
Appeal Decision

Site visit made on 13 December 2016

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 9th January 2017

Appeal Ref: APP/W3520/W/16/3159634

Land adjacent to Cherry Tree Close, Yaxley, Suffolk, IP23 8DH

- 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 Daniel Lucas Dove Farm Developments Limited against the decision of Mid Suffolk District Council.
 - The application Ref 4028/15, dated 11 November 2015, was refused by notice dated 21 March 2016.
 - The development proposed is residential development of 15 new dwellings.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the site address from the appeal form, as this is more precise than the address given in the application form.
3. The application is in outline with all matters reserved. An indicative site plan was submitted with the application and was subsequently revised. I have had regard to the revised indicative plan in my decision.
4. Based upon the submitted reptile survey, the Council advise that they no longer wish to defend the second reason for refusal in respect of biodiversity. Reference to this harm within the first reason for refusal also falls away. I therefore do not address this matter in my reasoning below.
5. Following the determination of the planning application, the Council adopted a Community Infrastructure Levy. As such, the Council have confirmed that contributions towards school places, libraries and waste are no longer sought. However, affordable housing contributions as well as the adoption of the highway and the management of the open space would still need to be sought via a planning obligation. No such agreement has been submitted as part of the appeal and the Council's maintain their reason for refusal in respect of this.

Main Issues

6. In relation to the above, the main issues are therefore:
 - (a) whether the site is a suitable location for residential development having regard to accessibility of services and facilities;
 - (b) whether or not a planning obligation is required to make the proposal acceptable, with particular regard to affordable housing, the adoption of the road and open space, and;
-

- (c) whether the site is a suitable location for residential development having regard to flood risk and sustainable urban drainage.

Reasons

Location of Development

7. Saved policy CS1 of the Mid Suffolk Core Strategy 2008 (CS) identifies Yaxley as a secondary village, whereby small scale residential infill and local needs development is permitted. The appeal site would be located outside, but would abut, the defined settlement boundary for Yaxley. In both regards, the proposed development of 15 houses would be contrary to the aims of this policy.
8. However, due to a lack of 5 year housing land supply, it is agreed that the policies within the CS as well as policies in the Core Strategy Focused Review 2011 (CSFR) and the Mid Suffolk Local Plan 1998 (LP) relating to housing are considered to be out of date in terms of paragraph 49 of the National Planning Policy Framework (the Framework). Consequently, Paragraph 14 of the Framework applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
9. The Framework sets out a number of core planning principles which underpin decision-taking. These include supporting thriving rural communities within the countryside and actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling. Paragraph 55 of the Framework is clear that new housing should be located where it will enhance or maintain the vitality of rural communities, and isolated new homes in the countryside should be avoided unless there are special circumstances. In promoting sustainable development in rural areas, the Framework therefore seeks to ensure that new residential development should not be detached from being part of a viable and vibrant rural community, where there would be access to day to day facilities without the need to travel.
10. At my site visit, I noted a church and a public house within the village. I understand that a post office and shop, located within the public house have ceased trading. Yaxley therefore has no services to meet the day to day needs of residents. The nearest school is located at Mellis, around 1.5km away. Eye is located around 1.5km away and contains a range of services and facilities typical of a small rural town.
11. Access to Eye would be via narrow country lanes with no footpaths. Furthermore, users would need to cross the A140 as a busy main road. Similarly, access to Mellis is similar and in spite of local calls to provide a footpath which would run between the two settlements, I saw that this remains incomplete with a significant gap.
12. Public transport options are restricted to a bus service which operates only a limited schedule. Regular use of walking, cycling or public transport options would not therefore be likely to represent a realistic travel choice for the necessary regular journeys of occupants of the development. While it is conceivable that there would be some use of the bus service, and in time there may be footpath provision between Yaxley and educational facilities at Mellis, I

find that the use of the private car would be the necessary and most realistic transport choice for residents in most cases.

13. Paragraph 55 of the Framework recognises that smaller settlements can support services in other nearby villages, and I note that both these settlements are only around 1.5km away and as such any car journeys to access services and facilities in these settlements would only be short trips. I also appreciate that as a rural area, reliance on private transport is not uncommon within the District and that paragraph 29 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. CS Policy CS1 also does allow for some housing growth, and while the purpose of defined settlement boundaries relates to restricting encroachment into the countryside the appeal site would constitute infill development on brownfield land, and as such would not conflict with saved Policy GP1 of the LP in this respect.
14. Nonetheless, the development of 15 houses in a small village which has only very limited services would be likely to generate significant use of and reliance upon unsustainable forms of transport. This would undermine any benefits of the development in respect of supporting services in neighbouring areas. The rural nature of the District in itself would not justify major development in this location. Furthermore, in refusing the planning application in this location, there is no evidence that the Council are seeking to meet housing need by restricting development to its 4 main settlements.
15. It has been put to me that in light of the shortfall within the District, in offering 35% affordable housing, the development would be a rural exception site. However, this would represent only a proportion of development on site and would be in line with the requirements of Policy H6 of the Local Plan Alteration 2006 (LPA) which is applicable for all developments of 5 or more houses. The proposal would not therefore represent a rural exception which would justify the scheme under CS Policy CS2 and the weight I can attach to this is limited.
16. I note reference to two schemes in Palgrave, which is also identified as a secondary village and is a similar distance away from a Town. While I note the appellants concerns in respect consistency in decision making relating to accessibility and distance between settlements, I do not have full details in respect of these decisions which led to their approval. In any case, I have determined the appeal on its own merits, based on the evidence before me.
17. On this basis, I conclude that the proposed development would not accord with paragraphs 17 and 55 of the Framework due to its isolated location in respect of accessibility and sustainable transport. The proposal would also conflict with Policy FC1 and FC1.1 of the CSFR, in which there is a presumption in favour of sustainable development. These policies do not directly affect the supply of housing and as such can continue to be given weight.

Planning obligation

18. Paragraph 204 of the Framework and Regulations 122 and 123 of the Community Infrastructure Levy (Amendment) Regulations 2015 (the CIL Regs) states that obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

19. In order to meet requirements of Policy FC1.1 of the CSFR, CS Policy CS6, saved Policy H4 of the LP, the proposal generates the need for affordable housing as well as the need to secure the adoption of the road and a management plan in respect of the open space through a planning obligation. I find that the provision of such housing and infrastructure is necessary to make the development acceptable in planning terms, is directly related to the proposal and is reasonably related in scale and kind to it. The provision sought therefore complies with paragraph 204 of the Framework and Regulation 122 of the CIL Regs.
20. However, no such obligation has been executed and the proposed development does not provide an appropriate means to secure affordable housing and other infrastructure.
21. I accept that both the Council and appellant agree that an obligation is necessary and that the appellant has contacted the Council on this matter. Nevertheless, the Procedural Guide – Planning appeals – England 2015¹ clearly states that an executed and certified copy of the obligation should be received no later than 7 weeks from the appeal start date and I am not obliged to delay my decision to wait for a completed obligation.
22. In the absence of an obligation, the question which arises is whether this matter could be dealt with by condition. However, the Planning Practice Guidance (PPG) advises that a positively worded condition should not be used to require payment of money or other contributions. It also advises that a negatively worded condition limiting the development that can take place until an obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances such as in the case of more complex and strategically important development, where there is clear evidence that the delivery of the development would be put at risk². Such circumstances do not exist in this case.
23. I therefore conclude that this matter cannot be dealt with by condition. The proposal would therefore be contrary to CSFR Policy FC1.1, CS Policy CS6 and saved LP Policy H4. This would also be contrary to Paragraph 50 of the Framework which also indicates that where the need for affordable housing is identified it should be provided.

Flood Risk

24. Following the refusal of planning permission, the appellant has submitted a Drainage Strategy in order to address the Council's concern that the application did not include sufficient information to establish whether the use of soakaways for surface water drainage is possible and whether the proposed system would be adequate. Further evidence has also been supplied in respect of advice given by Anglian Water and a further letter from the consultancy who produced the strategy.
25. On the basis of the information submitted, including the pre-planning assessment report by Anglian Water, I am also satisfied that the development would not increase the risk of flooding to properties both within the site and in the surrounding area.

¹ Procedural Guide – Planning appeals – England 2015 : Deadline for receipt of planning obligations – section N.2

² Planning Practice Guidance ID 21a-010-20140306

26. In respect of the method of control of surface water run off for major development sites it is essential that sustainable drainage systems are in place unless it is demonstrated to be inappropriate. The PPG³ recognises that particular types of sustainable drainage systems may not be practicable in all locations and advises that a hierarchical approach applies.
27. Infiltration tests were not undertaken as the trial pit found clay and it was anticipated that infiltration of surface water would not therefore be possible. In seeking to discharge to a sewer, the Drainage Survey assumes the worse-case scenario respect of this hierarchy.
28. Having regard to the nature and scale of the development, while drainage is preferable via infiltration or other means, I consider that the Drainage Survey is reasonable in its assumptions. I am also mindful that infiltration testing could reasonably be conditioned in order to provide further evidence and further inform any future strategy for the site.
29. I therefore conclude that the proposed development would accord with CS Policy CS4 which seeks the implementation of sustainable drainage systems where technically feasible. In this regard, there would also be no conflict with CSFR Policies FC1 and FC1.1 in respect of the presumption and delivery of sustainable development. The development would also be consistent with paragraph 103 of the Framework which gives priority to sustainable drainage systems.

Planning Balance

30. In order to achieve sustainable development, the Framework identifies that economic, social and environmental gains must be sought jointly and simultaneously.
31. The Framework seeks to boost significantly the supply of housing and the development would contribute to housing supply in an area where there is a shortage. This would therefore provide modest economic benefits. The development would also give rise to other economic benefits relating to employment and construction, although these would be limited and temporary.
32. The provision of housing would also constitute a social benefit to communities. However, due to a lack of a planning obligation I do not accept that the development would offer significant social benefits in respect of affordable housing. The weight I can attach to this is therefore limited.
33. In terms of the environmental strand of sustainable development, the site is an area of previously developed land, the reuse of which is encouraged by the Framework. The impact on character and appearance of the area, biodiversity and flood risk would be neutral, subject to condition or details at the reserved matters stage. Again, the weight I can attach to cited environmental and indeed social benefits in respect of the provision of open space are restricted due to a lack of s106 agreement.
34. However, I have found that the site would not represent a rural exception site and the social and environmental harm I have identified in respect of its isolation from services and facilities would be significant.

³ Planning Practice Guidance ID 7-080-20150323

35. I therefore conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The proposals cannot, therefore, be considered to be the sustainable development for which the Framework presumes in favour.

Other matters

36. The Council do not consider that the development would cause harm to the significance of the adjacent Grade II* Guildhall Cottage, subject to the imposition of conditions. In light of the previous use of the site, the separation distance and the intervening screening provided by the established trees, I see no reason to disagree with their evaluation.

Conclusion

37. For the reasons given above, taking into account all other matters raised, I conclude that the appeal should be dismissed.

C Searson
INSPECTOR