



Appeal Decision

Site visit made on 3 January 2023

by Diane Lewis BA(Hons) MCD MA LL M RTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal Ref: APP/W0530/W/21/3280931

The Arches, Schole Road, Willingham, Cambridgeshire CB24 5JD

- 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 Julie Brown against the decision of South Cambridgeshire District Council.
- The application Ref 20/04431/FUL, dated 29 October 2020, was refused by notice dated 19 March 2021.
- The development proposed is: Removal of existing mobile chalet unit and erection of new single storey dwelling with new 'link' to existing brick and tile 'medical unit', with temporary provision for the siting of 2 no static caravans for occupation during construction phase, and allowing for the continued use during the construction phase of the medical unit by the applicant.
- An application for costs was made by the appellant against South Cambridgeshire District Council. This application is the subject of a separate Decision.

Summary of Decision: The appeal is allowed.

Main Issue

1. The main issue is whether the policy protection of the countryside from encroachment is outweighed in the planning balance by other considerations, including the personal circumstances explained by the appellant.
2. The rights of the appellant and her family to respect for their private and family life, their home and their correspondence under Article 8¹ also will be an important consideration.
3. In addition, under the Public Sector Equality Duty (PSED), I must have due regard of the aims to eliminate discrimination, advance opportunity and foster good relations. The protected characteristics of race and disability are engaged here.

Reasons

Countryside protection

4. The appeal site is located outside the development framework for Willingham, in a location where policies for the built-up areas of settlements give way to policies for the countryside. The proposed dwelling is not a type of development that is supported by Policy S/7 of the South Cambridgeshire Local Plan (the Local Plan). This policy seeks to protect the countryside from gradual encroachment on the edges of villages and to help guard against incremental growth in unsustainable locations. More specifically Policy H/14 states that the replacement of caravans and mobile homes with permanent dwellings will not

¹ Article 8 of the European Convention on Human Rights, as set out in Schedule 1 of the Human Rights Act 1998

be permitted outside village framework boundaries. The proposal is not put forward as a countryside dwelling of exceptional quality that Policy H/15 would support subject to compliance with the policy criteria. Therefore the proposal is contrary to Policies S/7, H/14 and H/15 and the development plan directs it should not be permitted.

Other considerations

5. There are several considerations to weigh in the balance, including the planning history of the site, the effect of the proposal on the character and appearance of the site and surrounding area, and the matters related to the personal circumstances of the appellant and her family.
6. The site history, involving development by the appellant, is an important factor. In June 2005 an appeal against an enforcement notice was dismissed, where the development was a material change of use to a residential caravan site and associated works. The Inspector concluded the harm to the open fenland character and countryside was not outweighed by the personal circumstances and special needs of the family.
7. Subsequently planning permission was granted on appeal for the residential use of the land, involving the siting of two caravans, a utility block and a mobile chalet/medical unit for a disabled person. The decision was issued in April 2006 after a four day inquiry and was later upheld by the courts. The Inspector concluded that in many ways it was a good site for a single gypsy family, although the development would have a significant adverse effect, at least in the short to medium term, on the rural character and appearance of the local area. This harm was found to be outweighed by a significant under-supply of gypsy sites, the particular and exceptional circumstances of the appellant family, the lack of a suitable and affordable alternative site for them and the disproportionate interference with home and family life should the appeal be dismissed.
8. This permission continues to authorise and control the residential use. Planning conditions restrict the occupation to the appellant and resident dependants. When their occupation ceases, so does the residential use and all caravans, structures and materials would have to be removed to enable the site to be restored to its previous condition. Whilst there is a prospect of the residential use ceasing at some point in the future, the site is able to remain in residential use for as long as the family live there, which could be many years to come. The family have now lived on the land for nearly twenty years, which indicates the suitability of this site and its location to their needs. The existing small medical unit is a fully fitted out, adapted building and is not moveable.
9. Schole Road extends east from the built-up core of the village. Along the road the development pattern gradually becomes more open and the mix of residential properties and small holdings are typically separated by paddocks. The Arches is the last plot and beyond the views are of the fenland agricultural landscape with very few signs of development. However, I found the residential use on the site related well visually with the adjacent traveller site and the settlement along Schole Road. This lack of harm from the residential use bears out the conclusion of the Inspector in 2006 who anticipated that landscape harm would diminish over time. The proposal is not for the development of an isolated home in the countryside.

10. The proposal is to replace the existing mobile home with a permanent brick dwelling in external materials to match the existing medical unit. The new dwelling would be single storey and be in a similar position to the current home. However, it would be a little larger because of an additional front projection and the link to the medical unit. A brick and tile dwelling would have a solid, permanent appearance and a physical presence that is distinct from a static caravan or mobile home. However, through the use of planning conditions, there would be an opportunity to secure a more sustainable form of construction and resource efficiency.
11. The main purpose of the new dwelling is detailed in the appellant's supporting documentation. The development is very much based on the medical and quality of life needs of a family member and to help the family to continue to provide the essential support and care. The dwelling has been designed to specifically enable the accommodation in the medical building to become part of the dwelling as a whole, an aspect so important to enhancing family life and to enable social interaction at the individual level. The additional bed sitting room is to add flexibility and anticipates care requirements in the longer term.
12. The likelihood is a replacement caravan or mobile home would not be able to provide the same standard of accommodation, bearing in mind the statutory definition of a caravan. In the 2006 appeal decision the Inspector described the personal circumstances of the family as compelling and exceptional and these words are equally appropriate now. There is a place for compassion in planning decisions and this is one of those instances where it is justified.
13. In the event this appeal is not successful in all probability there would be a serious effect on the health, well-being and living conditions of a person within their home and in turn the carers within the family. The Article 8 right is engaged. Whilst this qualified right requires a balance between the rights of an individual and the needs of the wider community or public interest, any restriction of the right must be necessary and proportionate. Moreover, application of the PSED supports seeking to achieve a positive outcome for the appellant if possible.
14. The Parish Council has expressed concern that to grant permission for this development would set a precedent for the conversion of mobile homes to permanent dwellings in the countryside. However, this concern was not supported by evidence of similar proposals in the parish. Also there probably would be very few instances of such compelling personal circumstances to balance against the protection provided by the development plan. The matter provides no weight against the proposal.

Planning Balance

15. The proposal conflicts with Policies S/7, H/14 and H/15 of the Local Plan. Even though outstanding details of the development may be resolved through the compliance with planning conditions, as set out below, the proposal is not in accordance with the development plan when read as a whole. However, in this case the very substantial weight of the other considerations overcomes the direction provided by the development plan. To refuse planning permission would be disproportionate.

Conditions

16. The National Planning Policy Framework states that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
17. The Council has suggested a list of conditions which the appellant does not object to. In my view the wording of certain conditions does not take into sufficient account that the proposal is for a replacement home on a single residential plot. Planning Practice Guidance advises that it is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. Conditions should not unreasonably impact on the deliverability of a development by placing unjustifiable and disproportionate financial burdens on an applicant otherwise they will fail the test of reasonableness.
18. A condition will impose the standard time limit of three years for commencing development in order to accord with section 91 of the 1990 Act as amended. The development will be required to be carried out in accordance with the approved plans because that is the scheme that has been found acceptable for planning purposes.
19. The proposed landscaping condition will be amended and combined with the condition on biodiversity. The focus should be on the boundaries of the site, which offer the most appropriate opportunity to enhance amenity and biodiversity, given the site's position on the settlement edge and the small scale nature of the proposal.
20. Proposed conditions require the submission and approval of detailed information regarding energy efficiency and carbon emissions, site drainage and water efficiency. I am satisfied that a condition requiring an energy statement is justified by Policy CC/3 of the Local Plan and provisions within the Greater Cambridge Sustainable Design and Construction SPD (the SPD). However, there is no evidence to indicate that future grid capacity issues may arise and therefore this element of the draft condition will be omitted.
21. The application form stated that disposal of surface water and foul drainage would be by means of a soakaway and a packet treatment plant respectively. The position of the plant is shown on the site block plan. No further details are necessary.
22. Local Plan Policy CC/4 requires higher water efficiency standards in residential development than the national Building Regulations in response to the challenging local circumstances on water supply in the area. A condition on water efficiency is necessary and reasonable.
23. The Local Plan identifies and outlines why broadband is a key infrastructure element for the district. Policy TI/10 expects new development (residential, employment and commercial) to contribute towards the provision of suitable infrastructure to enable the delivery of high speed broadband services across the district. The proposed condition requires suitable ducting to the public highway to accommodate fibre optic cabling. The site is towards the far end of Schole Road, which is not an adopted public highway. Without further specific

information and justification, to require a single household to provide such infrastructure is unreasonable.

24. An aim of Policy CC/6 of the Local Plan is to limit the adverse effect construction of new developments can have on the amenity of surrounding occupiers and the local environment through the generation of noise, smell and dust. In this case a limit on the hours of construction is justified because of the potential noise disturbance to neighbours in a quiet rural area.
25. The final proposed condition seeks to restrict the future use of permitted development rights in respect of alterations or extensions to the dwelling, including alterations or additions to the roof. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear reason for doing so. None has been provided by the Council in this case. I consider the condition fails the tests of necessity and reasonableness, bearing in mind the detailed provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 controlling the exercise of the stated permitted development rights within the curtilage of a dwelling.
26. The appellant indicated that a personal condition, whilst not preferred, would be acceptable. The condition would require the dwelling and other structures to be removed and the land returned to its former condition within 3 months of the applicant and her dependant relatives no longer requiring the buildings. However, with reference to Planning Practice Guidance, to require the future demolition of the proposed building does not pass the test of reasonableness. I note the Council did not propose such a condition and none will be imposed.

Conclusion

27. For the reasons given above the appeal should be allowed.

DECISION

28. The appeal is allowed and planning permission is granted for Removal of existing mobile chalet unit and erection of a new single storey dwelling with new link to existing brick and tile 'medical unit', with temporary provision for the siting of 2 static caravans for occupation during construction phase, and allowing the continued use during the construction phase of the medical unit by the applicant on land at The Arches, Schole Road, Cambridgeshire CB24 5JD, in accordance with the terms of the application, Ref 20/04431/FUL, dated 29 October 2020 and subject to the following 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: location plan 20-5079-12 Rev A; site block plan 20-5079-10 Rev D; proposed plans and elevations 20-5079-01 Rev G.
 - 3) No development above ground level shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include (a) indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of

development; and (b) details of proposals for: boundary treatments, indicating the type, positions, design, and materials of boundary treatments to be erected; hard surfacing materials; finished ground levels; planting plans including written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants, noting species, plant sizes and numbers/densities where appropriate; measures to enhance biodiversity with an aim of achieving a net biodiversity gain on the site of 10%; an implementation programme.

- 4) The landscaping works shall be carried out in accordance with the approved details and the agreed implementation programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No development above ground level shall begin until an Energy Statement has been submitted to and approved in writing by the local planning authority. The Statement shall demonstrate that a minimum of 10% carbon emissions (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) can be reduced through the use of on-site renewable energy and low carbon technologies. The approved scheme shall be fully installed and operational prior to the occupation of the dwelling and thereafter maintained in accordance with the approved details.
- 6) The dwelling shall not be occupied until a water efficiency specification, based on the Water Efficiency Calculator Methodology or the Fitting Approach set out in Part G of the Building Regulations 2010 (2015 edition) has been submitted to and approved in writing by the local planning authority. This specification shall demonstrate that the dwelling is able to achieve a design standard of water use of no more than 110 litres/person/day and the development shall be carried out in accordance with the agreed details.
- 7) Construction works shall take place only between 0800 hours and 1800 hours on Monday to Friday, 0800 hours and 1300 hours on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.

Diane Lewis

INSPECTOR