
Appeal Decision

Hearing held on 9 January 2019

Site visit made on 9 January 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2019

Appeal Ref: APP/W3520/W/18/3197538

Land off 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 planning permission.
 - The appeal is made by Dover Farm Developments Limited against the decision of Mid Suffolk District Council.
 - The application Ref DC/17/04605, dated 8 September 2017, was refused by notice dated 21 December 2017.
 - The development proposed is erection of 10 dwellings (including 6 affordable homes), 2 flats and 1 retail unit.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - a) whether the site is a suitable location for residential development having regard to accessibility of services and facilities;
 - b) the effect of the proposal on the living conditions of existing residents in Cherry Tree Close, with regard to outlook, sunlight, privacy and noise;
 - c) whether the proposed development would make appropriate provision for surface water drainage;
 - d) whether a suitable mechanism is in place to secure the proposed affordable housing, future management of the open space within the scheme and adoption of the estate road; and
 - e) in light of my findings on the above matters and the Council's housing land supply position, whether the proposal would constitute a sustainable form of development.

Reasons

Location of development

3. Policy CS1 of the Mid Suffolk Core Strategy 2008 (Core Strategy) identifies Yaxley as a secondary village where the focus is upon small-scale development to meet local needs. The supporting text explains that local needs include

community facilities, as well as small-scale infill housing and rural exception sites for affordable housing.

4. The appeal site comprises two separate land parcels. The larger of these would accommodate a total of 10 dwellings and this development would be located immediately outside of the identified settlement boundary for Yaxley where the Core Strategy restricts housing development to rural exception sites. Six out of the ten proposed dwellings are intended to be affordable units, but the scheme is not being promoted as a rural exceptions site. Despite the Suffolk Housing Needs Survey indicating a requirement for smaller and more affordable homes at the county level, there is no firm evidence to demonstrate a local housing need within Yaxley itself.
5. The site was described within an earlier appeal decision¹ as infill. Whether or not it is infill in the truest sense is a moot point, although I acknowledge that there is no definition within the Core Strategy. Nevertheless, Policy CS2 seeks to ensure that all new market housing is delivered within settlement boundaries and there would be conflict with the development plan in this regard.
6. The Core Strategy does not specify a maximum size threshold for schemes within secondary villages. However, I accept the Council's point that the villages within this tier of the hierarchy vary significantly and therefore what may be considered small-scale in one location may not be appropriate elsewhere. Although it is evident that the Council has granted housing schemes in other secondary villages, each proposal must be assessed on its own merits.
7. The settlement of Yaxley contains a church, public house and village hall which are all longstanding facilities. The nearest primary school is located at Mellis, roughly 1.5km away. There is a lengthy gap in footway provision between the two settlements and this is a barrier for those wishing to make the journey to school on foot. The likelihood is that children within the proposed development would be conveyed to school by car.
8. Dedicated school bus services provide access to secondary education in Eye, approximately 1.5km from the site. This small rural town provides a range of services and facilities, together with employment opportunities at Eye Airfield Industrial Estate. The nearest major supermarket lies further away in the Norfolk town of Diss, with the journey by car taking approximately 10 to 15 minutes.
9. Yaxley and Eye are connected by narrow unlit lanes with no footpath. The route is not conducive to walking or cycling, not least because of the need to cross the busy A140. The limited bus service which existed at the time of the last appeal has been withdrawn, reducing further the already limited travel options available to local residents. Occupiers of the proposed dwellings would be heavily dependent upon the private car for most everyday trips. Whilst I acknowledge that the car journey to Eye is relatively short, the cumulative impact on carbon emissions for a scheme of 12 dwellings would be significant.
10. The appellant contends that the Council is proposing to allocate a number of housing sites in Yaxley, in addition to extending the settlement boundary. However, the Joint Local Plan for Mid Suffolk and Babergh is at an early stage of preparation. Although it was argued that I should have regard to the 'direction of travel' being established by officers, there is no documentary evidence to

¹ APP/W3520/W/16/3159634

confirm the proposed approach, neither can there be any guarantee that it will not change following public consultation and examination. Accordingly, I have given very limited weight to this element of the appellant's case.

11. The Council does not contest the benefits of providing a shop in the village and accepts that this element of the scheme would comply with development plan policy. However, there is no retail operator on board with the project and no obvious interest in the unit being run as a community based enterprise. Two shops have closed over the years, the most recent being located within The Cherry Tree public house. The reasons for these failures are unknown, but the limited population of Yaxley (588 at the 2011 Census) and relative proximity of supermarkets in Eye and Diss may be contributory factors.
12. Regardless, the available evidence gives me little confidence that the proposed retail unit would be financially viable in the long term. Its position, tucked away within a residential cul-de-sac, is unlikely to attract any passing trade. Therefore, whilst the retail unit is acceptable in principle, its delivery and longevity are questionable. This limits the weight I can attach to it as a community facility which would support the new housing.
13. Notwithstanding the planned commencement of a mobile post office service² in February 2019, the loss of the bus service means that the village will be in a significantly worse position than when the earlier appeal scheme for 15 dwellings was considered. The current proposal would be marginally smaller in terms of unit numbers, but it would nonetheless represent major development in the context of Yaxley. Although the proposed dwellings would not be isolated homes in the countryside within the meaning of paragraph 79 of the National Planning Policy Framework (the Framework), their occupants would have poor access to services and facilities without reliance on the private car. This would be contrary to the development strategy set out in Core Strategy Policy CS1 and the Framework objective of maximising the use of sustainable travel modes.

Living conditions

14. Plot 10 of the appeal scheme would be situated directly adjacent the rear garden boundaries of Nos 13 and 15 Cherry Tree Close. Notwithstanding a drafting error on the plans, it is evident that the occupiers of the adjoining properties would look onto a large expanse of unrelieved brickwork at close quarters. The mass of the building would make it overbearing and the development would overshadow neighbouring gardens.
15. Furthermore, a bedroom window in the north elevation of Plot 10 would offer direct views into adjacent properties and gardens, with window-to-window distances of around 13.5m. This level of overlooking would be intrusive and materially harmful to privacy. It has been suggested that a condition could be imposed to require that the window be obscurely glazed or modified to provide a high internal sill level. However, neither design solution is likely to provide occupants of the bedroom with an acceptable living environment.
16. The Council has also raised concerns regarding the potential for residents in Cherry Tree Close to be disturbed by noise from the operation of the new shop unit. The level of trade will depend upon the type of retail business and its popularity. In my opinion, the long term prospects for a general store in this

² A weekly visit of 1 hour duration.

location are extremely poor. Nevertheless, I must consider the possibility that a commercial occupier could make a success of the business. In that circumstance, the comings and goings of customers and deliveries has the potential to cause unacceptable noise and disturbance for existing residents, particularly if the unit is open during the evening and at weekends.

17. Cherry Tree Close is a quiet cul-de-sac and residents should have a reasonable expectation that it will remain so. Whilst I have considered the option of imposing a condition to restrict hours of opening and delivery times, the appellant is not in favour of such controls which would reduce the viability of the business premises in any event.
18. Accordingly, I conclude that the scheme would have a material adverse effect on the living conditions of existing residents in Cherry Tree Close. There would be conflict with saved Policies H16, H17, S7 and E9 of the Mid Suffolk Local Plan (1998) insofar as they seek to protect the amenity of nearby residents. These policies are consistent with paragraph 127 of the Framework in requiring a high standard of amenity for existing and future users.

Surface water drainage

19. The Planning Practice Guidance sets out a hierarchy of drainage options and explains that the aim should be to discharge surface run-off as high up the hierarchy as reasonably practicable. Following unsuccessful percolation tests the appellant has rejected the option of discharging water into the ground using infiltration techniques. There are no suitable watercourses to which to connect the scheme and therefore the next best option is disposal to a surface water sewer.
20. There is already a surface water sewer available in Cherry Tree Close. This is an attenuated drainage system using large diameter pipes with a restricted off-site discharge rate. The proposal is to connect into this infrastructure with further underground storage. Clearly, there would be an additional volume of water to dispose of, but the rate of discharge means that it would not increase the burden on the public sewer. Although the Council is concerned that connection to this existing infrastructure has not been agreed by Anglian Water, it is the risk of flooding which is the primary matter for consideration. The water authority has a duty under s106 of the Water Industry Act 1991 to accept requests to connect with the public sewer.
21. The available evidence demonstrates that the appeal site is at low risk of flooding. Furthermore, the proposed development would not increase the risk of flooding elsewhere. I therefore find that the proposal would accord with Core Strategy Policy CS4 and Framework paragraph 163, insofar as they seek to prioritise sustainable drainage systems. Technical details of the drainage scheme could be secured by condition were the appeal to be allowed.

Mechanism for securing affordable housing, open space and road adoption

22. The submitted Unilateral Undertaking (UU) aims to deliver 6 semi-detached dwellings as affordable homes. These are intended to be shared ownership properties which would be made available for first time buyers in Yaxley or young people employed on the Eye Airfield Industrial Estate. The UU is imprecisely drafted and does not include any long term safeguards to ensure that the benefit of affordable housing would be enjoyed by successive occupiers. As

such, it cannot be relied upon to secure affordable housing in accordance with saved Altered Policy H4 of the Mid Suffolk Local Plan First Alteration (2006).

23. The Council advised that it has previously used planning conditions to secure affordable housing. This option is less satisfactory than a planning obligation since it brings an element of risk and uncertainty, but I accept that the suggested condition would meet the tests set out in Framework paragraph 55. It would also enable the Council to negotiate its preferred tenure mix.
24. It is common ground that the UU would secure the provision and maintenance of the proposed open space within the site. I have no reason to take a different view. The open space would serve the needs of the new residents and compensate for the loss of the amenity area upon which the retail unit would be constructed. It is neutral in the overall planning balance.
25. Cherry Tree Close has not been adopted as public highway and I note that there is an ongoing dispute over whether it meets the relevant standard. It is clearly desirable for the access road to be adopted, but this is not a requirement of Core Strategy Policy CS6. Therefore, notwithstanding the comments of the previous Inspector, which were focused on the provision of infrastructure in the round, the adoption issue is not fatal to the appeal.
26. Drawing the strands together, the UU makes adequate provision for the future maintenance of open space but is defective in relation to affordable housing. This matter can be dealt with by means of a planning condition. There is no mechanism within the UU to insist on the adoption of the estate road, but this is not a policy requirement in any event.

Other Matters

27. The previous Inspector referred to the site as brownfield land. The evidential basis for this comment is unclear. There is no documentation before me to substantiate the claim that the site has had an industrial use. Oral submissions at the hearing point to the site having been used for the keeping and exercising of horses, and then as a temporary construction compound for the Cherry Tree Close development. Based on the available evidence, and notwithstanding the agreement between the parties, I have some doubt as to whether the land would be previously developed within the definition set out within Annex 2: Glossary to the Framework. The appeal does not turn on this point in any event.
28. The appellant contends that the appeal scheme accords with pre-application advice given by officers. I have not been given details of the discussions, but they are not binding upon the Council in any event.
29. It is argued that there would be no detriment to the character and appearance of the area, and to biodiversity. However, the absence of harm is a neutral factor which neither weighs for nor against the development.

Planning Balance

30. My starting point for determining this appeal is s38(6) of the Planning and Compulsory Purchase Act 2004. This requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

31. Core Strategy Policy FC1 states that where relevant policies are out-of-date permission will be granted unless material considerations indicate otherwise – taking account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework; or specific policies in the Framework indicate that the development should be restricted. The Framework has been revised since the Core Strategy was adopted, but its presumption in favour of sustainable development is not dissimilar to that set out in Policy FC1.
32. The Council concedes that it is unable to demonstrate a five year supply of deliverable housing sites, in light of a recent appeal decision³ which concludes that the housing land supply is 3.4 years. This automatically triggers the tilted balance set out within Framework paragraph 11.
33. The proposal would deliver market and affordable homes and thereby contribute to rectifying the acute shortage of housing within the district. This represents a social benefit of granting permission and one which carries great weight in the planning balance. The provision of a new community facility has the potential to be a social and economic benefit but uncertainties over its long term viability limit the weight that I can attach to this material consideration. There would be economic benefits during the construction phase, but these would be of a temporary duration and they attract only moderate weight.
34. Against the above, I must balance the identified harms. The lack of any public transport and the poor pedestrian/cycle connections to Eye and Mellis mean that occupants of the development would be heavily dependent upon the private car. Although opportunities to maximise sustainable transport solutions will vary between urban and rural areas, the scheme conflicts with the social and environmental objectives set out within Framework paragraph 8. The adverse effects on the living conditions of existing residents would constitute another significant harm. I have attached this considerable weight in the planning balance.
35. The Council's housing land supply position means that I attach only moderate weight to the conflicts with Core Strategy Policies CS1 and CS2. Nevertheless, the combined harms identified above are sufficient to significantly and demonstrably outweigh the benefits of the appeal scheme. I reach this finding irrespective of whether or not the site constitutes previously developed land. Overall, I conclude that the proposal would not constitute a sustainable form of development for which Core Strategy Policy FC1 and the Framework provide a presumption in favour.
36. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR

³ APP/W3520/W/18/3194926

APPEARANCES

FOR THE APPELLANT:

Charles Streeten	of Counsel
Bernadette Hillman	Asserson
Philip Cobbold	Phil Cobbold Planning Ltd
Richard Martin	Morrish Consulting Engineers Ltd

FOR THE LOCAL PLANNING AUTHORITY:

John Pateman-Gee	Area Planning Manager
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INTERESTED PARTIES:

Colin Arnold	Interested party
Ian Luff	Chairman of Yaxley Parish Council
Nije Thomas	Local resident
Tess Thomas	Local resident
Terry Lucas	Dover Farm Developments Ltd

DOCUMENTS SUBMITTED AT THE HEARING

- 1) Inset 98 from Mid Suffolk Local Plan
- 2) Extract from Suffolk Design Guide (p.42)
- 3) Draft affordable housing condition
- 4) Drawing SL02 MP for appending to Unilateral Undertaking