
Appeal Decision

Site visit made on 9 January 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2023

Appeal Ref: APP/P1560/W/22/3301013

Land East of Straight Road, Bradfield, CO11 2RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Mitchell Hedges against the decision of Tendring District Council.
 - The application Ref. 22/00239/OUT dated 4 February 2022, was refused by notice dated 26 May 2022.
 - The development proposed is the erection of three dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was in outline, with all matters reserved. However, the application was accompanied by indicative plans showing potential locations of the 3 proposed dwellings and indicating a point of access.

Main Issue

3. The main issue in this case is whether the site is a suitable location for residential development, when judged against the relevant policy of the development plan and any other material considerations.

Reasons

4. The site is situated on the eastern side of Straight Road, to the north-west of Bradfield. Bradfield has a defined settlement boundary, which extends as far as the southern boundary of the site. North of the appeal site, the only frontage development on the east side of Straight Road is a single dwelling before Windmill Road is reached. Straight Road has no development on its western side. Bradfield is defined as a smaller rural settlement within Policy SPL1 of the Local Plan, having a primary school, two public houses, two places of worship, a village hall, a car garage, a post office, a shop and a tearoom.
5. The starting point is the development plan policies, as referred to in paragraph 2 of the National Planning Policy Framework (the Framework): planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.

6. The council has an up-to-date development plan, which comprises Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan, adopted January 2021 and January 2022 respectively (TDLP), together with any neighbourhood plans (not applicable here) that have been brought into force. The council can demonstrate a five-year housing land supply, meaning that there is no claim that there is a substantial need for further dwellings to counter a shortage. This does not mean that there is any cap on housing supply, simply that this is not an issue that justifies a departure from the development plan on the basis of Framework paragraph 11 d). Therefore, it is the relevant policies of the development plan that should primarily govern my decision.
7. Policy SPL2 of the TDLP indicates that outside of settlement development boundaries, the Council will consider proposals in relation to the pattern and scales of growth promoted through Policy SPL1 and other relevant development plan policies. The supporting text of Policy SPL2 indicates that settlement development boundaries have been drawn flexibly to allow for some limited development within or on the edge of villages, providing for some opportunities for small-scale and infill development within these boundaries. It is clear that, the intention of the policy and supporting text is that development needs in the smaller rural settlements are being met through development within the settlement development boundaries. As such, by virtue of its location outside the settlement development boundary, the proposal is contrary to the strategy set out in Policy SPL2.
8. Reliance is placed in the appellant's representations to self-build/custom built homes, although the application form, at question 9, shows that the proposed houses would be market dwellings, and there is no entry in the 'Self Build and Custom Build' part of the question. Nevertheless, I see that the Planning Statement submitted with the planning application makes clear that the applicant and two brothers intend to build and live in these homes. It is proposed to provide one joint access to serve the three properties with an adequate turning area, two car parking spaces per dwelling and ample amenity space. Therefore, the most relevant policy of the TDLP is Policy LP7.
9. Policy LP7 states the following:
"SELF-BUILD AND CUSTOM-BUILT HOMES
The Council will encourage the provision of opportunities for constructing Self-Build and Custom-Built Homes as part of the mix of housing on large residential developments and the one-for-one replacement of an existing dwelling, of any size, in the countryside outside of settlement development boundaries with a single unit of Self-Build Housing, unless the impacts of development would conflict with other policy requirements in this Local Plan.
The Council will also consider, on their merits, proposals for small developments of new Self-Build and Custom-Built Homes on land outside of, but within a reasonable proximity to, settlement development boundaries, where they will still support a sustainable pattern of growth in the District and are brought forward by individuals or associates of individuals who will occupy those homes. All new dwellings on such developments must either:
a. be safely accessible on foot within 600 metres of the edge of the settlement development boundary of one of the District's 'strategic urban settlements', or 'smaller urban settlements'.

b. be safely accessible on foot within 400 metres of the edge of the settlement development boundary of one of the District's 'rural service centres'; or
c. involve the redevelopment of vacant or redundant previously developed land that can be shown, with evidence, to be unviable for employment use.

The proposal shall have no significant material adverse impact on the landscape, residential amenity, highway safety, or the form and character of nearby settlements and shall be otherwise appropriate in scale and design for their location, having regard to other policies in this Local Plan".

10. It is clear that the policy is for consideration to be given to this form of development on land that is within reasonable proximity to a settlement development boundary, subject to meeting 1 of 3 criteria. Criterion a. requires proximity to the settlement boundary of either a strategic urban settlement or a smaller urban settlement. The appeal site is adjacent to the settlement boundary of Bradfield, but Bradfield is not a strategic or smaller urban settlement. Criterion b. requires safe accessibility on foot to a rural service centre, which is not the designation of Bradfield. Criterion c. requires the site to be vacant or redundant previously developed land that has been shown to be unviable for employment uses. This criterion requires analysis of the claimed status of the site as previously developed land.
11. For the appellant it is argued that the site was granted permission in May 2018 for a change of use from agriculture to the keeping and grazing of horses under reference 18/00480/FUL. It is further said that this was implemented, by the clearance of the land post-permission, the erection of a sign for 'The Pines' and an invoice addressed to the site for 50kg of paddock grass seed, dated 11 September 2018.
12. A change of use from agriculture to grazing for recreational horses is clearly 'development' within the meaning of planning legislation, or planning permission would not have been needed. However, it is not 'operational development', if that distinction is relevant. Assuming that the grass seed was indeed sown, I cannot see that this can be seen as a 'material start' to a change of use development, since it is not a use of land in itself, and clearance in the absence of a tree preservation order or some other reason would not require planning permission. Further, the appellant's Planning Statement includes what appears to be an unequivocal statement that "As there has been no local interest in this land for paddocks, this application seeks to propose the erection of three self-build/custom built infill dwellings along Straight Road ...". At face value this statement appears to be evidence that the use did not actually commence. Certainly, there has been no evidence produced of the letting of the field for grazing, or photographs of horses grazing upon it, although there are photographs of the land being cleared. Further, since the change of use was permitted in 2018, more than 3 years have elapsed meaning that, if not implemented, it has run out of time.
13. Notwithstanding the above, it is necessary to consider the meaning of previously developed land. This is set out in Annex 2: Glossary to the Framework, as follows:

Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last

occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

14. It will be seen that in the first sentence of the definition, that previously developed land is land which is or was occupied by a permanent structure ... and any associated fixed surface infrastructure. So, irrespective of the fact that equestrian uses are not included in the exclusions, the open land does not meet the basic requirement that it is or was occupied by a permanent structure. In the light of this, and without needing to consider the matter of an alternative employment use, the proposed use does not meet the relevant criterion of policy LP7.
15. Turning to other material considerations, the appellant has sought information from the council about the extent to which there is demand for Self-Build and Custom-Built Homes, and the number of permissions the council has given. It is clear that a considerable number of permissions have been granted that meet the definition, but the officer's report states that *"it is acknowledged that there is currently an unmet need for self-build/custom build dwellings in the area"*. This acknowledgement is a factor that carries weight in support of the appeal development. However, there is no information as to the amount of unmet need that exists in the district, and I conclude that this consideration does not outweigh the matters that I have dealt with above.
16. It is also argued that policies SPL2 and LP7 do not align with the Framework with regard to self-build and custom built dwellings. I do not find this argument convincing, since the 2 elements of the development plan have recently been found sound which includes consideration of whether they are consistent with national policy. I do not see the identification of settlements within the policy LP7 criteria as being inconsistent with the Framework, and the policy only requires that 1 of the criteria is met. Since this includes the previously developed land criterion, I cannot see that it is restrictive to the extent that it is out of step with the Framework's policy at paragraph 62.

Conclusions

17. I have taken account of all other matters raised, including the other appeal decisions that have been brought to my attention. I do not find these helpful since they related to different sites and circumstances, and each case must be judged on its merits.
18. For the reasons that I have set out above, I will dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR