

Appeal Decision

Site visit made on 25 September 2018

by J Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2018

Appeal Ref: APP/W3520/W/18/3196561

Land bounded by Derry Brook Lane and Little London Hill, Debenham.

- 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 C Wakefield of Park Properties (Anglia) Ltd against the decision of Mid Suffolk District Council.
 - The application Ref 0030/17, dated 2 May 2017, was refused by notice dated 15 December 2017.
 - The development proposed is use of land for the erection of up to 25 dwellings. Formation of vehicular access to Little London Hill.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr C Wakefield of Park Properties (Anglia) Ltd against Mid Suffolk District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application form indicates the application was made in outline with all matters of detail reserved for future determination. Although matters of access, appearance, landscaping, layout and scale are not formally submitted for determination, the submission is accompanied by an indicative proposed site layout (Revision F) to which I have had regard.
4. A unilateral undertaking, signed and dated 1 August 2018, was submitted by the appellant to address affordable housing and off-site highway improvements.
5. The revised National Planning Policy Framework (the revised Framework) was published on 24 July 2018. The parties were asked to respond in writing as to whether the revised Framework had implications for their cases. I have taken those responses and the revised Framework into account.

Main Issue

6. The main issue in this appeal is the effect of the proposed development on pedestrian and highway safety.

Reasons

7. Located outside the defined settlement boundary for Debenham, the appeal site lies on the northern edge of the village. It contains areas of grassland and woodland and includes a number of buildings presently used for storage purposes. The appeal site is situated north of Derry Brook Lane and south-west of Little London Hill, both unclassified country roads.
8. Derry Brook Lane is a narrow single track road without road markings which becomes an unmade farm track some distance beyond the appeal site to the west. The road adjoins the River Deben to the north. There is an existing access from the appeal site via a footbridge to Derry Brook Lane. A footpath lies opposite the footbridge and serves the houses at The Butts facing the appeal site. There is a layby for parking and some street lighting outside the houses. To the east of the appeal site, Derry Brook Lane narrows and the footpath terminates east of the junction of Derry Brook Lane with Hitcham Road. At this point, Derry Brook Lane becomes heavily vegetated on both sides of the road up to the junction with Great Back Lane and visibility is limited due to the hedging and the slight curve in the road. This section of road between Hitcham Road and Great Back Lane has no footpath. Beyond the Great Back Lane junction, the footpath recommences and runs up to the junction with Aspoll Road. This part of Derry Brook Lane has double yellow lines outside the school.
9. Little London Hill is one of 2 roads leading northwards out of the village. It has a junction with Derry Brook Lane to the west of the Sir Robert Hitcham CEVA Primary School site. From the junction, Little London Hill slopes upwards away from the village and bends slightly close to the vehicular access to the appeal site. The road has high hedges on both sides and has a 30mph speed limit which continues beyond the appeal site for some distance. Although the curve in the road close to the appeal site is fairly gentle, when taken in conjunction with the high hedges and parked cars on the carriageway, visibility is limited in places. There is no footpath serving the appeal site or existing properties at Village End and The Red House.
10. I visited the appeal site on a mid-week morning immediately prior to and during school drop-off time. While my site visit only represented a snapshot of highway conditions, both roads were relatively busy, particularly Little London Hill. Derry Brook Lane appeared to be being used for either school parking or to access one of the side streets off the lane. During my site visit, I walked up and down both Derry Brook Lane and Little London Hill. I observed cars being parked in the layby opposite the appeal site and children and adults walking down Derry Brook Lane on the carriageway. While walking along the most heavily vegetated section of Derry Brook Lane, it was possible to hear cars approaching, but they could not be seen until immediately prior to them travelling past. On Little London Hill, I observed cars being parked close to the junction with Derry Brook Lane. While a number of cars were present, I did not see any contractors' vehicles parked on the road.
11. During my site visit, I noticed some potential for conflict between vehicles passing in opposing directions on Little London Hill, particularly when one of the vehicles was larger than a car. While some vehicles stopped to let others past and allowed me a reasonable distance as a pedestrian walking on the

carriageway, I had to step off the road and onto the private driveway of Village End when other vehicles tried to pass one another.

12. The proposed development would comprise up to 25 dwellings, including 9 affordable housing units. The indicative proposed site layout provides for a mixture of one bedroom apartments and 2, 3 and 4 bedroom dwellings and 54 parking spaces. The appellant's planning statement makes reference to the proposed development being accessed from an upgraded access off Derry Brook Lane, a pedestrian link across Derry Brook Lane to the footpath close to the junction with Hitcham Road, and a new access from Little London Hill.
13. When walking into and out of the village and to the primary school via the proposed primary access from Little London Hill as indicated on the proposed site layout, the appellant has indicated a new footpath adjacent to the appeal site's new access within a widened section of road. This would be accompanied by warning signs being erected to advise drivers that pedestrians may be using the road.
14. Policy T10 of the Mid Suffolk Local Plan 1998 (LP)(saved policies) requires consideration of, amongst other things, safe access to and egress from a site, the suitability of existing roads giving access to the development, including the safe and free flow of traffic and pedestrian safety, and whether the needs of pedestrians and cyclists have been met. While the LP is of an advanced age, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised Framework. Due weight should be given to them, according to their degree of consistency with the revised Framework. LP policy T10 is a general transport policy which seeks to address the potential impact of developments on transport networks, and avoid any adverse effects. I consider it to be generally consistent with Section 9 of the revised Framework on promoting sustainable transport, and therefore give it considerable weight in my decision.
15. Whether or not the footpath and road widening would be deliverable due to land ownership, the proposed footpath would terminate at the adjacent property boundary at Village End. This would necessitate pedestrians walking on the carriageway and would be likely to result in conflict between road users from Village End towards the junction of Derry Brook Lane and Little London Hill. Given the number of family houses within the proposed development and its location close to the primary school, there would be likely to be children and adults walking to and from the proposed development to the school and the other local services. This would be likely to hamper the safe and free flow of vehicular traffic, particularly at peak times when there is increased on-street parking associated with the school. The risk of conflict would be increased by the potential number of additional vehicle and pedestrian movements resulting from the proposed development. Given the vulnerability of the highway users under consideration, I consider that even a relatively small increase in risk to them would be significant. As such, the proposed development would cause harm to pedestrian and highway safety.
16. I understand that the appellant has submitted a further outline planning application DC/18/00192 for 8 dwellings on the southern part of the appeal site. The Council has resolved to approve the current planning application subject to a legal agreement to secure off-site highway works and public use of

a footpath link to the highway network. While no decision notice has yet been issued, I consider the proposed development and the current planning application to be fundamentally different. Not only are the red line boundaries of the 2 sites significantly different in their extent, but the proposed numbers of houses would differ by up to 17 units, with a commensurate decrease in the proposed number of both residents and parking spaces. While I consider that the current planning application may be theoretically possible to deliver, it is not sufficiently similar to the proposed development to provide a true fallback position. I give it very limited weight in my decision.

17. If pedestrians were walking from and to the proposed development into and out of the village, the appellant notes that they could access a footpath on Derry Brook Lane from the southern boundary of the appeal site. They further note that the Council appears to have been inconsistent in its view of the potential for pedestrian access to Derry Brook Lane. The pedestrian link from the appeal site across Derry Brook Lane indicated on the proposed site layout would lead to Hitcham Road and onto Henniker Road. However, in reaching the primary school or other services and facilities within the village, it is likely that pedestrians would continue to walk down Derry Brook Lane as the most direct route. This would involve walking along a narrow road with high hedges and limited visibility, thereby increasing pedestrians' vulnerability to harm.
18. Although the appeal relates to outline planning permission with all matters reserved, I am not convinced that the matters raised could be adequately addressed at reserved matters stage. Furthermore, while both parties have discussed the use of a Grampian condition to deliver highway works and I note the advice in the Planning Practice Guidance¹, I consider that this would not necessarily mitigate the harm I have found.
19. The appellant has submitted a Section 106 agreement which provides for highway improvements, including parking restrictions outside the primary school and works adjacent to The Red House. While I recognise that these matters may have a positive effect in terms of highway safety, they do not address the totality of the issue before me. Additionally, I note the appellant's concerns about the Council's response to the submitted Section 106 agreement in terms of land ownership, the boundary of the land included within the agreement, definitions, and the nomination agreement. However, this does not alter my findings on pedestrian and highway safety.
20. While the appellant's photographs show only a small number of private cars parked on the public highway on Little London Hill and Derry Brook Lane on 22 February 2018 between 0845 and 0900, this does not represent what I experienced during my site visit, where I saw a greater number of cars parked on street and noted a number of cars and vans driving along the 2 roads.
21. It is noted that the Council's Planning Committee determined the planning application contrary to the officer's recommendation and that the Highway Authority did not raise an objection to the proposed development, subject to planning conditions. However, I was careful to check during my site visit whether there was any substance to the objections raised by local residents. In

¹ Paragraph Reference: 21a-009-20140306: When can conditions be used relating to land not in control of the applicant?

this instance, I have found there to be a harmful effect on pedestrian and highway safety.

22. Concluding on this main issue, I consider that the proposed development would have a harmful effect on pedestrian and highway safety. Consequently, the proposed development would be contrary to LP policy T10 and the requirements of the revised Framework. LP policy T10 is discussed above. It would also be contrary to paragraph 109 of the revised Framework which confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

23. Based on the ecological survey data provided by the appellant with regard to slow-worms, grass snakes, otters, and water voles, it appears that the proposed development would require a European Protected Species Licence from Natural England. I am the competent authority in this instance and am therefore tasked with considering whether there is a reasonable prospect of a licence being granted. However, it has not been necessary to apply the tests set out in the Conservation of Habitats and Species Regulations 2017 as I am dismissing this appeal for other reasons.
24. I note that local residents have raised a range of concerns regarding the proposed development about other highway safety issues, flooding, drainage, infrastructure, starter homes, landscaping, living conditions of neighbouring occupiers, and character and appearance. Given my findings on the main issues, it has not been necessary for me to consider these concerns in detail.

Planning Balance

25. The Council acknowledged at the time their decision was issued that it was unable to demonstrate a 5 year supply of housing land (HLS). The appellant's statement makes reference to 3.3 years of HLS when measured against both the Core Strategy Focused Review 2012 and the Strategic Housing Market Assessment. The Council's statement then makes reference to a 6.5 year HLS. However, since the Council's statement was produced, the appellant has provided me with a recent appeal decision² which indicates that the Council's HLS stands at no more than 3.4 years. It has not been proven that the Council can demonstrate a 5 year HLS. I have therefore applied paragraph 11 of the revised Framework.
26. Paragraph 11 of the revised Framework confirms that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

² APP/W3520/W/18/3194926, decision issued 28 September 2018.

27. The proposed development would provide economic and social benefits including investment in the local construction industry, delivery within the life of the planning permission, support for the vitality of rural communities, some highways improvements, and the provision of up to 25 houses of a mix of sizes and types, including affordable housing. Debenham is a key service centre with a good range of services and facilities. Though outside the settlement boundary of the village, the proposed development would not harm the character and appearance of the area, would not be considered isolated given its proximity to other housing within the settlement boundary, and would provide energy efficient construction, modern drainage, and landscaping. However, the proposed development would harm pedestrian and highway safety.
28. The appellant has made reference to recent appeal decisions³ in Kelsale, Suffolk, and Crondall, Hampshire. However, as I have found harm to pedestrian and highway safety in this instance, I consider that the appeals provided are not particularly similar to the appeal before me. I therefore afford them limited weight.
29. The proposed development would make only a moderate difference to any housing shortfall locally or the national picture and so the benefits set out above carry modest weight in favour of the proposal. In contrast, I consider that the adverse impact that would result from the harm to pedestrian and highway safety would be a significant factor weighing against the proposed development. I give the conflict with the development plan in this respect significant weight. Therefore, the adverse impacts would significantly and demonstrably outweigh the benefits and so the proposal would not represent sustainable development.
30. To conclude on the planning balance, I consider that the proposed development would cause harm to pedestrian and highway safety. This is a significant factor weighing against the proposed development and would render the proposed development contrary to LP policy T10 and paragraph 109 of the revised Framework.

Conclusion

31. For the reasons set out above, the appeal is dismissed.

J Gilbert

INSPECTOR

³ APP/J3530/W//17/3187529, decision issued 19 March 2018, and APP/N1730/W/17/3185513, decision issued 23 August 2018.