

Appeal Decision

Site visit made on 8 October 2019

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2019

Appeal Ref: APP/W0530/W/19/3233536

8 The Green, Rampton CB24 8QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr and Mrs Pawley against South Cambridgeshire District Council.
 - The application Ref S/3649/18/OL, is dated 17 September 2018.
 - The development proposed is change of use to residential and erection of two dwellings.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural matters

2. During the course of the determination period of the planning application, the appellants submitted amended plans. The Council considered that the amendments proposed represented a substantially different development, which should be considered through submission of a separate planning application¹. This application was subsequently refused. I have determined this appeal on its merits and in the interests of natural justice, I have not accepted the amended plans and have determined the appeal on the basis of the original plans submitted with application reference S/3649/18/OL dated 17 September 2018.
3. The Council resolved that had it been in a position to determine the application it would have refused planning permission for reasons relating to (1) Noise; (2) Highway safety; (3) Impact upon the existing garage, Rampton Motors; and (4) Great Crested Newts.

Main issues

4. Thus, the main issues are the effect of the proposed development on:
 - Living conditions for future occupants, with particular reference to noise;
 - Highway safety;
 - The economic viability of the adjacent garage; and
 - Biodiversity, with particular reference to Great Crested Newts.

¹ Council reference: S/2610/19/OL

Reasons

Living conditions

5. The appeal site is located to the rear of No 8 The Green and comprises land to the rear of an existing garage. Part of the site is currently used for parking vehicles associated with the garage, with the remaining area being vacant and overgrown. Access to the site would be via an access track off Cow Lane, which would be shared with No 14 Cow Lane. Therefore, the access to the garage would only be from The Green.
6. Policy SC/10 of the South Cambridgeshire Local Plan (SCLP) (2018) advises that where a planning application for residential development is near an existing noise source, the applicant will be required to demonstrate the proposal would not be subject to unacceptable noise levels, both internally and externally. The Council has stated that no noise impact assessment has been submitted to accompany the planning application, therefore, it is unable to determine if the noise levels would be acceptable for the proposed development.
7. The appellants have suggested that they are not aware of any noise complaints from any existing neighbouring residential properties. Furthermore, they are proposing a mitigating acoustic fence to the land between the proposed dwellings and the garage, which would also benefit the residents of No 14. They have also stated that any noise would likely to be minimal as the main access door for the garage is located off The Green, with the nearest building to the proposed dwellings being a storage room and former office. As well as the garage not being open at weekends and only operating between 7:30-13:00 and 14:00-17:30. To address the issue of noise the appellants have suggested that a noise assessment could be conditioned and could accompany the reserved matters application.
8. Whilst I acknowledge the points raised by the appellants, the lack of complaints from existing properties, does not necessarily mean that noise levels would be acceptable. There is potential that noise levels would be such that they cannot be sufficiently mitigated to a level that would not cause significant harm to the living conditions of the future occupants. I note that noise can often be eliminated by design and additional mitigation features. Whilst the proposed development is only outline and the plans indicative, the noise experienced in the outdoor space could still be unacceptable. Therefore, without the evidence to support the claims made by the appellants, I am unable to determine whether the noise levels from the garage would be acceptable.
9. Consequently, I must take a precautionary approach and find the proposed development would cause harm to the living conditions of the future occupiers with particular reference to noise. Therefore, it would be contrary to policies SC/10 and HQ/1 of the SCLP (2018). These policies seek to protect the health and amenity of occupiers from development which would create unacceptable impacts.

Highway safety

10. The proposed development would have an access from Cow Lane which would be shared with No 14 Cow Lane. The appellants have a right of access over this route and the access is unrestricted. The Local Highway Authority (LHA) had

submitted objections to the use of the access for the proposed development, due to its width and the lack of adequate visibility splays, and not demonstrating where the existing parking provision associated with the adjacent garage would be accommodated. In response, the appellants submitted additional information to the Council².

11. The Council has stated that the existing access from Cow Lane is not currently in use and has not been used by the garage in recent years. However, the appellants have suggested that the access has been used historically by occupants of No 7 The Green. No 14 have also suggested that the access route has been used for occasional access to the garage. Whilst, I do not have any substantive evidence before me to demonstrate how frequently the access has been used, the appellants have a right of access and could use it any time. However, the proposed development and its use must be assessed on its own merits.
12. I acknowledge the findings of the appeal³ example in the appellant's Highways and Transportation Report⁴, in terms of the visibility and lack of accidents. However, I do not have the accompanying plans to determine if the appeal is directly comparable to the one before me, therefore, I only give this limited weight.
13. Although the access route for the proposed development is below the required standard by the LHA, drawing 316/15/0002 shows that two cars could pass each other on the driveway to the site. In the Highways and Transportation Report (2019), it has been shown that in the last 20 years there have not been any recorded accidents on Cow Lane. It has also been suggested that existing properties may reverse on to the highway without causing any recorded accidents, namely No 22 Cow Lane. However, I only give this example limited weight, as the vehicle could reverse onto the driveway and leave in a forward-facing position. I have also been directed to extracts from Manual for Streets 2, which sets out that unless there is a local accident problem, highlighting a local safety issue, then failure to provide the desired splay would not necessarily lead to an increase in accidents.
14. The proposed development is for 2 dwellings, therefore, the vehicle movements from the site would be limited. Whilst the standards set out by the LHA have not been fully met, having considered the evidence before me, I find that the proposal would still achieve an adequate level of visibility and the access could accommodate cars in a way which would not be detrimental to highway safety.
15. In terms of the loss of parking provision, the land to the rear of the garage does not appear to be in extensive use for the storage of vehicles. The appellants have stated that the garage tenant parks a number of his own cars on the site, and that these can be relocated to land elsewhere. The appellants have provided a 2017 planning permission⁵ in the name of Mr Butler, the garage Tenant. This shows that the site he has secured planning permission on has land around it, which could be used to store the Tenant's own vehicles if he wished. Whilst I note that the loss of the land would reduce the opportunity to store vehicles, I do not have substantive evidence before me, to suggest that

² Covering Letter from Kingdom TP - Site Access Strategy Review (dated 25 January 2019)

³ APP/F2605/W/17/3192099

⁴ Highways and Transportation Appeal Report – Strategic Land Solutions (June 2019)

⁵ Planning application reference 17/00533/FUL

the loss of this land, would subsequently lead to issues of highway safety surrounding the site.

16. Consequently, the proposed development would not have an unacceptable impact on highway safety or have a severe impact on the road network. Therefore, it would accord with Paragraph 109 of the National Planning Policy Framework, which states 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.

The economic viability of the adjacent garage

17. The proposed development would lead to a loss of land currently attributed to the adjacent garage. However, on my site visit I noted that the majority of the land area did not appear to be a functional part of the business use. The appellants suggest that the current tenant has been shown the plans, and that the lack of a response means that there is no issue. However, this is neutral in the planning balance.
18. As stated above, the appellants suggest that the garage tenant parks a number of his own cars on the site and that these can be relocated to land elsewhere. In terms of parking facilities for the business, the proposed layout⁶ shows that 11 cars parking spaces can be accommodated on the garage land, which excludes cars in the workshop. The figure of 11 parking spaces was used as this reflected the number of vehicles parked across the site during the Agent's site visit. However, I do not have any substantive evidence before me to suggest this figure would not be adequate for the business.
19. The Council states there was a planning application submitted for use of the land for parking, and that vehicles have been parked on the appeal site since January 2000. However, I noted on my site visit that the appearance of the land, being overgrown, did not suggest that all of the site was in active use, or an essential part of the business. The appellants suggest that the needs of the garage have changed over time as car parts are now sourced quicker, meaning less cars need to be parked on site for long periods. The loss of this land would not lead to an unacceptable loss of the service provided by the garage, or mean the business could no longer operate, with the main function of the business being located to the south of the appeal site.
20. Consequently, I conclude that the proposed development would not significantly harm the economic viability of the adjacent garage. Therefore, it would accord with Policy SC/3 of the SCLP (2018). This policy seeks to protect the loss of loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

Biodiversity

21. Policy NH/4 of the SCLP Plan (2018) states that where there are grounds to believe that a proposal may affect a protected species, applicants will be expected to provide an adequate level of survey information and site assessment, to establish the extent of a potential impact. Part four of the policy also states that survey information and site assessment should be provided prior to determination of the planning application. Whilst I note that the

⁶ Plan reference 1139-08

potential presence of a protected species on site, namely, Great Crested Newts (GCN), was raised late in the process of this appeal by the Council's Ecologist, it is an issue that must be given due consideration.

22. The appellants have provided details of other applications nearby that did not have a presence of GCN on them or did not undertake an ecological survey. However, this does not rule out their presence on the appeal site. I note that the appellants have raised the issue of the nearby barriers, such as the road, to the nearby ponds. However, the character of the site, and the comments of the Council, are sufficient indication for there to be a risk that protected species could be affected by the proposal. Thus, without an ecological survey, or substantive evidence to demonstrate otherwise, I am unable to determine if the proposed development would cause harm to GCN or what mitigation might be appropriate if they were present.
23. Consequently, as a precaution, I must find that the proposed development would cause harm to the biodiversity of the site, with particular reference to GCN. Therefore, it would be contrary to Policy NH/4 of the SCLP Plan (2018). This policy, amongst other things, requires applicants to provide an adequate level of ecological survey information and site assessment to establish the extent of a potential impact on Protected Species.

Other matters

24. I acknowledge the comments made in regard to the Council's handling of the planning application. However, these matters are not determinative for this appeal.

Planning balance and conclusion

25. The appellant has suggested the Council cannot demonstrate a 5 year supply of deliverable housing.
26. The appellants have suggested that the proposed development would be located in a sustainable village on a brownfield site, which benefits from amenities, and its close proximity to other villages well served by Public Transport via the Guided Busway. There would also be economic benefits from construction and new customers and employees for local businesses and services, as well as the social benefit of new homes. There would also be environment benefits such as bat and bird boxes and cycle parking.
27. However, even if I accept the shortfall suggested by the appellant, the combined benefits are modest. Consequently, they are significantly and demonstrably outweighed by the harm I have identified to living conditions, ecology and the local economy.
28. That said, other material considerations do not indicate that my decision should be taken other than in accordance with the development plan.
29. The proposal would not accord with the development plan, the appeal should therefore, be dismissed, and planning permission refused.

D Peppitt

INSPECTOR