
Appeal Decision

Site visit made on 16 June 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 July 2020

Appeal Ref: APP/C1570/W/20/3246546

Land to the North of De Vigier Avenue, Saffron Walden CB10 2BN

- 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 Turnstone St Neots Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/18/2297/OP, dated 13 August 2018, was refused by notice dated 3 October 2019.
 - The development proposed is described in the application form as Outline planning permission with all matters reserved except for access for the erection of up to 12 dwellings with associated landscaping, parking and supporting infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address of the appeal site differs slightly on the application form to that used on the appeal form and on the Council's decision notice. I have used the address sited on the appeal form and decision notice as this effectively identifies the site.
3. Outline planning permission is sought with the matter of access to be considered in detail at this stage and matters of appearance, landscaping, layout and scale reserved for future consideration. I have had regard to the access details provided and have determined the appeal on that basis. I have treated all other submitted information as illustrative.
4. The appellant has submitted a signed Planning Obligation, dated 21 May 2020, pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended), which would take effect should planning permission be granted. I shall return to this later in my decision.
5. I note the references to the draft Uttlesford Local Plan (eULP) and the recommendation of the Local Plan Inspectors (January 2020) that it should be withdrawn. It, therefore, appears likely that this will be the case. However, whilst some reference is made in the appeal documents to the emerging policies, none are cited in the reason for refusal. Consequently, I attach it limited weight in the determination of this appeal.

Main Issue

6. The main issue is the effect of the proposed development on biodiversity, with particular regard to calcareous grassland and Common Lizard.

Reasons

7. The appeal site is triangular in shape with agricultural land bordering the north western boundary. A large, new residential and commercial development site (hereafter 'the Ridgeons site'), abuts the eastern boundary. Access to the appeal site would be through the Ridgeons site. The site comprises a mounded area of dense scrub and grassland.
8. The Council refused the proposed development solely on the grounds of harmful impact to protected species, priority species, wildlife, habitat and biodiversity. It is clear from the evidence submitted that the site has biodiversity value and that its development, in the form proposed, would result in loss of habitats and, therefore, potential harm to the aforementioned biodiversity features. This is because the majority of the vegetation on the site would be removed to allow for the appeal scheme.
9. The planning application was accompanied by a number of professional technical supporting documents in respect of ecological matters, including a Preliminary Ecological Appraisal (PEA), a reptile survey and a botanical assessment.
10. The PEA identified potential impacts relating to protected species and other biodiversity assets, in particular calcareous grassland, Common Lizards, bats, nesting birds and hedgehogs. The PEA, along with the other assessments provided, concluded that the potential impacts can be adequately mitigated and/or compensated for and could result in biodiversity net gain. The County Ecologist reviewed all the information and considered that the proposed measures would make the appeal scheme acceptable in ecological terms, subject to the imposition of conditions to secure delivery of the proposed measures.
11. Although the Council disagree and consider the proposed development would be harmful to biodiversity features, irrespective of the intended mitigation and compensatory measures, it has not provided any substantive evidence to challenge the findings and recommendations of the appellant's technical surveys or the advice of the County Ecologist. In the absence of such evidence, I consider that the appellant's technical reports provide sufficient comfort over the scale of any impacts, and that these could be adequately addressed by the measures proposed, subject to suitable mechanisms being secured to ensure their delivery.
12. However, of particular importance is the presence of calcareous grassland and a medium population of Common Lizard on the appeal site. The appeal scheme would require the translocation of around 500m² of calcareous grassland and the capture and translocation of the population of Common Lizard to 'adjacent receptor sites'. These sites are proposed to be within the neighbouring 'Ridgeons' site. Whilst the evidence indicates that the proposed translocation to these receptor sites could be acceptable, I am not satisfied that agreement with the owner of the Ridgeons' site has been, or would necessarily be, secured.

13. The County Ecologist has recommended a number of planning conditions to overcome the effects of the development. However, they further advised that, for those measures that are off-site, amendments to an existing S106 agreement for the Ridgeons' site would need to be incorporated and secured prior to commencement of development. I have not had sight of the existing S106 agreement for the Ridgeons site, nor details of what the amendments that would be required to that agreement would be. Additionally, whilst I have before me a S106 agreement, the obligations within do not relate to these matters.
14. The appellant makes clear in their letter to the Council dated 1 May 2019, that the Ridgeons site is not within their ownership. Therefore, as the receptor sites are not in the control of either the appellant or the current owner of the appeal site (the Council), in the absence of a S106 agreement with the third party landowner, I cannot be certain that the measures proposed for the translocations and the future long-term management of the receptor sites, would or could be delivered as intended.
15. A planning condition has been suggested that appears to seek a legal agreement by which the long-term implementation of the plan would be secured. However, the national Planning Practice Guidance (PPG)¹ advises against using negatively worded conditions limiting development that can take place until a planning obligation or other agreement has been entered into. I acknowledge that the PPG also states that in exceptional circumstances a negatively worded condition of this sort may be appropriate. However, I do not consider that the appeal scheme, by virtue of the scale of development proposed, amounts to exceptional circumstances.
16. Alternatively, a positively worded condition which requires the developer to enter into a planning obligation under S106 or an agreement under other powers is unlikely to pass the test of enforceability. The PPG further advises that the best way to deliver certainty for all parties is to ensure that any planning obligation or other agreement is entered into prior to granting planning permission.
17. Paragraph 175 of the National Planning Policy Framework (the Framework) states that permission should be refused if significant harm to biodiversity caused by development cannot be avoided, adequately mitigated, or, as a last resort, compensated for. Although the evidence persuades me that the harm that would result from the proposed development could be compensated for by the measures set out, in this instance, I consider that there is no appropriate mechanism before me by which I can be certain that the compensatory measures would be secured.
18. Consequently, I conclude that the proposal fails to demonstrate that its effects on biodiversity, with particular regard to calcareous grassland and Common Lizard would be acceptable. Thus, the proposal is contrary to Policy GEN7 of the Uttlesford Local Plan 2005 (ULP) and the Framework, which seek to conserve and enhance biodiversity.

¹ Paragraph: 010 Reference ID: 21a-010-20190723

Other Matters

19. The site lies outside of any settlement boundary as defined within the ULP. The Council has not raised the location of the site as a cause for concern. I acknowledge that the site appears as a draft allocation for residential development in the eULP and that the status of the eULP is unclear. Nevertheless, it has not been suggested by the main parties that the draft allocation has been identified as an issue by the Local Plan Inspectors. As such, I have no substantive evidence to conclude that there would be harm arising from the proposed development's location.
20. On the basis of my conclusions on the main issue, it has not been necessary for me to reach a conclusion on the effectiveness or otherwise of the obligations set out in the submitted S106 agreement. This is with the exception of the obligation relating to the provision of affordable housing. This is because the provision of affordable housing would be a benefit of the proposed development to be weighed in the planning balance against any identified harms.
21. However, notwithstanding the provisions of the S106 agreement, the appellant disputes the Council's assertion that the proposed development triggers a requirement for the provision of affordable housing. ULP Policy H9 sets out that the Council will seek an affordable housing requirement of 40% of the total provision of housing on appropriate allocated or windfall sites, having regard to the up to date Housing Needs Survey, market and site considerations.
22. The supporting text provides some clarification of what 'an appropriate' site might be, by specifying that within Saffron Walden, on sites of 0.5 hectares or of 15 dwellings or more 40% affordable housing will be negotiated. The Council does not dispute that the site is 0.49 hectares, nor do they argue that the number of dwellings proposed triggers the requirement. The Council considers that the site has been artificially sub-divided from the adjacent 'Ridgeons' site and, therefore, should provide affordable housing by virtue of having met the triggers by being part of a larger residential development.
23. However, on the evidence before me relating to historic and current ownership of the two sites, and in the absence of any specific policy requirement for determining instances whereby artificial sub-division of a site is alleged, I am satisfied that the proposal is not 'an appropriate' site for the purposes of ULP Policy H9 and does not therefore trigger an affordable housing contribution. Consequently, this matter attracts no further weight in my conclusions.
24. Reference has been made to a covenant on the site that requires it to be kept as public open space for the benefit of the town. However, covenants are civil matters outside of the control of the planning system. As such, this matter cannot be taken into account in the determination of this appeal.
25. I note the frustrations expressed by the appellant in relation to the level of communication from the Council leading up to this appeal. However, this is not a matter for this appeal which I have determined on its planning merits and based on the evidence before me.
26. An interested party has raised concerns regarding the Council's committee decision making process. However, this is a matter that would need to be taken up with the Council in the first instance and in determining the appeal I have only had regard to the planning merits of the case.

Planning Balance

27. It is not disputed that the Council is unable to demonstrate a 5 year supply of deliverable housing sites, although the main parties disagree on the level of the shortfall. The worst-case supply position, as suggested by the appellant, is that only 2.68 years supply can be demonstrated. The Council considers the supply to be 3.29 years. In either case, the shortfall is significant and the provisions of paragraph 11 d) of the Framework are triggered and the presumption in favour of sustainable development applies.
28. I note the contribution that would be made to the supply of housing by this site. The delivery of up to 12 dwellings would make a meaningful contribution to the overall supply and mix of housing in the area. I afford this benefit moderate weight.
29. I am also mindful that the Framework acknowledges at Paragraph 68 that small sites can make an important contribution to meeting the housing requirements of an area.
30. There would be economic investment, and therefore benefits, resulting from both the construction and subsequent occupation of the proposed development. These are benefits which weigh in favour of the proposal. Other issues, where no material harm has been identified, would be neutral in the overall planning balance.
31. However, I have found that the proposal has failed to demonstrate that its effects on biodiversity would be acceptable. This is a matter to which I give significant weight against the granting of planning permission.
32. Overall, I find that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. This is the case even when taking into consideration the significant housing land supply shortfall. The proposal would be contrary to the development plan and this conflict is not outweighed by other material considerations including the Framework.

Conclusion

33. For the above reasons the appeal is dismissed.

S Tudhope
Inspector