E9 of the LP. However, the appeal site has no special designation and views of the development would be limited in the wider landscape. Moreover, the visual harm could be partially mitigated over time by a net increase in green infrastructure. The site occupies a sustainable location where future residents would have a realistic choice to walk, cycle and use public transport to access essential day-to-day services and facilities. Based on the foregoing, I find that the overall level of environmental harm would be moderate.
34. When considered in the round, the proposed development would contribute significantly to the *economic* and *social* dimensions of sustainability. There would be moderate harm in terms of the *environmental* dimension. However, relative to the scale of the benefits arising, I find that this harm would not significantly and demonstrably out-weigh the benefits, when assessed against the policies in the Framework taken as a whole. The development would

therefore be sustainable and the presumption identified in paragraph 14 of the Framework applies.

35. I consider this to be a significant material consideration sufficient to outweigh the conflict I have identified with the development plan. There are no other factors which would justify withholding planning permission. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a risk-based land contamination assessment to determine the nature and extent of any contamination on the site has been carried out, in accordance with a methodology that has first been submitted to and approved in writing by the local planning authority. Should any unacceptable risks be found, a remedial scheme and verification plan shall be submitted to and approved in writing by the local planning authority. The remedial scheme shall be implemented as approved before development begins.

If, during the course of development, any contamination is found which has not previously been identified, additional measures to address it shall be submitted to and approved in writing by the local planning authority and the additional measures shall be carried out as approved.

- 5) The development shall commence until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority for that particular phase. The statement shall include:
 - i) the proposed hours and days of working;
 - ii) details of measures to prevent the deposit of mud and/or other debris on the public highway.
 - iii) Details of parking, turning, unloading areas for employees and contractors

The development shall be carried out in accordance with the statement so approved.

- 6) Provision and maintenance of the visibility splays shown on the submitted plans with no obstructions over 0.6 metres above carriageway level within the splays, prior to the occupation of any dwellings hereby approved, and hereafter retained in perpetuity.
- 7) The ecological enhancements detailed within the submitted ecological statement shall be implemented on site prior to the occupation of any dwellings hereby approved.