
Appeal Decision

Site visit made on 21 August 2017

by S Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 6th September 2017

Appeal Ref: APP/V0510/W/17/3175470

41 Ward Way, Witchwood, Ely CB6 2JR

- 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 Mark Braybrooke against the decision of East Cambridgeshire District Council.
 - The application Ref 16/01603/FUL, dated 15 November 2016, was refused by notice dated 20 February 2017.
 - The development proposed is erection of 1 detached 4 bedroom barn style energy efficient home and double garage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have had regard to the Supreme Court Judgment: Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council which was published on 11 May 2017¹. The parties have been provided with the opportunity to comment on the judgement. I have taken into account comments received together with the judgement itself in coming to my decision.
3. The second reason for refusal states that insufficient information was available for the Council to be satisfied that biodiversity, ecology and natural landscape features including trees would be satisfactorily protected. An Ecological Scoping Survey (the 2017 ESS) was submitted with the appeal and I have taken this into account in my considerations.

Main Issues

4. I consider the main issues for this appeal to be: the effect of the proposed development on the character and appearance of the area; and the effect of the proposed development on biodiversity, ecology and trees.

Reasons

1. Planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise². The development plan includes the East Cambridgeshire Local Plan 2015 (the LP).

¹ [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

² Section 38 of the Planning and Compulsory Purchase Act 2004

This was adopted subsequent to the National Planning Policy Framework (the Framework) which is a material consideration in deciding planning applications and appeals. Policy GROWTH 5 of the LP accords with Paragraph 14 of the Framework in containing a presumption in favour of sustainable development. This is defined in Paragraph 7 of the Framework as having economic, social and environmental roles that need to be considered together.

Character and appearance

2. The appeal site comprises part of an open grass field and part of a belt of trees/scrub. Access would be from Main Street via Mills Lane which is a gravel track that is also Public Footpath 6³. There are houses along Main Street in the vicinity of Mills Lane and a house was granted planning permission in the garden of 143 Main Street with access off Mills Lane Ref 10/00221/FUL. There is a dwelling to the west of the appeal site some distance further along the track and a number of barns and sheds, one of which I understand is used by the local archery club, are also accessed from Mills Lane. Across part of the field to the west of the appeal site is a balancing pond behind which is Swallow Stables a collection of equestrian related buildings and manege⁴ owned by the appellant.
3. Policy GROWTH 2 of the LP seeks to direct the majority of development to market towns including Ely and to villages within defined development envelopes. Outside defined development envelopes Policy GROWTH 2 seeks to strictly control development, with some exceptions, to protect the countryside and the setting of towns and villages. The appeal site lies some 140m outside the settlement boundary and would not be one of the listed exceptions. Accordingly I conclude that the proposal conflicts with Policy GROWTH 2.
4. The wider landscape is dominated by horse paddocks, arable farms, tree lines, hedgerows and woodland blocks. Paragraph 2 of the Design and Access Statement states that Witchford is a linear village. However, there is also development in depth including Ward Way some distance to the north of the appeal site.
5. Although not as isolated as some sites, and even though the backs of houses on Ward Way can be seen across the field, the proposed dwelling would be some distance from existing houses and from other countryside structures such as barns and stables. Even were I to agree that the site is dissimilar to agricultural land to the south it would be unrelated to any existing landscape features. Whether or not it would be partly screened by trees it would amount to a piecemeal intrusion into open countryside space around Witchford that currently is unbuilt on. I conclude that, despite the proposed custom design chalet style utilising modern sustainable building technology, a house, a double garage and garden where none exists would cause significant harm to the rural character and appearance of the site and the surrounding area.
6. For the reasons set out above I conclude the proposal would conflict with those parts of Policies ENV1 and ENV2 of the LP that require developments to create positive complementary relationships with existing development, to protect, conserve and where possible enhance existing patterns of landscape features,

³ The Parish Council are willing to grant a license for access to the development Part 8, Design and Access Statement

⁴ Planning permission was granted for change of use from agricultural land to equestrian/agricultural land construction of 5 No. stables, tack room and hay store and manege Ref 09/00640/FUL

the settlement edge, spaces between settlements and their wider landscape setting with comprehensive rather than piecemeal development. It would also conflict with the core planning principle of the Framework that recognises the intrinsic character and beauty of the countryside.

Biodiversity, ecology and trees

7. The 2017 ESS relies in part on a survey carried out in 2015 and was not a full data search. It has subsequently been confirmed that the great crested newt surveys were conducted between 20 April and 12 May 2015 and the later survey on 11 April 2017 which is within the two year good practice period and within the three year breeding season period taking account of movement, migration and expansion. The 2017 ESS concludes that there would be no anticipated impacts on any protected species as a result of the proposed development that could not be mitigated by condition.
8. I am mindful of the Planning Practice Guidance⁵ which states that "*Local planning authorities should only require ecological surveys where clearly justified, for example if they consider there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.*" Bearing this in mind I conclude that sufficient information has been provided to demonstrate that, subject to conditions requiring the implementation of the enhancement strategy as proposed at paragraph 3.6 of the 2017 ESS, biodiversity and ecology would be sufficiently protected.
9. It is acknowledged that the 2017 ESS did not include an impact assessment of the intrinsic value of the trees. However, nothing I have seen in the evidence leads me to believe that the trees/scrub could not be cleared without permission. On this basis I conclude that subject to conditions regarding appropriate tree protection and replacement planting the impact on trees would not be unacceptable.
10. For the reasons set out above I conclude that the proposed development would not significantly conflict with those parts of Policies ENV1, ENV2 and ENV7 or the Framework that seek to protect vegetation and woodland and their functions as ecological corridors; to respect biodiversity and to provide appropriate mitigation and enhancement measures.

Other considerations

11. Witchford has a range of local amenities and the proposed dwelling would be some 200m from the centre of the village. There are bus services to Ely and Cambridge from the village. However, the prospect of travel by means other than the private car would be undermined to some extent as the dwelling would be accessed by an unmade unlit track.
12. It has been asserted that the proposed development could deter anti-social behaviour and crime along Mills Lane and in its vicinity and enable security at the stables. I have seen no detailed evidence in regard to these matters. As the house would be tucked behind trees some distance from Mills Lane

⁵ Paragraph: 016 Reference ID: 8-016-2014061

and from existing buildings I give relatively little weight to the likely deterrence that might occur as a result of the proposal.

13. I acknowledge the long association the appellant and his family have with the local area. I also acknowledge their desire to live an environmentally conscious lifestyle and to achieve a work/life balance in an affordable way. Whilst these are personal benefits they do not attract significant weight in considering the planning merits of the proposal. The appellant also intends to reinstate the overgrown orchard, renovate the pond area and benefit wildlife. However, such aims could be implemented without the need for a new dwelling and I understand some of these are already underway.
14. There were no objections from local residents and one letter was submitted in support of the proposal. There are many reasons why third parties respond to consultations on proposals for development or not. I have reached my conclusions based on the material planning considerations in relation to the proposal rather than on whether support or objections have been raised by local residents. I have also taken account of other proposals referred to by the appellant but do not have sufficient information about the relevant material planning considerations applying in those cases to determine their relevance in relation to the appeal before me. In any case each proposal needs to be considered on its own planning merits.
15. I have considered whether a condition which tied the dwelling to the equestrian use of the land would be appropriate. However, the dwelling has been applied for without any demonstration of need in respect of equestrian activities. Accordingly such a condition would not be relevant to the development to be permitted or reasonable and would therefore not meet the requirements for conditions set out in Paragraph 206 of the Framework.

Other Matters

16. The appellant is concerned that the Council's planning officers only viewed the site from Mills Lane. However, I can confirm that I was able to enter the appeal site. The appellant has also expressed dissatisfaction with the way the planning application was handled by the Council but this does not go to the heart of the planning matters of the proposal before me.

Planning Balance and Overall Conclusion

17. The Council states it cannot demonstrate a five year supply of deliverable housing land to meet objectively assessed housing need⁶. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the Council cannot demonstrate a five-year supply of deliverable housing sites. Policy GROWTH 2 is a restrictive policy which seeks to limit housing development in the countryside outside settlement boundaries. It has the effect of constraining the supply of housing land such that, at the present time, it has not resulted in a five year supply in accordance with the objectives of Paragraph 47 of the Framework and so, for the purposes of this appeal, should be regarded as a relevant policy for the supply of housing.
18. However, although Policy GROWTH 2 is out of date, this does not mean it no longer applies. The Supreme Court confirmed that the weight to be given to

⁶ Paragraph 1.4 of the Council's Statement

development plan policies is a matter of planning judgement. I find that, because the Framework recognises the intrinsic beauty and character of the countryside as a core planning principle, Policy GROWTH 2 should be given significant weight. However, it clearly carries less weight than would be the case if there were a five year supply of deliverable housing sites.

19. I have concluded above that the proposal would be contrary to significant parts of Policies ENV1 and ENV2 of the LP and that it would cause significant harm to the rural character and appearance of the site and the surrounding area. There would be some economic benefits including employment during construction, promotion of a local builder, spending in the local economy, a New Homes Bonus payment and Council Tax Revenue. Additional residents would help contribute to the vitality of the village community. These benefits would accord with those principles of Paragraphs 47 and 55 of the Framework that seek to enhance or maintain the vitality of rural communities and to boost significantly the supply of housing. However, they would equally apply to a new house built within the settlement envelope and the provision of one house would provide relatively limited social and economic benefits. Accordingly I can only afford these considerations limited weight.
20. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan.
21. The proposal is contrary to Policies GROWTH 2; ENV1; and ENV2 of the LP and material considerations do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above and taking into account all other relevant matters raised I conclude the appeal should be dismissed.

SHarley

INSPECTOR