



Appeal Decision

Site visit made on 8 February 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/V2635/W/22/3299013

Manor Lodge, 40 Small Lode, Upwell, PE14 9BE

- 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 R Starr against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 21/01258/O, dated 2 June 2021, was refused by notice dated 30 March 2022.
 - The development is described as 'proposed residential development'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with access to be considered at this stage. Appearance, landscaping, layout and scale are reserved for later consideration. While the submitted plans are not marked as indicative, it is clear that the parties have considered these plans as indicative, including as they relate to the layout of the access road within the site. I have considered the appeal on this basis.
3. There are references within the evidence of the main parties regarding the proposed number of dwellings and to a reduction in this number. However, the description of development does not specify how many dwellings are proposed, nor has any formal amendment to the description been submitted. While the Council's officer report refers to the southern part of the site to not be developed following discussions with the appellant, it remains within the red line for the site. I have therefore considered the appeal on the basis of the red line area for residential development.
4. The appellant's final comments were received after the deadline for such comments to be submitted. The Council has raised no concerns with these being accepted, and I have therefore taken them into account when determining this appeal.
5. The application was advertised as affecting the setting of the Upwell Conservation Area (CA) when the majority of the site is located within the CA. As I am dismissing the appeal, I consider no prejudice would arise to any party.
6. The local highway authority withdrew their concerns regarding the proposal subject to a condition requiring a revised access arrangement for an existing

building on the site. I have sought views from the parties and will return to this matter.

Main Issues

7. The main issues are:

- whether safe and suitable access to the development can be secured;
- the effect of the development on the character and appearance of the Upwell CA; and
- whether the site is a suitable location for residential development with regard to the provision of Grade 1 agricultural land.

Reasons

8. The appeal site consists of land to the side and rear of the existing residential property at 40 Small Lode. Part of this is a grassed area which effectively runs the length of the site. Within the site, to the rear of No 40, lies a building which has an agricultural appearance. The remainder is unmade and partially gravelled, allowing for access to Small Lode for the site, the existing dwelling and a former barn that sits to the front of No 40, immediately adjacent to Small Lode. There is an extant permission adjacent to No 40 for a detached dwelling which would also use this access.
9. A tall, close boarded fence runs along the boundary to Small Lode. A substantial hedge runs to the side. A post and rail fence separates the site from the fields to the rear.
10. There are further residential properties opposite and beyond No 40. To the other side of the boundary hedge is a footpath and grassed verge which leads to Townley Close. Beyond this are further dwellings along Small Lode and a small cul-de-sac. There are no parking restrictions along the street.

Highways

11. The local highway authority set out that the existing site access to Small Lode would not be suitable to serve the additional traffic generated by this development due to the unacceptable standard of visibility. From my observations at my site visit, I do not disagree with this assessment. The proposed development would therefore have an adverse effect on highway safety were the access to Small Lode used to serve the proposed development.
12. The appellant has control of a substantial area of land to the rear of the appeal site. It is not in dispute between the parties that access to this land from New Road was secured through a separate planning permission¹. Agreement between the main parties was reached that provided the existing building would be accessed via New Road and no longer used the Small Lode access, the proposed development would have an acceptable effect on highway safety. While the local highway authority initially stated the application should be amended to show this, they later withdrew their objection subject to a condition securing this access.

¹ 18/01980/O

13. The Planning Practice Guidance sets out the circumstances in which conditions can be used to modify plans and other details submitted with an application². This confirms that it 'would not be appropriate to modify the development in a way that makes it substantially different from that set out in the application'. The introduction of an access road across a length of undeveloped fields to a highway some distance from the area of land within the red line of the application would make the proposal substantially different.
14. The plan submitted during the course of the appeal is marked as existing access road for fields and barns. However this does not appear to be the approved plan for that permission. At the time of my site visit, there was substantial vegetation at this access, no dropped kerb and no clearly visible evidence of an access track across the fields. I have not been provided with evidence to show where site notices were posted to advertise the application. I therefore cannot be certain that surrounding landowners and occupiers, including those of the newly constructed and under construction dwellings along New Road, would not be prejudiced by the imposition of this condition.
15. For these reasons, the use of a condition to secure a separate access would not be reasonable in all other respects. It therefore would fail to meet the tests set out in Paragraph 56 of the National Planning Policy Framework (the Framework) for the imposition of planning conditions.
16. I therefore conclude that safe and suitable access to the development could not be secured. The development would therefore be contrary to King's Lynn and West Norfolk Borough Council Local Development Framework Core Strategy adopted July 2011 (CS) Policy CS11 which requires new development to provide safe access for all modes of transport.

Character and appearance

17. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
18. For the purposes of this appeal, the significance of the CA is derived from the close relationship of the built form to roads and waterways and its rural landscape setting with associated views.
19. The site is very close to the CA boundary along Small Lode and the footpath, and the rear of the site appears to form the CA boundary. The boundary treatments to Small Lode and the footpath are substantial in height. They do not allow for views through as one is a close boarded fence, and the other a dense hedge. Furthermore, the existing development on the site further restricts views towards the CA. The land to the rear of the appeal site lies outside the CA. The only view available through the site, when the gates are open, does not lead to the CA.
20. Although only a proportion of the site is comprised of the grassed area, it can be seen when the gates are open. While the boundary hedge does soften the appearance of the area, and there are some trees, there is not sufficient planting for the site to be described as verdant or landscaped. Nor does the grassed area have a particularly rural character given the layout around No 40.

² Use of planning conditions Paragraph: 012 Reference ID: 21a-012-20140306 Revision date: 06 03 2014

It therefore is a neutral feature in the CA and does not contribute to its significance.

21. The residential properties opposite the site on Small Lode visually sever the site from the surrounding expansive landscape which forms the rural setting of the CA.
22. The site is not viewed in the context of Lode House and its landscaped buffer due to not only the hard boundary treatment of the appeal site itself, but the intervening development along Small Lode and Low Side. There would be no effect from the proposed development on the contribution to the significance of the CA made by this buffer.
23. The proposed development would inevitably intensify residential development on the site. However, the built development along Small Lode is generally set in spacious plots and set back from the road. This gives the development along Small Lode a weaker relationship to the road frontage than the rest of the CA which tends to comprise of development that is closer together and in greater proximity to the footpath and road.
24. The existing dwelling on the site is set well back from the road, as would be the extant dwelling. Development away from the road would therefore not be uncharacteristic of its surroundings. The existing single storey barn to the front of No 40 does make a positive contribution to the CA given its strong relationship to the road. While siting and layout are reserved matters, and notwithstanding the detail shown on the indicative plans, it would be possible for the site to be developed in such a way that addressed the road frontage, and did not close off the views along Small Lode towards the CA.
25. I am mindful of the duty imposed on me by the Act, and the requirements of Section 16 of the Framework. However, for the reasons given above, I am satisfied that, in principle, the site could be developed in such a way that the character and appearance of the CA would be at least preserved. The statutory test imposed by the Act and the considerations of the Framework would apply to any subsequent reserved matters application, which could be refused if it were not acceptable.
26. I therefore conclude that the proposed development would have a neutral effect on the character and appearance of the Upwell CA. It would therefore preserve its character and appearance and be in accordance with CS Policies CS08 and CS12, and Site Allocations and Development Management Policies Plan adopted September 2016 Policy DM15, which, together with Section 16 of the Framework, seek to protect the historic environment.

Agricultural Land

27. The site is Grade 1 agricultural land. Upwell Parish Neighbourhood Plan made 2021 (NP) Policy EN2 sets criteria for allowing development on such land. The supporting text sets out examples of overriding community benefits, and it is clear that market housing is not considered to be such a benefit. It also requires it to be considered if there are reasonably available sites on certain types of land. The Council contends that there are other such sites within Upwell and this has not been disputed by the appellant. Beyond this, there is no evidence before me to demonstrate an assessment as sought by NP Policy EN2b has been carried out by the appellant.

28. Only part of the site is laid to grass. It is not currently in use for food production, and as a relatively small area, it may be impractical to farm. However there is no substantive evidence before me to confirm that commercial agricultural use of the land would not be viable. It therefore has not been demonstrated that the benefits of growth would outweigh the loss of Grade 1 agricultural land.
29. I therefore conclude that the site would not be a suitable location for residential development with the regard to the provision of Grade 1 agricultural land. The proposal would therefore be contrary to NP Policy EN2 which seeks to protect Grade 1 agricultural land.

Other Matters

30. The parties are in dispute as to the use of the existing building on the site. I therefore cannot be certain if it benefits from permitted development rights for conversion to a dwelling or dwellings. However, even if there were such a right, it would be unaffected were this appeal to be allowed. There is no evidence before me to suggest the existing building is to be demolished, or a mechanism to surrender any permitted development rights were the appeal to be allowed. The appeal proposal therefore would not 'displace' or replace any such dwellings. Furthermore, such conversions are not subject to the same tests as the proposal before me which must be determined in accordance with the policies of the development plan.
31. At my site visit, I observed that St Peter's Church, a Grade I listed building, was clearly visible across the fields from the site, and that the existing barn on the site could be seen in views of the Church from within Upwell. The parties consider there would be no impact to its significance from the proposed development. From my site visit, I consider that if I was minded to allow the appeal, this would merit further consideration. However, as I have concluded that the appeal should in any case be dismissed, I have not pursued the matter further.
32. The site is located in flood zone 1 and as such is a sequentially preferable location for development. There are no objections from the Council's Environmental Health team. However these matters amount to a lack of harm which would render them neutral in the planning balance.
33. The appellant has not disputed that the Council can demonstrate a five year supply of deliverable housing land. However this is not a cap, and there would be a benefit from additional dwellings which could be delivered in the short term. There would also be associated economic benefits arising from the development. However these would be limited given the small scale of the development proposed.

Conclusion

34. I have found that it would not be possible to secure a safe and suitable access to the proposed development and that it would not be in a suitable location for development with regard to the provision of Grade 1 agricultural land. While I have found there would be a neutral effect on the character and appearance of the CA, this would amount to a lack of harm and would therefore be neutral in the decision.

35. I therefore conclude that the appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR