
Appeal Decision

Site visit made on 22 August 2017

by Graham Wyatt BA (Hons) MRTPI

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

Decision date: 8th September 2017

Appeal Ref: APP/E3525/W/17/3175909

George Hill Nurseries, Barningham Road, Stanton IP31 2AD

- 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 & Mrs J Smith against the decision of St Edmundsbury Borough Council.
 - The application Ref DC/16/2030/OUT, dated 13 September 2016, was refused by notice dated 22 November 2016.
 - The development proposed is a residential development – erection of 5 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought outline planning permission with only access for determination. All other matters are reserved for future consideration.
3. The site has been the subject of a previous appeal¹ against a decision for 'the erection of 12 dwellings' (the previous appeal scheme). I have considered the previous Inspector's findings and decision. The evidence before me indicates that the principal difference between the previous appeal proposal and the one before me is the revised number of dwellings.

Main Issues

4. The main issues are:
 - The effect of the development on highway safety.
 - Whether the site is an appropriate location having regard to the provisions of the Development Plan and the National Planning Policy Framework (the Framework).
 - The effect of the development on biodiversity.
 - Whether the previous use of the land represents an unacceptable risk to future occupiers with regard to contamination.

Reasons

The Effect on Highway Safety

5. An existing access lies to the north of the site which is 3 m wide and is substandard in terms of width and visibility. The appellant proposes a new access

¹ APP/E3525/W/16/3158478 dated 23 January 2017

to the centre of the site which would be 4.5 m wide to allow for two way vehicle movement. The appellant maintains that the new access would enable significant improvements in visibility as detailed on drawings 790/3 and 790/4.

6. Those drawings formed part of the proposals for the previous appeal scheme as dismissed. The concern of the previous Inspector was that, from the drawings provided, it was not sufficiently clear that the proposed visibility splays would be within the ownership/control of the appellant or within the public highway. Indeed, the drawings indicate that the splays would cut across third party land and consequently, there is no guarantee that the splays would be kept free from obstruction.
7. The Council have suggested that if there is no intensification of use as a result of the proposed development, and subsequently a benefit to highways safety, there would be no reason to object to the development on highway safety grounds. The appellant also indicates that the deciding issue is not whether the Council's highway standards can be met but rather whether the proposed development would have an adverse impact on highway safety in comparison to the existing use of the site and any potential change of use that could occur at the site without the need for planning permission.
8. Given that it remains unclear what visibility splays can be achieved at the proposed access without the reliance on third party land, the appellant has failed to demonstrate that the proposed access would represent an improvement upon the existing access. Accordingly, I am not persuaded by the evidence that the proposed access would be an improvement on the existing situation. Indeed given that proposed intensification of the uses of the site access that would result from the proposed housing development, given the circumstances outlined above, it seems more likely that the appeal scheme would be harmful to highway safety.
9. On this basis, I therefore conclude on the first main issue that the proposals would result in material harm to highway safety, contrary to Policy DM2 of the Joint Development Management Policies Document 2015 (the JDMPD) and paragraph 32 of the Framework which see to ensure, amongst other things, to protect highway safety and to ensure that safe and suitable access to a site can be achieved.

Is the Site an Appropriate Location for Housing?

10. Policy CS4 of the St Edmundsbury Core Strategy 2010 (the Core Strategy) sets out the settlement hierarchy for the district and defines Stanton as a Key Service Centre. The site however, lies beyond the settlement boundary of Stanton and both parties agree that, for the purposes of planning policy, it is within the countryside.
11. The Council can demonstrate a 5 year housing land supply. As such, the relevant local plan policies for the supply of housing are considered up-to-date. Consequently, as the site lies beyond a defined settlement boundary and does not relate to an exception development as set out within Policies DM5, DM26, DM27 and DM29 of the JDMPD and Policy CS5 of the Core Strategy, the proposed development would be in conflict with these policies. Accordingly, the Council consider the proposal unacceptable as a matter of principle.
12. Paragraphs 11 and 12 of the Framework tell us that development must be determined in accordance with the development plan unless material considerations indicate otherwise and the Framework does not change this statutory requirement. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

13. The Court of Appeal² has confirmed that the “presumption in favour of sustainable development” can only be obtained in the circumstances defined by paragraph 14 of the Framework when the “tilted balance” may be applied. In this case, the Council are satisfied that as they have an up-to-date plan and a 5 year supply of deliverable housing, the presumption of sustainable development as set out at paragraph 14 does not apply to this case. I agree with that assessment.
14. While the Council identify a policy conflict, this alone does not mean that planning permission should necessarily be withheld. I agree with the previous appeal Inspector that actual harm as a result of any policy conflict needs to be identified and it is unclear what the Council consider this to be. While I have accepted the Council’s position in respect to the up-to-datedness of the development in the terms of the Framework, this alone does not justify resisting additional, unplanned development as a matter of principle.
15. Furthermore, I also note to paragraphs 24 to 31 of the previous appeal Inspector’s decision where he states that he is satisfied that the scheme before him would be consistent with Paragraph 55 of the Framework. In doing so he concluded that the site would be suitable for housing, would not be isolated and would contribute towards the vitality of the rural community of Stanton. I have no reason to disagree with this assessment and planning permission should not be withheld on this matter alone, regardless of the conflict with the rural housing policies of the development plan.
16. Therefore, having regard to the previous Inspector’s decision and notwithstanding the identified conflict with development plan policies, I find the site to be an acceptable location for housing of the scale and type proposed, in accordance with paragraph 55 of the Framework which seeks to promote sustainable development in rural areas where it will enhance or maintain the vitality of rural communities.

Biodiversity

17. The site has been vacant for some time and contains a number of buildings that will be demolished to make way for the proposed dwellings. Part of a substantial hedge to the front of the site would also be removed to make way for the proposed access. It is reasonable to assume that, should protected species³ exist at the site, they could be harmed by the proposed development.
18. The appellant has provided a Preliminary Ecological Appraisal Report dated February 2017 as part of his appeal submission, which confirms that no protected species exist at the site. The appraisal also suggests enhancement measures as part of the redevelopment of the site. I am satisfied that the proposed enhancement measures could be secured through an appropriately worded condition. The development would therefore be in compliance with Policies DM10, DM11 and DM12 of the JDMPD and paragraph 118 of the Framework which seeks to conserve and enhance biodiversity.

Contaminated Land

19. The Council have repeated their concerns that as a result of the historic use of the site, plus the sensitive nature of the end user, an assessment of contamination at the site should be provided to ensure that there is no risk to occupiers of the proposed dwellings.

² *Barwood Strategic Land v East Staffordshire BC and SSCLG [2017] EWCA Civ 893*

³ As defined in the Wildlife and Countryside Act 1981 (as amended)

20. The appellant provided an environmental report with the planning application which confirmed that the site is not such that it would be designated as "Contaminated Land" within the meaning of Part 2A of the Environmental Protection Act 1990. Moreover, the previous appeal Inspector concluded at paragraphs 35 to 37 of his decision that the site represented a low risk in respect of land contamination and any further investigation and remediation could be addressed through a suitably worded condition. From the evidence before me I find no reason to disagree with that assessment.
21. As such, I conclude that there would be a low risk to future occupiers of the proposed dwellings from potential contamination and that any such risk could be reasonably mitigated. Therefore there would be no conflict with Policy DM14 of the JDMPD, which requires developments to be safeguarded from hazards.

Other Matters

22. A number of concerns have been raised by interested parties that the proposal would be out of character with the area and would lead to an overbearing development which would impact on the living conditions of adjoining occupiers. However, these matters relate to the layout, scale and appearance of the development and would be considered at reserved matters stage. I have not seen any evidence that the existing drainage or local services, such as schools and doctors, could not cope with the additional demands of five dwellings. Likewise, I have not seen any evidence that the site is liable to unacceptable levels of flooding.

Conclusion

23. For the reasons given above, and having regard to the development plan when read as a whole, I conclude that the appeal should be dismissed.

Graham Wyatt

INSPECTOR