
Appeal Decision

Site visit made on 17 August 2015

by K R Seward Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 September 2015

Appeal Ref: APP/J1915/W/15/3016566

Land East of Cambridge Road, Puckeridge, Hertfordshire

- 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 The Co-operative Group against the decision of East Hertfordshire District Council.
 - The application Ref 3/14/1627/OP, dated 5 September 2014, was refused by notice dated 10 December 2014.
 - The development proposed is outline application including details of access for up to 24 residential dwellings and provision of public open space, landscaping, parking and associated works.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 24 residential dwellings and provision of public open space, landscaping, parking and associated works at Land East of Cambridge Road, Puckeridge, Hertfordshire in accordance with the terms of the application, Ref 3/14/1627/OP, dated 5 September 2014, subject to the conditions set out in the Schedule at the end of this Decision.

Procedural Matters

2. I have utilised the address given in the Appeal Form and Council's decision notice as only the grid reference appears in the original application.
3. The application was made in outline with all matters reserved for future determination, except for access. The Council has raised no objection to the proposed access and whilst noting concerns from the Parish Council, I have no reason to disagree. A 'masterplan' showing a possible layout was submitted with the application. This is annotated as being illustrative only and I have considered it on that basis.
4. A completed unilateral undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted by the appellant during the course of the appeal. This makes financial provision for various types of local infrastructure together with on-site affordable housing and play space. I return to this matter below.
5. Following its decision to refuse planning permission, the Council resolved not to pursue its reason for refusal concerning flood risk. In light of the advice from the Environment Agency, which seeks conditions only, I agree that stance.

Main Issues

6. The main issues are:-

- the effect of the development on the character and appearance of the surrounding area, having particular regard to the pattern of development and its countryside location.
- whether the proposal for housing in this location comprises sustainable development having regard to the development plan and the National Planning Policy Framework (the Framework).

Reasons

7. The appeal site comprises around 1.9 hectares of Grade 3 agricultural land located to the west/south-west of the village of Puckeridge, not far from the A10 road. It is within the rural area beyond the Green Belt as defined within the East Herts Local Plan Second Review (LP), 2007. There is a short row of housing and flats to the south of the appeal site referred to as 'Shenley' with housing immediately to the north for the main settlement of Puckeridge.

Policy background

8. There is no dispute that the Council cannot currently demonstrate a deliverable 5 year housing land supply. The starting point for the consideration of this appeal is therefore Paragraph 49 of the Framework. This makes clear that *housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.*
9. It follows that the Council's Policies LP GBC2 and GBC3 cannot be considered up-to-date insofar as they seek to restrict the circumstances in which development within the rural area outside the Green Belt can be undertaken. Thus, the location of the appeal site outside of the settlement boundary is not determinative on its own in relation to this appeal. In terms of their underlying countryside protection aims, I concur with the Inspector in the linked appeals for Hare Street Road, Buntingford¹ that GBC2 and GBC3 align with objectives in the Framework.
10. Paragraph 14 of the Framework indicates that the presumption in favour of sustainable development means that *for decision taking, where the development plan is absent, silent or the relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Issue 1 - Character and appearance

11. The appeal site is a long and narrow strip of land stretching alongside Cambridge Road. It is unused and has become overgrown. Its long highway frontage is bounded by dense hedgerow and trees severely restricting views into the site. The opposite side of the road is similarly bound. It is this green frontage which forms a defining characteristic of the appeal site. With dwellings located to the south and north, the appeal site provides physical and visual

¹ Appeal Refs: APP/J1915/A/13/2205582, 2205581 & 2199777

separation between the housing within and outside the village settlement. However, given the enclosed nature of the frontage, it does not contribute openness to the street scene nor can it be described as an important gap.

12. The site falls within an area identified as High Cross Plateau landscape character area within the Council's Landscape Character Assessment Supplementary Planning Document. This describes its key characteristics as including gently undulating arable land, filtered views out from and along the A10 with limited views elsewhere, filtered by hedgerow vegetation.
13. The proposed vehicular access onto Cambridge Road would necessitate removal of a central section of the hedgerow with two smaller areas allowing pedestrian access. The remainder of the hedgerow could be left mostly intact thereby preserving the verdant character of this part of the road and maintaining a visual break between buildings. Thus, its role as a green wedge could still be effective through its boundaries of hedgerow and trees. This would be a matter for future consideration by the Council.
14. The illustrative layout shows how the housing could be accommodated within the site in two long parallel rows towards the front of the site to allow for the undulating topography. A wide green buffer behind the housing is shown and this could shield views of the development from the fields beyond. If an area to the north of the site is left free from housing as illustrated, that too would help relieve the continuity in built form and maintain a break from the main settlement. It would not totally overcome the appearance of the village being extended in linear manner, but the visual impact could be softened significantly especially if more planting is introduced. Again, the layout and landscaping would be a matter for future determination, but it is a useful illustration of how the impact of this number of dwellings is capable of being mitigated.
15. Inevitably, environmental harm would arise from the loss of open countryside and I note the objections from the Campaign to Protect Rural England. However, as identified in the appellant's submitted Landscape and Visual Review, 2015, the appeal site is very well contained due to the topography sitting within a dip in the wider landscape. The site is seen in the context of existing development to either side to which it more readily relates than the open countryside beyond. Furthermore, given its topography large areas within the site would be undeveloped allowing opportunity for open space and planting which would minimise the impact on the landscape.
16. Having regard to all of the above, I conclude that there would some albeit very limited harm to the character and appearance of the surrounding area, having particular regard to the pattern of development and its countryside location. Given that there would be some harm, the proposal would be contrary to the general aims of LP Policy GBC14 to improve and conserve local landscape character and LP Policy ENV1 which seeks development compatible with its environment. It would also conflict with the countryside protection aims within Paragraph 115 of the Framework.

Issue 2 - Sustainability

17. The Framework, in Paragraph 7, recognises that there are three dimensions to sustainable development, namely economic, social and environmental. The construction of around 24 dwellings would assist the local economy in terms of labour opportunities and demand for materials and services during construction.

Once occupied it may be anticipated that future occupiers would also support local services providing ongoing economic benefits. From the number of likely occupants this could be significant.

18. The social dimension concerns providing the supply of housing required to meet the needs of present and future generations and accessible local services. In the Statement of Common Ground accompanying the appeal documentation, the parties agree that the Council can only demonstrate 3.4 years of deliverable housing supply. Up to 24 dwellings would provide much needed housing. Until details are submitted it will not be known whether the house types will meet the greatest local need. However, the UU secures 40% of the housing as affordable homes which would make a valuable contribution. Furthermore, the land is available now and the appellant maintains that the scheme would be deliverable within 5 years which weighs in its favour.
19. As the Council acknowledges, existing services and facilities in the village appear to be thriving. Many of these are an easy cycle ride away and within reasonable walking distance with a footway outside the site leading into Puckeridge village centre. There is a small convenience shop with a diverse range of products including fresh and frozen foods. Whilst this is unlikely to suffice for a weekly shop, it offers a good facility for convenience and top-up shopping. There are two public houses, a tearoom, hairdressers/beauticians, garage and petrol station. The village also has primary and middle schools, pharmacy, dentists, medical centre and a recreation ground within 1m. Some of these would be outside the 800m comfortable walking distance cited in the Manual for Streets. Even if a car were used, the trips would be very short.
20. There may be some employment opportunities locally, but most residents are likely to work further afield. Bus services run from relatively nearby to the nearest towns and Stansted Airport. Not all services are hourly and the frequency and duration of journeys is unlikely to be sufficiently convenient for many workers. Railway stations at Ware and Bishop's Stortford are about 10km and 11km respectively which in all likelihood would involve use of the private car to access them. The limitations on public transport impede the social credentials to some extent which otherwise perform reasonably well given the type and range of services within fairly easy reach. It also impacts negatively on the environmental role.

Conclusion on the main issues

21. In terms of the economic dimension of sustainability, I am of the clear opinion that there are benefits which should be apportioned moderate weight. I have found that the development would be reasonably sustainably located in terms of services and facilities. The social benefit arising from the contribution towards housing supply including 40% affordable housing, must carry very substantial weight given the acknowledged housing supply position in the district and the need to boost housing. Its deliverability within the foreseeable future adds to the credentials.
22. I acknowledge that the proposal does not fair particularly well on sustainable transport modes due to the limited availability of public transport options and need to travel by car for work and wider services, such as supermarkets. In addition, there is an issue over the use of land in the open countryside, but the landscape to be lost would not be so valuable as to give rise to more than limited harm. Paragraph 8 of the Framework makes it clear that the three

elements of sustainability should not be taken in isolation as they are mutually dependant. To achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously.

23. Overall, I consider that the appeal site is sufficiently sustainable for the benefits to outweigh the adverse impacts including the small amount of harm to character and appearance and the associated conflicts with the development plan. Therefore, on balance, this would be sustainable development for which there is a presumption in favour.

Planning obligations

24. Whilst contesting the need for some contributions, the appellant has submitted a completed UU dated 6 August 2015 in favour of the Council and Hertfordshire County Council. A planning obligation may only constitute a reason for granting planning permission if it would be necessary, directly related to the development and fairly and reasonably related to it in scale and kind as provided by Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL) and as reiterated in Paragraph 204 of the Framework. The Council has referred to LP Policy IMP1 requiring appropriate provision for affordable housing, open space, recreation and other local infrastructure along with its Planning Obligations SPD (the SPD). The County Council relies on its 'Planning obligations guidance – toolkit for Hertfordshire'. Various appeal decisions have been drawn to my attention to support the payment of contributions. As these will have been decided on their own merits, they have little bearing in this appeal.
25. The UU secures 40% of the units (rounded up to the nearest whole) as affordable housing on a split of 75% social rented and 25% shared ownership. This would accord with LP Policy HSG3 and the SPD. Development would not be permitted to commence until a scheme for a local area for play at the appeal site had been submitted to, and approved in writing by the Council. The delivery of such facilities within open space at the development would offset the need for a contribution towards public parks and gardens pursuant to the SPD. I consider that both obligations meet the CIL tests above.
26. Hertfordshire County Council maintains that the UU is defective in a number of ways. Financial provision is made towards childcare, library, nursery and youth facilities which the County Council no longer requires. It acknowledges that such contribution would fall foul of regulation 123(3) of CIL. This restricts the pooling of contributions towards an infrastructure project once five or more separate planning obligations made on or after 6 April 2010 are already in place. It is thus clear that those contributions are not justified and I have not taken account them into account. There is provision within clause 5 of the UU to relieve the owner of obligation to pay any contribution which is found in this appeal not to be CIL compliant. The remaining obligations in the UU are still capable of taking force and effect.
27. In terms of education, inevitably the construction of more houses would generate more demand for school places. The appellant disputes the need for an education contribution based on statistics showing primary school capacity. A three tier school system operates in the area with the two nearest middle (not primary) schools in Puckeridge and Buntingford currently full. With an outline planning application where precise numbers and mix of housing is not yet known, it is reasonable for financial calculations to be sought by reference to a

sum per dwelling linked to bedroom size depending on whether it is social or market housing.

28. A contribution is sought towards expansion of Ralph Sadleir middle school. The County Council confirms that whilst it has received generic contributions for this type of infrastructure, no planning obligations for this specific project have been entered since April 2010. Whilst it would have been far preferable for the UU to have explicitly referred to this specific project, the County Council has indicated expressly that the monies would be targeted in that way. On that basis I am prepared to accept it, noting that the appellant has not taken issue on this particular point.
29. The County Council complains that the incorrect sums per dwelling for middle schools are shown in the table of figures within the UU. This refers to 'secondary' education rather than middle and upper schools separately as the County Council has done. The sums in the UU are more generous overall than those in the County Council's table. As the UU would meet identified needs, I accept that the obligation would fulfil the tests in regulation 122 of CIL, but in reaching this view I have had no regard to sums exceeding those sought.
30. A healthcare contribution of £15,004 would provide for general medical services by Puckeridge and Standon Medical Practice. This corresponds with the sum sought by NHS England to offset the additional patient demands generated by the proposal, estimated as 58 registrations for primary care. The surgery is identified to be working at over-capacity. Comprehensive details with calculations have been provided to demonstrate the likely impact and measures required to contribute towards GP support and additional space and build cost. The CIL tests are met accordingly.
31. Financial contributions towards outdoor sports facilities and community centres would also be payable by reference to a charge per dwelling related to the number of bedrooms. The SPD contains a standard charge per dwelling for both types of facilities. The Council has identified the need to invest in existing play pitches at the local recreational playing fields. Improvements and an extension to the Standon and Puckeridge Community Centre are also identified. Given the extra demand likely to be placed on those facilities by the proposed scheme, I consider the contributions to accord with CIL.
32. Whilst the UU contains provision for sustainable transport contributions based on a sum per dwelling, I have no information on how the monies would be applied other than generically towards the transport network. Likewise, there are no details on why a £24,000 bus stop improvements contribution would be necessary in this case and how the sums would be used. In the absence of sufficient justification, I am not satisfied that these contributions comply with regulation 122 of CIL and I am unable to take them into account as a result.
33. The County Council is concerned that the trigger for all payments is expressed to be on occupation of 50% of the dwellings. Whilst payment on commencement of development may be desirable, I am mindful of the necessity for the project to gain traction and deliver on sales to fund the package of mitigation measures. A delayed trigger point for payment for this scale of development would be reasonable in the circumstances.
34. The County Council is concerned that the UU omits provision for fire hydrants. It requires these to be provided so that it does not incur the cost as Statutory

Fire Authority. This is capable of being addressed by way of a condition as suggested by the appellant.

35. Finally, the appellant has contested the need for a monitoring fee of £310 payable in respect of each obligation in light of the High Court judgment in *Oxfordshire County Council v SSCLG and others [2015] EWHC 186 (Admin)*. No such provision is made in the UU and its omission would not render the document unacceptable.

Other Matters

36. A number of other concerns have been raised by local residents and the Parish Council. The access would be along a straight stretch of road with reasonable visibility in each direction. There is no substantive evidence that traffic would increase to such an extent as to present traffic flow or parking problems giving rise to highway safety implications. Nor is there evidence to conclude that access at the A120 junction would become hazardous as a result of this proposal. Indeed, I note that the local highway authority has not objected.
37. A condition would address surface water drainage. I realise that there have been issues regarding flooding in the village which are subject to an investigation by the Environment Agency into a potential flood alleviation scheme. The Environment Agency does not consider that the development proposal would affect the outcome of its flood risk assessment work and has raised no objection. I have no reason to conclude otherwise.
38. Occupiers of the neighbouring detached property at 'The Buffalos Head' have raised concerns over privacy and security. At this stage the details of the scheme including layout are yet to be considered. Nonetheless, I consider that development is capable of coming forward without compromising the living conditions of neighbouring occupiers. The layout and future maintenance of the public open space are subject to future consideration.
39. With regard to wildlife, an Ecological Assessment and Reptile Survey accompanied the application. I will impose a planning condition to require compliance with the recommendations contained therein.

Conditions

40. A list of agreed conditions has been submitted by the parties in the event of this appeal being allowed. I have considered these in accordance with the provisions of Paragraph 206 of the Framework and the national Planning Practice Guidance. Where appropriate, I have made amendments for greater clarity and precision and abbreviations where draft conditions contained unnecessary detail. I have omitted any wording enabling the Council to agree alternatives as this would introduce uncertainty.
41. The parties have agreed a reduced time period of 1 year for the submission of details and commencement of development. Since the deliverability of the scheme within the next 5 years has formed a reason for allowing the appeal, a shorter than normal timescale is appropriate. Apart from the reserved matters conditions, it is necessary for the development to be carried out in accordance with the submitted plans for the avoidance of doubt and in the interests of proper planning.

42. A Construction Management Plan will minimise the impact of construction traffic on the local highway network along with disruption to residents as would a restriction on hours of operation during construction. For highway safety, conditions controlling the gradient of the proposed access and approval of details for the extension to the highway kerb line are necessary and reasonable. For environmental protection and human health, conditions are imposed regarding investigation and remediation of any contamination of the site and a restriction placed on infiltration of surface water drainage into the site. To be certain of satisfactory drainage, a condition is necessary for a detailed surface water drainage scheme and maintenance strategy. To protect biodiversity a condition is necessary to ensure compliance with the recommendations within the submitted Ecological Assessment and Reptile Survey. A condition will protect any archaeological remains. As indicated above, I have imposed a condition for the provision of fire hydrants as required by the County Council in the interests of public safety.

Overall Conclusion

43. From my findings above, this would be sustainable development and there would be other benefits in the form of affordable housing provision and on-site open space with play area. The adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. For the reasons given above and, having had regard to all other matters raised, I conclude on balance that the appeal should be allowed.

KR Seward

INSPECTOR

Schedule of 16 Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: TPMA1034_101 A (*proposed site access arrangement*); P-01-000 P1 (*location plan*); P-02-004 P1 (*existing site plan with topographical survey*); P-02-002 P1 (*parameters plan*).

- 5) No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme, and this condition will only be discharged when the required archaeological reports have been submitted to and approved in writing by the Local Planning Authority and if appropriate, a commitment to publication has been made.
- 6) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 7) In connection with all site demolition, site preparation and construction works, no plant or machinery shall be operated on the premises outside of the following hours:

0730 hours to 1830 hours on Monday to Friday;

0730 hours to 1300 hours on Saturdays;

and not at any time on Sundays or bank/public holidays.
- 8) Prior to the commencement of development, a detailed surface water drainage scheme and maintenance strategy for the drainage scheme shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based upon the submitted flood risk assessment (Curtins, Ref: TPMA1220/FRA, 29 August 2014) and shall include a restriction in run-off and surface water storage on site. The development shall be implemented in accordance with the approved details.
- 9) The gradient of the access road at the junction with the main road shall not exceed 1 in 20.
- 10) Details of an extension to the kerb line on Cambridge Road to the northern boundary of the development site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details
- 11) Prior to the commencement of development a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:

- (i) A site investigation scheme, based on the Phase 1 Detailed Desk Top Study (Curtins, Ref: EB1442/AW/3875, 22 July 2014), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - (ii) The results of the site investigation and detailed risk assessment referred to in (i) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - (iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (ii) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
 - (iv) Any changes to these components require the express written consent of the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 12) No occupation of any part of the development hereby permitted shall take place until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include the results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a plan (a 'long term monitoring and maintenance plan') for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 13) If during development contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy has been submitted to and approved in writing by the Local Planning Authority detailing how the unsuspected contamination shall be dealt with. The remediation strategy shall be implemented in accordance with the approved details.
- 14) No infiltration of surface water drainage into the ground at this site is permitted other than with the express written consent of the Local Planning Authority which may be given to those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
- 15) The recommendations in section 6 of the Ecological Assessment (dated May 2014, reference RT-MME-116937 Rev A) and section 6 of the Reptile Survey (dated July 2014, reference RT-MME-117164 Rev A) shall be implemented.
- 16) No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of fire hydrants at the development. No dwelling shall be occupied until the fire hydrant serving the property has been installed as approved. Thereafter the fire hydrants shall be retained in their approved form.