
Appeal Decision

Site visit made on 21 January 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State.

Decision date: Wednesday, 26 February 2020

Appeal Ref: APP/W0530/W/19/3241667

Haelen Feld Farm, Twenty Pence Road, Cottenham, Cambridge CB24 8PS

- 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 Miss Helen Baker against South Cambridgeshire District Council.
 - The application Ref S/1269/19/OL, is dated 2 April 2019.
 - The development proposed is outline planning application for a single dwelling following the approval of the change of use of an agricultural building to a dwelling under class Q of the GPDO 2015.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is against the failure of South Cambridgeshire District Council to give notice within the prescribed period of a decision on an application for outlined planning permission. I have a statement of case from the Council indicating their position on the appeal proposal, should they have determined the application. I am therefore clear on the main points at issue in this appeal.
3. The application was submitted in outline with all matters reserved and I have determined the appeal on this basis.
4. There is a discrepancy in the address of the site given on the application documentation and the appeal documentation. On the application documentation the address is given as Haelen Feld Farm, whilst on the appeal documentation the address is Haelen Field Farm. I have checked the other application documents and the address is consistently given as Haelen Feld Farm. I have therefore used the address of the site given on the application documentation.

Main Issues

5. The main issue is whether the appeal site is a suitable location for a new dwelling having regard to local planning policy, the character and appearance of the surrounding area, and accessibility.

6. Reasons

7. The site lies in an open countryside location away from the main settlements of the District. It constitutes an area of land, currently undefined on the ground,

surrounded by agricultural land and buildings. Access is on to the main road running alongside the site, Twenty Pence Road. It is around two miles from the village of Cottenham. Whilst there are other dwellings on this part of Twenty Pence Road these are sporadic and randomly spaced. The area retains a predominantly open countryside character.

8. The development plan for the area is the South Cambridgeshire Local Plan (SCLP) 2018. An objective of the plan is to protect the character of South Cambridgeshire. It expects all new development to enhance the area, have access to services and facilities and to maximise the potential for journeys to be undertaken by sustainable modes of transport.
9. The strategy is set out in Policy S/6. This states that development in the rural areas will be limited, with a focus on allocations for jobs and housing in rural centres and minor rural centres. Developments for single dwellings are directed to rural settlements in accordance with its categorisation of villages.
10. The development plan defines at policy S/7 development frameworks for villages. Outside development frameworks only allocations within Neighbourhood Plans that are in force or development for agriculture or other uses which need to be located in the countryside will be permitted.
11. The village of Cottenham is defined as a rural centre. This allows for development or redevelopment within its development framework. It is accepted by the parties that the appeal proposal lies outside Cottenham's development framework. It is also not part of the appellant's case that the development is required for any use that needs to be located in the countryside.
12. I find the appeal proposal is in conflict with the SCLP. It would represent a form of development that would be discordant with the prevailing open countryside appearance of this part of Twenty Pence Road by introducing a new dwelling with its associated domestic features. Whilst the strategy and objectives of the plan are generally positive towards development, it also seeks to protect the rural character of the District. The appeal proposal would have the effect of beginning the consolidation of residential development in this area to the detriment of its open countryside appearance and rural character.
13. It also lies a significant distance from the main services in Cottenham and would not be readily accessible by sustainable means of transport such as bus, cycling or walking. It is also part of the SCLP's strategy to maximise the potential for journeys to be undertaken by sustainable modes of transport. A new dwelling in this location would not do this, as it is at least one mile to the nearest bus stop and two miles into Cottenham along a busy road without a continuous footpath. I therefore find conflict with this aspect of the SCLP.
14. In support of the proposal the appellant has argued there is a 'fall back' position created by the prior approval of the conversion of an agricultural building to a dwelling near the appeal site. This has been done using Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). The conversion itself has yet to take place. The appellant has argued that this permission will be implemented should the proposal that is the subject of this appeal be dismissed. The High Court has

- decided that 'fall back' positions are other material considerations that decision makers need to take into account in reaching a decision¹.
15. No details have been supplied of the prior approval granted under this part of the GPDO by either party. However, it not located on the appeal site as there are no buildings, agricultural or otherwise on the site.
 16. In terms of considering the weight to be attached to a 'fall back' position I have to consider whether it would be possible to carry out both developments, whether that would be an acceptable outcome or whether the 'fall back' position would be worse than the appeal proposal. I also need to consider if there is a greater than a theoretical possibility that the 'fall back' position might be implemented.
 17. I find that there is a greater than theoretical possibility that the 'fall back' development will take place. I base this judgement on the fact that the appellant has gone through the prior approval process to establish the permitted development rights for the building under the GPDO. I therefore give the 'fall back' position some weight as a material consideration.
 18. However, I have more difficulty with the siting of the appeal proposal in relation to the building which benefits from the GPDO rights. It is clear that there are no buildings within the appeal site. There is an extensive range of agricultural buildings facing the entrance to the site and a pole barn lying parallel to Twenty Pence Road. If any or all of these buildings benefit from the prior approval granted under the relevant class of the GPDO then it can be carried out as well as the appeal proposal, were that to be allowed.
 19. I have already found that the appeal proposal is in conflict with the development plan for the reasons set out in paragraphs 12 and 13. If the appeal proposal were to be granted there is a real possibility of two new dwellings being created in this location. This would increase the harm caused by the appeal proposal through the proliferation of new dwellings, the increase in domestic activity and the impact that would have on the character and appearance of the open countryside in this location.
 20. The appellant has argued that the existing prior approval for the conversion can be extinguished by a condition requiring the demolition of the barn with the prior approval for its conversion to a dwelling. In general, the implementation of an existing planning approval cannot be prevented by a condition. This can either be carried out by the local planning authority or the Secretary of State revoking the permission under the provisions of s97 and s100 of the Town and Country Planning Act 1990, but not by condition.
 21. It is also open to the appellant to enter into a binding obligation in which they would agree not to carry out a previously approved development. However, I have no such obligation before me.
 22. The appellant has argued Policy H/14 of the SCLP, replacement dwellings should apply to the appeal proposal. However, the appeal proposal would not represent a 'replacement dwelling' as the dwelling it purports to 'replace' has not yet been started. Furthermore, the construction of the appeal proposal would not prevent the implementation of the permitted dwelling, without either the formal revocation of the permission in accordance with the provisions of the

¹ Raffaele Gambone v SSCLG v Wolverhampton City Council, [2014], [EWHC], 952

- 1990 Act, or a completed binding obligation from the appellant agreeing not to implement the permitted dwelling. Neither of these things applies in this case.
23. The appellant has cited a number of appeal decisions in support of her case. The South Norfolk decision is of limited relevance to this appeal. The Inspector in that case found that the site was adjacent to a cluster of houses, represented 'rounding off' and was a reasonable distance to a wide range of services. The appeal site before me is not adjacent to a cluster of houses, nor does it represent rounding off and I do not consider it to be within a reasonable distance to a wide range of services. I therefore do not consider the arguments made in that case, including that concerning the contribution made by small sites to a 5-year supply of deliverable housing sites, are capable of outweighing the conflict with the development plan I have identified.
24. In the South Kesteven case the new dwelling granted permission is clearly a direct replacement, on the same footprint, for the buildings that were granted prior approval under GPDO. This meant that the proposal granted permission under this part of the GPDO was incapable of being implemented should the planning permission granted on appeal be carried out. It is clear from the proposals before me that both the appeal proposal and the approval under GPDO are capable of being carried out independently of each other. I therefore find that this case does not outweigh the conflict with the development plan.
25. The Bedford Borough Council case is similar to the above, in that it refers to a large barn given approval to be converted to a dwelling under GDPO being located on the appeal site. This is not the case in the appeal before me, the barn to be converted to a dwelling under the GPDO is not on the appeal site.
26. Whilst I have found that the existence of a 'fall back' position is a material consideration in this case, I find that I can give it little weight as the appeal proposal and the dwelling permitted under the GPDO are both capable of being implemented should the appeal proposal be granted. The harm caused by the appeal proposal would not be comparable or less than the 'fall back' position.
27. I find that the appeal proposal is in conflict with the policies of the development plan, the SCLP, and that the material considerations advanced by the appellant are not of sufficient weight to lead me to allow the appeal and grant planning permission.

Other matter

28. I have also had regard to the appellant's argument concerning the contribution the site would make to the overall supply of deliverable housing sites in the area. I find that in view of the harm the proposal would cause, set out above, this argument does not outweigh my conclusion that the appeal should be dismissed.

Conclusion

29. I find that having regard to all matters before me, including the policies of the development plan, when taken as a whole the appeal should be dismissed.

Peter Mark Sturgess

INSPECTOR