



Appeal Decision

Site visit made on 2 May 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/V0510/W/22/3305819

Dairy Cottage Ness Road, Burwell CB25 0DB

- 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 & Mrs Smithson against the decision of East Cambridgeshire District Council.
 - The application Ref 21/01777/OUT, dated 3 December 2021, was refused by notice dated 4 May 2022.
 - The development proposed is erection of 1no dwelling and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made in outline with access to be considered at this stage. All other matters, relating to appearance, landscaping, layout and scale were reserved for future consideration. The planning application included a proposed site plan showing the positioning of one dwelling on the appeal site. Although it is not marked as such, I have treated the siting of a dwelling as indicative only. The information provided on the proposed site plan in relation to the position of the access is considered as part of this appeal.

Main Issues

3. The main issues are:
 - whether the proposed development would be in a suitable location, having regard to the relevant policies of the development plan;
 - the effect of the development on living conditions, with particular regard to noise;
 - the effect of the development on highway safety; and
 - the effect of the development on existing trees.

Reasons

Suitable Location

4. The appeal site comprises of an area of grassland with a number of trees located within the site. Hedgerows and fencing are located around the perimeter. The appeal site sits within a short ribbon of development that fronts onto Ness Road. Adjacent to either side are the garden areas associated with neighbouring dwellings. To the rear of the neighbouring property is an

operational kennels and cattery business. Open countryside is located to the rear of the appeal site and opposite the frontage. The ribbon of development in which the appeal site is located is removed from the built up areas of the nearest settlements of Burwell and Fordham, with intervening agricultural land present.

5. Policy GROWTH 2 of the East Cambridgeshire Local Plan April 2015 (LP) sets out the locational strategy for development across the district and focusses the majority of development in the three market towns of Ely, Soham and Littleport. It identifies that more limited development will take place in villages which have a defined development envelope with development in areas outside the defined development envelopes being strictly controlled in order to protect the countryside and the setting of towns and villages.
6. The appeal site falls outside of any defined development envelope and is removed from the nearest settlement by some distance. Policy GROWTH 2 does identify some exceptions where development will be permitted outside of the defined development envelopes, but none of these exceptions include market housing such as the appeal proposal. The proposal therefore conflicts with the requirements of Policy GROWTH 2 and is contrary to the Council's locational strategy.
7. The National Planning Policy Framework (the Framework) seeks, in rural locations, to locate housing where it will enhance or maintain the vitality of rural communities and maximise sustainable transport solutions, whilst recognising that this will vary between urban and rural areas. The scale of development is such that it would not provide significant support for local communities. Moreover paragraph 79 of the Framework states that development in one village may be supportive of development in another nearby. However, the development would not be located in a village. Rather, this would constitute sporadic development in the open countryside, which is not supported by the Framework.
8. The appeal site is removed from the nearest settlement of Burwell. The Council have stated that there are no public transport services accessible along Ness Road. I walked along the grass verge alongside the road in order to view the appeal site and whilst I accept it is a snapshot in time, the road was relatively busy. There is no separate footpath and the road is subject to the national speed limit. This would be unlikely to provide an attractive route for many using means of transport other than the private car. Accordingly, the development would not be in an accessible location, which would be contrary to the aims of the Framework.
9. I therefore conclude that the proposal is contrary to Policy GROWTH 2 of the LP. It also conflicts with paragraphs 79 and 105 of the Framework, which seek, amongst other things, to promote sustainable development in rural areas and manage patterns of growth to promote sustainable transport objectives. There is dispute between the parties as to the weight that should be given to Policy GROWTH 2. I shall return to this matter below.

Living conditions

10. The rear of the appeal site is located adjacent to a kennels and cattery business. During my site visit I heard dogs barking continuously. I acknowledge that the noise from the kennels will vary throughout the day and

night. However, there is no evidence before me in the form of a noise assessment establishing the current noise environment of the site, the potential effect of this on the living conditions of future occupiers or if any mitigation would be capable of overcoming any harm. I cannot therefore be certain that the existing neighbouring use would not give rise to an adverse effect on the living conditions of future occupiers of the proposed dwelling.

11. The appellant asserts that a noise assessment has not been required in relation to previous applications within the vicinity of the appeal site and that there have not been any complaints about the noise from occupiers of existing nearby properties.
12. However, I note that the dwelling to the northeast of the appeal site is further removed from the kennels than the appeal site and does not share a boundary with it. Dairy Cottage immediately adjacent to the kennels is occupied by the operators of the kennels. The dwelling adjacent to Dairy Cottage was a conversion scheme and I do not have the information before me in relation to the site context or conditions at the time this was considered by the Council. These all differ therefore to the appeal before me in terms of the type of development, or the relationship with the kennels.
13. I therefore find that there is insufficient information before me to demonstrate that there would be acceptable living conditions for future occupiers of the property with regard to noise. The proposal would therefore be contrary to policies ENV2 and ENV9 of the LP. These policies seek, amongst other things, to ensure there is no significantly detrimental effect on the residential amenity of the occupiers of new buildings, especially dwellings and to restrict development where there is a potential conflict with existing developments.

Highway safety

14. I observed that visibility is restricted when looking towards the southwest due to the alignment of the road and due to vegetation located along the front boundary of the adjacent site. No evidence is before me, such as a speed survey identified by the Local Highway Authority, to demonstrate that a more limited visibility splay would still result in safe access and egress on to the road in relation to the proposed access. I therefore find that the access as shown on the proposed site plan would be likely to be harmful to highway safety, due to the restricted visibility to the southwest.
15. Whilst I recognise other existing access points may have more limited visibility, those in the vicinity of the appeal site appear to have been established for some time and may have predated the standards that the Local Highway Authority now consider to be appropriate to ensure the safety of road users. This does not negate the need to ensure any new access points are safe.
16. The Council have also stated that they requested an amendment to the scheme during the application stage to increase the width of the access from 3.2m to 3.6m in order to ensure vehicle movements are contained within the access to avoid damage to the highway and vehicles using the access, but this amendment was not submitted. This particular issue could be resolved by the widening of the access which appears to be achievable and therefore further details could be required by condition to ensure this is appropriately dealt with.

17. I therefore find, without substantive evidence to the contrary, that the proposal would likely to be harmful to highway safety. The proposal therefore conflicts with Policy COM 7 of the LP, which seeks, amongst other things, to ensure development proposals provide safe and convenient access to the highway network.

Existing trees

18. Policy ENV7 of the LP seeks to protect the biodiversity and geological value of land and minimise harm to or loss of environmental features such as trees. I saw that there are a number of trees located within the appeal site towards the front boundary. I note that whilst the proposed layout provided on the submitted drawing is only indicative given the outline nature of the application, the access is identified as a matter that is to be considered at this stage.
19. Whilst the submitted proposed site plan states that 'existing trees fronting highway boundary to be retained and enhanced where possible', there is no tree survey provided in support of the appeal to identify the specific location of the existing trees, details of the current condition of the trees or how the development of the site would affect them. In my view, the position of the proposed access would conflict with the position of existing trees meaning that the proposal would be likely to result in the removal of at least some of the existing trees.
20. However, layout and landscaping are reserved matters. The appeal site is of a sufficient size that a dwelling could be sited outside of the area where the trees are located to the front of the site. In addition, if one or more of the existing trees would need to be removed to allow the access to be created, there is space within the appeal site for mitigation in the form of replacement planting. The identification of trees that would be retained and how they would be protected during construction could also be secured by a pre-commencement condition.
21. Therefore, I find that the proposal would not adversely affect existing trees. The proposal would therefore, subject to conditions, comply with the requirements of policies ENV 1 and ENV 7 of the LP. These policies seek, amongst other things, to protect, conserve and enhance individual trees and provide appropriate mitigation where harm to environmental features is unavoidable.

Other Matters

22. As noted above, there is dispute between the parties as to whether Policy GROWTH 2 should be considered out-of-date. Several appeal decisions¹ have been put to me by both parties which pull in different directions on this matter.
23. There is common agreement between the main parties that Policy GROWTH 1 of the LP, which identifies the level of growth required for the district over the plan period is out-of-date as it uses an out-of-date housing requirement figure. This has resulted in the preparation of a Single Issue Review of the Local Plan which is currently at an emerging stage. However, it does not follow that other policies are automatically out-of-date as a result of one policy being identified as such.

¹ APP/V0510/W/21/3282449; APP/V0510/W/21/3283920; APP/V0510/W/21/3273002; APP/V0510/W/21/3284284

24. Policy GROWTH 2 seeks to direct development to the larger settlements within the district where the greatest number of services and facilities are located. It allows for some limited growth in the villages which have a defined development envelope, to support local communities, and to enhance the character of the countryside. The policy is therefore consistent with the Framework's objectives of locating development to limit the need to travel, promoting sustainable transport and recognising the intrinsic character and beauty of the countryside. In this regard, I do not consider the policy is out-of-date.
25. While I have had regard to the Soham decision², I am not aware of the evidence put to the Inspector in that case. Moreover, there appear to be some material differences between the cases, not least that the Soham development related to a market town rather than development outside of a village. I am also conscious that the more recent decision³ at Haddenham came to a different conclusion to that at Soham.
26. Having considered all decisions put to me and the clear consistency between the aims of Policy GROWTH 2 and the Framework I tend towards the views of my colleagues who consider the policy not to be out-of-date.
27. The appellant has raised a previous planning permission granted by the Council in 2018 at a neighbouring site. The Council have confirmed that the adjacent property was granted planning permission⁴ when a five year housing land supply could not be demonstrated and for operational reasons in relation to the applicants seeking a suitable location for their gun dog training business. I note the difference in the proposal and the policy position when that previous permission was granted and do not consider it directly comparable to the current situation.
28. Notwithstanding the status of Policy GROWTH 1, based on the information before me, I am satisfied that the most important policies for determining the application are not out-of-date. Therefore, paragraph 11 d) of the Framework which sets out the so-called 'tilted balance' to be applied where relevant development plan policies are out-of-date is not relevant in this instance.
29. The Council did not object to the proposal on the effect that a new dwelling would have on the character and appearance of the area. Based on the information before me, I see no reason to take a different view in this regard. However, a lack of harm in this respect is neutral and weighs neither for nor against the development.
30. The proposal would provide one additional dwelling, which would provide some economic and social benefits, albeit they would be limited given the scale of the proposal. However, these limited benefits do not outweigh the harm I have identified above.

Conclusion

31. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole. Material considerations, including the Framework do not indicate that a decision should be taken other than in

² APP/V0510/W/21/3282449

³ APP/V0510/W/21/3283920

⁴ Council Reference: 18/01291/OUT

accordance with the development plan. Having considered all matters raised, I therefore conclude that the appeal should be dismissed.

G Dring

INSPECTOR