
Appeal Decision

Site visit made on 21 July 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2020

Appeal Ref: APP/V0510/W/20/3251452

Land to the rear 109 & 111, Station Road, Dullingham, Newmarket, Suffolk CB8 9UT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs A Musgrove against the decision of East Cambridgeshire District Council.
 - The application Ref 20/00121/FUL, dated 22 January 2020, was refused by notice dated 23 March 2020.
 - The development proposed is 2 No one and a half storey dwellings with associated parking and alterations to existing vehicular access together with new garage/store for existing dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Officer Report referred to the location of the appeal site outside the development envelope of Dullingham and acknowledged that the proposed development was not for any of the exceptions listed in Policy GROWTH 2 of the East Cambridgeshire Local Plan (April 2015) (the LP). However, this was not listed as a reason for refusal on the Decision Notice. The Council has therefore introduced this as an additional concern during the appeal process, which they have justified by a change of circumstances since permission was refused, in respect of their housing supply position. Moreover, the Council has now referred to the aforementioned conflicts with Policy GROWTH 2. As the appellant has had an opportunity to consider the relevance of this matter to the appeal proposal, I have dealt with this as a substantive matter, as set out in the main issues below.
3. Similarly, during the course of determining this appeal, the appellant for another site in the district, for which I am the appointed Inspector, drew my attention to a linked appeal decision¹ for two sites in Witchford (the Witchford appeals). This in turn referred to an appeal at Fordham². I therefore invited the main parties to provide comment in relation to any implications that the Witchford appeals would have for this appeal, particularly in relation to housing land supply.

¹ Appeal References: APP/V0510/W/18/3213834 & APP/V0510/W/19/3227487.

² Appeal Reference: APP/V0510/W/19/3227639.

Main Issues

4. The main issues are: -

- the effect of the proposed development on the character, appearance and countryside setting of the area;
- the effect of the surrounding noise environment on the living conditions of future occupiers of the proposed development; and
- whether the proposal is consistent with policies relating to housing in rural areas, including with regard to accessibility to local shops, services and facilities.

Reasons

Character, appearance and countryside setting

5. The appeal concerns a site situated in the countryside, northwest of Dullingham and to the rear of the pair of dwellings at 109 and 111 Station Road. Along with their plot size and shape, the design of dwellings within the immediate area varies greatly. However, the arrangement of dwellings is fairly coherent, as they are primarily aligned with Station Road and incorporate a frontage, the only exception being a single-storey house accessed from the car park of the Dullingham Railway Station. The established planting of boundaries creates a verdant character and the space around the dwellings provides a transition to the open and undeveloped fields beyond. Taken together these stated features create a clear and distinct pattern to development that makes a significantly positive contribution to the character and appearance of the area.
6. The appeal site is substantial in depth and the access to the site currently serves an existing double garage, single garage and outbuildings. The topography of the land surrounding the site rises from the south, beyond the site to the Railway Station. Although parts of the surrounding field boundaries are enclosed by hedges and the site is partially screened to its north and southwest boundaries by mature hedging and trees, the site remains visually prominent within the immediate landscape, particularly from the south in views from the footpath leading to the village and the from the Railway Station carpark to the north.
7. The backland position of the proposed dwellings behind Nos 109 and 111, would also jar with the coherent frontage pattern of development, described above, and substantially reduce the openness of the space to the rear of the existing dwellings. Together with the proposed garage/store, the proposed dwellings would be a strident built incursion that would appear discordant when viewed against the established grain of development. Accordingly, there would be a significantly detrimental effect on the character of the area.
8. There is permission for Nos 109 and 111 to be altered and converted into one house³ and I note that the proposal would utilise a palette of materials that would reflect the appearance of that scheme when it is completed. The design of the proposed dwellings and garage/store would not, of itself, offend the appearance of the surrounding area and the buildings would be

³ Planning Reference: 19/01398/FUL (conversion of the semi-detached dwellings at 109 and 111 Station Road to one dwelling, and additional extensions).

likely to be set against the backdrop of trees and hedges to the north rather than the skyline.

9. Nevertheless, due to their scale and spacing within the site, the proposal would be visible over the existing landscaping and would reduce the space to the rear of the existing dwellings, and thereby the transition to the open and undeveloped fields beyond. Whilst planting could be put in place to soften the appearance of the proposal, including a buffer between the proposed dwellings and the garage/store, this would be unlikely to have a meaningful effect for some time. The proposal would therefore amount to development that would not be akin to the predominant visual characteristics of the locality, so would therefore have a significantly detrimental effect on the appearance of the area.
10. I appreciate that the Signal Box and double-height cycle rack at the Railway Station sit higher than the site and they are prominent in the locality. However, they are of a small footprint and characteristic forms of development associated with the function and operation of stations. Similarly, the farm building situated to the northeast of site is a functional building, the scale and appearance of which is commonplace within countryside. The existing dwelling accessed from the Railway Station car park is also low in scale and primarily screened from view by existing planting and buildings found within the landscape. Collectively, these buildings would not be comparable with the appeal scheme in respect of their appearance within the immediate area and, for the same reasons as the planting within the backdrop of the site, their presence in proximity of the site would not diminish the harm to the character and appearance of the area that would result from the appeal proposal.
11. I have also been referred to a number of sites within the countryside around Dullingham⁴. However, all of those developments are shown on the Policies Map for Dullingham⁵ to have a close relationship with the various parts of the Development Envelope of the village. The implications of the appearance of those developments within the countryside are not therefore comparable with the appeal scheme, which is for development some distance from the village.
12. The location of a site of housing to the northwest of the appeal site⁶ is also some distance from the village but is also not comparable with the appeal site, as the site is not within a sloping part of the landscape and the new dwellings have been built between existing buildings to either side.
13. I note that the dwelling could be built to a high standard of environmental design, utilising renewable energy sources and electric vehicle recharging points, amongst other sustainable technologies. Furthermore, the site is not situated within a protected landscape and would only affect part of the countryside in the District. Nevertheless, for the reasons outlined above, I conclude that the proposed development would have a significantly detrimental effect on the character and appearance of the area. Hence, the proposal would not accord with Policies ENV1, ENV2 and HOU2 of the East Cambridgeshire Local Plan (April 2015) (LP) which, amongst other things, seek to ensure that design which fails to have regard to local context and does not

⁴ Planning References: 18/01435/OUT (for a mixed-use development of 41 homes, including 12 affordable homes and 250sqm of commercial units); 19/01128/OUT (for four dwellings); 16/01689/FUL (for one dwelling); and 17/02202/VAR (which varies 17/01314/FUL for one dwelling).

⁵ Insert Map 8.13.

⁶ Planning Reference: 16/00978/FUM (for conversion of agricultural buildings to six dwellings and four further dwellings).

take advantage of opportunities to preserve, enhance or enrich the character, appearance and quality of an area will not be acceptable. In particular, the location, layout and scale of buildings should relate sympathetically to the surrounding area and each other, as well as creating quality new schemes in their own right; and should protect, conserve, and where possible enhance the unspoilt nature and tranquillity of the area.

14. The proposed development would also be in conflict with Paragraphs 127 and 130 of the National Planning Policy Framework (the Framework), in particular, the latter mirrors the requirement of the LP to refuse permission for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
15. I note that the Council has suggested that the proposal would not be sustainable development due to the visual and environmental impacts associated with the harms I have identified above. However, I refer to whether the proposal would be sustainable development in the Planning Balance.

Noise

16. The appeal site is in close proximity of the Ipswich to Ely railway line, which is on higher ground to the north. The northern boundary of the site is currently a mixture of mature hedge planting and close-boarded fencing. The proposed dwellings would be arranged east to west in the site away from the northern boundary but both would incorporate a number of north-facing windows. Moreover, at ground floor there would be a study, hallway and kitchen; and, at first floor, a bathroom, landing and third bedroom.
17. My role is to consider the evidence before me in the context of relevant planning policies and other material considerations. The application and appeal are not supported by an assessment of the surrounding noise environment, including background noise readings taken within the site, particularly for more sensitive times of the day and week, when disturbance is more likely.
18. I note that the Council's Environmental Health Technical Officer (EHTO) raised concerns due to the close proximity of the railway line but recommended that a noise assessment could be agreed by planning condition. However, this was based on the premise that internal noise levels would need to be met with partially open windows. Moreover, the EHTO suggested that closed windows and alternative forms of ventilation be unlikely to be deemed acceptable.
19. I have no doubt that dwellings in other locations may be closer to railway lines and incorporates acoustic mitigation; and I appreciate that there are other dwellings in the vicinity of the site that may not incorporate acoustic mitigation to protect occupants from noise from the railway line. Nevertheless, I am not persuaded that the use of such a planning condition would be an appropriate course of action in the absence of a representative picture of existing background noise or the potential for noise which could affect occupants of the proposed dwellings. In the absence of a noise assessment, addressing these matters, the mitigation measures required by the Council cannot be adequately evaluated. The evidence before me does not therefore offer sufficient clarity and robustness to be able to determine that the living conditions of future occupants of the proposed development would not be harmed by noise emanating from the railway line.

20. In light of the above, I am not satisfied that the evidence relating to the potential for noise demonstrates that the proposed development could be accommodated within the site without causing unacceptable harm to the living conditions of future occupants. Hence, the proposal would not accord with Policy ENV2 of the LP, which, amongst other things, seeks to ensure that occupiers of new buildings, especially dwellings, enjoy high standards in terms of their living conditions. The proposal would also be in conflict with paragraph 180 of the Framework, which requires that new development is appropriate for its location taking into account the likely effects of pollution on living conditions.

Rural housing

21. For the purposes of planning policy, the appeal site is situated within the countryside, as defined by Policy GROWTH 2 of the LP. This policy suggests that the majority of development will be focused on the market towns of Ely, Soham and Littleport, but more limited development will take place in villages, with an emphasis on developing within or on the edge within a defined development envelope, thereby helping to support local services, shops and community needs.
22. In the countryside, outside defined development envelopes, development is strictly controlled to protect the countryside and the setting of towns and villages. Development is therefore restricted to particular types of development, including affordable housing through exception schemes or community-based development, dwellings for essential rural workers and the extension and replacement of dwellings in the countryside. The policy also outlines that these exceptions may be permitted, providing there is no significant adverse impact on the character of the countryside and that other Local Plan policies are satisfied, this is referred to above. The appeal scheme is not for any of the types of development listed under the policy, so would be contrary to the locational strategy in Policy GROWTH 2 of the LP.
23. The Framework suggests that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I appreciate that Station Road lacks street lighting but there is a dedicated footway to the eastern side, which leads to Dullingham to the southeast and the Railway Station a short distance to the north, where services are available along the Ipswich to Ely line. Future residents of the proposed dwellings would not therefore be restricted to travelling by private motorised transport to access local shops, services, facilities and employment. I note that the Council arrived at a similar conclusion in this respect.
24. Having regard to all of the above and the particular circumstances of this case, although the proposal would encompass housing outside a defined development envelope, I conclude that the site represents an appropriate location for housing in respect of its accessibility to local shops, services and facilities. Hence, the proposed development would accord with paragraphs 78 and 103 of the Framework. In particular, the former seeks to restrict housing in rural areas to locations where housing will enhance or maintain the vitality of rural communities.

Other Matters

25. Given the orientation of the site and the distance of the proposed house from neighbouring properties, the proposal would not result in harm to the living conditions of neighbouring occupiers, particularly in respect of overlooking, overshadowing or oppressive effects. There is also sufficient space within the site for parking and manoeuvring of vehicles and to alter the access to serve the proposal. I note that the Council did not raise any concerns in respect of these matters. Similarly, I note that the Council was satisfied that the site is at a low risk of flooding and that surface and foul water disposal, and dealing with otherwise unexpected contamination, could be addressed by planning conditions. There is no substantive evidence before me which would lead me to a different conclusion in respect of these matters.

Planning Balance

26. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
27. The development plan for the area comprises the LP, which predates the current Framework, as it was examined when the 2012 version of the Framework was in place. However, the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework.
28. Despite the pre-application advice provided by the Council⁷ in respect of the weight to be afforded to Policy GROWTH2 of the LP, a settlement envelope policy, in isolation of other considerations, would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. Moreover, the policy does not include all of the policy exceptions to isolated homes in the countryside as set out in the Framework. In particular, for circumstances where design is of exceptional quality or a proposal relates to the subdivision of an existing dwelling. However, the policy is consistent with the aim of the Framework to direct housing to locations where it is supported by local facilities and services through an established pattern of distribution; and contributing to and enhancing the natural and local environment by recognising the intrinsic character and beauty of the countryside. I have therefore regarded the underlying objectives of the policy as being generally consistent with the revised Framework.
29. Policies ENV1 and ENV2 are consistent with the Framework in terms of its aim to achieve well designed places.
30. Overall, whilst there is some inconsistency of Policy GROWTH2 with the Framework, taken as a whole these policies are not to be regarded as out-of-date. I have therefore afforded full weight to the conflict of the proposal with the abovementioned policies, as set out in the main issues.
31. A period of five years has passed since the adoption of the LP. In such circumstances, the Framework suggests that the housing requirement used in assessing a Council's five-year supply of deliverable housing land will be based on the standard method for determining local housing needs for the local

⁷ Planning Reference: PREAPP/00184/19.

planning authority area. Accordingly, the Council issued a new Five Year Housing Land Supply Report⁸ (FYHLSR), which has regard to the latest Housing Delivery Test results⁹, so includes a 20 percent buffer. The FYHLSR identifies that the Council can demonstrate 6.61 years supply of deliverable housing land within East Cambridgeshire.

32. In the Witchford appeals the Council argued that it could demonstrate 3.94 years supply of housing land but the Inspector ultimately relied on the Fordham appeal, where the position was only calculated to be 2.1 years. However, the Fordham appeal decision has since been quashed, specifically in relation to how the Inspector calculated the housing land supply. I am not therefore able to give any weight to the quashed decision or the Witchford appeals in respect of this matter.
33. I note that paragraph 74 of the National Planning Policy Framework (the Framework) states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State. There is no evidence before me to suggest that the supply of housing stated in the FYHLSR has been calculated using this method. However, other than point to the fragility of the situation presented by the Fordham and Witchford appeals, I have not been provided with any evidence by the appellants setting out an alternative calculation for the five-year housing land supply in the district.
34. I am also mindful that the presence of a five-year supply does not represent a ceiling on the delivery of housing, as the Framework supports the Government's objective to significantly boost the supply of homes. On this basis, I did not reengage with the main parties following receipt of their comments. Clearly should I determine that the Council cannot demonstrate a 5-year housing land supply, paragraph 11 of the Framework would be engaged.
35. In the context of paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by the appeal proposal, particularly as it could be carried out relatively quickly. The appeal scheme would deliver two additional dwellings, which would contribute to the overall housing mix in the District. Although the appellant has suggested that the proposal would provide homes of an appropriate type and tenure for the locality, there is no substantive evidence before me as to how the proposal would help to meet this specified need. The contribution to the supply of housing would therefore be minor in its extent, so it would only be afforded limited weight.
36. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period and future occupiers would also contribute to the local economy through expenditure, which would carry moderate weight.
37. I also recognise that the proposal could be said to make more efficient use of the site. However, the Framework is clear that making efficient use of land should include taking into account the desirability of maintaining an area's

⁸ East Cambridgeshire District Council Five Year Housing Land Supply Report 1 April 2019 to 31 March 2024.

⁹ Published in February 2020.

prevailing character and the importance of securing well-designed, attractive and healthy places.

38. I appreciate that the proposed development could provide net gains for biodiversity, as set out in the Framework, through new planting of hedgerows and trees and the improvement of retained trees and hedgerows. However, there is no substantive evidence before me of how the net gains have been measured or would be secured. This benefit therefore carries no weight.
39. The proposed development would not comply with development plan policy in respect of the harm to the character, appearance and countryside setting of the area and the living conditions of future occupiers. Furthermore, although the proposal would be contrary to the locational strategy of the development plan it would be an accessible location in the terms of the Framework. Nevertheless, given the other harms identified, the proposed development would not amount to sustainable development under the terms of the Framework. Overall, the adverse impacts of the proposal are matters of significant weight against the grant of planning permission.
40. Even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested in the Fordham and Witchford appeals, the adverse impacts of granting permission identified would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This does not indicate the proposal should be determined other than in accordance with the development plan.

Conclusion

41. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR