



Appeal Decision

Site visit made on 31 May 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/A2470/W/23/3314473

Pt Os Field No 0003, Langham Road, Ashwell, Rutland LE15 7LN

Easting 486314 Northing 313270

- 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 and Mrs Hollingsworth against the decision of Rutland County Council.
 - The application Ref 2022/0310/FUL, dated 9 March 2022, was refused by notice dated 12 July 2022.
 - The development proposed is new dwelling including demolition of privy and sheds.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an amended landscape plan as part of the appeal. The 'Procedural Guide: Planning appeals – England' is clear that the appeal process should not be used to evolve a scheme. The amendment to the landscaping scheme consists of the introduction of additional hedge planting to the rear and side boundary of the site. This has not been subject to consultation and I cannot be certain that accepting this plan would not lead to prejudice to interested parties. I therefore have determined the appeal with regard to the landscaping scheme shown on drawing number 918/21/3B as considered by the Council.

Main Issues

3. The main issues are:
 - whether the appeal site is a suitable location for development with specific regard to the spatial strategy, access to services and the need to travel;
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of future occupiers with specific regard to disturbance from noise; and
 - whether the appeal scheme would deliver a biodiversity net gain.

Reasons

Suitable Location

4. It is common ground that the appeal site is outside of Ashwell as it is defined. It is therefore in the countryside where Core Strategy Development Plan Document adopted July 2011 (CS) Policy CS4 strictly limits development to that which has an essential need to be located there which supports the rural economy and meets affordable housing needs. Site Allocations and Policies Development Plan Document adopted October 2014 (SAP) expands on this and confirms that only dwellings essential to the operational needs of agriculture, forestry or an established enterprise, or affordable housing to meet an identified local need, will be allowed.
5. The appellant sets out that they are animal farmers and provide conservation grazing opportunities, both in a number of locations. As such, they require continuous access to the countryside. However, there is no substantive evidence before me demonstrating that this is an established enterprise, how this is essential for the operational needs of the business or that the site is at or near their place of work.
6. Ashwell is identified in CS Policy CS3 as being a restraint village. The supporting text to CS Policy CS4 confirms such settlements have few services and facilities. I have not been presented with any evidence to indicate that there are services and facilities within Ashwell which would be capable of meeting the day to day needs of incumbent or future occupiers.
7. I have not been directed to the precise location of the bus stops, but it has been indicated these are 430m from the application site which would not be an unacceptable distance. Whilst this is not an excessive distance, I have not been provided with details of the routes or frequency of services. I do not have sufficient detail of the distance to Oakham or the route that cyclists would take. I remain therefore to be convinced if either of these are sustainable transport options on which to rely.
8. Langham Road is single width and has infrequent lighting. I did not observe anything that would indicate it is a formal shared surface. There is no segregated footpath. While there were wide verges along it which were in a well managed condition at the time of my site visit that pedestrians could step onto, it is unlikely that this would form an attractive route in low light, during inclement weather or for people with mobility issues. With this and the above in mind, it seems there would be a high degree of reliance on the private car for future occupiers of the proposed dwelling to access services to support their day to day needs.
9. In regard to this main issue therefore, the appeal site would not be a suitable location for new housing when considering the spatial strategy, access to services and the need to travel. The proposed development would therefore be contrary to CS Policies CS1, CS3 and CS4 which taken together seek to direct development to the most sustainable settlements with access to services and facilities and access to public transport.

Character and Appearance

10. To the south of Langham Road lies undeveloped land which allows for expansive views across the open and undeveloped countryside from the north

and the east. The appeal proposal would be a clearly incongruous feature, introducing development to the southern side of the road where none exists at present. This would have an urbanising effect on the high rural qualities of the area, not only from the introduction of the dwelling, but in the use of estate railings around the boundary and the introduction of hardstanding around the dwelling. This would be harmful to the character and appearance of the area.

11. There is almost continuous development along the opposite side of Langham Road and the site is bounded to one side by the railway line. When viewed from the west, the proposed dwelling would be seen in conjunction with the existing dwelling on the opposite side of Langham Road, the slightly raised railway line and the apparatus associated with the level crossing. These factors would temper the harm I have identified above, but not eliminate it.
12. At the time of my site visit, the storage of bales gave the site a distinctly rural appearance. The site has been used to house livestock and until recently had been fully overgrown. This does contradict the claim that the site could not be returned to agricultural use. However, it also shows the remains of the permanent structure on site close to the level crossing, which I observed at my site visit. However, whether or not the site is previously developed land would not be determinative in this appeal. Even if I were to find that it were, this would not outweigh the harm to the character and appearance of the area I have identified above, particularly in light of the advice in paragraph 120c) of the National Planning Policy Framework (the Framework) that substantial weight to the value of using suitable brownfield land applies within settlements, which is not the case here.
13. The proposal would therefore harm the character and appearance of the area contrary to CS Policies CS19 and CS21 and SAP Policies SP6 and SP23 which taken together require development to be sensitive to its landscape setting.

Living Conditions

14. The appeal site is immediately adjacent to a railway line and level crossing. At my site visit, which I acknowledge is only for a brief time, background noise levels were low. Although I did not observe any trains passing the site, it is likely the noise from passing trains and any associated audible warnings at the level crossing would be particularly prominent. This would have the potential to cause at least a moderate level of noise that would cause disturbance to future occupiers of the property.
15. The application has not been accompanied by a noise assessment. There is also no evidence before me as to the type of trains, speed at which they travel or frequency of service. I am also mindful of the response from Network Rail that there could be trains running 24 hours a day along the line. Measures have been suggested to address the effects of noise in the form of maximising the distance from the railway line, placing non-habitable space closest to it, triple glazing and alternative ventilation measures. However, there is no evidence before me that these would be effective in mitigating the effects of noise from the railway line and level crossing. While the existing property opposite is closer to the railway line, I must determine this appeal with regard to present day circumstances, where there may be different expectations of living conditions and where the noise generated by the railway line may be of a different nature to that at the time the previous dwellings were approved. Nor am I aware if any mitigation was required to those properties.

16. The proposed development would therefore have an adverse effect on the living conditions of future occupiers with regard to noise and subsequent disturbance from the railway line and level crossing. This would be contrary to CS Policy CS19 and SAP Policy SP15 which taken together require development to be well designed and protect the amenity of future occupiers of the development. This is consistent with paragraph 130 of the Framework which confirms that planning decisions should ensure that development promotes health and well-being with a high standard of amenity for future users. I attach significant weight to this conflict.

Biodiversity

17. No substantive ecological information was submitted with the appeal either in relation to the current condition of the site, or how biodiversity could be maintained and improved through the proposal.
18. The Council has indicated that the cleared nature of the site is such that an ecological survey would not be necessary. They also indicate that it would be likely that the submission of further details would address this issue, however this was not requested in light of the other reasons for refusal. The appellant's evidence indicates that landscaping of the site could be carried out in such a way that biodiversity could be enhanced. It has not been demonstrated that such measures could not be secured through the use of a planning condition.
19. I do not therefore find any harm in regard to this main issue, and it would seem eminently possible for the scheme to deliver biodiversity net gain. Therefore, the proposed development could comply with the requirements of CS Policy 21 and SAP Policy 19 which taken together require development to maintain, protect and enhance biodiversity.

Other Matters

20. There is some public support for the proposed development although such would not absolve me from making a full assessment of its merits against the policies of the development plan. There were no caravans on the site at the time of my visit. It is reasonable to conclude that past waste dumping on the site would desist if a dwelling were to be erected, but equally there are other measures to control this available.
21. The design of the proposed dwelling seeks to reflect its rural setting with the eastern wing referencing the design of a traditional barn. Details of materials could be secured by condition. The retention of existing hedging and root protection measures for this, and any adjacent planting including the sycamore could also be secured by condition. However, as these would be expected of any well designed development, there would be a lack of harm in each case, therefore these would be neutral matters.
22. There is no sufficiently compelling evidence before me pertaining to the lawful use of the site. Any complaints arising from its current use would be matters for the Council or any other relevant body to deal with. I do not have details of the scheme approved at Wellfield, nor do I have details of the developments adjacent to other level crossings in the area. However, each case is to be determined on its own merits and approval in one location would not necessarily equate to approval in another. Issues around the access to the site

at present and the condition of the verges adjacent to the site are outside the scope of this appeal which considers the proposed development only.

23. Section 149(1) of the Equality Act 2010 is that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
24. There is the potential for my decision to affect persons with a protected characteristic. The negative impacts of dismissing this appeal will arise from the difficulties in finding suitable accommodation, particularly in a rural area. However, having due regard to this, and to the principles set out in s149, in my view the adverse effects of dismissing the scheme on those with protected characteristics would be proportionate, having regard to the potential adverse effects of allowing the development, particularly those on the living conditions of occupiers of the proposed dwelling.

Planning Balance

25. The Council accepts that it is currently unable to demonstrate the supply of housing required by the Framework. I am therefore taken to the circumstances of paragraph 11 which deems the most important policies would be out of date.
26. The appeal scheme would be harmful in a number of areas. The principle of the development in the location proposed would be unacceptable. The siting of the dwelling would be harmful to the character and appearance of the countryside as well as the living conditions of future occupiers. These harms would be wide ranging and long lasting and conflict with the relevant parts of the Framework. I consequently ascribe them significant weight.
27. The scheme seeks to provide a fully accessible dwelling, compliant with the relevant British Standard. The Council do not dispute there is no such housing available locally. Paragraph 112 of the Framework confirms that development proposals should address the needs of people with disabilities and reduced mobility in relation to all modes of transport. Paragraph 130 advises planning decisions should ensure that developments create places that are inclusive and accessible. The Planning Practice Guidance¹ advises that inclusive design should include the setting of the building in the wider built environment, including consideration of ease of movement with mobility aids between homes and services and proximity and links to public transport and local amenities.
28. It would appear that a wheelchair friendly means of public transport stops hourly in Ashwell. However, and as I have set out, there are obvious constraints to the use of Langham Road by pedestrians. These constraints would be exacerbated for wheelchair users for whom the verge may not be an option to avoid conflict with cars. The high dependency on the private car would therefore seem to remain. I therefore give it limited weight.
29. Fewer permissions for self-build development have been granted than the demand established through their self-build register. These figures have not been quantified. I have no reason to disagree with the fact that the dwelling

¹ Housing for older and disabled people Paragraph: 018 Reference ID: 63-018-20190626 Revision date: 26 June 2019

would be a self-build project albeit I have no sufficiently robust mechanism before me to secure it as such. This therefore weighs moderately as a benefit.

30. The Framework seeks to significantly boost the supply of housing. The appeal proposal would contribute to this, along with the associated economic benefits that would arise during both construction and occupation. I attach limited weight to these given the proposal is for a single dwelling and the shortfall is likely to be short lived.

31. With this and the above in mind, it is sufficiently clear that the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits. The proposal would not therefore benefit from the presumption in favour of sustainable development.

Conclusion

32. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations before me worthy of sufficient weight, including the approach of the Framework, which would indicate that a decision should be taken other than in accordance with the development plan. Therefore, the appeal should be dismissed.

J Downs

INSPECTOR