



Appeal Decision

Site visit made on 1 June 2023

by S. Hartley BA(Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/V0510/W/22/3310748

Land to the rear of 75-91, The Causeway, Burwell CB25 0DU

- 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 A Nuttall of Lunda Developments (Red) Ltd against the decision of East Cambridgeshire District Council.
 - The application ref 21/00418/FUL, dated 8 March 2021, was refused by notice dated 9 September 2022.
 - The development proposed is the residential development of 6 dwellings with associated landscape works.
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Decision

1. The appeal is allowed, and planning permission is granted for residential development of 6 dwellings with associated landscape works on land to the rear of 75-91, The Causeway, Burwell, CB25 0DU in accordance with the terms of the application ref 21/00418/FUL, dated 8 March 2021, subject to the attached schedule of conditions.

Application for costs

2. An application for costs has been made by Mr A Nuttall of Lunda Developments (Red) Ltd against East Cambridgeshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The original application for seven dwellings was amended prior to the determination of the planning application. It was amended to six dwellings as per the drawings that were considered by the Planning Committee. The description of development therefore reflects the above and is taken from the Council's refusal notice. I have determined the appeal based on the amended plans for six dwellings on the site.
4. Six dwellings have previously been approved on the site. However, these planning permissions have now lapsed. There is no objection, however, from the Council to the principle of erecting six dwellings on the site. I have no reason to disagree. The main issues relate to matters of detail as per below.

Main Issues

5. The main issues are the effect of the proposed development upon i) the living conditions of the occupiers of neighbouring properties in respect of outlook and ii) highway safety including use of the public right of way.

Reasons

6. The site is located on land to the rear of the established line of development on The Causeway and the short terrace in The Leys. It is essentially a back land site with its access taken from The Causeway and then via an access road which is unmade, and which also functions as a public right of way. The latter currently provides vehicular access to the rear of several properties on The Leys and The Causeway.
7. The main area of Burwell is predominantly residential in nature with a small, limited number of commercial properties on The Causeway. Overall, the site measures approximately 0.19 of a hectare.
8. The site is an amalgamation of what is said to be disused rear garden areas to the west of the properties 75 – 91 The Causeway and abuts a footpath that serves as access to the rear of dwellings on Poplars Close. The closest dwellings to the site would be the small terrace of dwellings to the south.

Living conditions

9. As part of my site visit, I was able to consider the position and height of the proposed dwellings on the site and their relationship with existing neighbouring dwellings. Those on Poplars Close are mainly bungalows with useable spaces in the roofs whereas the proposed development would consist of properties over 9 metres in height. However, taking into account the topography of the appeal site, the distances between existing and proposed dwellings and also intervening trees and vegetation, (despite many being deciduous), I find that the proposed dwellings would assimilate well into the surrounding landscape and that when viewed from neighbouring properties and gardens, they would not have an unacceptably dominating or enclosing impact.
10. The buildings would be visible from some surrounding properties, but that does not mean that the development would be unacceptable in planning terms. The Council does not dispute the appellant's comment that the proposal suitably accords with separation distances in the Council's Design Guide SPD 2012 (SPD). However, it states that this is '*guidance only*' and that '*the standards as set out in the SPD are also minimum and not maximum requirements*'. In my judgment, and even accounting for changes in land level, the proposals suitably accord with the separation distances outlined in the SPD. In any event, I do not find that material harm would be caused to the outlook enjoyed by the occupiers of surrounding properties or indeed matters pertaining to acceptable levels of light and privacy. I have no reason to depart from the assessment in the officer report to the Planning Committee.
11. For the above reasons, and subject to the imposition of conditions including for the protection of trees and for other landscaping, I conclude that the proposal would not cause material harm to the living conditions of the occupiers of neighbouring residential properties or land in respect of outlook (or indeed privacy or light) and hence there would be no conflict with the amenity

requirements of policy ENV 2 of the East Cambridgeshire Local Plan 2015 (LP) or the SPD.

Highway safety

12. While the evidence is that historic planning permissions for the site have now lapsed, the principle of using the access (including the public right of way) to serve an additional six dwellings has previously been accepted by the Council. I have not been provided with any evidence to indicate that circumstances have materially changed in terms of the use of such an existing access from the time when these permissions were approved.
13. The Local Highway Authority (HA) has not raised, at planning application determination stage, any objection to the intensification of the site access. This is currently used for access to several properties on The Leys and The Causeway. Parking does take place on this access, although there is no dispute that any such parking on this unadopted route is authorised.
14. The lack of an objection from the HA was subject to demonstration of acceptable turning on the site and upgrading the junction of the access with The Causeway, from a cross over to a bell mouth. There is a prospect of these necessary proposals/upgrades taking place and that subject to the imposition of conditional control, there would be no demonstrable harm caused to matters of highway safety. I note the concern raised by the Parish Council that the provision of a bell mouth junction may lead to increases in speed, but I do not find that such an arrangement would have the said unacceptable highway impact.
15. I acknowledge that the access road from The Causeway to the main part of the site is also used as a public right of way. However, I do not find that the comings and goings associated with use of an additional six dwellings would cause material harm to the safe use of the public right of way. In this environment, I do not consider that drivers would be likely to travel at excessive speeds and, in the context of the quantum of development proposed, I find that shared use of the access by vehicles and pedestrians would be acceptable.
16. I note that the report to Committee suggests that a condition could be imposed requiring the access to be made up. This could include a more definitive route for the public right of way, perhaps including some form of physical demarcation to ensure segregation between vehicles and pedestrians (as indicated on drawing No 2147-21-6 Rev F). In this regard, there is potential for the proposal to make matters better for users of the existing public right of way/access. Traffic speeds would be kept low, and any conflict with pedestrians minimised, if also any such condition was to include traffic calming measures.
17. I note the adverse comments made about the turning head into the site and views expressed that some residents park in this area. However, In this environment, where traffic speeds are likely to be low, and I do not find that the access/turning head arrangement would have an unacceptable impact on highway or pedestrian safety. Furthermore, the provision of a turning head at this point would have some benefits for the wider area in terms of lorries/large vans being able to turn when they are in this part of the lane.
18. I have no reason to disagree with the conclusion reached by the HA in respect of the amended proposal. Members of the Planning Committee were of course

entitled to reach a different decision to the planning officer, and indeed the HA, about this matter. However, the Council's statement of case simply directs me to the Planning Committee minutes in respect of this main issue. There is nothing that specifically elaborates on the reason for refusal in the Council's statement of case. While I note that there are objections to the proposal in highway safety terms, I do not find that the Council has reasonably substantiated its position in terms of this main issue.

19. For the above reasons, and subject to the imposition of planning conditions, I conclude that the proposal would not lead to any material conflict between users of the adopted highway and the unadopted access road including the public right of way. Therefore, I do not find that the proposal would lead to unacceptable harm being caused to highway safety. Therefore, the proposal would accord with the highway safety requirements of policies ENV2 and COM 7 of the LP and paragraph 111 of the Framework.

Other Matters

20. Concern has been raised by other interested parties about the height of the proposed dwellings and whether they would suitably reflect the context of the area in design terms. The height of the dwellings would be slightly lower than those approved by the Council for a pair of dwellings on the site. I do not find that the dwellings would look out of place in height terms, even accounting for the bungalows to the west. In terms of scale, materials and fenestration details, the proposal would assimilate well into the area and hence would constitute good design.
21. I have considered the appellant's ecological appraisal and find that, subject to mitigation conditions, no significant harm would be caused to biodiversity. The development would achieve an acceptable level of enhancement in accordance with policy ENV7 of the LP.
22. While some trees and vegetation would be lost to facilitate built and engineered development, I do not find that this would cause harm to the character and appearance of the area. However, a high grade landscaping scheme would be required to soften the effects of the development and to ensure that the proposal preserves the character and appearance of the Burnwell North Street Conservation Area (CA) when considered as a whole. A condition could be imposed in respect of this matter as well as in terms of the erection of boundary fencing. Owing to the separation distances involved, I do not find that the proposal would harm the setting of any nearby listed buildings.
23. The amended layout shows fourteen car parking spaces. This would provide an acceptable level of parking for both residents and visitors of the dwellings.
24. None of the other matters raised alter or outweigh my conclusions on the main issues.

Conditions

25. I have considered the Council's suggested conditions. I am satisfied that they meet the tests as laid out in paragraph 57 of the Framework. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity. There is clear justification for the imposition of some pre-commencement conditions and the appellant has expressly agreed them. In this case, there is clear justification for the removal of some national permitted

development rights to safeguard the living conditions of the occupiers of nearby dwellings and to ensure that the character and appearance of the CA is preserved.

26. I have included the reason for each necessary condition in the schedule of conditions below.

Conclusion

27. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons outlined above, I therefore conclude that the appeal should be allowed.

S. Hartley

INSPECTOR

Schedule of Conditions

1)The development hereby permitted shall begin not later than 2 years from the date of this decision.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990, as amended.

2)Development shall be carried out in accordance with the drawings and documents listed below: drawing 2147-21-6 Rev F; drawing 2147-21-2 Rev A and drawing 2147-21-7 Rev F.

Reason: For the avoidance of doubt and in the interests of certainty.

3)No clearance of the site or development shall take place until a scheme of biodiversity mitigation measures for the development has been submitted to and agreed in writing with the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved scheme.

Reason: To protect and enhance species in accordance with policies ENV1, ENV2 and ENV7 of the East Cambridgeshire Local Plan 2015 and the Natural Environment SPD, 2020.

4)No development (including demolition and any preparatory work) shall commence until a scheme for the protection of the retained trees, in accordance with British Standard BS: 5837 (2012) Trees in relation to demolition, design and construction - Recommendations, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) has been submitted to and approved in writing by the Local Planning Authority. Specific issues to be dealt with in the TPP and AMS as appropriate:

- a) Location and installation of services/ utilities/ drainage
- b) Methods of any demolition within the root protection area (RPA as defined in BS 5837: 2012) of the retained trees.
- c) Details of construction within the RPA or that may impact on the retained trees.
- d) A full specification for the installation of boundary treatment works within or adjacent RPA's.
- e) A full specification for the construction of any roads in relation to RPA's, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification.
- f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
- g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
- h) A specification for scaffolding and ground protection within tree protection zones.
- i) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
- j) Details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires.
- k) Methodology and detailed assessment of any agreed root pruning.
- l) Details of Arboricultural supervision and inspection by a suitably qualified tree specialist.
- m) Details for reporting of inspection and supervision.

n) Methods to improve the rooting environment for retained and proposed trees and landscaping.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: To ensure that the trees on site are adequately protected, to safeguard the character and appearance of the area, in accordance with policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement in order to ensure that the protection measures are implemented prior to any site works taking place to avoid causing damage to trees to be retained on site.

5) No development shall take place until a scheme to dispose of surface water for the entire site including the access road has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include and be based upon infiltration testing of the site. The approved scheme shall be implemented prior to the first occupation of the development.

Reason: To prevent the increased risk of flooding and to improve and protect water quality, in accordance with policies ENV2 and ENV8 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it would be unreasonable to require applicants to undertake this work prior to consent being granted and the details need to be agreed before construction begins.

6) No development shall take place until a scheme to dispose of foul water for the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the foul drain crossing the site and any necessary diversion of that drain. The approved scheme shall be implemented prior to the first occupation of the development.

Reason: To prevent the increased risk of flooding and to improve and protect water quality, in accordance with policies ENV2 and ENV8 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it would be unreasonable to require applicants to undertake this work prior to consent being granted and the details need to be agreed before construction begins.

7) 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.

Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it would be unreasonable to require applicants to undertake this work prior to consent being granted.

8) No development shall commence until a scheme for the upgrading of the existing access road including works to the public right of way and alterations to the junction with the adopted highway have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include construction details, surfacing details and drainage arrangements and a timescale for implementation. Thereafter the approved scheme shall be implemented in accordance with the approved timescale.

Reason: In the interests of highway safety, in accordance with COM7 and COM8 of the East Cambridgeshire Local Plan 2015. The condition is pre-commencement as it

would be unreasonable to require applicants to undertake this work prior to consent being granted.

9) Prior to the commencement of development, an energy and sustainability strategy for the development, including details of any on site renewable energy technology and energy efficiency measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved strategy.

Reason: To ensure that the proposal meets with the requirements of sustainability as stated in policy ENV4 of the East Cambridgeshire Local Plan 2015 and the Climate Change SPD, 2021. This condition is pre-commencement as some of the measures may be below ground level.

10) 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.

Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.

11) 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 surfacing materials for all areas of hardstanding. The works shall be carried out in accordance with the approved details prior to the occupation of any part 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.

Reason: To safeguard the special architectural or historic interest, character and appearance and integrity of the Conservation Area, in accordance with policies ENV2 and ENV11 of the East Cambridgeshire Local Plan 2015.

12) Notwithstanding the boundary details shown on approved drawing 2147-21-6 Rev F, no above ground construction shall commence until a scheme of boundary treatments have been submitted to and agreed in writing with the Local Planning Authority. Substantial native hedge planting shall be incorporated into the scheme and close-boarded fencing shall be minimised. The boundary treatments shall be in situ in accordance with the approved details prior to the first occupation of the development and shall thereafter be retained.

Reason: To safeguard the special architectural or historic interest, character and appearance and integrity of the Conservation Area, in accordance with policies ENV2 and ENV11 of the East Cambridgeshire Local Plan 2015.

13) Notwithstanding the landscaping shown on approved drawing 2147-21-6 Rev F, no above ground construction shall commence until a full schedule of all soft landscape works has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include, planting plans, a written specification; schedules of plants noting species, plant sizes, proposed numbers/densities; and a detailed implementation programme. It shall also indicate all existing trees and hedgerows on the land and details of any to be retained and a timetable for implementation. The approved works shall thereafter be carried out in full accordance with the approved details and timescale. If within a period of five years from the date

of the planting, or replacement planting, any tree or plant (including retained existing trees/hedgerows) 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.

Reason: To safeguard the special architectural or historic interest, character and appearance and integrity of the Conservation Area, in accordance with policies ENV2 and ENV11 of the East Cambridgeshire Local Plan 2015.

14) No above ground construction shall take place until a scheme for the provision and location of fire hydrants to serve the development to a standard recommended by the Cambridgeshire Fire and Rescue Service or alternative scheme has been submitted to and approved in writing by the Local Planning Authority. The hydrants or alternative scheme shall be installed and completed in accordance with the approved details prior to the occupation of any part of the development.

Reason: To ensure proper infrastructure for the site in the interests of public safety in that adequate water supply is available for emergency use. This is supported by paragraph 95 of the NPPF.

15) No above ground construction shall take place on site until details of the external materials, canopies, windows, doors, roof windows and rainwater goods to be used on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To safeguard the special architectural or historic interest, character and appearance and integrity of the Conservation Area, in accordance with policies ENV2 and ENV11 of the East Cambridgeshire Local Plan 2015.

16) 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.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with policy ENV9 of the East Cambridgeshire Local Plan 2015.

17) Construction times and deliveries, with the exception of fit-out, shall be limited to the following hours: 0730 to 1800 each day Monday - Friday, 0730 to 1300 Saturdays and none on Sundays, Bank Holidays and Public Holidays.

Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.

18) Prior to the first occupation of the development, the approved parking and turning areas shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan 2147-21-6 Rev F (or an alternative plan which has first been

approved by the Local Planning Authority) and thereafter retained for that specific use.

Reason: In the interests of highway safety, in accordance with policies COM7 and COM8 of the East Cambridgeshire Local Plan 2015.

19) Prior to occupation a scheme of biodiversity improvements including a management plan for the site shall be submitted to and agreed in writing with the Local Planning Authority. The biodiversity improvements shall be installed prior to the first occupation of the hereby approved development and thereafter maintained and managed in accordance with the approved scheme in perpetuity.

Reason: To protect and enhance species in accordance with policies ENV1, ENV2 and ENV7 of the East Cambridgeshire Local Plan 2015 and the Natural Environment SPD, 2020.

20) 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. Such drainage details shall be submitted to the Local Planning Authority for approval prior to the access and hardstanding areas being formed.

Reason: In the interests of highway safety, in accordance with policies COM7 and COM8 of the East Cambridgeshire Local Plan 2015.

21) Notwithstanding the provision of Class A of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking, amending or re-enacting that order) no gates, fences or walls shall be erected across the approved vehicle access or the parking and turning areas as shown on approved plan 2147-21-6 Rev F or any subsequently approved plan.

Reason: In the interests of highway safety, in accordance with policies COM7 and COM8 of the East Cambridgeshire Local Plan 2015.

22) The first-floor windows in the side elevations of each dwelling shall be glazed using obscured glass and any part of the window(s) that is less than 1.7m above the floor of the room in which it is installed shall be non-opening. The window(s) shall be permanently retained in that condition thereafter.

Reason: To safeguard the living conditions of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.

23) 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 Class(es) A or D of Part 1 of Schedule 2 of the Order shall take place on site unless expressly authorised by planning permission granted by the Local Planning Authority.

Reason: To safeguard the special architectural or historic interest, character and appearance and integrity of the Conservation Area, in accordance with policies ENV2 and ENV11 of the East Cambridgeshire Local Plan 2015.

24) 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 Class(es) A of Part 2 of Schedule 2 of the Order shall take place on site unless expressly authorised by planning permission granted by the Local Planning Authority.

Reason: To safeguard the special architectural or historic interest, character and appearance and integrity of the Conservation Area, in accordance with policies ENV2 and ENV11 of the East Cambridgeshire Local Plan 2015.

-----End of Conditions-----