
Appeal Decision

Site visit made on 6 July 2020

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th July 2020

Appeal Ref: APP/D0515/W/20/3245685

Brewin Oaks, City Road, March PE15 9LT

- 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 Execors of Mrs P Brewin c/o Akhil Choudhury against the decision of Fenland District Council.
 - The application Ref F/YR18/0345/FDL, dated 27 March 2018, was refused by notice dated 22 November 2019.
 - The development is described on the application form as flats and houses (max. 53 dwellings) with associated parking and external amenity areas.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was submitted in outline form with all matters to be reserved for future consideration. I shall consider the appeal on this basis. I shall treat the accompanying plans which show a suggested layout and design of the flats and houses as indicative only.
3. During the course of the Council's consideration of the planning application, the number of dwellings was reduced to 45 (41 flats and 4 houses) and it was on that basis that the application was determined. Therefore, I have assessed the proposal on this basis.

Background and Main Issues

4. The Officer report to the Planning Committee, which considered the planning application the subject of this appeal, recommended that the planning application was granted subject to the signing of a S106 legal agreement (S106). The S106 was required to secure affordable housing on the appeal site together with financial contributions towards Public Open Space, Education and Libraries.
5. The Planning Committee refused the planning application on grounds relating to character and appearance and living conditions. However, no S106 has been submitted as part of the appeal, despite the appellants agreeing to enter into one.
6. Within that context the main issues are:

- Whether or not the proposal makes adequate provision for affordable housing and infrastructure;
- The effect of the proposal on the character and appearance of the area; and
- The effect of the proposal on the living conditions of neighbouring occupiers with particular regard to outlook, privacy and noise.

Reasons

Affordable housing and Infrastructure

7. Policy LP13 of the Fenland District Local Plan 2014 (the Local Plan) states that planning permission will only be granted if it can be demonstrated that there is, or will be, sufficient infrastructure capacity to support and meet all the requirements arising from the proposed development.
8. Policy LP5 of the Local Plan requires that on all housing development sites of 10 dwellings or more, 25% of the dwellings should be provided as affordable houses. This would result in a requirement for 11 dwellings on the appeal site to be affordable. The Council's Housing Enabling Officer supports this provision delivered as 8 affordable rented homes and 3 intermediate tenure homes.
9. The Council's Developer Contributions Supplementary Planning Document 2015 states that for development sites of the size such as the appeal site, it is expected that contributions would be made to neighbourhood/Town Parks, Children's Play, Natural Greenspace, Allotments and Outdoor Sports. The contributions should be made through off-site provision.
10. The evidence before me shows that existing primary schools and early years provision facilities are at capacity, and the proposed development would increase demand for places. On that basis, Cambridgeshire County Council (CCC) as Education Authority has requested a contribution in total of £408,500 based on the proportionate cost of projects identified to accommodate increased requirements for provision. In addition, Cambridgeshire County Council is of the opinion that there is not sufficient capacity at March library to cater for the expected number of future residents of the appeal site. It has therefore requested a contribution of £10,010 to remodel the library and provide additional floorspace.
11. Therefore, on the evidence before me, it appears that the need for the contributions sought by CCC, and the provision of Public Open Space and affordable housing arises from the development and satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010 and the requirements of paragraph 56 of the National Planning Policy Framework (the Framework).
12. There has been no S106 agreement submitted to secure the infrastructure and affordable housing requirements. Nor has any viability assessment been submitted in support of any challenge by the appellant to the required provision.
13. I have given consideration as to whether such provision could be adequately secured by a condition. However, I have had regard to the advice in the Planning Practice Guidance on this¹. It confirms that ensuring that any planning obligation or other agreement is entered into prior to granting

¹ PPG ID: 21a-010-20140306

planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency. It goes on to state that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In this instance I am not convinced that the development is complex or strategically important or that its delivery would otherwise be at serious risk.

14. Therefore, for the reasons above, I conclude that the proposal would fail to secure the appropriate level of affordable housing on the appeal site or infrastructure with regard to education, libraries and Public Open Space. It would therefore be in conflict with Policies LP5 and LP13 of the Local Plan.

Character and appearance

15. To the south and west of the appeal site is mainly residential development in the form of detached houses and bungalows set in relatively large plots. There is a degree of planting to the gardens, with some streets having a more verdant appearance than others.
16. To the east is part of the main commercial area of March, together with car parks and variety of building styles and sizes, including the library to the immediate north east of the appeal site. To the north of the appeal site is a park comprising a large area of open green space and tree planting.
17. The appeal site is a large area of open land containing one house set between the centre of March and the surrounding housing. Although the existing house is attractive it is not listed or located within a conservation area and therefore could be demolished at any time. It has high hedges around its perimeter creating an enclosed site. However, the planting contributes positively to the visual character of the area. It does though lie in a transition zone between the two very different areas of the town.
18. That residential use is acceptable on the appeal site in this accessible location near the centre of March is not disputed. I see no reason to disagree. The dispute relates to whether 45 dwellings can be appropriately accommodated without harming the character and appearance of the area.
19. Policy DM3 of the Delivering and Protecting High Quality Environments in Fenland Supplementary Planning Document 2014 (the SPD) requires that all development should achieve high quality design. In particular the character of the landscape, local built environment and settlement pattern should inform the layout, density, proportions, scale, orientation, materials and features of the proposed development and proposals should aim to improve and reinforce positive features of local identity.
20. While matters of layout, scale and the external appearance of the dwellings are matters to be considered in the future, it is appropriate at the outline stage to consider whether the proposed number of dwellings could be satisfactorily accommodated on the appeal site, given its surroundings. The appellant's indicative drawings 1A and 0B show one way of developing the site through the

demolition of the existing house and its replacement with four blocks of development to provide 45 dwellings. Without doubt the character of the appeal site would change given its current form being replaced with houses. However, change does not necessarily equate to harm.

21. The illustrative drawings show that the existing perimeter planting would be removed. However, I do not consider this to be essential to the character of the area, as planting would be incorporated into a future scheme which could adequately reflect the character and appearance of the area.
22. The indicative layout allows the retention of the majority of trees which have been identified in the appellant's tree survey as being of worthy of retention. The Council do not dispute the contents of this survey. The suggested layout also allows room for planting within garden space located close to public vantage points which would reinforce positive features of the local identity and ensure that biodiversity is not materially harmed. Details of new planting would need to be considered by the Council in a future application. At this time the Council would be able to ensure that the planting adjacent to existing residents was appropriate.
23. The illustrative layout plan shows the provision of a detached house and three terraced houses to the south of the appeal site with a block of flats in the centre of the appeal site and one to the north. All but the detached house would be three storeys in height. The size of the two blocks of flats in particular would create a mass of building which is not common within the surrounding residential areas of the town. However, they would not be dissimilar in scale to the community and commercial buildings to the north east and east of the appeal site. Given that I have found that the appeal site is within a transition zone between the areas of two different characters I am satisfied that three storey development would be appropriate for the appeal site and would reflect buildings in the area, particularly when integrated with quality green space and landscaping. I see no reason why, with appropriate design and materials, dwellings on the site would not only respond to but improve the character of the built environment through the provision of a quality development which would integrate the housing areas and the commercial part of March.
24. Furthermore, there would be a sufficient degree of separation to the housing to the east and south to ensure they would not dominate the character of these areas and this would be facilitated by the reduction in height of the blocks towards the south of the site.
25. Therefore, for the reasons above, I am satisfied from the evidence before me that up to 45 dwellings could satisfactorily be accommodated on the appeal site without materially harming the character and appearance of the area. There would therefore be no conflict with Policy LP16 of the Fenland Local Plan, Policy DM3 of the SPD and the National Planning Policy Framework. These seek to deliver high quality design which makes a positive contribution to the local distinctiveness and character of the area, enhances its local setting and responds to and improves the character of the local built environment.

Living conditions

26. As details of the layout, scale and the external appearance of the dwellings are matters to be considered in the future by the Council in the first instance, then the impact on the living conditions are more generally considered at that stage when exact relationships are known.
27. Nonetheless, blocks A, B and C on the illustrative layout would be sited a considerable distance from existing residential properties. While the blocks would be of a greater height than the existing houses and bungalows, the lengthy intervening distance, together with proposed planting between the properties, and in the case of Block A the oblique relationship, would be sufficient to ensure that existing occupiers would not have a material loss in privacy, outlook or light.
28. The two storey house at plot 1 would according to the appellant be about 23 metres away from No 3 City Road. This has not been disputed by the Council. This distance, together with the oblique relationship between the two means that the outlook, privacy and light of the residents of No 3 would not be unacceptably harmed.
29. The illustrative layout shows that car parking would be introduced on the appeal site near to the gardens of existing residential properties. However, there would be sufficient space to accommodate a satisfactory landscaping and fencing buffer to be introduced between the properties.
30. Therefore, I am satisfied that the appellant has demonstrated that the appeal site could be developed for up to 45 dwellings without having a materially harmful impact on the living conditions of the occupiers of surrounding residential properties. Therefore, there would be no conflict with Policy LP16 of the Local Plan. This states amongst other things that development should not have an adverse impact on the amenity of neighbouring users.

Other matters

31. The Council refers to the cumulative impact of the proposal but offers no further comment regarding the perceived harm caused by that cumulative impact. This matter has not therefore been determinative.

Planning Balance and Conclusion

32. The provision of 45 dwellings in an accessible location would make a modest contribution to the Government's intention to significantly boost the supply of housing. Furthermore, there would be some employment generated during the construction of the building and future occupiers would contribute to the local economy.
33. While the appellant has stated that the site would deliver affordable housing, there is no mechanism before me to appropriately secure such provision. I therefore give this suggestion little weight.
34. The lack of harm to residents' living conditions and the character and appearance of the area would be neutral in the planning balance.
35. With no mechanism to secure affordable housing, public open space, or contributions to education and libraries, the proposal would fail to comply with the relevant development plan policies.

36. The proposal would be contrary to the development plan as a whole and this conflict is not outweighed either individually or cumulatively by the other material considerations. Therefore, the appeal should be dismissed.

Zoe Raygen

INSPECTOR