



Appeal Decision

Site visit made on 18 January 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th February 2022

Appeal Ref: APP/V0510/W/21/3273002

Land to the rear of The Reindeer Public House, 62 The Street, Saxon Street CB8 9RS

- 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 Lisaleen Ltd against the decision of East Cambridgeshire District Council.
 - The application Ref 20/00895/FUL, dated 20 August 2020, was refused by notice dated 20 November 2020.
 - The development proposed is Erection of 5no. dwellings (4no. market dwellings and 1 no. self-build plot) and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted a Statement of Common Ground (SoCG) as it was their expectation that the appeal would have been conducted under the Hearing procedure. The Council has not agreed to the SoCG. As this appeal is being determined under the Written Representations procedure and the Council has not agreed to the SoCG, whilst I have considered its contents, I have not treated it as common ground between the parties.
3. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021 and the 2021 Housing Delivery Test (HDT) measurement results were published on 14 January 2022. I have given the Council and the Appellant the opportunity to comment upon the implications of these for their cases and taken them into account in determining this appeal.
4. The proposals before the Council included a commitment for the appellant to invest in an adjacent Reindeer public house (PH) that is an Asset of Community Value (ACV). Since the appeal was lodged I have been provided with a planning obligation seeking to secure an investment in the PH, which I have given the Council an opportunity to comment upon. I will return to this later.

Main Issues

5. The main issues are:
 - whether or not the proposed development would be in a suitable location having regard to policies for the location of new housing; and,

- the effect of the proposed development upon the character and appearance of the area.

Reasons

Policies for housing

6. The locational strategy set out in Policy GROWTH2 of the East Cambridge Local Plan (2015) (the ECLP) directs the majority of development towards its three main towns. More limited development is directed to within defined development envelopes of villages that have one, subject to other matters being satisfied. To protect the countryside and the setting of settlements, outside defined envelopes, development will be strictly controlled.
7. The village envelope for Saxon Street is drawn such that it generally follows the boundaries of residential gardens and rear boundary lines of buildings and structures along the main thoroughfares. The appeal site comprises mostly grassed and landscaped land part of which was understood to have been used as an outdoor seating area for patrons of the PH. The settlement envelope is a short distance rear of the building and parking area, with the majority of the grassed appeal site and the significant majority of the footprint of new dwellings outside the envelope, in the open countryside.
8. Outside the envelope development is restricted to categories and types outlined in Policy GROWTH2, subject to there being no significant adverse impact on the character of the countryside and other ECLP policies being satisfied. As a scheme for market and self-build/custom build housing the appeal scheme does not fall within the categories of development that may be permitted outside the envelope in GROWTH2. It would result in a significant incursion outside the envelope into open countryside, thereby not protecting the countryside. Therefore, it cannot be regarded as a minor technical breach of GROWTH2.
9. For the reasons set out above the proposed development would not be in a suitable location having regard to the development plan policies for the location of new housing, in conflict with Policy GROWTH2 of the ECLP, the relevant provisions of which I have referred to above.

Character and appearance

10. This part of Saxon Street is generally characterised by dwellings in a linear arrangement close to or addressing the highway, and assemblages of commercial buildings adjacent to or set a limited distance back from the highway. An exception to this is an equine yard and stables north of the appeal site, at which the single storey buildings are located up to approximately 90m back of the highway. However, it is single storey, and its depth does not reflect the characteristics of the majority of the development pattern nearby.
11. The appeal site mainly comprises rough improved grassland with some medium sized trees, set within and defined primarily by mature hedgerows, trees, fenced and walled boundaries. There was little paraphernalia on the appeal site at my visit. The relatively wide, deep, undeveloped open grassland area, surrounded by hedgerows and open countryside on two sides, is distinctly rural in character and appearance. Both this area and the more landscaped area to

the north of the PH building make a make a positive contribution to the character and appearance of the area.

12. The proposed scale, footprint and layout of the dwellings, circulation and parking areas would result in a significant incursion and intensity of built development into open countryside. This and the increased intensity of vehicular activity, parking, boundary treatments and paraphernalia would have a significant and harmful urbanising effect. The cul-de-sac type layout and positioning of dwellings, would effectively form two additional rows of development rear of the PH.
13. Numerically the number of dwellings or plot ratios would not appear to be out of keeping with densities in the area and plots are compliant with sizes in the Design Guide Supplementary Planning Document (2012). However, the combination of the building footprints, scale, and deep rear of plot layout, would result in the appearance of a somewhat deep, harmfully dense, and cramped development significantly at odds with the character and pattern of development nearby. While it may be a similar depth to the stables to the north, these dwellings would have a considerably higher roofline, and greater bulk and massing, and different layout, so would be markedly different. The harm would be compounded by the loss of the historic flint wall for the access, which is reflective of the distinctive historic vernacular and makes a positive contribution to the street scene.
14. The appellant's typologies suggest the appeal site and land to the south is of 'mixed character with a variety of building types and layouts'. However, from what I saw, the appeal site and land to the south constitutes more of a linear frontage development, with largely undeveloped land to the rear. This also reflects other residential development along the western side of The Street north of the stable block, and most development south of the right of way. While of a more mixed character and appearance, the buildings on the east of The Street are not sited as far back and as high as would result from this proposal. The small cul-de-sacs on School Road and backland development on Cheveley Road are some distance away and not viewed within the visual context of this part of The Street.
15. Given the relatively flat open landscape the appeal site is within a sensitive location. The harm from the development would be visible at a number of locations well above the boundary treatments and adjacent buildings, including interrupting some views in and out of the settlement. While the PH would remain the predominant building from The Street, the harm would still be markedly visible across the PH car park above parked cars. It would also be significantly visible from a limited number of nearby residential and commercial premises, sections of a public right of way to the south that I walked on my visit, and parts of the countryside to the west. Existing and proposed further landscaping might soften the appearance to a limited degree once mature. However, given the scale of the dwellings this would take several years, such that this and other matters secured by suitably worded planning conditions, could not adequately mitigate, or overcome the harm.
16. For the reasons set out above the proposed development would be significantly harmful to the character and appearance of the area, in conflict with Policies HOU2 and ENV2 of the ECLP. Amongst other things these require development is of a high quality that has regard to and preserves, complements, or

enhances the area and local distinctiveness, including with particular reference to layout, density, and relating well to existing features.

Other Matters

17. The planning obligation seeks to secure a contribution of not less than £150,000 towards works on the PH, aimed at securing its future as an ACV and Heritage Asset. I am informed that without investment the PH is likely to close, although it is unclear if this would be a result of inherent limitations with the location and configuration of the premises or because of the way it is currently being operated. The Viability Statement (VS), states that £356,366 would be necessary to bring the PH back to a sufficient operational state.
18. A planning obligation must meet the tests^[1] in Paragraph 57 of the Framework. These are explained further in a caselaw judgment^[2] to which the Council has referred me. Of particular relevance in this instance is that an obligation must be necessary and related to the proposed development in order to uphold the principle that planning permission cannot be bought or sold.
19. Policy COM3 of the ECLP seeks to prevent the loss of commercial community facilities, but it does not include a mechanism or requirement to explore retaining them by means of enabling development. As a result, the obligation is not necessary to ensure policy compliance and thus make the development acceptable in planning terms. Moreover, the success of the PH as an ACV has no direct bearing on the acceptability of the proposal when considered on its own merits. Therefore, the benefit of spending money on the ACV has insufficient connection to the change in character of the appeal site proposed.
20. The contribution would also be spent on a building that would have no direct operational relationship to the five proposed dwellings. It is therefore questionable whether the contribution, in so far as it relates to the ACV, would serve a planning purpose. As a result, the obligation would not be necessary or directly related to the proposed development. For these reasons securing the contribution would not be fair and reasonable. The obligation therefore fails the tests set out paragraph 57 of the Framework, so I cannot take it into account as a reason for granting permission in respect of the ACV.
21. The PH is a sizeable period building constructed in locally distinctive materials. It appears to have some evidential, historic, and architectural value and significance. However, it has been modified, especially the windows and doors, and there is nothing of substance before me to suggest it is particularly rare. Accordingly, from the information before me the building's significance as a non-designated heritage asset (NDHA) does not seem to be of a high order. Paragraph 208 of the Framework relates to enabling development in respect of heritage assets. Proposals for enabling development require an assessment of whether the benefits of securing the future conservation of a heritage asset outweigh the disbenefits of departing from relevant policies.
22. The £150,000 would be considerably below that stated in the VS as being necessary to undertake the works required to make the business sustainable. As the schedule of works is to be agreed with the Council, I am unable to form a view upon whether more limited works would be adequate. From what I saw

^[1] (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.

^[2] R (on the application of Wright) v Resilient Energy Severndale Ltd and another [2020] 2 All ER 1A.

the building is structurally sound. No survey has been provided demonstrating the structure is in critical condition. The obligation only commits to the PH being open 1 day per week, and it is not clear how the 5-year stay open clause could work if the PH is losing money to the point it cannot trade whatsoever.

23. Although there have been no bids to buy the ACV during moratorium periods, I have not been provided with evidence persuading me this statutory process is as effective as specialist commercial marketing. Neither have I been provided with details demonstrating marketing has been undertaken for a sustained period at a realistic valuation. Therefore, it is not demonstrated all reasonable efforts have been made to sell the NDHA at a realistic price, which could otherwise negate the need for harmful enabling development.
24. Overall, while the planning obligation is capable of meeting the tests in respect of being related to an enabling development, it proposes very modest benefits to an NDHA of seemingly limited merit, facilitated by a development which I have found to be significantly harmful. It is not demonstrated the development is the minimum necessary to achieve the benefit, or that there are not any other realistic means by which conservation might be achieved. Whether it is in relation to the proposal as an enabling development, or even if I agreed the paragraph 57 tests were met in relation to the ACV/commercial community asset status, the obligation attracts limited weight.

Planning Balance & Conclusion

25. On 13 October 2021 the Council could demonstrate a housing land supply (HLS) of 7 years, although achieving a 5 year HLS is not a ceiling. There may have been significant past under delivery, but the Council's 2021 HDT measurement is 95%. I have not been provided with the decision references, letters, or other relevant evidence in respect of the other appeals referred to by the appellant, so there is no substantive evidence the Council's recently updated HLS and HDT position is incorrect.
26. The Self Build and Custom Housebuilding Act 2015 requires Authorities to keep a register of those seeking self-build and custom build plots and give enough permissions to meet demand. There may be a market demand for self-build properties in the area¹. However, I am not provided with the up-to-date position in respect register numbers and permitted plots. Even if the need were very acute, and there was a suitable means before me to secure the plot as a custom or self-build dwelling such as a clause in a planning obligation, or a suitable planning condition offered, a single dwelling would be a limited benefit.
27. The development would result in a moderate temporary economic benefit during construction, and some small on-going spend in the local economy once occupied. This windfall site for five dwellings including one custom or self-build plot would contribute to the objective of significantly boosting the supply of housing in an area of high demand where they would enhance the vitality of rural communities, resulting in a moderate social benefit. The ecological enhancements such as bat roost and nest boxes, bee bricks, wildlife attracting planting, and the use of wildflower seed mixes, would markedly increase biodiversity interest on the development area. Notwithstanding the built development footprint of dwellings, accesses, driveways, and patios, this still attracts moderate weight in favour of the scheme. The benefits set out above

¹ Letter by Morris Armitage dated 20 July 2020

of the planning obligation are attributed limited weight. Overall, the benefits of the development are attributed moderate weight.

28. Compliance with policies in respect of the detailed design, appearance, materials, and space standards are neutral matters in the planning balance. If I were to agree the development is or could be made compliant with policies in respect of matters such as the living conditions of neighbouring and future occupiers, access and parking arrangements, accessibility of location, drainage, and land contamination, these would also be neutral matters in the balance.
29. Based upon the evidence before me, the most important policies for determining the application are GROWTH1, GROWTH2, ENV2 and HOU2. Policy GROWTH2 was prepared against an annual requirement of 575 dwellings in GROWTH1, markedly less than the 642 dwelling requirement against which the Council's HLS has been measured. Therefore, Policy GROWTH1 is out of date. This may have some implications for spatial strategy. However, the Council's HLS and HDT position suggests it has not.
30. GROWTH2 seeks to guide the majority of development to larger settlements where the greatest number of services and facilities are available, and it does not preclude some growth in villages and the countryside. It lists a wide range of development acceptable in the countryside providing flexibility, seeks to locate development to limit the need to travel, and contribute to and enhance the character and beauty of the countryside. Therefore, Policy GROWTH2 is consistent with the Framework objectives of locating development to limit the need to travel, promoting sustainable transport and recognising the intrinsic character and beauty of the countryside. As a whole, it is not out of date.
31. Policy HOU2 and ENV2 of the ECLP are consistent with paragraphs 130 and 174 of the Framework in recognising the intrinsic character and beauty of the countryside, development contributing to and enhancing the local environment, being sympathetic to local character and history. Therefore, these are not out of date. Consequently, of the list of the most important policies identified, only GROWTH1 is out of date, so the collective basket is not out of date as a whole.
32. The development conflicts with the planned approach to housing in Policy GROWTH2. Although the policy is not out of date, it is not fully consistent with the Framework which reduces the weight I give to the conflict to a modest extent. However, it still carries significant weight against the scheme. The conflict with Policies HOU2 and ENV2 of the ECLP as a result of the harmful effects to the character and appearance of the area is such that it attracts significant weight against the scheme. Overall, the harm from the proposal attracts significant weight against the scheme. It therefore significantly outweighs the benefits of the development.
33. The proposed development would be contrary to the development plan taken as a whole. There are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR