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## Appeal Decision

Site visit made on 27 May 2022

by **P. D. Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28<sup>TH</sup> June 2022

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### **Appeal Ref: APP/V0510/D/22/3286018 14 The Avenue, Burwell CB25 0DE.**

- 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 Anthony Smith against the decision of East Cambridgeshire District Council.
  - The application Ref 21/00794/FUL dated 20 May 2021, was refused by notice dated 13 October 2021.
  - The development proposed is erection of two private detached dwellings, new dropped kerb, access road and associated works.
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### **Decision**

1. The appeal is allowed and planning permission is granted for erection of two private detached dwellings, new dropped kerb, access road and associated works at 14 The Avenue, Burwell CB25 0DE in accordance with the terms of the application, Ref 21/00794/FUL dated 20 May 2021 and subject to the conditions at Schedule A below.

### **Preliminary Matters**

2. The proposal is chargeable development in respect of the Community Infrastructure Levy (CIL). The collection of the CIL contribution is undertaken by the relevant charging authority on service of a notice that planning permission has been granted in relation to chargeable development. As such the requirement for and any enforcement of the payment of a contribution in relation to the development is not for consideration at this appeal.
3. The occupant at No 11 The Avenue did invite me to view the development site from No 11. On calling at the front door however on the day of the site visit there was no reply but I was able to assess the development from the front door whilst waiting.

### **Main Issues**

4. The main issues in this case are whether the proposed development would have an adverse effect on:
  - the character and appearance of the Avenue and surrounding area.
  - highway and pedestrian safety as a result of the access arrangements.

### **Reasons**

#### *Character and appearance*

5. The land the subject of this appeal lies immediately to the north of No 14 the

Avenue, Burwell in what is currently the rear garden to No 14. The Avenue is a cul-de-sac of mixed residential properties with short terraces of 2 storey houses interspersed with semi-detached bungalows all built in brick and render under tiled roofs. The Avenue at its western end has a large turning circle used for car parking, off which the access to No 14 would be taken.

6. It is common ground and not disputed by the parties that the development within the development envelope of Burwell would be acceptable in principle. The fact that development would be in the backland to the existing properties on the Avenue is also not disputed. There are a number of examples in the Avenue and surrounding streets of development in the backland including a single unit at No 17A the Avenue. Of particular relevance to the appeal however is that, in the period since the application on the appeal site was submitted, an alternative scheme for one dwelling positioned on the site of Plot 1 in the appeal proposal has now been granted planning permission (ref 21/01628/FUL).
7. It has been put to me that other examples of backland development are restricted to only one dwelling and are therefore not comparable. Whilst I accept that in the majority of examples this is the case it is not exclusively so. For example the backland development in Ness Road, referred to by the appellant, although permitted as two individual proposals nevertheless has resulted in two dwellings adjacent to each other in the backland. The issue is the extent to which the size of backland plot can accommodate more than one dwelling without adversely impacting on the character and appearance of the surroundings.
8. The Council has prepared the *East Cambridgeshire District Council Design Guide Supplementary Planning Document* (SPD) to assist developers in designing schemes and, amongst other things, the SPD offers advice on where development in backland locations will be acceptable. The Guide calls for a contextual analysis to be prepared and this was carried out in this case. Provided the contextual analysis would support development in the backland and it can be provided with adequate access and noise and disturbance would not be an issue for any existing properties, development can be supported.
9. In this case the proposal is for two modestly sized, single storey, two bedroomed dwellings. I accept that the plot size available for each of the two dwellings would be smaller than that typical elsewhere on the Avenue. However, the houses would not be cramped on the site. They would have adequately sized front and rear gardens and parking areas and the existing dwelling at No 14 would also be provided with sufficient garden space to meet the normal day to day needs of sitting out, clothes drying, children's play etc. I am not therefore persuaded that the proposal would amount to overdevelopment.
10. Clearly the Council considered that a dwelling to the rear of No 14 was acceptable and granting permission for this small unit close to the side boundary with No 11 exactly on the footprint of Plot 1 in the appeal proposal leaves sufficient space for a further modest dwelling as now proposed. It has been put to me that the second dwelling would be in a position that is not well-related to the terrace and appears cramped. However, comparing the proposed house on Plot 2 with that permitted at No 17A The Avenue, the relationship to the Avenue properties and the plot size, etc. would not be substantially different and the proposal on Plot 2 being single storey would be visually less intrusive than is the case with No 17A.

11. I am not therefore persuaded by the Council's concerns and am satisfied that permitting two dwellings on the site would not have any significantly additional impact on character and appearance, over the single unit scheme.
12. Moreover, it is the dwelling on Plot 1 that would be visible from the Avenue and development there has already been permitted. The house on Plot 2 would be visible from the public domain between Nos 11 and 14 to only a very minimal extent.
13. Accordingly, the scale, design and nature of the proposal would be compliant with Policies ENV1 and ENV2 of the *East Cambridgeshire Local Plan* (ECLP) which require the location, layout, scale, form, massing and materials, etc to create positive complementary relationships with existing development and relate sympathetically to the surrounding area. Given the backland location however it would be necessary, in granting permission, to restrict permitted development rights for the two properties particularly in respect of extensions and enlargement and the construction of outbuildings.

#### *Highway and pedestrian safety*

14. Although the Council's reason for refusal did not directly raise a highway safety issue it did refer to the restricted nature of the access arrangements and third parties have specifically expressed concern regarding safety both within the site as a result of vehicles passing close to pedestrians and in respect of the access onto the Avenue.
15. The access proposed, although capable of having sufficient width at the entrance from the Avenue, would narrow down over a stretch of approximately 12 metres where it passes between No 14 and No 11 before it widens out again into the hardstanding serving the two dwellings.
16. Specific concern has been raised by the occupants of No 15 who have a right of access by foot from their rear garden over this section to access the Avenue. Although I acknowledge that the width of just over 3 metres through the narrow section is not ideal, for a number of reasons I am not persuaded that it is sufficient reason to dismiss the appeal.
17. First, the narrow section is relatively short over which there is a clear line of sight to assess approaching traffic. Secondly, the volume of traffic generated by two houses will be extremely low and movements would be no more than would be expected on any private drive. Thirdly, the Council has already permitted this access and determined it to be adequate and safe to serve one house and I am satisfied that the additional traffic as a result of one extra small dwelling would not be substantially different.
18. In respect of the access arrangements onto the public highway the Local Highway Authority has not objected subject to the imposition of a number of conditions to ensure the access would operate safely. Having reviewed these and the context on site I am satisfied that no issues regarding vehicle and pedestrian safety on the Avenue would arise as a result of the access arrangements provided the conditions are in place.
19. Third parties have expressed concern regarding the potential for noise and disturbance from vehicles passing between Nos 11 and 14. Backland development can give rise to such issues but again the small amount of traffic that would be involved, the absence of any main side windows in No 14 facing onto the access and the close-boarded fencing to head height and shrubs screening No 11 and its

entrance means that noise and disturbance is unlikely to be an issue. I note that there is concern about possible noise if a loose surface material was used but this can be adequately controlled by condition to ensure the surface is constructed with a bound material. Similarly, provided a screen fence is secured by condition between the entrance to No 14 and the access road the relationship would be satisfactory.

20. I also note that the width over the narrow section would preclude larger emergency vehicles accessing to the rear of the site. However, the distances involved between the proposed houses and the point where emergency vehicles could gain access would be not more than about 30-40 metres and is not likely to give rise to an inability of the emergency services to quickly access the properties. In any event it would be possible to condition a sprinkler system for the properties to reduce risk in the event of fire.
21. Accordingly, the proposal would be acceptable in terms of access and the requirements of Policy ECLP COM 7 and COM 8 regarding the impact of traffic and parking respectively would be met.

#### *Other Matters*

22. A number of other concerns have been raised by third parties. These include that the development is not needed as the Council can demonstrate sufficient housing provision and that a housing site is already allocated elsewhere in Burwell, that the development will result in overlooking and loss of privacy, that the houses would overshadow the neighbouring allotment and that development would give rise to noise and disturbance as a result of construction.
23. In respect of housing provision, whilst I note there is now adequate supply within East Cambridgeshire the requirement for a 5 year supply is not a fixed target – it is a minimum requirement and opportunities for additional housing can be taken where they are appropriate in the context of the development plan as in this case.
24. Regarding the possibility of overlooking and loss of privacy the proposed houses are single storey dwellings and they are set a minimum of 20 metres from the nearest properties in the Avenue with only the house on Plot 1 directly facing the rear elevation of the Avenue properties. This is an adequate facing distance to avoid any loss of privacy as a result of overlooking. If anything, it would be the new dwellings that have the potential to be overlooked from upper windows in the properties on the Avenue. However, any overlooking would be mainly over front gardens and parking areas and, as the main garden areas to the houses will be to the rear, overlooking from the existing houses in the Avenue will not be a problem.
25. In terms of overshadowing, again the proposed units are single storey to a hipped roof design, the impact of their height on the rear allotment garden to No 15 would therefore be limited and particularly as the house on Plot 2 lies east and north of the garden the impact on sunlight levels would be minimal.
26. All development will result in some noise and disturbance during the construction period. However this is for a limited period of time and the effects can be mitigated by imposition of a condition requiring a Construction Management Plan to be prepared.

#### **Conclusion and Conditions**

27. In reaching my decision I have had regard to the matters before me and for the reasons above the appeal should be allowed and planning permission granted for two dwellings on the appeal site subject to conditions.

28. The Council suggested a number of conditions. I have considered these in the light of the advice in the Framework and *Planning Practice Guidance*. A condition requiring development to be carried out in accordance with the submitted plans is necessary in the interest of certainty.
29. Although it is unlikely that contamination will be found on the site, no assessment has been made and a condition is therefore necessary to control development in circumstances where contamination is identified after commencement.
30. The Council has suggested two drainage conditions one requiring details of foul drainage to be submitted prior to commencement of development as these are not submitted and one to ensure a sustainable drainage scheme is implemented. These are necessary in accordance with the requirement to deliver appropriate drainage to the site as required by ECLP Policy ENV8.
31. The Highway Authority has requested that 7 conditions are added in the interests of securing highway and pedestrian safety and to ensure access to the site is appropriate. The first of these seeks to remove permitted development rights for the erection of gates etc. This is necessary to ensure the free flow of traffic into and along the access road. Secondly, on the first section of the access road it is important that sufficient width is available for two vehicles to pass within the site so that a vehicle does not need to wait on the highway. Thirdly, before the development is occupied it is important that the planned arrangements for parking and turning for the two houses are completed. In view of concerns over the previously proposed use of gravel for the areas in front of the properties and the noise that this would create for neighbouring occupiers I have adjusted the Council's proposed condition to require that a bound surface is used throughout the site and that this should be permeable. Fourthly, the provision of appropriate visibility splays across the pavement are necessary to ensure pedestrian safety when vehicles are exiting the site. Fifthly, it is important that surface water from the access road does not flood onto the carriageway and therefore a condition is required to ensure appropriate drainage is provided on the access road. Sixthly, in the interests of promoting sustainable transport a condition is necessary to ensure the proposed cycle storage is in place for the site prior to occupation. Finally, the Highway authority proposes a condition to control all hard landscaping for the site. I am satisfied that all these conditions are necessary to control the provision of access in accordance with Policies ENV2 and COM7.
32. The Council propose a number of conditions to control the finished appearance of the site in addition to the condition for hard landscaping. They propose control over soft landscaping and its maintenance, external materials and boundary treatments. These are all necessary in order to protect the character and appearance of the site and its surroundings in accordance with policies ENV1 and ENV2. With respect to the boundary treatments I have adjusted the condition to ensure that a fence or railing is provided between the main entrance door to No 14 and the access road as these are very close to each other and in the interests of safety and amenity for the occupants of No 14 this should be provided.
33. Because of the location of the development to the rear of established housing it is important that the construction process is managed. The Council has proposed three separate conditions requiring the submission of a Construction Environment and Management Plan, hours of construction and control in the event that ground conditions necessitate the installation of piled foundations. I am satisfied that all three are necessary and reasonable in compliance with Policy ENV2.
34. The Council proposed two conditions to protect the natural environment of the site and enhance biodiversity. One of these is necessary to ensure tree protection

measures are in place whilst the second is required to ensure biodiversity enhancement proposals are delivered. Both are necessary in accordance with Policy ENV7.

35. Given the nature of the development site to the rear of established housing and the shape and configuration of the site it is necessary to restrict some of the permitted development that would otherwise be permitted under the *General Permitted Development Order 2015* (as amended). The classes of development where it is important that planning control is retained is in respect of enlargement (Class A), roof extensions (Class B) and development incidental to the enjoyment of the dwelling house (Class E) of Part 1 to Schedule 2 of the Order.
36. Finally, it was proposed by the Council that, given the limited width of the access road and the fact that emergency vehicles would not be able to access into the rear of the site, a condition requiring installation of a sprinkler system in the two houses should be imposed. I agree that this is necessary and reasonable for the safe operation of the site for residential use.
37. A number of the conditions of necessity have to be pre-commencement conditions specifically the drainage details, tree protection and the requirement for a Construction Management Plan. Although such conditions are generally to be avoided, in the case of these issues they must be resolved prior to construction commencing. As the appellant has not specifically agreed to these as pre-commencement conditions, in accordance with guidance I have consulted to confirm consent to these as pre-commencement conditions. The appellant has confirmed acceptance of all.

*P. D. Biggers*

INSPECTOR

### **Schedule A - Conditions**

1. The development hereby permitted shall be commenced before the expiration of 3 years of the date of this permission.
2. Development shall be carried out in accordance with the drawings and documents listed below:  
CGI High Res Image 7th August 2021; P- 6222-02 REV B 6th August 2021;  
P- 6222-03 REV B 6th August 2021; P- 6222-04 REV B 6th August 2021;  
P- 6222-05 REV B 6th August 2021; P- 6222-06 REV B 6th August 2021;  
P-6222-01 Existing 21st May 2021; Biodiversity Report 21st May 2021;  
Environmental Report 21st May 2021; Planning Statement 21st May 2021;  
Tree Survey, AIA, TPP and AMS 27th July 2021; Tree Report 27th July 2021.
3. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported to the Local Planning Authority within 48 hours. No further works shall take place until an investigation and 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.

4. No development shall take place until a scheme to dispose of foul drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme(s) shall be implemented prior to occupation.
5. The sustainable drainage scheme as shown on Drawing Ref. P-6222-03 Rev B shall be implemented prior to occupation of the development hereby approved and maintained thereafter.
6. Notwithstanding the provision of Class A of Schedule 2, Part 2 of the *Town and Country Planning (General Permitted Development) Order 2015*, (or any order revoking, amending or re-enacting that order) no gates, fences or walls shall be erected across the approved vehicular access within 10 metres of the edge of the public highway, as shown on Drawing Ref. P-6222-06 Rev B.
7. The access shall be a minimum width of 5m, for a minimum distance of 8m measured from the near edge of the highway carriageway and thereafter retained in perpetuity.
8. Prior to first occupation or commencement of use the proposed on-site parking and turning area shall be laid out, demarcated, levelled, surfaced in a permeable bound material and drained in accordance with the approved plan P-6222-06 Rev B and thereafter retained for that specific use.
9. Prior to the commencement of the use hereby permitted visibility splays of 2m x 2m shall be provided each side of the vehicular access measured from and along the back of the footway. Such splays shall thereafter be maintained free from obstruction exceeding 0.6m above the level of the footway.
10. The access and all hardstanding within the site shall be constructed with adequate drainage measures to prevent surface water run-off onto the adjacent public highway and retained in perpetuity.
11. Prior to above ground construction, details of covered cycle storage as shown on Drawing Ref. P-6222-02 Rev B shall be submitted to and agreed in writing by the Local Planning Authority. The works shall be implemented prior to the occupation of the dwellings hereby permitted and thereafter retained for that specific use.
12. No above ground construction shall commence until full details of hard landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include car parking layouts, hard surfacing materials, lighting, wearing course for the access road and turning area and on-plot hard landscaping. The works shall be carried out in accordance with the approved details prior to the occupation of the development or in accordance with an implementation programme submitted to and approved in writing by the Local Planning Authority prior to first occupation, and thereafter maintained in perpetuity.
13. All soft landscaping works shall be carried out in accordance with the approved details as shown on Drawing Ref. P-6222-03 Rev B. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority. 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. No above ground construction shall commence until details of the boundary treatments (including a fence/railing separating the entrance doorway to No 14 from the access road) have been submitted to and agreed in writing with the Local Planning Authority. The boundary treatments shall be in situ in accordance with the approved details prior to the occupation of the development hereby approved.
15. The materials to be used in the construction of the external surfaces of the development shall be either: a. As detailed on the Application Form and Drawing Ref. P-6222-05 Rev B; or

- b. Submitted to and approved in writing by the Local Planning Authority prior to their use in the construction of the development. All works shall be carried out in accordance with the approved details.
16. Prior to any work commencing on the site a Construction Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the Local Planning Authority regarding mitigation measures for noise, dust and lighting during the construction phase. These shall include, but not be limited to, other aspects such as access points for deliveries and site vehicles, and proposed phasing/timescales of development etc. The CEMP shall be adhered to at all times during all phases.
17. Construction times and deliveries, with the exception of fit-out, shall be limited to the following hours: 08.00 to 1800 each day Monday - Friday, 08.00 to 1300 Saturdays and none on Sundays, Bank Holidays and Public Holidays.
18. In the event of the foundations from the proposed development requiring piling, prior to the commencement of development the applicant shall submit a report/method statement to the Local Planning Authority, for approval in writing, detailing the type of piling and mitigation measures to be taken to protect local residents from noise and/or vibration. Noise and vibration control on the development shall be carried out in accordance with the approved details.
19. No development shall take place until a scheme for the protection during construction of the trees on the site, in accordance with *BS 5837:2012 - Trees in relation to design, demolition and construction - Recommendations*, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show the extent of root protection areas and details of ground protection measures and fencing to be erected around the trees, including the type and position of these. The protective measures contained within the scheme shall be implemented prior to the commencement of any development, site works or clearance in accordance with the approved details, and shall be maintained and retained until the development is completed. Within the root protection areas the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon. If any trenches for services are required within the fenced areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.
20. The biodiversity improvements as shown on Drawing Ref. P-6222-04 Rev B and as set out in the Biodiversity Improvements report prepared by ASJ Architecture Ltd shall be installed prior to the first occupation of the hereby approved development and thereafter maintained in perpetuity.
21. Notwithstanding the provisions of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) (or any order revoking and re-enacting that Order with or without modifications), no development within Classes A, B and E of Part 1 of Schedule 2 of the Order shall take place on site.
22. No above ground construction works shall commence until a scheme for domestic automatic sprinkler system (installed in accordance with *BS 9251: 2014* or equivalent acceptable standard) is submitted to and agreed in writing with the Local Planning Authority. No dwelling shall be occupied until the agreed sprinkler system has been installed and made operational. The sprinkler system shall remain operational in perpetuity.