



Appeal Decision

Site Visit made on 10 May 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 15 June 2021

Appeal Ref: APP/V0510/W/20/3262870

59A Great Fen Road, Soham, CB7 5UH

- 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 Mrs Mutton of Border Farm Timber against the decision of East Cambridgeshire District Council.
- The application Ref: 19/01595/FUL, dated 2 November 2019, was refused by notice dated 9 July 2020.
- The development proposed is the residential redevelopment of existing timber yard.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal is submitted in outline with all matters reserved for future consideration. Plans have been submitted showing the proposed siting and layout of the dwellings, however, I am advised that these are indicative only and accordingly I have considered the appeal on this basis.

Main Issues

3. The main issues are:-
 - i) whether the appeal site is a suitable location for residential development having regard to the settlement strategy of the development plan and the accessibility of services and facilities;
 - ii) the effect of the proposal on flood risk; and
 - iii) the effect of the proposal on the provision of employment land.

Reasons

Settlement strategy and accessibility of services and facilities

4. The appeal site is located some distance away from the defined settlement boundary for Soham and for the purposes of applying planning policy it is located within the countryside. Policy GROWTH 2 of the East Cambridgeshire Local Plan (2015)(LP) sets out the locational strategy for new residential development. Its aim is to ensure that growth takes place in the best locations in the district, where it is needed, deliverable and where it is sustainable. Outside of defined settlement boundaries, development will be strictly controlled, having regard to the need to protect the countryside and setting of towns and villages.

5. In the absence of anything to suggest that the scheme would be consistent with the exceptional categories of development listed within the policy, the appeal site is not a location towards which new housing is directed and to do so would undermine the locational strategy for new residential development.
6. The National Planning Policy Framework (the Framework) sets out that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities. It also states that isolated homes in the countryside should be avoided unless there are special circumstances. This fits into the general planning principle of supporting thriving rural communities. Given the proximity of other dwellings I do not consider that the appeal site would be 'isolated' for the purposes of the Framework, since it cannot be said that it would be far away from other places, buildings or people, albeit the location is rural.
7. However, it does not necessarily follow that a site that is not 'isolated' will be reasonably accessible to services and facilities when considered in the context of other requirements of the Framework. In this case, the appeal site is located some 3 miles from the nearest services and facilities of Soham. The availability of a school bus service is acknowledged but there are no other public transport opportunities. Given the distance and nature of the route to Soham along unlit rural lanes without any pedestrian footway, it is unlikely that anyone would choose to access the services and facilities of Soham on foot or by cycle.
8. Consequently, I conclude that the future occupants of the proposed dwellings would be heavily reliant on the use of a private motor vehicle to access services and facilities for their day to day needs. The proposal would fail to accord with the provisions of LP Policy GROWTH2 which seeks to focus new development to market towns and villages with defined settlement boundaries. The proposal would also conflict with the aims of the Framework which seeks to limit the need to travel and offer a genuine choice of transport modes.

Flood risk

9. The appeal site is located within Flood Zone 3 where it is identified that there is a high probability of flooding. The Framework advises that inappropriate development in areas at risk of flooding should be avoided by guiding development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The aim of the sequential test is to steer new development to the areas with the lowest risk of flooding.
10. The Planning Practice Guidance (PPG) advises that the area to apply the sequential test across will be defined by local circumstances relating to the catchment area for the type of the development proposed. Albeit a Flood Risk Assessment (FRA) was submitted with the planning application, this did not include a detailed consideration of the sequential test. Although it is for a local planning authority to consider the extent to which sequential test considerations have been satisfied, the developer should justify, with evidence, what area of search has been used when making the application. Whilst I acknowledge that the appeal site lies within a defended flood zone, the presence of a defended area does not mean that the proposal is 'safe', only that while the defence is maintained the risk is reduced. To my mind, this does not release the appeal scheme from the requirements of the sequential test.

11. Given the above, it has not been demonstrated that there are no reasonably available sites appropriate for residential development in areas with a lower probability of flooding. The proposal fails the sequential test and would therefore not be an acceptable form of development with regards to flood risk. As the proposal fails the sequential test, there is no requirement to consider whether the exception test is satisfied nor to consider the mitigation measures put forward by the appellant.
12. My attention has been drawn to other dwellings within the vicinity that have recently been granted planning permission. It is suggested that these justify that a consistent approach should be taken. However, the existence of other dwellings that may be susceptible to flooding does not of itself justify the proposal. Moreover, as there is little evidence regarding the flood risk posed to these developments, it is not possible to undertake any meaningful comparison. I have determined the proposal on its individual planning merits.
13. Accordingly, I conclude that the proposal would be contrary to provisions of LP Policy ENV8 which requires, among other things, for the sequential test to be applied and for new development to normally be located within Flood Risk Zone 1. Similarly, it fails to accord with the guidance of the Cambridgeshire Flood and Water Supplementary Planning Document and is contrary to the provisions of the Framework and the PPG which seek to steer development to areas with the lowest risk of flooding.

Loss of employment land

14. LP Policy EMP1 seeks to retain land or premises that are currently or were last in employment use. Whilst this policy makes no specific mention of sui generis employment uses, I consider the intention of this policy is to promote employment and economic activity and resist the loss of land and premises provided for business use. The existing use of the appeal site as a timber yard is an employment generating use. As such, it is relevant to consider the appeal scheme against the provisions of LP Policy EMP1.
15. On the basis of the evidence before me, the appeal scheme proposes a total loss of all employment land at the appeal site and therefore clear viability or other evidence is required to justify the loss. No evidence has been provided. Moreover, the appellant confirms that viability of the business is not currently an issue. Although it is suggested that the appeal site constrains any future expansion of the business and states there would likely be issues relating to viability, there is little evidence before me to substantiate this view. Although the appellant's alternative site in Littleport is acknowledged, there is no explanation why the business could not operate from both sites to facilitate future expansion. Moreover, the accompanying text to LP Policy EMP1 recognises that the loss of business land can harm local firms who may find it difficult to find suitable replacement sites. There is no clear evidence before me to demonstrate that the appeal site would be unsuitable to other businesses.
16. Overall, on the basis of the evidence before me, the proposal does not provide clear and robust justification for the loss of employment land. A detrimental loss of employment land would be contrary to LP Policy EMP1, the requirements of which are set out above.

Other Matters

17. The appellant disputes the Council's ability to demonstrate a five-year supply of deliverable housing sites. However, there is little detailed information from the appellant in this regard. Moreover, a recent appeal decision gave consideration to this issue and the Inspector in that instance concluded that a figure of 5.60 years was a 'truer reflection' of the Council's supply position. In the absence of any substantive evidence to demonstrate any inaccuracy of the Council's updated Five-Year Land Supply Report, which shows a supply in the region of 6.14 years, I do not find the tilted balance of the Framework to be engaged for this reason.
18. The 2020 Housing Delivery Test for East Cambridgeshire District Council indicates that it achieved 87% of housing delivery measured against its housing target over the last 3 years. This is considerably more than the 75% benchmark used to define substantial under delivery in the Framework.
19. Consequently, as I have found the Council is able to demonstrate a five-year housing land supply, and as the latest Housing Delivery Test result is greater than 75%, neither of these considerations results in policies which are the most important for determining the application being considered out-of-date in the context of paragraph 11 of the Framework.
20. I have had regard to the availability of other residential developments in the vicinity including a number along Great Fen Road. However, I have little information relating to the particular circumstances of these developments and whether the circumstances are therefore comparable to the appeal proposal. Moreover, the Council indicates that these were determined at a time when the Council were unable to demonstrate a five year supply of housing and therefore this would have altered the weight to be applied to any conflict of those schemes with the development plan. To my mind, it does not demonstrate an acceptance on the Council's part that housing development in the locality is relatively sustainable, as is advanced by the appellant. I have therefore determined the appeal before me on its individual planning merits.
21. Although it is put to me that there would be a decrease in the number of vehicular trips to and from the site as a consequence of the business use relocating elsewhere, there is little detailed analysis of the frequency of these journeys, nor the likely number that would be generated as a consequence of the appeal scheme. On the basis of the evidence before me, I cannot be certain that there would be any environmental benefit likely to arise as a result.
22. No adverse impacts upon the character and appearance of the countryside nor the living conditions of neighbouring occupiers have been identified. However, as an outline application and in the absence of detail regarding the final design, siting and layout of the proposed scheme, matters affecting the character and appearance of the area and living conditions of neighbouring occupiers are issues for consideration as part of the reserved matters. However, for the purposes of this appeal, the absence of harm is a neutral matter that weighs neither for nor against the proposal.
23. The appeal scheme would utilise brownfield land and contribute up to four additional dwellings towards housing supply. However, given the limited scale of the development proposed, the resultant benefits would be limited.

Economic benefits generated during the construction phase would be limited and temporary.

24. Given the adverse impact that would arise in relation to the conflict with the settlement strategy, undue reliance on the use of a private motor vehicle, loss of employment land and flood risk, in my judgement, this harm carries substantial weight and the totality of the other material considerations does not justify making a decision other than in accordance with the development plan.

Conclusion

25. For the reasons given above, I conclude that the appeal should be dismissed.

E Brownless

INSPECTOR