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## Appeal Decision

Site visit made on 30 October 2019

**by I A Dyer BSc (Eng) MIHT**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 December 2019**

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**Appeal Ref: APP/W3520/W/19/3229751**

**Land adjacent to Chilton Leys Barn, Forest Road, Onehouse, Stowmarket, Suffolk IP14 3EN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
  - The appeal is made by R&C Gough against the decision of Mid Suffolk District Council.
  - The application Ref DC/18/04734, dated 25 October 2018, was refused by notice dated 29 November 2018.
  - The development proposed is the erection of 3-4 residential dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. As explained in the Planning Practice Guidance (the Guidance), the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for the proposed development from the technical detail.
3. In respect of residential development, an applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, permission in principle has been sought for the erection of a minimum of three and a maximum of four dwellings at the appeal site. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the above referenced Order and the Guidance.

### Main Issues

4. The PPG further advises that the scope of permission in principle is limited to location, land use and amount of development. With reference to this and to the Council's reasons for refusing the application, the main issue is whether the principle of the proposed development is acceptable with specific regard to: -
  - i) highway safety; and: -
  - ii) the character and appearance of the surrounding area with particular reference to trees.

## Reasons

5. The appeal site lies to the north of Chiltern Leys Barn, a substantial dwelling set in an extensive plot of which the appeal site forms a part. It is currently laid to grass and is bounded on its northern, western and eastern sides by substantial conifer hedges. Its southern side, facing towards the rear of Chiltern Leys Barn, is open. The land to the east of the site has planning permission for housing development, Council Ref 1867/17, (the 2017 permission) and to the south east lies a large housing site known as Chilton Leys. The land to the south west and north of the site is open countryside.

### *Highway Safety*

6. The National Planning Policy Framework -2019- (the Framework) 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.
7. Policy T10 of the Mid Suffolk Local Plan -1998- (the Local Plan) requires the provision of safe access and egress from the site. Similarly, the Framework aims to create places that are safe, secure and attractive and which minimise the scope for conflicts between pedestrians, cyclists and vehicles. The aims of Policy T10 are broadly in accordance with the aims of the Framework that seek to promote sustainable transport.
8. The site is accessed from Forest Road/Starhouse Lane, a classified County Road (the C440), along a tree-lined metalled drive. This drive meets the C440 on the outside of a bend. At this point the C440 is subject to a 60 MPH mandatory speed limit. The C440 provides a link between settlements and, in the vicinity of the access, has the character of a rural road with little active frontage and few accesses.
9. The inside of the bend has dense mature planting close to the edge of the carriageway. This restricts visibility for drivers, both from the drive and forward along the C440, particularly for drivers travelling towards Onehouse from the Stowmarket direction.
10. At the time of my site visit, I observed that vehicle speeds on the C440 were restricted by the tightness of the bend and the lack of forward visibility and the Highway Authority have recognised the speed limiting effects of the road alignment and planting. They consider that the design speed for the access could be reduced below the mandatory speed limit, citing the use of 50 MPH as acceptable. However, neither they nor the appellant have provided a vehicular speed survey to justify a reduction in the design speed for the road, nor shown the visibility splays that can be achieved on a plan.
11. My attention has been drawn to an appeal decision at Binfield Heath<sup>1</sup>. I note the Inspector's comments on the use of highway design guidance, together with his comments on lack of evidence provided by either side. In this instance, the Highway Authority have explained their reasoning for the use of the Design Manual for Roads and Bridges (DMRB) as a design standard in this particular case, but I note the lack of supporting evidence from either side in regard to traffic flows, vehicle approach speeds, proportion of heavy traffic or achievable visibility splays.

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<sup>1</sup> PINS Ref APP/Q3115/W/17/3179874

12. Manual for Streets 2 (2010) (MfS) sets out design principles for non-trunk Roads, whilst DMRB is the appropriate design standard for motorways and other trunk roads. However, there is a degree of overlap between the documents and, whilst it is recommended that MfS should be used as a starting point for any scheme affecting non-trunk roads, it is also appropriate, in certain circumstances to consider the guidance in both MfS and DMRB together. Such circumstances would occur where higher speeds are prevalent, in which case further consideration should be made in regard to the function, characteristics of the road and likely driver behaviour.
13. Given the nature of the C440 in the locality of the access in regard to its primary function linking settlements, layout and the degree of active frontage the movement status of the road dominates over the place status and it would be appropriate to consider the use of DMRB as the basis for required visibility standards should it be demonstrated that the road experiences higher traffic speeds.
14. However, in the absence of a supporting vehicle speed survey to determine vehicle speeds, or any assessment of available visibility there is insufficient evidence before me upon which to determine which design guidance is more appropriate to calculate necessary visibility, or whether such visibility can be achieved.
15. Visibility splays are required to ensure that emerging and approaching drivers have sufficient warning of each other's presence and intentions to allow safe manoeuvring. To ensure the availability of visibility splays they should be either under the control of the owner of the access, or in public ownership.
16. The traffic associated with the additional dwellings would intensify the use of the access, albeit that there is sufficient space within the site to allow vehicles to turn and leave in forward gear. No accident history has been identified at, or in the vicinity of, this junction. However, the potential for vehicular conflict is currently limited by virtue of the low number of turning movements.
17. Given the potential risk to the public I have decided to take a precautionary approach and, based upon the evidence before me, it has not been demonstrated that the available forward visibility on the bend or visibility for drivers egressing the driveway is adequate to safeguard users of the public highway, nor that there is potential to provide adequate visibility with land within the public highway or the control of the appellants.
18. My attention has been drawn to the 2017 permission for development at the adjacent site, which is an outline permission. The appellant has cited the absence of highway improvements at the access to that development, which would be shared with the appeal proposal. Whilst I have little information before me regarding that application, I note that on the plan provided by the Council, there is an area of proposed road widening at the access. The plan also shows that the land under the control of the applicants was more extensive with greater scope for improvements to the access.
19. The landowners who have benefit of that permission have clarified in their written representation that they have discussed other improvements to the access with the Highway Authority, such as the localised widening of the drive, using land within their control.

20. Whilst the appellants consider that the 2017 permission sets a precedent that makes this proposal acceptable, I do not consider that the circumstances of the two proposals are directly comparable and I have determined this appeal on its own merits.
21. I therefore conclude that the proposal fails to demonstrate that it would not result in harm to highway safety, or that appropriate mitigation is available to address this harm. The proposal is therefore contrary to saved Policy T10 of the Local Plan which requires the provision of safe access and egress from the site. Similarly, the proposal would be contrary to those parts of the Framework that aim to create places that are safe, secure and attractive and which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

*Character and appearance*

22. The proposal site sits on elevated land and would be prominent in views from the outskirts of Onehouse and the C440. The trees along the access drive are also prominent in these views. These trees make a positive contribution to the character and appearance of the landscape.
23. Policy GP1 of the Local Plan requires that proposals should maintain or enhance the character and appearance of their surroundings, and that landscaping should be regarded as an integral part of design proposals. The aims of this policy are broadly in accordance with the aims of those sections of the Framework that seek to achieve well-designed places.
24. The metalled access drive is too narrow for two vehicles to pass and visibility from one end of the drive to the other is restricted by the alignment of the drive and the existing trees. It is therefore likely that vehicles will need to pass each other as they travel along the drive, pulling into the verge to the side when they do. The proximity of the trees to the drive means that it is likely that areas of the verges are within the root protection areas (RPAs) of the trees and that vehicles would overrun the RPAs.
25. Whilst this conflict between vehicles, with resultant overrunning of the RPAs is likely to be occurring, to a degree, at present the proposal would be likely to increase the number of conflicts and thus the amount of such overrunning, with potential for damage to the trees. I have no evidence before me of any measures that could be delivered to mitigate the risk of damage to the trees, and so I cannot be assured of their retention.
26. Given the importance that I have placed upon the contribution that the trees make towards the character and appearance of the landscape the loss, or damage to the trees would, in this instance, constitute harm.
27. The appellants have proposed that the increase in traffic from the proposal would be offset by a reduction in traffic accessing the agricultural land around the site. However, I have little evidence before me to demonstrate that this access is no longer necessary or feasible and that any reduction in the movements of agricultural traffic on the drive would be permanent.
28. Again, the appellants have raised the matter of the 2017 permission and the absence of agreed mitigation on the trees during that application. However, in that case, the applicants have potential to provide mitigation within the land under their control.

29. The site itself is well contained visually within the hedges bounding it and so its impact upon the wider countryside is limited. Further the appellants control the land within the hedge and it would be feasible to provide additional planting to mitigate any visual effect of the development at submission of technical matters, should this be necessary.
30. I therefore conclude that, although the buildings of the proposal would be screened from the wider area by existing planting, the proposal is likely to result in harm to the character and appearance of the surrounding area and would, therefore, be contrary to Policy GP1 of the Local Plan. Similarly, the proposal would be contrary to those parts of the Framework that seek to ensure good design.

### **Other Matters**

31. The site is adjacent to a residential development with extant planning permissions and would form a relatively minor extension to that development to form a logical boundary. To this end I note that the Council has no fundamental objection to the proposal in principle, subject to their being satisfied in regard to certain matters relating to highway safety and the effect of the proposal on the landscape. These matters have been considered above.
32. I note that the appellants consider that the Council have treated them badly, been inconsistent in their decision making and been unreasonable. This, however, is a matter between the appellants and the Council and lies outside of the scope of this appeal.

### **Planning Balance**

33. The appellants have cited two appeals<sup>2</sup> in which the Inspectors concluded that the Council cannot demonstrate a 5-year supply of housing land and there is nothing before me that would lead me to a different conclusion in this respect. The appellants assert that, as the policies restricting development in the countryside are out of date, this, and the lack of a 5-year supply of housing land means that the tilted balance under paragraph 11 d) of the Framework is triggered.
34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise. In reaching my decision I must consider the development plan and Framework as a whole, even though the decision letter cites only a limited number of policies which are said to be breached. Therefore, I must deal with all policies that have a bearing on the proposals and, in line with the Framework, I must identify those which are most important for determining the appeal and whether they should be considered to be out-of-date.
35. The Local Plan pre-dates the Framework and so policies within it should be assessed and given weight in terms of their consistency with the aims of the Framework. The policies within the Local Plan relating to highway safety and design are broadly consistent with the aims and policies set out in the Framework and so moderate weight can be applied to them.

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<sup>2</sup> Pins Ref APP/W3520/W/18/3217559 and APP/W3520/W/18/3194926

36. The development would provide benefits in terms of delivering three or four additional homes to boost housing supply. The Framework identifies that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. There would be benefits to the local economy in terms of short term employment in the construction industry and longer term support to local shops and businesses. The proposal is situated on the edge of a wider development and is relatively close to other settlements and is not, therefore, isolated. Taken together, and given the scale of the development, these benefits carry moderate weight.
37. I have found that the development would result in material harm to highway safety and the character and appearance of the surrounding area, contrary to policies within the Local Plan and the aims of the Framework. These are significant factors weighing against the scheme.
38. In conclusion the identified harm would significantly and demonstrably outweigh the benefits provided by the scheme when assessed against the policies in the Framework taken as a whole.

### **Conclusion**

39. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

*I Dyer*

INSPECTOR