
Appeal Decision

Site visit made on 28 August 2019

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2019

Appeal Ref: APP/C1760/W/19/3233009

Twin Acres, Church Lane, Goodworth Clatford, Andover, Hants SP11 7HL

- 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 & Mrs Joe Li against the decision of Test Valley Borough Council.
 - The application Ref 19/00455/FULLN, dated 21 February 2019, was refused by notice dated 18 April 2019.
 - The development proposed is described as the 'construction of a tarmacadam tennis court painted green, with 2.75m high green chainlink fence to run-back area reducing to 1m high to sides of court, on green 40mm dia metal posts'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs Joe Li against Test Valley Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the appeal proposal would constitute an acceptable form of development with particular regard to the provisions of local policy in respect of the location of development.

Reasons

4. The proposed construction of a tennis court would form an area of hard standing, enclosed by fencing of varying heights, on land that is both outside of the domestic curtilage of Twin Acres and outside of the settlement boundary of Goodworth Clatford. As such the proposed works would result in a form of development that would change the use of the land, extending ancillary residential development into the countryside.
5. Policy COM2 of the Test Valley Borough Revised Local Plan DPD Adopted Local Plan 2011-2029 adopted January 2016 (LP) sets out that development outside of settlements will only be allowed if provided for under other policies or where it is essential for the proposal to be located within the countryside. Furthermore, Policy SP3 of the Goodworth Clatford Neighbourhood Development Plan 2018-2029 'made' March 2019 (NP) supports COM2.
6. The appellants have pointed to Policy COM11 of the LP as a policy that exceptionally allows development outside of the Goodworth Clatford settlement

boundary, under Policy COM2. It sets out provision for the creation of ancillary domestic buildings in the countryside subject to set criteria. The Council in its evidence have stated that COM11 is not applicable in this context, with the proposed development being for an engineering operation rather than a building. However, the appellants have highlighted another decision by the Council (LPA ref: 18/03046/FULLS) appearing to reach a contrary conclusion on a similar scheme.

7. The meaning of 'building' is not defined within Policy COM11, but it is defined at Section 336 of the Town & Country Planning Act 1990 (the Act) as including any structure or erection. It is a matter of fact and degree as to what constitutes a building and I am mindful of the tests around size, permanence and physical attachment. I consider that the proposed hard-standing surface and the proposed fencing are not mutually dependent in a way that the foundations, floor and walls of a building usually are. I consider that they represent two separate operations in this proposal.
8. Firstly, there is the reprofiling of the land and laying out of a hard standing to provide a flat and suitably drained playing surface. I consider that the creation of a hard surface here is an engineering operation. Secondly, the proposal details the erection of chain link fencing of varying heights between upright posts to enclose the hard standing. However, I note the chain link material would merely be attached via the posts and although it may be in contact with the ground, it would not necessarily be directly attached to it. Furthermore, the fence would not be a solid material and there would be no roof. Therefore, taking these considerations together, I conclude that the proposal does not exhibit features of permanence and physical attachment such as to be consistent with the definition of a building under s336 of the Act. Furthermore, the Town and Country Planning (General Permitted Development) Order 2015 sets out a different interpretation of a 'building' for the purposes of that legislation. Within most circumstances it specifically excludes 'enclosures' from the definition of a building. Therefore, based on the evidence before me, I do not consider that the proposal should be considered as a 'building' within the context of Policy COM11 of the LP.
9. The second exception of Policy COM2 sets out that development may also be acceptable if it is essential for the proposal to be located within the countryside. I have no clear evidence to disagree with the main parties insofar as to whether the specific proposal can be facilitated within the existing residential curtilage of Twin Acres and the settlement boundary of Goodworth Clatford. Based on the Council's evidence of the curtilage being 45 m by 45 m then it does not appear that the proposal, as shown on drawing reference: no. 01 (Proposed block plan), could be entirely accommodated within the existing garden space. Furthermore, based on this and the plan at Appendix A.1. of the NP it does not appear that the proposal could be accommodated within the existing settlement boundary. Therefore, the argument is whether it is essential for the proposal to be located within the countryside given that there is no other alternative.
10. The meaning of 'essential' is not defined within Policy COM2. Therefore, I have taken it within its usual meaning. Despite the examples provided by the appellants of tennis courts being allowed within the same Council area, I find it hard to envisage circumstances where the provision of a private tennis court, incidental to the enjoyment of a dwelling, can be considered absolutely

necessary or extremely important. I have not been provided with full circumstances that led to those decisions to grant planning permission and I note some differences between them and the proposal subject of this appeal. Furthermore, no evidence has been provided in this specific case to suggest that the private needs of the occupiers of Twin Acres mean that it is essential to locate the development completely within the countryside. Additionally, third parties have highlighted the existence of similar public facilities within the village and in very close proximity of the appeal site. Therefore, based on the evidence before me, I do not consider that it is 'essential' for the proposal to be located within the countryside.

11. The settlement boundary of Goodworth Clatford has been drawn tightly around the built form of the village. Consequently, the village edge is not linear, rather it has indentations and projections to reflect the essential needs of the village. To infill every gap and indentation around the village would cumulatively result in significant encroachment into the countryside. This is not a pattern of development that would be desirable to replicate. Furthermore, the change of use and operational development would be visually intrusive in this context due to the extent of the area affected. To the south of the appeal site there is a right of way that runs through the countryside. The proposal would be clearly visible from public vantage points here, particularly on approaches from the east along the public footpath.
12. Therefore, in conclusion on the main issue, the proposed development would not constitute an acceptable form of development with particular regard to the provisions of local policy in respect of the location of development. The proposal would be contrary to Policy COM2 of the LP and SP3 of the NP, which amongst other aims seek to protect the environment, the village and its countryside.

Other matters

13. The appellants have highlighted that the Council has not refused permission on detailed planning matters, such as landscape. Furthermore, I have noted that the Council's landscape officer has raised no objection and that the delegated report concluded that there was no breach of LP Policy E2 in regard to landscape. However, I consider that this is a different consideration to that required from COM2. The lack of any other planning harm, including landscape impact, is a neutral consideration in any planning balance.
14. Furthermore, the appellants have provided examples of decisions to allow similar development despite conflict with principle policies of the development plan. I have noted the various examples set out by the appellants as setting precedent for allowing this appeal. However, I do not have the benefit of full details, and I note that the cases do not appear to be identical to this appeal in terms of the detail and/or the prevailing policy at the time of the decision. As such I afford these examples limited weight and I have proceeded to determine the case on its own merits.
15. I have had regard to the National Planning Policy Framework (the Framework) as a material consideration. In particular, I am mindful of paragraph 11 that sets out the presumption in favour of sustainable development. However, for the reasons given above I do not consider that the proposal accords with the development plan. Furthermore, I consider that policy COM2 of the LP and policy SP3 of the NP have general conformity with the Framework.

Significantly, I note that the NP was 'made' in March 2019 post publication of the Framework. Therefore, I do not consider this to be a form of development to which the presumption applies.

16. Additionally, the Framework restates the primacy of the development plan and the need for a genuinely plan-led system. Furthermore, paragraph 29 states that 'neighbourhood plans can shape, direct, and help deliver sustainable development, by influencing local planning decisions as part of the statutory development plan'. I consider that to grant planning permission contrary to such a recently 'made' plan, without compelling justification and/or community support, could have negative impacts on future community engagement with the planning system.

Conclusion

17. The appeal scheme would be contrary to the development plan and material considerations do not indicate planning permission should be forthcoming despite this. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

James Taylor

INSPECTOR