



Appeal Decision

Hearing held on 9 August 2022

Site visit made on 9 August 2022

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Appeal Ref: APP/J1915/W/22/3297661

Land at Railway Meadow, London Road, Spellbrook CM23 4AU

- 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 Mrs Ran Yao against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/1178/FUL, dated 30 April 2021, was refused by notice dated 27 October 2021.
 - The development proposed is the erection of seven infill dwellings including associated vehicular access, landscaping and infrastructure.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of seven infill dwellings including associated vehicular access, landscaping and infrastructure at land at Railway Meadow, London Road, Spellbrook CM23 4AU in accordance with the terms of the application, Ref 3/21/1178/FUL, dated 30 April 2021 subject to the attached schedule of conditions.

Applications for costs

2. An application for costs was made by Mrs Ran Yao against East Hertfordshire District Council. This application is the subject of a separate decision.

Background and main issue

3. The appeal site is located in the Metropolitan Green Belt, where Policy GBR1 of the East Hertfordshire District Plan (2018) (the District Plan) states that planning decisions should be considered in line with the provisions of the National Planning Policy Framework (the Framework). Whilst the Framework regards the erection of new buildings in the Green Belt as generally being inappropriate. There are some exceptions to this, which include the construction of limited infills in a village. The appellant and Council agree that this exception has been met. I have no reason to disagree. Therefore, for the purposes of this appeal, the main issue is the suitability of the appeal site as a location for a residential development, with reference to the requirements of the Development Plan.

Reasons

4. The appeal site is a currently undeveloped plot of land located in a linear pattern of development. The vicinity of the appeal site contains many dwellings that are constructed to different styles and scales. In addition, the surrounding

- area contains several commercial and community uses including a school, public house and small business park. The site is also near to bus stops.
5. In considering this appeal, I have been directed towards Policy DPS2 of the District Plan. Amongst other matters, this policy seeks to provide a hierarchy for the location of new developments. Furthermore, the policy seeks to outline the appropriate scale of acceptable proposals. The policy suggests that the provision of limited development in the villages might be acceptable.
 6. From the evidence before me, and with regards to the size of the settlement, the proposed development can be described as being limited in scale. In addition, it would be in a linear form of development. Therefore, it can be summarised as being a limited infill.
 7. The preamble to this policy states that Policy DPS2 is intended to be a broad policy framework, which is then carried through into the separate settlement-level policy sections of the District Plan. These provide more detail regarding the assessment of the location of proposed developments. In addition, Policy DPS2 does not state that all areas within the hierarchy of settlements might be an acceptable location for new developments.
 8. Therefore, although the appeal site is within a village, it is clear that Policy DPS2 requires the assessment of a proposed development against other policies of the District Plan. Alongside other policies, Policy VILL2 of the District Plan categorises various settlements depending on their size and facilities that are within it. The policy defines Spellbrook as a Group 2 village. The policy states that development would be limited to the built up area defined by that allocated on the Policies Map.
 9. There is no Neighbourhood Plan for Spellbrook and the site is outside, but adjacent to, the built up area defined on the Policies Map. Its development would therefore be contrary to Policy VILL2. Therefore, given that the intention is that Policy DPS2 and Policy VILL2 should be read alongside one another, the development would breach the requirements of Policy DPS2 for it would not be within the built up area of Spellbrook shown on the Policies Map.
 10. Having identified that the proposed development would breach the requirements of Policies DPS2 and VILL2, I am required to establish whether any harm would arise from these breaches of policy. This is because it is a requirement of planning law and the Framework that planning proposals are determined in accordance with the development plan, unless material circumstances indicate otherwise.
 11. The purpose of including land within the built up area is to ensure that occupiers of developments have appropriate access to services and facilities. Although the proposed development would be sited outside of the built up area in Spellbrook, residents of the development would be able to access the various services in the village. These include a primary school, a public house and a business centre. These would be accessible via a network of pavements that are lit. In addition, the distances that would need to be travelled are short.
 12. In consequence, this means that the services within the vicinity of the appeal site would not be any less accessible for the occupiers of the proposed development than the occupiers of dwellings sited in the Village Development

Boundary. This would occur even though the appeal site is opposite some fields.

13. Owing to the scale of the settlement, it is likely that some occupiers of the development would need to travel to other settlements in order to use the services and facilities that they are likely to require on a frequent basis. However, the appeal site is near to lit pedestrian routes into Bishops Stortford.
14. In addition, the appeal site is in proximity to a bus stop from which there are very regular services into Bishops Stortford, including the town centre. Therefore, occupiers of the proposed development would have alternatives to private cars for several of the journeys that they are likely to undertake.
15. In consequence, although outside of the built up area, the occupiers of the development would not be reliant upon the use of private cars as a means of travel. Therefore, the services and facilities that residents are likely to require on a frequent basis would be accessible via other means. In consequence, the siting of the development would not be materially different to a location inside the built up area of Spellbrook in this respect.
16. Policy VILL2 requires that developments adhere to other objectives, such as those pertaining to design. I have had regard to these. However, the evidence before me is indicative that these objectives have been adhered to and I have no reason to disagree.
17. I therefore conclude that the proposed development would not fully comply with the requirements of Policies DPS2 and Policy VILL2 of the District Plan. Whilst I am mindful of this breach, I am conscious that the location of the proposed development would not result in harm being created. Accordingly, with reference to the Framework, which states that planning decisions are to be considered in accordance with the Development Plan unless material considerations indicate otherwise, I conclude that the proposed development would be within a suitable location.

Other Matters

18. The Council can demonstrate a five-year housing land supply. Whilst this means that the Council is significantly boosting the supply of homes, it is important to note that the five-year housing land supply is not a maximum. In addition, as the development would not give rise to any harm, the local level of housing supply is not a sufficient reason alone to dismiss this appeal.

Conditions

19. In addition to the standard implementation condition, a condition specifying the approved plans is necessary in the interests of precision.
20. In order to ensure that the development harmonises with its surroundings, does not harm the living conditions of the occupiers of neighbouring properties and provides appropriate living conditions for the future occupiers of the development, conditions covering the approval of building materials, boundary treatments, obscure glazing at key points, refuse storage, the provision and implementation of landscaping, drainage provision, and contamination remediation are required. Conditions pertaining to ecology, such as bats, are necessary in the interests of biodiversity.

21. Given the undeveloped nature of the site and its previous uses, a condition requiring the investigation into archaeology is necessary. In order to maintain highway safety, conditions requiring the provision and retention of access controls, road markings, hard surfacing and car parking are also needed.
22. However, the off-site highway works would require the agreement of the relevant Highway Authority before such works could take place. Furthermore, the approval process from the Local Highway Authority would include the timing for the works to be carried out. Therefore, approval of these details by the Council would unnecessarily duplicate this process. I have therefore amended the highway works condition accordingly.
23. In order to protect the environment, conditions requiring the provision of suitable boilers, electric charging points and water usage are necessary. In the case of the latter point, the policy to which I have been directed seeks to ensure that proposals achieve a higher standard than the relevant Building Regulations. The electric car charging points should be approved by the Council as there are several places where they might be installed in the development.
24. To prevent the building process from giving rise to adverse effects, conditions regarding dust suppression and a construction management plan are necessary and reasonable. However, I have amended the wording suggested by the Council to remove references to the routing of construction traffic as some of this is likely to be undertaken by third parties outside of the control of the appellant.
25. A condition requiring noise mitigation to be installed in the buildings is necessary owing to the proximity of the appeal site to a busy road and a railway line. However, I have omitted the part of the condition that would require the submission of a verification report as the remainder of the condition would enable enforcement action to be taken in the event that such works are not carried out. Given the land levels of the site, a condition covering the foundation design is necessary.
26. Where necessary I have amended the conditions to remove tail-pieces by which alternative details might be agreed and to include retention clauses. This is to provide certainty regarding the extent of the development that has been approved. Owing to the need for some of these details to be implemented at an early stage of the development process, some of the conditions need to be approved prior to the commencement of development.

Conclusion

27. For the preceding reasons, I conclude that the appeal should be allowed and planning permission granted, subject to conditions.

Benjamin Clarke

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Hannah Weston
Rachael Collard

East Hertfordshire District Council
East Hertfordshire District Council

FOR THE APPELLANT

Oliver Rider

Zesta Planning

Documents submitted at the Hearing

Copies of Plans PL_4000 Rev. C and 4175
Key Diagram and Inset Map 19 from the District Plan

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 4175; 672-02; 672-03; PL_0101 rev A; PL_1000 rev C; PL_1001 rev J; PL_2000 rev H; PL_3000 rev I; PL_4000 rev C; PL_4001 rev J; S803TCP (Tree Constraints Plan); S803TPP (Tree Protection Plan); and S803TRP (Tree Removal Plan).
3. No development shall take place within the proposed development site until the applicant, or their agents, or their successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to, and approved in writing by, the Local Planning Authority.
4. Prior to the first occupation of any dwelling hereby permitted, an archaeological report detailing the archaeological works that have been carried out, including details of any publication, shall be submitted to, and approved in writing by, the Local Planning Authority.
5. The northern most access to the site shall be used for ingress only and the southern most access for egress only. Details of signage to this effect shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any dwelling. The approved signage shall be implemented prior to first occupation of any dwelling and retained thereafter.
6. Prior to the commencement of development above ground floor slab level, details of the external materials of construction for the proposed dwellings hereby permitted shall be submitted to, and approved in writing by, the Local Planning Authority and the development shall thereafter be implemented in accordance with the approved materials.
7. Prior to the commencement of the development hereby permitted all materials to be used for hard surfaced areas within the site including roads,

driveways and car parking areas shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the first occupation of any dwelling hereby permitted and retained thereafter.

8. Prior to the commencement of development, a scheme to deal with contamination of land/ground gas/controlled waters shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include all of the following measures:
 - a) Based on the findings of the STM Phase Desk 1 report dated January 2021 which revealed possible pollutant linkages, a Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites – Code of Practice. The report shall include a quantitative human health, controlled waters and environmental risk assessment.
 - b) A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.
 - c) a timetable for the submission of any remediation schemes in the event of the identification of unexpected contamination.
 - d) If during the works, unexpected contamination is encountered, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the Local Planning Authority in accordance with the previously agreed timetable;
 - e) A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to the first occupation of any dwelling. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.
9. Prior to the first occupation of any dwelling hereby permitted, any gas-fired boiler to be used in that dwelling shall meet a minimum standard of <40 mgNO_x/kWh and shall not be replaced with another gas-fired boiler that does not meet the same minimum standard.
10. Prior to the commencement of development, a Dust Management Plan (DMP), based on an Air Quality and Dust Risk Assessment, shall be submitted to and approved, in writing, by the local planning authority. The DMP shall be in accordance with the Institute of Air Quality Management guidance for Control of Dust and Emissions during Construction and Demolition. The DMP will need to detail the measures to reduce the impacts during the site preparation and construction phase. The development shall be undertaken in accordance with the approved plan.
11. Prior to the commencement of the development, full details of both hard and soft landscape proposals shall be submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate: (a)

Details of current levels of biodiversity on site and calculations to demonstrate that the proposal results in a biodiversity net gain of 10%; (b) Proposed finished levels or contours; (c) Hard surfacing materials; (d) Planting plans; (e) Written specifications (including cultivation and other operations associated with plant and grass establishment); (f) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate; and (g) Implementation timetables.

12. All hard and soft landscape works shall be carried out in accordance with the approved details, including the implementation timetables. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.
13. Prior to the commencement of any development, a Construction Method Statement shall be submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - phasing for the development of the site, including all highway work;
 - the parking of vehicles of site operatives and visitors on site;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoardings;
 - location and details of wheel washing facilities;
 - measures to control the emission of dust and dirt during construction;
 - a scheme for the storing on site and subsequent recycling/disposing of waste resulting from site preparation and construction works;
 - measures and details to change the levels across the site in terms of the import of material; and
 - the hours of operation for construction and/or demolition works.
14. The recommendations in the Preliminary Ecological Appraisal (13/02/20), Bat Inspection survey (13/02/2020), and the Reptile Survey (13/02/20) shall be implemented as part of the approved development prior to the first occupation of any dwelling and shall be retained thereafter.
15. No building works shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to, and approved in writing by, the local planning authority. The drainage scheme shall demonstrate the surface water run-off generated, will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details prior to the first occupation of any dwelling hereby permitted and shall be retained thereafter.
16. The proposed window openings in the north facing elevation of each dwelling and the glass screen serving the roof terrace of each dwelling (as indicated on drawing PL_1000 C, PL_1001 J, PL_4000 C); shall be fitted with obscure glazing prior to the first occupation of each dwelling and retained thereafter.

17. The proposed window openings to the south elevation and the glass screen serving the roof terrace (as indicated on drawings PL_1000 C, PL_1001 J, PL_4000 C) to plot 7 shall be installed prior to the first occupation of the dwelling hereby permitted and retained thereafter.
18. Prior to the commencement of construction works, the access and junction arrangement, including visibility splays onto London Road shall be completed in accordance with plan SCP/190674/D01 within Appendix 3 of the submitted Transport Statement reference AM/190674/TS/0 and shall be retained thereafter.
19. Prior to the first occupation of any dwelling hereby permitted, full details of a widened (to two metres) public footway fronting the site shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details, be fully implemented prior to the first occupation of any dwelling hereby permitted and shall be retained thereafter.
20. No dwelling hereby permitted shall be occupied until such time as
(a) changes to road markings within London Road in the vicinity of the site including a right turn lane for traffic entering the site by coloured surfacing; and (b) the pedestrian crossing points and widening of the footway between the site egress and the bus stop shown on drawing SCP/190674/D01 have been implemented in full.
21. The car parking, including those spaces shown adjacent to the access road, as illustrated on drawing PL_1000 C shall be provided prior to the first occupation of any dwelling hereby permitted and retained thereafter.
22. Prior to the commencement of construction, full details of the method of foundation construction shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details.
23. Prior to first occupation of any dwelling hereby permitted, full details of the on-site storage facilities for waste, including waste for recycling, for each property shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities for each dwelling shall be provided prior to first occupation of that dwelling and retained thereafter.
24. Prior to first occupation of the development hereby permitted, details of boundary treatments for each dwelling shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall be provided prior to first occupation of each dwelling hereby permitted and retained thereafter.
25. Prior to first occupation of any dwelling hereby permitted, full details of a minimum of seven electric vehicle charging points (1 per dwelling) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details for each dwelling prior to the first occupation of that dwelling and retained thereafter.

26. The noise levels in rooms and the external amenity areas at the development hereby approved shall meet the amenity standards as set out in the criteria of BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings' for internal rooms and external amenity areas. Construction methods and materials to achieve this for each dwelling shall be implemented prior to first occupation of that dwelling and shall thereafter be permanently retained.
27. Prior to the first occupation of the development hereby permitted, full details of measures to ensure that water usage by persons occupying the dwellings hereby permitted shall not exceed 110 litres per person per day have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details, be fully implemented prior to the first occupation of the development hereby permitted and shall be retained thereafter.