



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: Monday, 19 July 2021

Appeal Ref: APP/V0510/W/20/3261587

Gosling Cottage, 165 The Street, Kirtling, CB8 9PD

- 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 Godfrey of Hamilton Developments (Newmarket) Ltd against the decision of East Cambridgeshire District Council.
 - The application Ref: 19/01386/FUL, dated 20 September 2019, was refused by notice dated 21 April 2020.
 - The development proposed is the demolition of existing cottage and outbuildings and the erection of 4no dwellings and 1 replacement dwelling with 2no crossovers, shared surface access road and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for Demolition of existing cottage and outbuildings and the erection of 4no dwellings and 1 replacement dwelling with 2no crossovers, shared surface access road and associated works at Gosling Cottage, 165 The Street, Kirtling, CB8 9PD in accordance with the terms of the application, Ref: 19/01386/FUL, dated 20 September 2019, subject to the conditions contained within the Schedule.

Preliminary Matters

2. The Council's reasons for refusal did not cite a conflict with Policy GROWTH2 of the East Cambridgeshire Local Plan (2015)(LP). However, since this matter was determined by the Council it is claimed that they are presently able to demonstrate a five year supply of housing land. This matter is disputed by the appellant. However, as the main parties have had the opportunity of considering LP Policy GROWTH2, I have had regard to this policy in my overall determination of this appeal.

Main Issues

3. The main issue is whether the appeal site is an appropriate location for the proposed development having regard to the development plan and the character and appearance of the area.

Reasons

Settlement strategy

4. LP Policy GROWTH2 sets out the district's strategy for the location of new 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. Some limited development to meet local needs is anticipated in villages which have a defined development envelope, thereby helping to support local services, shops and community needs.

5. Outside of defined settlement boundaries, development is strictly controlled to protect the countryside and the setting of towns and villages. Nonetheless, LP Policy GROWTH 2 is permissive of some limited development providing there is no significant adverse impact on the character of the countryside and that it satisfies one of the exceptional categories of development such as affordable housing, community-based development, dwellings for essential rural workers and the extension and replacement of dwellings in the countryside.
6. Whilst a large part of the proposed built form would be sited within the defined settlement boundary, two of the proposed dwellings would be positioned outside of it and, for the purposes of applying planning policy, part of the appeal site is considered to be located within the countryside, where development will be strictly controlled having regard to the need to protect the countryside and the setting of towns and villages.
7. In the absence of anything to suggest that the appeal scheme would satisfy one of the exceptional categories of development, the appeal site is not a location to which new development should be directed and to do so would undermine the identified strategy for growth within the district. Accordingly, there would be conflict with LP Policy GROWTH2 in this regard.

Character and appearance

8. Kirtling comprises several clusters of dwellings positioned on either side of The Street with agricultural land interspersed between groups. Dwellings are predominantly arranged in a linear pattern to face the highway with occasional pockets of cul-de-sac type layouts punctuating the linear pattern of buildings. Although there is no common build line, dwellings are mainly set back from the highway and their sizeable and well-stocked front gardens contribute to a pleasant and verdant rural village character.
9. The appeal site is a roughly rectangular parcel of land comprised of a derelict cottage and a number of other redundant outbuildings and dilapidated structures together with mostly unkempt areas of grass, vegetation and trees. In addition, I observed there were a number of piles of materials, broken furniture and waste materials being stored within the appeal site which gave an untidy appearance. Although the front boundary is relatively open, the majority of the site is well-contained by the mature trees and vegetation along its edges. Consequently, it is relatively well enclosed and secluded from the farmland and countryside that lies beyond it. As a result of these physical characteristics, I consider that the appeal site makes a moderate contribution to the rural character of the surrounding area.
10. The proposed cul-de-sac layout, whilst not being the predominant arrangement of dwellings within Kirtling, would include a limited overall depth which would be commensurate with other similar developments within the locality. The introduction of two dwellings with a frontage to The Street would appear as a continuation of the linear pattern of dwellings. Sizeable front garden areas of proposed plot numbers 1 and 2, together with landscaping would reflect local distinctiveness and preserve the pleasant and verdant rural character.
11. Importantly, the rear boundary of the most rearward proposed dwellings, plot numbers 4 and 5, would broadly align with the rear boundary of the neighbouring dwelling at 169 The Street and the appeal scheme would not

- extend by any considerable degree beyond the rear boundaries of neighbouring properties.
12. The proposed dwellings would be well screened by the existing trees and vegetation. However, it is likely that some partial glimpses would be visible in views through and over existing vegetation, particularly during the winter months when foliage is typically less dense. From the adjacent public right of way (the PRoW), views of the appeal scheme would be considerably limited by a substantial buffer of scrub and vegetation. Even so, the dwellings would be read against a backdrop of built form, particularly given the recent construction of nearby dwellings, which have established a distinguishable building line that is readily visible on approach along the PRoW in wider countryside views.
 13. Consequently, I conclude that the introduction of a cul-de-sac layout of dwellings would not be out of keeping with the pattern of development within the village and there would be limited landscape and visual impact that would arise as a consequence of the proposed scheme.
 14. In reaching my decision, I have had regard to the findings of a previous Inspector who dismissed a previous appeal scheme¹ for residential development at the appeal site. However, I note there are significant differences between that scheme and the appeal scheme before me, including a reduction in the number of dwellings proposed, some reductions in scale and height and the most rearward proposed dwellings have been positioned closer to the highway.
 15. Crucially, the appeal scheme before me does not include an extensive and elongated area of land to the rear of proposed plot numbers 4 and 5. This has had the effect of significantly reducing the overall depth of the site from approximately 312 metres to 118 metres, taking the appellant's measurements, which have not been disputed by the Council. I acknowledge the previous Inspector's concerns that the 'finger of land' could be used as outdoor amenity space in connection with the proposed dwellings. However, as this area of land is not within the red line of the boundary of the proposed development, it will not form part of any garden curtilage and the use of this area of land would be unaltered by the appeal scheme. Consequently, the appeal scheme would reflect the more contained pattern of built form within Kirtling and there would be no harmful encroachment into the countryside nor adverse impact on the intrinsic character of the countryside.
 16. Therefore, I conclude that there would be no adverse impact upon the character and appearance of the countryside and the surrounding area. It would accord with the provisions of LP Policies ENV1 and ENV2 insofar as these policies seek to make efficient use of land and a complementary relationship with existing development by protecting the settlement edge, the space between settlements and their wider landscape setting. In addition, the appeal scheme would be sympathetic to local character and thus accord with the aims of the National Planning Policy Framework (the Framework).

Other Matters

17. I have had regard to the Council's assessment of the impact of the proposed scheme on 162 The Street, a former public house and a Grade II listed

¹ APP/V0510/W/19/3237095

building. I am required to have regard to heritage assets in accordance with the statutory duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Whilst there would be a measure of change to the wider setting of the listed building, the proposed dwellings would be set back from the listed building and given the distances involved and intervening landscaping there would be a neutral effect on the setting of this listed building. This concurs with the view of the Council.

18. I have had regard to a number of third-party comments, a number of which relate to the matters I have considered above. Reference is also made to the impact of the proposed scheme on on-street parking and highway safety. However, the Council and the Highway Authority raise no concerns and on the basis of the evidence before me, I see no reason to take a different view. My attention is also drawn to the capacity of local schools and a general absence of facilities for young children. However, there is no substantive evidence in this respect. The number of dwellings to be provided as part of the appeal scheme is insufficient to trigger the Council's requirement for the provision of any affordable housing.
19. Issues concerning the safety of trees, boundary disputes, the wishes of the previous owner and the intentions of the appellant are private matters which do not affect my findings above. It is suggested that the privacy of neighbouring occupiers would be adversely impacted, however, the Council have not raised any concern in this regard and I see no reason to take a different view. Similarly, it does not form part of the Council's case that the proposed development fails to provide adequate areas of private amenity space for future occupants of the proposed dwellings. Based upon my own observations and the submitted plans I would concur with the view of the Council.
20. It is suggested that the appeal site is a habitat for newts, owls and other birds, deer, foxes and insects. Although the adequacy of the Ecological Assessment is called into question, there is no substantive evidence before me to support this view.

Planning Balance

21. Pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, a determination must be made in accordance with the development plan unless material considerations indicate otherwise.
22. I have identified conflict with LP Policy GROWTH2. This is a restrictive policy that provides support to development within the countryside only in very exceptional circumstances. The Framework is less restrictive in its approach and sets out that housing should be located where it will enhance or maintain the vitality of rural communities and that planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. For the reasons given above, I find that Policy GROWTH2 of the LP is not wholly consistent with the Framework in terms of its approach to rural housing.
23. Moreover, the aim of LP Policy GROWTH2 is cited as being to protect the countryside and the setting of towns and villages. The Framework does not protect the countryside for its own sake. Instead it recognises the intrinsic character and beauty of the countryside and I have concluded that this would

be preserved by the appeal scheme. Taking everything into consideration, and in the absence of any harm by reason of the scheme's impact on the character and appearance of the countryside or the setting of the village, I give very limited weight to the conflict with the locational strategy of the development plan.

24. In terms of the benefits of the appeal scheme, the appeal scheme would provide five additional dwellings towards the district's housing land supply and future occupants of those dwellings would help to support services and facilities within the local area. There would be economic benefits generated during the construction phase, albeit this would be for a temporary period. The scheme would promote the effective use of land and improve its derelict and untidy condition.
25. Overall, I conclude that the benefits of the appeal scheme are material considerations of moderate weight that outweigh the very limited harm arising from the scheme's conflict with the strategy for new development. As such, the material considerations in this instance justify a decision otherwise than in accordance with the development plan.
26. Given my findings above, it has not been necessary to reach a determinative view on the Council's housing land supply position. In the event that an adequate supply of housing did not exist, this would increase the weight to be applied to the appeal scheme's benefits, which I have already found to outweigh the conflict with the development plan.

Conditions

27. A draft list of conditions was provided by the Council. I have considered these against the advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency or clarity. Where conditions appear as pre-commencement conditions, I have sought the comments of the appellant and I note there is no objection to these being discharged prior to commencement of the development.
28. I have imposed the standard time condition relating to the commencement of development, however, as there was no justification provided for a reduced period of 2 years, I have amended this to 3 years. A condition specifying the plans and documents is necessary as it provides clarity.
29. To ensure a satisfactory level of living conditions for neighbouring occupiers, it is necessary to attach conditions restricting construction, demolition and delivery working hours, the provision of fire hydrants and the provision of details of boundary treatments.
30. To prevent undue risk to the local environment it is necessary to attach conditions relating to drainage, contamination and archaeology.
31. I have imposed conditions regarding the external materials, a detailed arboricultural method statement, hard and soft landscaping and lighting in order to safeguard the character and appearance of the area.
32. In the interests of ecology and biodiversity, I have imposed conditions requiring a badger survey, biodiversity enhancements and tree or shrub removal to be undertaken outside of the bird breeding season.

33. To safeguard highway safety, I have imposed conditions requiring the submission of details of an engineering scheme for the vehicular access from the existing carriageway, the minimum requirements for the shared access, the provision of onsite turning and parking areas including their proper drainage, provision of bin stores and a condition prohibiting obstruction of the access.
34. The conditions relating to archaeology, contamination, arboricultural method statement and a badger survey are pre-commencement conditions as they relate to the construction of the development, or matters need to be determined prior to the ground being disturbed by demolition or construction.

Conclusion

35. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

E Brownless

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 19_TSK_200 Rev D; 19_TSK_201 Rev B; 19_TSK_101 Rev C; 19_TSK_102 Rev A; 19_TSK_312 Rev A; 19_TSK_316 Rev A; 19_TSK_317 Rev A; 19_TSK_325 Rev A; 19_TSK_327 Rev A; 19_TSK_000 Rev A; 19_TSK_102; 19_TSK_001 Rev A; 19_TSK_101 Rev A; 19_TSK_300 Rev A; 19_TSK_301 Rev A; 19_TSK_302 Rev A; 19_TSK_303 Rev A; 19_TSK_304 Rev B; 19_TSK_305 Rev A; 19_TSK_306 Rev A; 19_TSK_307; 19_TSK_308; 19_TSK_309; 19_TSK_310; 19_TSK_311; 19_TSK_313; 19_TSK_315; 19_TSK_318; 19_TSK_319; 19_TSK_320; 19_TSK_321; 19_TSK_322; 19_TSK_323; 19_TSK_324; 19_TSK_326; 19_TSK_328; 19_TSK_329; 19_TSK_330; Phase 1 Geo-environmental Desk Study Report received 27 September 2019; Landscape and Visual Appraisal received 27 September 2019; AIA received 27 September 2019; Ecological Assessment received 27 September 2019; Design & Access Statement received 27 September 2019.
- 3) No dwelling shall be occupied until the on-site parking, turning and servicing area shall have been laid out, demarcated, levelled, surfaced and drained in accordance with approved plan 19_TSK_101 Rev C and thereafter it shall be kept available at all times for those purposes.
- 4) Notwithstanding the provisions of Class A, Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected across the approved access as shown on approved plan 19_TSK_101 Rev C.
- 5) No development shall take place until an Archaeological Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Written Scheme of Investigation.
- 6) Demolition, works of construction or deliveries taken at or despatched from the site, shall take place only between 07:30–18:00 on Monday–Friday and 07:30–13:00 on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7) Development shall not progress above slab level until details of the bin stores shall have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the bin stores shall be in situ in accordance with the approved details.
- 8) Development shall not progress above slab level until details of boundary treatments shall have been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be installed and completed in accordance with the approved details prior to the occupation of any part of the development.
- 9) Development shall not progress above slab level until details of a scheme for the disposal of foul water and a scheme for the disposal of surface water shall have been submitted to and approved in writing by the Local

Planning Authority. The approved schemes shall be implemented in accordance with the approved details prior to the occupation of any part of the development.

- 10) No development shall commence until an investigation and risk assessment of the nature and extent of any contamination on the site, whether or not it originates on the site, has been undertaken. The investigation and risk assessment shall be undertaken by a suitably competent person, and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority. The report of the findings shall include:
- i) a survey of the extent, scale and nature of contamination;
 - ii) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
 - iii) an appraisal of remediation options and identification of the preferred option(s). This shall be conducted in accordance with the Environment Agency – Model Procedures for the Management of Land Contamination (CLR 11)(or equivalent Model Procedures if replaced). The approved remediation works shall be carried out in accordance with the approved details and in accordance with a timeframe to be submitted to and approved in writing by the local planning authority.
- 11) Any contamination that is found at any time when carrying out the approved development that was not previously identified shall be reported to the Local Planning Authority immediately. No further works shall take place until a risk assessment has been undertaken and submitted to and approved in writing by the Local Planning Authority. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. The necessary remediation works shall be undertaken and following completion of measures identified in the approved remediation scheme a verification report must be prepared and approved in writing by the Local Planning Authority.
- 12) Development shall not progress above slab level until a scheme for the provision and location of fire hydrants to serve the development to a standard recommended by the Cambridgeshire Fire and Rescue Service or alternative scheme has been submitted to and approved in writing by the Local Planning Authority. The hydrants or alternative scheme shall be installed and completed in accordance with the approved details prior to the occupation of any part of the development.
- 13) No dwelling shall be occupied until a schedule of all soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include, planting plans, a written specification; schedules of plants noting species, plant sizes, proposed numbers/densities; and a detailed implementation programme. It shall

indicate all existing trees and hedgerows on the land and details of any to be retained. The works shall be carried out in accordance with the approved details prior to the end of the first planting season following occupation of the development. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

- 14) Development shall not progress above slab level until details of hard landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include: finished floor levels, car parking layouts, hard surfacing materials and lighting. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority.
- 15) Development shall not progress above slab level until details of all external surface materials including bricks, stone, roof coverings, flashing, windows and doors, to be used on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 16) No development (including works of demolition) shall take place until a detailed Arboricultural Method Statement (AMS) has been submitted to and approved in writing by the Local Planning Authority. The AMS shall include justification and mitigation for any tree removal proposed and details of how trees will be protected at all stages of the development. Recommendations for tree surgery works and details of any tree surgery works necessary to implement the permission will be required as will the method and location of tree protection measures, the phasing of protection methods where demolition or construction activities are essential within root protection areas and design solutions for all problems encountered that could adversely impact trees (e.g. hand digging or thrust-boring trenches, porous hard surfaces, use of geotextiles, location of site compounds, cart lodge, office, parking, site access, storage). All works shall be carried out under supervision by a Project Arboriculturist in accordance with the agreed AMS.
- 17) Tree or shrub removal shall not be undertaken during the bird breeding season of 1st March to 31st August in any calendar year. If clearance works must occur within the bird breeding season then any vegetation targeted for clearance shall first be surveyed by an ornithologist and clearance works shall only be permissible if the survey reveals no active bird's nests within the vegetation proposed for removal.
- 18) The biodiversity improvements as set out in the Ecological Assessment [agb Environmental Ltd] dated 25th April 2019 shall be implemented prior to the first occupation of any part of the development and thereafter maintained in perpetuity.
- 19) No external lights shall be erected within the site (either freestanding or building-mounted) other than those expressly authorised within this application.

- 20) The energy and sustainability strategy as set out in the Design and Access Statement shall be installed prior to the first occupation of any part of the development.
- 21) Prior to the commencement of development (including site clearance) a pre-construction badger survey shall be undertaken in accordance with the recommendations of the Ecological Assessment [agb Environmental Ltd] dated 11th September 2019. The development shall be carried out in accordance with the recommendations contained in the Ecology Appraisal.
- 22) The shared access shall be constructed to a minimum width of 5 metres, for a minimum distance of 10 metres measured from the near edge of the highway carriageway and thereafter it shall be retained in perpetuity.
- 23) No dwelling shall be occupied until the vehicular access from the existing carriageway edge shall be laid out and constructed in accordance with a detailed engineering scheme to be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the provision of a metalled/sealed surface for a minimum length of 5m from the existing carriageway edge.