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# Appeal Decision

Hearing held on 23 November 2011

Site visit made on 23 November 2011

**by Elaine Benson BA (Hons) Dip TP MRTPI**

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

**Decision date: 16 January 2012**

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**Appeal Ref: APP/W0530/A/11/2157430**

**Land to the south of Brickhills, Willingham, Cambridgeshire CB24 5JH**

- 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 Andy Greed against the decision of South Cambridgeshire District Council.
  - The application Ref S/0733/11, dated 5 April 2011, was refused by notice dated 16 June 2011.
  - The development proposed is described as *19no. proposed dwellings on vacant land accessed off Brickhills Estate*.
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## Procedural Matters

1. It was agreed by the parties that the above address describes the location of the appeal site more clearly than the address given on the application form.
2. A Planning Obligation (Obligation) in accordance with Section 106 of the above Act was submitted with the application. This would secure affordable housing and contributions towards infrastructure in respect of open space and education. This matter is addressed in detail below.

## Decision

3. The appeal is allowed and planning permission is granted for 19no. proposed dwellings on vacant land accessed off Brickhills Estate at land to the south of Brickhills, Willingham, Cambridgeshire in accordance with the terms of the application Ref S/0733/11, dated 5 April 2011, subject to the conditions on the attached schedule.

## Application for costs

4. At the Hearing an application for costs was made by Mr Andy Greed against South Cambridgeshire District Council. This application is the subject of a separate Decision.

## Main Issues

5. The main issues are the effect of the proposed development on the character and appearance of the surrounding area; its effect on the living conditions of neighbouring residents and whether the contributions secured by the Obligation are reasonably required.

## Reasons

6. The appeal site is within the built-up area of Willingham, a large village with local shops and other amenities. For the most part it is surrounded by housing and there are limited public views of the site. The eastern half of the appeal site is ploughed land which is not a designated open space and there is no public access to it. The remaining land comprises part of the gardens of a number of houses on Church Street. Garden land is no longer previously developed land as defined by Planning Policy Statement (PPS) 3: *Housing* (PPS 3). Whilst the policy encouragement for the development of gardens has been removed, this does not necessarily mean that such land can no longer be developed. The proposal remains to be assessed against the provisions of the development plan, national planning policy and other relevant material considerations.
7. Policy ST/5 of the South Cambridgeshire District Council, Local Development Framework Core Strategy (CS) defines Willingham as a *Minor Rural Centre* where residential development up to a maximum of 30 dwellings will be permitted within village frameworks. The site is within the village framework area and the number of dwellings proposed complies with the guidance. The scheme has also been assessed against Policy DP/7 of the Development Control Policies DPD (DCP), which permits the development of unallocated land within village frameworks, provided that it is sensitive to the character of the location and the amenities of neighbours. These factors are addressed below.
8. The appeal proposals have been informed by a recent appeal decision for a similar development at the site (APP/W0530/A/10/2136269). Although it was dismissed, the Inspector found the principle of housing on the site acceptable. This is not contested by the Council, and there are no reasons to disagree. Furthermore, there is no dispute that the proposed development would contribute towards the Council's housing supply, providing a mix of market and affordable dwellings, tenure and price and would make efficient and effective use of land in a sustainable location. The mix of proposed dwellings would meet local needs, was considered acceptable by the previous Inspector and would comply with DCP Policy HG/3.

## Design

9. In summary, DCP Policy DP/2 requires new development to be of high-quality design, to preserve or enhance the character of the local area and to include variety and interest within a coherent design which is legible and provides a sense of place. Schemes should also be compatible with their location including in terms of their design and proportions. In respect of design, DCP Policy DP/3 criterion 2.1 indicates that planning permission will not be granted where the proposed development would have an unacceptable adverse impact upon village character.
10. The area surrounding the site contains buildings of varied size, scale, design and materials. An analysis of the locality, including a massing study, was carried out to inform the design of the proposed scheme. In response to the diverse character, a contemporary design with distinctive building profiles is proposed. This approach would accord with guidance in the Council's District Design Guide Supplementary Planning Document which, among other things, states that infill sites are expected to complement the street pattern by continuity of form and design or by appropriate contemporary contrast.

11. The Inspector found the contemporary design approach of the previous appeal scheme and its effect on the character and appearance of its surroundings acceptable in principle. The Council raises no objections to the design of the majority of the scheme, which is of a height and scale which generally accords with surrounding properties. However, changes have been made in response to the Inspector's conclusions that elements of the development were unacceptable due to their impact on neighbouring properties. The original scheme has been amended to reduce the height of the houses on plots 12 to 15 (plots 12-15), which are located in the middle section of the development, including through the use of flat roofs. The effect of the current proposal on neighbouring occupiers is addressed below.
12. The Council's first refusal reason relates to the design and appearance of plots 12-15 and in particular to their flat roofs. Four out of the 19 proposed dwellings would be flat roofed. This number could not reasonably be considered to amount to 'large proportions of flat roof elements', as the Council suggests. Their design and resulting bulk and scale have been considered, along with their relationship to the mono-pitch roof design of the overall scheme. The proposed flat roofs would reflect design details indicated in the wider development, including the proposed flat roofed porches. The front bays, projecting gables and render panels of plots 12-15 would reflect those on the adjacent plots 11 and 16 and the palette of materials and door and window details would be repeated throughout the scheme.
13. The consistent overall design would create a visually cohesive development with a sense of place. The contrast between the flat and mono-pitched roofs and the differing bulk and scale of the dwellings would provide a degree of design variety and interest reflective of the varied character of buildings in the surrounding area.
14. As set out above, the site is enclosed by development on most sides. Public viewpoints from where the flat roofs could be seen are limited. In the main, views of the scheme as a whole are restricted to glimpses between buildings and are generally obscured by outbuildings and landscaping. This is demonstrated by the appellant's massing study and was observed at the site visit. Nonetheless, as the flat roofs of plots 12-15 would be seen as an integral part of the comprehensive scheme design, the fact that they could be visible in some views would not in itself be objectionable.
15. PPS 1: *Delivering Sustainable Development* (PPS1) states that design policies should concentrate on guiding the overall scale, density, massing, height, landscape, layout and access of new development in relation to neighbouring buildings and the local area. It also indicates that local planning authorities should avoid unnecessary prescription or detail and should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. Against this background it is concluded that the Council has been unduly prescriptive in terms of its design requirements and its response to a small flat roofed element of a scheme which demonstrates a clear and coherent design approach. Whilst planning permission should be refused for development of obviously poor design, the appeal proposal could not reasonably be described in this way for the reasons set out above.

16. In respect of conservation matters, the previous appeal Inspector concluded that reducing by about half the gardens of the Grade II listed 45 and 47 Church Street would not harm the historic context of the two listed buildings or the historic pattern of development in the village. The appeal site falls outside and touches the boundary of the Willingham Conservation Area only at the southwest corner of the curtilage to 15 Rockmill End. There would be no adverse impact on the setting of the conservation area, as concluded by the previous appeal Inspector. The Council did not refuse the planning application on this basis and there are no convincing reasons to disagree with these conclusions.
17. In conclusion, the appeal proposal is of high quality design and would integrate acceptably with the character and appearance of its surroundings. It would therefore comply with the requirements of the Council's design policies set out above and the aims of PPS1 and PPS3 to achieve high-quality, inclusive and sustainable development. Additionally, there would be no conflict with PPS 5: *Planning for the Historic Environment*.

### **Effect on Neighbouring Occupiers**

18. The two-storey houses on Brickhills have short gardens, the smallest being around 6.4m from the appeal site at its closest point. Plots 12-15 would be two-storeys and sited between 8 and 9m from the northern boundary. It is not disputed that a 2m high acoustic barrier proposed along the boundary would prevent ground floor overlooking between the Brickhills houses and the proposed dwellings.
19. The previous Inspector found that the front elevations of plots 12-15 would overwhelm the neighbouring Brickhills properties as a result of their height, scale and proximity, eroding the enjoyment of their rear rooms and gardens, thereby harming their living conditions. At the Hearing the Council identified the affected Brickhills properties as Nos 39-47 (odd), of which Nos 41 and 43 have the smallest gardens.
20. In response to these concerns, the height of plots 12-15 has been reduced by about 1.4m by removing the previously shown mono-pitch roof and its replacement with a flat roof. The topmost elements of the front elevation would still be seen above the proposed acoustic barrier in some views, but these would be at an angle. The evidence indicates that when viewed from the ground floor and back gardens of the nearest neighbouring homes on Brickhills, the scale and lower height of plots 12-15 would no longer be harmfully overbearing, thereby overcoming the Inspector's concerns in this regard.
21. No technical justification or other convincing evidence was provided, either at the time of refusal or at the hearing to justify the Council's decision that this harm would remain. It is noted that officers considered that the relationship between the existing and proposed developments would be acceptable.
22. Various detailed design changes have been made to prevent overlooking, or the perception of overlooking, from the upper floors, in response to the previous Inspector's concerns. These amendments include alterations to the angles, design and orientation of windows and the use of obscure glazing. There is no dispute that these amendments successfully overcome the previous objections whilst maintaining adequate lighting and outlook for potential occupiers.

23. It is concluded that the proposed development would have no unacceptable adverse impacts on the residential amenities of the occupiers of properties in Brickhills and a satisfactory living environment would be created for future occupiers. On this basis there would therefore be no conflict with DCP Policy DP/3 and PPS3.

### **Section 106 Agreement**

24. Financial contributions towards infrastructure may be required to reflect increased demands arising from the development in accordance with CS Policy ST/5 and DCP Policies DP/3 and DP/4. The terms of the submitted Obligation were agreed by the main parties prior to the hearing. A reduced level of contributions had been negotiated to preserve the financial viability of the overall scheme, in accordance with the development viability criteria set out under DCP Policy DP/3.

25. A similar Obligation was discussed at the earlier appeal hearing. However, it was incomplete and had not been signed by all landowners. These deficiencies have since been addressed. The previous Inspector accepted the need for affordable housing, the method by which the number of units was calculated and their distribution throughout the scheme. However, he raised concerns about the method for calculating open space and education contributions, despite finding that they would be necessary in principle.

26. Notwithstanding these earlier conclusions, it is reasonable to expect that the sums which are now sought are rigorously justified and that an explanation is given of where existing deficiencies in infrastructure provision lie and how and on what any monies would be spent. The appellant does not challenge the need for the contributions which are being sought, with the exception of the education contribution.

27. The evidence submitted with the appeal and discussed at the hearing has been assessed against the requirements of the tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and in Circular 05/2005 *Planning Obligations*.

#### *Education Contributions*

28. The Council relies on the evidence of the County Council (CC) as Education Authority in respect of the need for contributions towards education infrastructure. The CC calculates that the proposed development would generate a requirement for 3 primary school places at a cost of £8,400 per place, totalling £25,200. There is no Supplementary Planning Document setting out the specific costs of education provision. However, the figures are calculated on a widely applied tariff basis, appear reasonable and are not disputed by the appellant. The Obligation makes provision for a contribution of £21,100. The viability exercise discussed above led to the acceptance of this lower figure by the main parties. The CC has identified the proposed contribution as directly related to the extension of Willingham Primary School to provide additional pupil capacity.

29. Notwithstanding that the Obligation makes provision for this education contribution, the appellant queries the need for the payment because the extension of Willingham Primary School has recently been completed. He considers that the statutory tests of the CIL Regulations relate to the impact of development and should not be retrospective.

30. The provision of family accommodation would increase demand for education infrastructure. This appears to be the basis of the previous Inspector's 'in principle' support for an education contribution. The advice in Paragraph B15 of Circular 05/2005 is that if a proposed development would give rise to the need for additional or expanded community infrastructure which is necessary in planning terms, as is the case in this appeal, then it might be acceptable for contributions to be sought towards this additional provision through a planning obligation.
31. The CC indicates that the school extension was required to accommodate the increased number of primary pupils resulting from new housing developments in Willingham. The CC states that the extension to the primary school was identified in its Integrated Plans and that the appellant had been aware that a primary education contribution would be required since 2009, when negotiations on the appeal scheme began.
32. Furthermore, the CC states that forward funding of schemes is not unusual as the Education Authority has a responsibility to ensure that there is capacity for increased pupil numbers and that it would not be unreasonable for the CC to effectively 'reimburse itself' for the forward funding of the local school extension. It is also relevant that £56,000 of the total cost of the school extension remains outstanding and is payable between 2011 and 2013. The appellant does not dispute that there is an outstanding sum for the works. At the Hearing the CC agreed that the contributions sought would effectively become part of a central resource of capital funding that would contribute to the projects identified in its Integrated Plan.
33. It is noted that there are primary school places available in the next village. However it would not be reasonable, including on safety grounds, to expect primary school children to travel to a school outside their large home village.
34. These factors have been taken into account along with all other relevant evidence and the statutory tests applying to planning obligations. Whilst the appellant's concern about the retrospective nature of the education contribution required is noted, Paragraph B23 of Circular 05/2005 states "in cases where an item of infrastructure necessitated by the cumulative impact of a series of developments is provided by a local authority or other body before all the developments have come forward, the later developers may still be required to contribute the relevant proportion of the costs. This practice can still meet the requirements of the Secretary of State's policy tests if the need for the infrastructure and the proportionate contributions to be sought is set out in advance."
35. In this case, the need for the contribution was known in advance, the infrastructure was set out in the CC's Integrated Plan and the proportionate contribution set out in advance. It is concluded that the requirement for an education infrastructure contribution complies with Paragraph B23 of Circular 05/2005; the contribution is necessary to overcome a valid planning objection and is fairly and reasonably related in scale and kind to the proposed development. The requirement therefore complies with the tests set out in CIL Regulation 122 and in Circular 05/2005.

### *Affordable Housing*

36. DCP Policy HG/3 requires proposals for housing developments to provide an agreed mix of affordable housing to meet local needs. Strict compliance would require 40% of the development as affordable housing. However, in accordance with DCP Policy DP/3 and the Council's SPD *Affordable Housing*, a viability assessment indicates that no more than 6 affordable units could be supported by the development. The parties agree that the number of affordable units, the proposed mix of 4 socially rented properties and 2 intermediate dwellings provided by a partner Registered Social Landlord and their disposition throughout the scheme would be acceptable. There are no reasons to disagree.
37. The relevant development plan policies and SPD are up to date and the need for affordable housing has been justified. Its provision therefore accords with the tests set out in CIL Regulation 122 and in Circular 05/2005.

### *Open Space Contributions*

38. DCP Policy SF/10 sets out the requirement for contributions towards outdoor play space and informal open space to meet the additional needs generated by residential developments. Contributions are sought in accordance with the open space standards set out in DCP Policy SF/11. The *Open Space in New Developments* Supplementary Planning Document (Open Space SPD) supports and expands this policy.
39. Public open space would be provided as part of the development. In addition, a contribution of £32,976.87 towards open space provision is sought, based on a district-wide formulaic approach derived from the anticipated number of residents in each dwelling. An audit and assessment of need for outdoor play space and informal open space has been carried out which identified a shortfall in Willingham.
40. The contribution is sought to make the proposal acceptable in planning terms and ensure that adequate outdoor facilities can be made available in the village to address the existing shortfall of sport and play space. The relevant development plan policies and the Open Space SPD are up to date and the contributions requested have been justified. They are of a scale that would accord with the tests in CIL Regulation 122 and in Circular 05/2005.

### **Other matters**

41. The proposal has also been assessed in the context of recent Ministerial Statements in respect of 'Planning for Growth' objectives, which encourage the support of economic and other forms of sustainable development, including through the provision of housing. The proposed development accords with these objectives, as it would provide housing, including affordable housing, as well as employment during its construction and it is within a sustainable location. Although the National Planning Policy Framework attracts limited weight as it is in draft form and may be subject to change, its provisions have been taken into account where they are consistent with extant national policy and guidance.
42. A number of matters raised by local residents were addressed in the previous appeal decision. These include the ability of Brickhills to safely accommodate any additional vehicle movements associated with the proposed development

without causing a danger to pedestrians or children at play. Sufficient parking is proposed and noise or disturbance during construction would be addressed by an operating hours condition. A number of trees at the western end of the site would be lost. However, as the previous Inspector indicated, many are non-native species and are not subject to tree preservation orders. Matters such as mud falling on the road or damage occurring during construction would be addressed by other legislation.

43. The proposed acoustic barrier would mitigate noise associated with the new road, in compliance with DCP Policy NE/15. Whilst it would create a sense of enclosure to the gardens of the Brickhills houses, a boundary treatment of this height could in any event be erected without requiring planning permission. Adequate and sufficient space is proposed for refuse storage to ensure that neighbours would not be affected by odours. External lighting could be controlled by condition to prevent any adverse impact on neighbouring occupiers through light spillage or pollution.

### **Conclusion**

44. All other matters raised have been taken into account; however, none are sufficient to outweigh the conclusions of the main issues. For the reasons given above the appeal should be allowed.

### **Conditions**

45. The conditions suggested by the Council have been considered in the light of the advice in Circular 11/95, *The Use of Conditions in Planning Permissions*. In some instances the suggested wording has been amended to more closely relate to the advice set out in the Circular.
46. Conditions relating to details of the external materials and the landscaping of the site are necessary to secure a satisfactory appearance. Details of foul and surface water drainage are required to reduce the risk of pollution to the water environment. To limit the impact of noise on residents in Brickhills, details of the noise barrier are required. Details of a scheme relating to renewable energy are required to secure an energy efficient and sustainable development. Because of the potential presence of archaeological remains at the appeal site, details of a scheme of archaeological investigation are required. The retention of parking spaces is required in the interests of highway safety.
47. It is reasonable and necessary to require certain windows to be obscurely glazed and to withdraw specific permitted development rights in order to prevent the construction of any further windows doors or openings above first floor level in the side elevations of a number of dwellings to protect the living conditions of adjoining occupiers. For the same reason, external lighting shall only be installed if previously approved. Having regard to the relationship of the appeal site to residential properties, a condition has been imposed to control operating hours to protect the amenity of residents during the construction period. A condition to specify the plans is necessary for the avoidance of doubt and in the interest of good planning.

*Elaine Benson*

INSPECTOR



## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection during the course of development and the positions, design, materials and type of boundary treatment to be erected. The details shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 5) Prior to the commencement of any development, a scheme for the provision and implementation of foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any part of the development or in accordance with the implementation programme agreed in writing with the local planning authority.
- 6) No development shall take place until details of the proposed reflective environmental noise barrier system have been submitted to and approved in writing by the local planning authority. The barrier shall be provided in accordance with the approved scheme, and thereafter retained as such.
- 7) No development shall take place until a scheme for the provision of on-site renewable energy to meet 10% or more of the projected energy requirements of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme.
- 8) No development shall take place on the appeal site until the appellant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the appellant and approved in writing by the local planning authority.

- 9) The approved car parking spaces shall be provided before the dwelling to which that parking relates is occupied and shall be kept available for the parking of motor vehicles at all times. The car spaces shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter.
- 10) Apart from any top hung vent, the proposed first-floor windows in the side elevations of plots 1, 3, 8 and 17 shall be fitted and permanently glazed with obscure glass.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no windows, doors or openings of any kind, other than those expressly authorised by this permission shall be constructed at and above first-floor level in the side elevations of the dwellings on plots 1, 3, 8, 12, 13, 14, 15 and 17.
- 12) No external lighting shall be provided or installed within this site other than in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 13) During the period of demolition and construction, no power operated machinery shall be operated on the site before 0800 hrs on weekdays and 0800 hrs on Saturdays, nor after 1800 hrs on weekdays and 1300 hrs on Saturdays, nor at any time on Sundays and Bank Holidays.
- 14) The development hereby permitted shall be carried out in accordance with the following approved plans: 09-15 G series 01B, 02B, 03A, 04B, 05B, 06B, 07C, 08B, 10A, 11B, 12A and 20.

## **APPEARANCES**

### FOR THE APPELLANT:

Mr A Greed	Appellant
Mr G Johns	Architect
Mr D Proctor	Agent

### FOR THE LOCAL PLANNING AUTHORITY:

Mr J Koch	Development Control Team Leader
Mr S Reid	Senior Planning Solicitor
Mr J Fisher	Section 106 Officer

### INTERESTED PERSONS:

Mr M Sharp	Cambridgeshire County Council (Education)
Mr R Stenner	Local resident
Mr and Mrs S W Dyson	Local residents
Mr K Ellwood	Local resident

## **DOCUMENTS**

- 1 Completed Section 106 Planning Obligation - submitted by the appellant
- 2 Council's response to appellant's application for an award of costs
- 3 Response from archaeological consultee dated 27 April 2010 - submitted by the Council