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## Appeal Decision

Site visit made on 27 June 2017

**by Graham Wyatt BA (Hons) MRTPI**

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

**Decision date: 8 August 2017**

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**Appeal Ref: APP/V0510/W/17/3173190**

**Land between Chequers and Malting Cottage, Malting End, Kirtling  
CB8 9HH**

- 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 Mr Michael Bailey against the decision of East Cambridgeshire District Council.
  - The application Ref 17/00053/OUT, dated 19 December 2016, was refused by notice dated 9 March 2017.
  - The development proposed is the erection of a single dwelling.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of a single dwelling at land between Chequers and Malting Cottage, Malting End, Kirtling CB8 9HH in accordance with the terms of the application, Ref 17/00053/OUT, dated 19 December 2016, subject to the conditions on the attached schedule.

### Preliminary Matter

2. The application sought outline planning permission with all matters reserved for future consideration. A layout has been provided detailing how the site could be developed with the new dwelling. I have treated this as an illustrative drawing for the purposes of the appeal.

### Main Issues

3. The main issues are:
  - Whether the site is an appropriate location for new housing having regard to the provisions of the Development Plan and the National Planning Policy Framework (the Framework).
  - The effect of the development on the character and appearance of the area.
  - Whether the Council can demonstrate a five year housing land supply.

### Reasons

#### *Location*

4. The appeal site is within a remote location with limited access to services and facilities in the nearest village at Kirtling. The appellant confirms that the Red Lion public house is some 750 m from the site where one can also access bus

services. However, the road does not have a footpath and is unlit. While it may be possible to walk to Kirtling, it is inevitable that the private car would be a more attractive alternative to access such services at the closest larger centre at Newmarket.

5. Consequently, the occupiers of the dwelling are likely to be reliant on the private car to access such services which is contrary to a core policy of the Framework which seeks to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. However, the Framework also tells us that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Moreover, the amount of car trips generated by one dwelling would be minimal.
6. On the first main issue I conclude that while the development is not within a sustainable location, the amount of trips generated by a single dwelling would be minimal. The proposal would have a limited conflict with Policies GROWTH2, GROWTH5 and COM7 of the East Cambridgeshire Local Plan 2015 (the Local Plan), which seek, amongst other things, to ensure proposals reduce the need to travel, particularly by car, provide a safe and convenient access and achieve the aims of sustainable development. I therefore give limited weight to the conflict with policy.

#### *Character and Appearance*

7. Chequers is a detached dwelling and lies to the east of the appeal site which is a roughly rectangular parcel of land. The site contains a single storey Nissan hut with the remainder of the site laid to grass with two mature trees on the boundary to the road. The immediate area is formed by a small cluster of detached dwellings and farm buildings. A dwelling between the appeal site and The Maltings was being constructed at the time of my site visit. The area has a rural quality that is reinforced by the spaciousness about and between the dwellings and mature landscaping.
8. The site lies outside of the development envelope for Kirtling and, for the purposes of planning policy, is within the countryside. Policy GROWTH2 of the Local Plan seeks to direct development to within defined development envelopes. Outside these areas development will be strictly controlled and restricted to the categories listed within the policy, none of which apply here.
9. The site is separated from the curtilage of Chequers by mature hedging with the existing building sited almost centrally within the site. The proposed dwelling would follow the prevailing linear, frontage development along the road and the illustrative drawings show that it would be sited largely on the footprint of the existing Nissan hut.
10. I accept that the development does not represent an isolated dwelling as it would be sited adjacent to existing dwellings. Nevertheless the site forms part of the countryside and the proposed development would result in the urbanisation of the site, occupied by a residential building which would adversely affect the character and appearance of the area. However, the harm to the character and appearance of the area would be limited to the immediate site and surrounding properties and the space about and between dwellings would remain.

11. On the second main issue I conclude that while the proposed development would materially harm the character and appearance of the area, this harm would be limited and localised. The development would have a limited conflict with Policies ENV1 and ENV2 of the Local Plan which seek, amongst other things, to ensure development proposals enhance the character and appearance of the area. I therefore give limited weight to the harm to the character and appearance of the area.

#### *Five Year Housing Land Supply*

12. The Council acknowledges that it cannot demonstrate a 5 year housing land supply and as a result, paragraph 49 of the Framework comes into play. This states that relevant policies for the supply of housing should not be considered up-to-date. Consequently, the approach set out at paragraph 14 of the Framework should be taken into account. This advises that where 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. The Framework also emphasises the need to boost significantly the supply of housing.

#### **Planning Balance**

13. I have found that the proposal would have a limited conflict with a number of local plan policies. In addition, as a result of a permanent structure occupying the site it represents previously developed land as defined within the glossary at Annex 2 of the Framework. One of the core planning principles within the Framework is to encourage the effective use of land by re-using land that has been previously developed, provided it is not of high environmental value.
14. The appearance of the dwelling is a reserved matter and could reflect the local vernacular. I acknowledge that the provision of a single dwelling would only be a modest addition to the Council's housing shortfall, it would nonetheless boost the Council's housing provision, to which I give significant weight. I also recognise that the proposal would have a small beneficial effect in terms of the social and economic strands of sustainability. The development would also re-use land that has been previously developed.
15. I therefore find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the development, which weighs heavily in favour of allowing the appeal.

#### *Other Matters*

16. The Council make reference to several decisions<sup>1</sup> that dismissed appeals for dwellings as a result of accessibility to services. However, none of these developments related to previously developed land and the decisions were made before the Supreme Court judgment<sup>2</sup> which clarified that if there is a shortfall in housing land supply, it does not matter if this is because of the policies which specifically deal with housing provision. It is the shortfall itself that that is the trigger for bullet point 4 to paragraph 14 of the Framework and all relevant policies in the circumstances of the individual case must be considered.

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<sup>1</sup> APP/V0510/W/16/3143840, 3158114 and 3160576

<sup>2</sup> Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37

## **Conditions**

17. The Council has suggested a number of conditions if I am minded to allow the appeal. In accordance with the advice contained within the Planning Practice Guidance (PPG), where appropriate, I have reworded them where necessary in the interests of concision and enforceability. I have attached a condition limiting the timing of the planning permission in accordance with the requirements to submit reserved matters.
18. Landscaping is a reserved matter and as such a specific condition is not necessary at this stage. The PPG also advises that the removal of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Details relating to the access and boundary treatments will also be considered at reserved matters stage when the layout of the proposed development is known.
19. As there is an existing building on the site, it would be reasonable to ensure that contaminated land is considered before any development commences. Although not suggested by the Council, the Tree Officer did recommend a condition to protect trees at the site. Detail of surface water drainage is also necessary to ensure its effective disposal. The location and block plan should be specified to provide certainty.

## **Conclusion**

20. The development would be contrary to policies in the development plan. Nonetheless, for the reasons given above, and in accordance with advice in the Framework, I conclude that this proposal benefits from the presumption in favour of sustainable development. As the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, I conclude that the appeal should be allowed.

*Graham Wyatt*

**INSPECTOR**

### **Schedule of Conditions**

- 1) Details of the access, 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 takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1035-01, 1035-02 and 1035-04
- 5) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
  - i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 7) The dwelling hereby approved shall not be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable

drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) All the trees shown on plan 1035-04 as existing and/or any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.