



Appeal Decision

Site visit made on 27 March 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 11th April 2017

Appeal Ref: APP/W0530/W/16/3164366

Unit F, Broad Lane Industrial Estate, Broad Lane, Cottenham, CB24 8SW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Marino against the decision of South Cambridgeshire District Council.
 - The application Ref S/1723/16/FL, dated 28 June 2016, was refused by notice dated 26 August 2016.
 - The development proposed is the demolition of B8 industrial units and the erection of 9 residential dwellings.
-

Decision

1. The appeal is dismissed.

Application for Costs

2. In his appeal statement the appellant indicated an intention to make a full application for an award of costs but to date I have not received one. If one is submitted it will be the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are: 1) The effect of the proposal on the character and appearance of the area; 2) Whether the proposal would provide an appropriate housing mix including adequate provision for affordable housing; 3) Whether the proposed development would provide adequate living conditions for future occupants with particular regard to noise, disturbance and outlook; and 4) Whether, in a planning balance, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits.

Reasons

The effect of the proposal on the character and appearance of the area

4. The appeal site encompasses a vacant industrial unit and its curtilage. It is located at the front of a small industrial estate with a frontage to both Broad Lane and the industrial estate's service road. There is currently a semi-mature hedge marking the southern and western boundaries of the appeal site. To the east and west of the appeal site is residential estate development. The estate to the west is characterised by a strong building line with the properties orientated to face and frame the street. East and south of the appeal site the building line, orientation and spacing of properties becomes more fragmented and less successful as an overall composition. This is to be expected as the estate to the west of the appeal site appears to have been designed as a whole.
-

5. The appeal scheme is for the erection of nine two storey houses. Plots 1-6 would be generally arranged to front Broad Lane but I share the Council's view that Plot 5 would be awkwardly skewed to accommodate frontage parking. Consequently, this dwelling would appear both cramped and contrived. Plot 6 would also be skewed. Nevertheless, whilst its orientation could be improved to better relate with Broad Lane, the arrangement proposed follows the geometry of the road as it turns the corner into the estate. Moreover, Unit 6 would reflect the corner property at Moores Court to the east and the appellant has indicated a willingness to position this property closer to the road, which can be secured through a planning condition¹. On balance, the orientation of Plot 6 would not be harmful.
6. Units 7-9 would be orientated with the rear elevations facing onto the adjoining estate road. This would result in a close boarded fence being prominent in views from the public realm. Such an arrangement would injure the street scene and jar with the predominant character and grain of residential development in the area, whereby houses are orientated to front the roads and streets. The appellant has suggested that the proposed orientation is intended to protect the living conditions of the future occupants of Plots 7-9². Be this as it may, the layout would harm the character and appearance of the area and therefore I have significant doubts over the appropriateness of Plots 7-9.
7. The properties would be apparently large detached dwellings located in close proximity to one another. Consequently, the dwellings could appear as being of an excessive size relative to the respective plots. Moreover, the planning application was not supported by a street scene elevation, visualisations or any other substantive details indicating how the scale and massing of the proposed development would integrate with that of the surrounding and nearby buildings. As such, I cannot be satisfied the scale and massing of the dwellings would be appropriate to their context. I also note that the proposal has not been the subject of a design review, as advocated in Paragraph 62 of the Framework and suggested by the Council's Urban Design Officer.
8. A significant failing of the proposal is the rather ad hoc approach to the setbacks of the dwellings, the size of the front gardens and the frontage parking arrangements, which would require the existing hedge to be removed. Unlike, the residential development to west the houses would be set back from the edge of the pavement with prominent frontage parking. This would harmfully disrupt the grain of the street scene, appear disjointed and the development car dominated. In this respect the proposal would fail to take an opportunity to stitch the proposal into the existing townscape, particularly that to the west of the appeal site. Alternatively the rear courtyard parking would be well integrated and overlooked.
9. The proposed amenity area would be flanked by fencing on most sides and it is unclear what its intended function would be, as it is too small and too close to houses to be a play area and has little in the way of a visual function in the street scene or the development. Thus, it would have the appearance of an afterthought. Therefore, I share the Council's view that it would be a poor amenity area that would not integrate with the development.
10. The style of the individual houses would reflect that of the estate housing nearby and I do not find fault with that in this context. Consequently the designs would not be overly complicated or 'top heavy'. Additionally, the appeal scheme would

¹ The Council have not raised concerns with this proposition

² The Council have also expressed concerns that the houses should not front onto the industrial estate.

facilitate the removal of the existing industrial unit and this would have some benefits to the street scene. However, the unit is currently screened by a semi mature hedge and is viewed in the context of the wider industrial estate. As such, its removal is not a determinative benefit, especially as the appeal scheme would have some notable failings.

11. Whilst not all aspects of the proposal would be injurious to the street scene I nevertheless conclude that the proposal overall would significantly harm the character and appearance of the area. This would be contrary to Policies DP/2 and DP/3 of the DCP³ which seek to secure developments that would preserve or enhance the character of the local area by being compatible with their context and the character of the village. This is consistent with Paragraphs 17, 58 and 64 of the Framework.

Whether the proposal would provide an appropriate housing mix, including affordable housing

12. Policy HG/2 of the DCP sets out an indicative mix for housing schemes proposing less than 10 homes. The supporting text to the policy explains that there is a need to rebalance the district's housing market to ensure smaller properties are provided. I have seen nothing to suggest this is no longer the case. It is also notable that the policy enables developers to propose an alternative mix when local circumstances suggest a different mix would better meet local needs. I have not been presented with substantive evidence to suggest a different mix should be applied at the appeal site or that a mix in line with that set out in Policy HG/2 would be unviable or would result in an unreasonable density of development.
13. The appellant has proposed a mix of four '2 bedroom' dwellings and five 4 bedroom dwellings. This is not in line with the indicative mix suggested in Policy HG/2 with too many larger homes proposed. Moreover, the '2 bedroom' properties would include a first floor study and it is unclear whether this could be used as a bedroom. This casts doubt on whether the development would provide any genuine two bedroom properties. As such, the proposal would not adhere to Policy HG/2 of the DCP and this would harmfully frustrate the Council's strategy for achieving a balanced housing mix in the district. An aim consistent with Paragraph 50 of the Framework.
14. Policy HG/3 of the DCP requires 40% affordable housing on schemes of 2 or more dwellings. The Council have viability tested the appeal scheme with some sensitivity analysis and consider 33% affordable housing would be a reasonable level that would provide viable returns. The Council have not applied the Vacant Building Credit and this has not been disputed by the appellant even though this could result in a level below 33% as an additional means of incentivising the redevelopment of the appeal site. The requirement for the provision of affordable housing is underpinned by the South Cambridgeshire Housing Needs Survey 2002. This is now dated but I have seen nothing to suggest that the affordability of housing is no longer an issue in the district.
15. As such, I consider the approach in Policy HG/3 in respect of affordable housing to be consistent with Paragraphs 47 and 50 of the Framework, which requires local planning authorities to meet the full, objectively assessed needs for market and

³ South Cambs' Local Development Framework Development Control Policies Development Plan Document 2007

affordable housing and where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified. The planning application should be determined in accordance with the development plan unless there are material considerations which indicate otherwise.

16. A material consideration of considerable importance and weight in this instance is the Written Ministerial Statement (WMS) of the 28 November 2014⁴. The WMS states that '*for sites of 10-units or less....affordable housing and tariff style contributions should not be sought*'. The intention of the WMS is to ensure that these requirements do not become a disproportionate burden for small scale developers and thus frustrate housing supply. This statement has been translated into national planning guidance in the National Planning Practice Guide (PPG). As such, there is a conflict between the national threshold relating to the provision of affordable housing in the WMS and the PPG and the local thresholds set out in Policy HG/3, which I have found consistent with the Framework. It is for the decision taker to weigh any conflict between relevant policies in light of material considerations, including local circumstances.
17. The effect of the national policy in the WMS is that it would normally be inappropriate to require any affordable housing below the thresholds stated. There is a general presumption that the requirements of a WMS should be followed, especially as it postdates the DCP. Nevertheless, it is also important to acknowledge that a policy should not be applied rigidly or exclusively when material considerations may indicate an exception may be necessary.
18. In this instance, a number of matters suggest a local exception from the policies in the WMS is currently necessary. Firstly, the Council have provided evidence that average house prices in the district have risen considerably in recent years. In particular, property prices in the last 12 months have increased substantially when compared to regional and national averages. This has placed the lower quartile price to income ratio in the district at approximately 12.8. I share the Council's view that this is a considerable affordability gap⁵. This would suggest that there is an acute need to provide affordable housing⁶. The Council have stated that the housing need in Cottenham is high and have also suggested that the need could be as high as 5,573 affordable dwellings across the district. The Council's evidence also suggests there is a similar affordability problem in the rental market. The appellant does not dispute any of this evidence.
19. Over the last four years 95 affordable dwellings have been provided on sites where ten or fewer homes have been proposed. This is not an insignificant contribution in the context of the level of need. Projections suggest that a further 350 affordable dwellings could be provided by 2031 through a requirement for affordable housing on schemes proposing 10 or fewer dwellings. As such, it is conceivable that without the overall contribution towards affordable housing delivery made by smaller sites the Council will struggle to provide a sufficient number of affordable homes.

⁴ Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the consideration of house prices, affordability and the significance of small sites in Elmbridge in relation to the Government's position

⁵ This analysis is further supported by a Hometrack Housing Intelligence Reports that demonstrates that households on average earnings cannot afford to purchase averagely priced housing on the open market

⁶ A conclusion supported in appeal decision APP/W0530/W/15/3084325, APP/W0530/W/15/3138791, APP/W0530/W/15/3131724 and APP/W0530/W/15/3139730

20. I have seen no substantive evidence that demonstrates the requirements of Policy HG/3 are consistently placing an unreasonable or disproportionate burden on developers or that its requirements would prevent the appeal scheme from coming forward. Instead, the evidence submitted by the Council suggests that since 2009 on-site provision or commuted sums have been secured in all of the 54 approvals where affordable housing was triggered and the number of homes is below the national threshold. I have no reason to doubt this. As a consequence, whilst the WMS carries considerable weight, I do not consider it outweighs the development plan in this instance given the acute and substantial need for affordable housing in the district and the importance of delivery through small sites.
21. Consequently, on the basis of the evidence before me the requirement for affordable housing arises from the development and satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Regulations 2010. Nevertheless, I have not been presented with a planning obligation that would secure the provision of affordable housing. I therefore conclude that the proposal would not make adequate provision for affordable housing⁷ contrary to Policy HG/3 of the DCP.

Whether the proposed development would provide adequate living conditions

22. The appeal site is located to the south of Bakers Bakery Ltd, which operates for 24 hours, six days a week. The car park serving this operation is located directly to the north of the appeal site and there is also extraction equipment along the southern boundary of the unit occupied by the bakery. The noise report⁸ submitted with the planning application found that the bakery would have a significant adverse noise impact on the internal and external living conditions of future occupants of the appeal scheme without mitigation. The Council have not disputed the methodology or findings of the noise assessment. I have therefore afforded it significant weight in my assessment. In particular, the report found that the bakery would be particularly disturbing during the night.
23. The noise report sets out a suite of mitigation measures to address the external noise impacts. This would include a 3m high acoustic fence along the northern boundary of the appeal site, a close boarded fence to screen the gardens of Plots 7-9 from road noise and close boarded fences elsewhere in the development. The Council have not suggested that external noise levels from the bakery would be unacceptable with this mitigation and I share this view.
24. The Council's principal concern is with the internal noise mitigation, as it is concerned this would result in unacceptable living conditions for future occupants. This is because the noise report recommends the installation of high performance double glazing as a means of preventing noise disturbance within the houses and that the windows would need to be closed at night with trickle vents and/or mechanical systems installed to provide ventilation.
25. Nevertheless, the appellant has suggested that it is standard industry practice that in such circumstances windows are required to be kept closed as internal noise mitigation. The reference to an appeal decision⁹ where fixed windows were

⁷ This conclusion is at odds with the conclusion reached in appeal APP/W0530/14/2216679. However, it is unclear what evidence was before that Inspector and therefore it is not a decision to which I afford any more than very limited weight.

⁸ Report 2016-05a-09a by Auracle Acoustics

⁹ APP/W0530/W/16/3144592

approved would support this conclusion. It is also a point reiterated by the appellant's acoustician and is not a proposition the Council have challenged. It is also important to note that the appellant has suggested that it is likely the windows would only need to be closed at night, when the noise from the bakery, and other sources, is not as significant. Again, this is not disputed by the Council. As such, the buildings would not need to be 'sealed' at all times. Consequently, on balance and based on the information submitted, I am satisfied the mitigation would not result in unacceptable living conditions for the future occupants of the appeal scheme. Nor, with the mitigation proposed, which could be secured through a planning condition, would the occupation of the dwellings prevent the reasonable operation of the neighbouring bakery.

26. The Council have suggested that road noise emanating from the industrial estate road, including bakery vehicles, would harm the living conditions of the occupants of Plots 7-9 as the private amenity spaces would back onto the road. However, the noise report suggests that close boarded fencing would provide adequate daytime mitigation when the noise levels are not as great. There is no substantive reasoning before me to suggest this is an inaccurate conclusion.
27. As part of the suite of mitigation measures, a 3m high acoustic fence would need to be erected along the northern boundary with the bakery. This would be a relatively tall boundary treatment but if it followed a simple design, utilised sensitive materials and was screened by robust landscaping then it would not harm the outlook from Plot 1. Particularly so as there would be a reasonable gap between the fence and the dwelling.
28. I therefore conclude that the appeal scheme would provide adequate living conditions for its future occupants. It would therefore adhere to Policies DP/3 and NE/15 of the DCP, which seek to prevent unacceptable adverse impacts on residential amenity. The policies are consistent with Paragraph 17 of the Framework and can thus be afforded significant weight.

Planning Balance

29. The appellant has suggested that the Council are currently unable to demonstrate a five year housing land supply. The Council has not disputed this. As such, and in accordance with Paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up to date and in such circumstances Paragraph 14 of the Framework is engaged. This directs that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh any benefits when assessed against the policies in the Framework taken as a whole.
30. Policies DP/2 and DP/3 of the DCP can have the effect of restricting housing developments and are thus policies relating to the supply of housing. As such, they are out of date. Nevertheless, I have still afforded them significant weight due to their consistency with Paragraphs 17 and 58 of the Framework, which place great importance on good design. Moreover, the focus of the policies is not the amount and location of housing. Instead, their main purpose is ensuring housing developments are of an appropriate quality, which is an important component of achieving sustainable development.
31. Policies HG/2 and HG/3 are not policies relating to the supply of housing. Instead, they are concerned with the mix of any housing delivered. Moreover, they are

consistent with Paragraph 50 of the Framework. As such, they are not out of date and can also be afforded significant weight.

32. The proposal would significantly harm the character and appearance of the area. The proposal would also harm the Council's strategy for securing an adequate housing mix and would not provide affordable housing. This would be contrary to the above development plan policies, to which I have afforded significant weight. The proposal would also be in conflict with the Framework. I afford the adverse impacts I have identified, as well as the conflict with the development plan and the Framework, substantial weight.
33. The proposal would provide adequate living conditions for future occupants and would not result in harmful impacts save for those I have identified. However, the absence of harm is not a benefit but is rather a neutral matter in the overall balance.
34. The construction of the proposed dwellings would provide some economic benefits to the construction industry and nine dwellings would not be an insignificant contribution. Likewise, the development would contribute to the local economy from the spending power of future occupants, but this is unlikely to be significant in the context of the settlement as a whole¹⁰ and therefore any benefits to the vitality of the rural community would be limited. Additionally, there is nothing before me to suggest local services are struggling due to a lack of patronage. The proposal would also make a moderate contribute to the Council's five year housing land supply by providing nine dwellings on previously developed land in a location with good access to services and facilities. All together I afford the benefits of the proposal moderate weight.
35. Consequently, the appeal scheme would have adverse impacts that would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. I therefore conclude that the proposal would not be sustainable development for which the Framework carries a presumption in favour.

Other Matters

36. I note that the appellant considers he received positive pre application advice, but this is not binding on the Council or my determination. I also note the appellant does not consider the Council has acted positively but this is a matter of little relevance to my assessment, which must focus on the effects of the appeal scheme. As such, this has not altered my overall conclusion.

Conclusion

37. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

¹⁰ The appellant suggests the population of the parish of Cottenham is 6,095 people