



Appeal Decision

Site visit made on 29 September 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Appeal Ref: APP/V0510/W/20/3244324

**Site between 117 and 119 Duchess Drive, Newmarket, Cambridgeshire
CB8 9HB**

- 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 John Simmons against the decision of East Cambridgeshire District Council.
 - The application Ref 19/01190/FUL, dated 17 August 2019, was refused by notice dated 4 October 2019.
 - The development proposed is the erection of single detached family home.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by East Cambridgeshire District Council against Mr John Simmons. This application is the subject of a separate Decision.

Main Issue

3. The main issues are the effect of the development on the character and appearance of the area and on biodiversity.

Reasons

4. The appeal site is located on the north-east side of Duchess Drive and consists of an undeveloped site with a number of mature and newly planted trees on it. The site is also subject to a woodland Tree Preservation Order¹ which covers the appeal site together with other land to the south and east.
5. To the north of the site lies a residential property (117 Duchess Drive) set in a spacious plot whilst further to the north are other residential properties. To the south of the site is the Jarman Centre (119 Duchess Drive) which is a community facility set in woodland.
6. From the evidence before me the site lies just outside of the established development framework for Newmarket (identified as Newmarket fringe) as the defined boundary runs along the northern boundary to the site. Nevertheless, in planning policy terms, the site is located within the countryside.

¹ Reference E/03/06 dated 16 May 2006

7. Policy GROWTH 2 of the East Cambridgeshire Local Plan (2015) (ECLP) seeks to focus development on the market towns such as Ely, Soham and Littleport. It goes on to state that outside defined development envelopes, development will be strictly controlled, having regard to the need to protect the countryside and the setting of towns and villages. Whilst there are some exceptions to this, none of these are relevant to the proposal before me.
8. Paragraphs 78 and 79 of the National Planning Policy Framework (the Framework) seek to promote sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities. It also seeks to avoid the development of isolated homes in the countryside. However, in the context of paragraph 79 of the Framework, the site cannot be considered to be isolated owing to the proximity of the other housing to the north.
9. Notwithstanding that, the appeal site very much has the appearance of a site which forms part of the woodland character of the adjoining Jarman centre. This woodland setting forms an important part of the distinction between the built-up area to the north and the surrounding countryside.
10. The development of the appeal site, even for a single dwellinghouse, would significantly change that character and would unacceptably erode the woodland setting of the wider area as a result of the permanent loss of open undeveloped land.
11. The Council has set out that the site was cleared in January 2017 and prior to that date was densely vegetated and it subsequently served a tree replacement notice which required 120 trees to be planted. It has been put to me that not all of these replacement trees have been planted, and from what I observed there appeared to be significantly less than 120 recently planted trees on site. Furthermore, I observed that several trees had either died or were struggling to establish themselves.
12. In addition to the above, the area where the trees were shown to be planted conflicts with the area of land which would form the principle element of the rear garden of the proposed dwelling. This suggests to me that the replacement trees in this area would be removed as part of the development proposal. To my mind, this further highlights the loss of the woodland setting which is to the detriment of the overall character and appearance of the area.
13. I am also conscious that even if that was not the case, the introduction of a dwelling in such proximity to the amount of trees in the area would invariably lead to significant pressure to prune back or remove such trees so that the future occupiers of the dwelling would have a reasonable amount of light to the property. This adds further weight to my concerns over the impact of the development on the surrounding trees.
14. Taking all the above into account, the development would have an undesirable urbanising effect on the local landscape, including the woodland, and would result in the permanent loss of countryside.
15. For the above reasons the development would harm the character and appearance of the area contrary to Policies GROWTH 2, ENV1, ENV2 and ENV7 of the ECLP which amongst other matters seek to ensure that development protects the countryside, is sympathetic to landscape and settlement character

and takes advantage of opportunities to preserve, enhance and enrich the character, appearance and quality of the area, including trees and woodland. It would also be at odds with the overarching aims of the Framework.

Biodiversity

16. The Appeal application was supported by a Preliminary Ecological Appraisal which sets out that there would be no harm arising from the proposal. Whilst the Council acknowledge this, it is also evident that as the site had previously been cleared this was probably not an unexpected outcome.
17. That said, I find it significant that the appraisal takes little account of the clearance works and provides no recommendations to compensate for that. Furthermore, no account is taken in respect of the appeal proposal itself which would result in the loss of some of the land identified for the replacement tree planting.
18. Policy ENV7 of the ECLP requires proposals to provide appropriate mitigation measures, reinstatement or replacement of features and/or compensatory work that will enhance or recreate habitats on or off site.
19. In the absence of any convincing evidence to suggest that appropriate mitigation could be provided on the land outside of the area which would form the main domestic garden area of the dwelling, I consider that the proposal would be in conflict with the aims of Policy ENV7.
20. Had the appeal proposal not resulted in the reduction in the amount of land used for the replanting required under the tree replacement notice, I consider that this matter could have been adequately dealt with by means of a suitably worded planning condition. However, that is not the proposal before me.

Planning balance

21. When the Council determined the planning application, they did so on the basis that the tilted balance set out at paragraph 11d) of the Framework applied. However, during the course of the appeal process, the Council have altered their position and they now consider that they can demonstrate a deliverable five-year supply of housing. As such, they consider that the tilted balance no longer applies. This is on the basis that the ECLP is now greater than five years old and that the way of calculating the local housing requirement should be via the standard method as advocated by the Planning Practice Guidance (PPG).
22. The Appellant has questioned this approach and the Council's approach to plan making, including that the Councils' 2018 housing delivery measurement is only 52%. Furthermore, it is stated that the Council can only confirm their 5-year supply through a recently adopted Local Plan or by using a subsequent annual position statement².
23. Whilst the Council hasn't confirmed their five-year supply through either of these methods it falls to me to make a judgement on this when determining this section 78 appeal as to whether the tilted balance at paragraph 11d) applies.

² Paragraph: 010 Reference ID: 68-010-20190722 of the PPG

24. The Appellant has drawn my attention to a linked appeal decision³ which concludes that the Council cannot demonstrate a deliverable five-year supply of housing. However, this decision is subject to a legal challenge and neither the Secretary of State nor the original Appellant are contesting the challenge. As such, a Consent Order to quash the decision has been drafted and is awaiting sealing by the Court. With that in mind, I give this decision very little weight.
25. More recently, an appeal decision at Witchford⁴ sets out the Council can demonstrate a deliverable five-year supply of housing based upon the standard methodology and the level of housing supply.
26. Having sought the Appellants views on this decision, my attention has been drawn to two further appeal decisions⁵. However, neither of these two decisions provide an assessment on whether the Council can demonstrate a deliverable five-year supply of housing. As such neither of these decisions provide any assistance in this matter.
27. In respect of the Witchford decision, I acknowledge that states that this appeal decision cannot be taken as determinative of the five-year supply. Whilst I agree with that point, it is nevertheless the most convincing piece of evidence before me in determining whether there is such a supply.
28. Taking all of the above into account, the evidence before me leads me to the view that the Council can demonstrate a deliverable five-year supply of housing and as a result the tilted balance is not engaged.
29. Notwithstanding that, I have also considered the benefits associated with the delivery of much needed housing, including the Governments objective of significantly boosting the supply of homes. I also acknowledge that sanction three of the Housing Delivery Test may apply at some point in the future. However, this is not currently the case and as such I can only give this limited weight in my decision. Whilst these matters weigh in favour of the proposal, it does not outweigh the harm I have identified above.

Conclusion

30. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR

³ References APP/V0510/W/18/3213834 & APP/V0510/W/19/3227487 date 16 July 2020

⁴ Reference APP/V0510/W/20/3245551 dated 24 September 2020

⁵ References APP/V0510/W/20/3251382 dated 1 October and APP/V0510/W/20/3254295 dated 3 November 2020