The Planning Inspectorate

# Appeal Decision

Site visit made on 2 April 2019

**by Graham Wyatt BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15th May 2019**

**Appeal Ref: APP/L2630/W/18/3209464**
**Heath Loke, Poringland, Norfolk NR14 7JU**

- 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 Kittle (Under supervision of Parker Planning Services Ltd) against the decision of South Norfolk District Council.
- The application Ref 2016/1627, dated 11 July 2016, was refused by notice dated 27 April 2018.
- The development proposed is described as the "erection of 18 dwellings with all matters reserved bar access".

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The planning application was submitted in outline form with only access for consideration. Matters relating to scale, appearance, layout and landscaping are reserved for future consideration. The appellant has provided an indicative layout which I have treated as illustrative for the purposes of this appeal.

3. The description of the development on the planning application states that the proposal sought permission for 18 dwellings. The Council confirm that this was amended during consideration of the application to 19 dwellings and its decision notice reflects this change.

## Main Issues

4. The main issues are:

   - The effect of the development on the character and appearance of the area;
   - Whether the appeal site is an appropriate location for the development having regard to the development plan, and;
   - Whether the development has prospect of being delivered within the next five years.

## Reasons

*Character and Appearance*

5. The appeal site forms a parcel of land that is used as a paddock to the north and a wooded area to the south. To the east of the site is an allocated site for residential development that is currently under construction, with dwellings along The Ridings, Tubby Drive and Sebald Crescent completed and occupied. The appeal site provides a rural buffer to the edge of the new development to the east.

6. The site rises gently to the west where it meets open fields that then extend further into the adjoining countryside. From the illustrative drawings the proposed dwellings would be positioned close to the dwellings that back onto the site and would be seen as a continuation of the development to the east. While I accept that the wooded area to the south of the site restricts views into this part of the site, the majority of the development would be within the paddock area in the north of the site which does not contain extensive landscaping. As such the proposal would relate to existing development to the east and would not be seen as an incursion into the countryside.

7. The site is not the subject of any landscape designation and views across the site are mainly from within the new development to the east. Although the site would change in character, I do not consider the land to display such qualities that it should be preserved for its natural beauty, to prevent the development from taking place. Moreover, Policy DM 1.3 of the South Norfolk District Council Local Plan DMPD 2015 (the Local Plan) defines all land outside of settlements as the "countryside" regardless of its quality and location. In this particular case, given that the majority of the site is a paddock, whatever its final form, I find the harm to the character and appearance of the area would be limited and localised. Nevertheless, the site forms part of the countryside and the proposed development would result in the suburbanisation of the site, being occupied by residential buildings which would affect the character and appearance of the area.

8. Whilst I consider that the proposed development would materially harm the character and appearance of the area, this harm would be localised. The development would have a limited conflict with Policy 2 of the Joint Core Strategy for Broadland, Norwich and South Norfolk 2011 (the Core Strategy) and Policy DM 4.5 of the Local Plan which seek, amongst other things, to ensure that developments do not result in significant harm to the landscape characteristics of an area.

*Location*

9. Although the appeal site lies adjacent to existing residential development it nonetheless is beyond the settlement boundary for Poringland. Policy DM 1.3 of the Local Plan states that permission for development within the countryside will only be granted if specific policies allow for it outside of development boundaries or it demonstrates that there are overriding benefits in terms economic, social and environmental as addressed in Policy DM 1.1 of the Local Plan.

10. The appellant argues that there would indeed be such benefits as a result of the development by providing 19 new dwellings in a time when it is considered that the Council are struggling to meet its housing land supply needs and it will provide a policy compliant level of affordable housing. The appeal site is also close to the services, amenities and transport links within Poringland, which is also identified as a Key Service Centre within the Core Strategy. The development would also assist in ensuring the viability of local facilities is retained and for these reasons, the development should be seen as an exception.

11. While I recognise the benefits of the development, they must be overriding and from the evidence before me, they would apply equally to a site that is identified for development within the Development Plan and thus, are not unique or relevant to the appeal site. However, it is clear that the Council previously considered the site as an acceptable location for development and indeed, made a resolution to grant planning permission subject to the appellant entering into a legal agreement to secure, amongst other things, financial contributions to off-set the impact of the development and affordable housing as part of the scheme.

12. Nevertheless, the development would be in conflict with Policies DM 1.1 and DM 1.3 of the Local Plan which seek, amongst other things, to ensure that developments are located so that they positively contribute towards sustainable development of the District as led by the Local Plan.

*Deliverability*

13. As part of the Council's consultation on the application, Norfolk County Council (NCC) responded as the Highway Authority that it did not raise any objection to the development on highway safety grounds. However, although the Council accepts the position of NCC, it nonetheless objects as it considers that the appellant has failed to secure a right of access over a private road into the site, which could stall the deliverability of the development.

14. It is clear that the development can provide a safe access into the site and therefore, despite the increase of traffic on the local road network as a result of the additional housing, I see no reason to disagree with the findings of NCC. Moreover, the planning system is concerned with land use in the public interest and while I note the letter[1] from Norfolk Homes regarding access rights into the site, the appellant also has written agreement[2] to allow access into the site via Heath Loke. However, the plans agreed with NCC detail an access via Sebald Crescent, which it finds to be acceptable, subject to several conditions one of which is to secure suitable visibility splays.

15. While I have not been provided with details of a legal obligation that secures access into the site, this is clearly a private matter between the parties and other mechanisms exist to resolve issues such as this. In any event, nothing in my decision affects the rights that any other owner may enjoy. Furthermore, the Council has the ability to impose a condition so that the proposal must be started within a timescale shorter than the relevant default period to expedite the development.

16. Moreover, I am satisfied from the evidence from the appellant that the provision of the affordable housing as part of the proposal would not result in a delay in delivering the development within a timely manner. The appellant has detailed that the site is owned by him, is available for the development and has a realistic prospect of being delivered in five years. Moreover, I have not been provided with any substantive evidence to the contrary that the development would not be delivered within five years or that a viability assessment is required. Thus, I do not find the proposal to be in conflict with the Framework in seeking to deliver a wide choice of quality homes.

**Other Matters**

17. The site lies within Flood Zone 1 and the appellant submitted a Flood Risk Assessment which the Lead Local Flood Authority (LLFA) considered acceptable subject to suitably worded conditions. The development would also secure ecological enhancements as part of the proposals, which could also be secured through conditions.

18. The development will change the outlook for those properties that back onto the site and it is entirely reasonable that residents would prefer the site to remain as a paddock and a wooded area. However, it is well established that there is no such right to private views and their loss as such is not regarded as a planning consideration, even if it affects the values of the houses concerned.

[1] Letter from Philip Makepeace dated 12 February 2019 and
[2] Letter from Norfolk Homes Ltd dated 30 October 2018

19. The Poringland Neighbourhood Plan (PNP) has yet to be made and therefore is not part of the development plan. Thus, I afford the policies within the PNP limited weight.

**The Planning Balance**

20. The parties are in disagreement whether the Council can demonstrate a five year supply of deliverable housing sites or not. Paragraph 73 of the Framework requires the Council to identify and update annually supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing as set out in adopted strategic policies, or, as in this case, against their local housing need where the strategic policies are more than five years old.

21. The Council submitted its latest housing land supply statement[3], which concludes that using the standard methodology for the calculation of local housing need there is a supply in excess of 6 years for the District. However, as the supply has not been established in a recently adopted plan or subsequent annual position statement, which has been produced through engagement with developers and others and has been considered by the Secretary of State, the Council's findings cannot be considered to have been demonstrated in the terms of paragraph 74 of the Framework. Consequently, this means that the policies which are the most important for determining the application are out-of-date in accordance with paragraph 11 d) of the Framework.

22. While I have found that the development would result in harm to the character and appearance of the area, this would be limited and localised. Moreover, the harm I have identified has to be off-set against the benefits of delivering housing in a location that is adjacent to a Key Service Centre along with a policy compliant provision of affordable housing, thus meeting the social objectives as set out within the Framework, to which I afford significant weight. Furthermore, the development would provide economic benefits both during and post construction and would support services and facilities within Poringland.

23. Therefore, having regard to paragraph 11 of the Framework, and in the current circumstances, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the development, which weighs in favour of allowing the appeal. On this basis, I find a decision other than in accordance within the development plan justified.

24. However, when the determination of the application rests with the Council, it is able to make a resolution to grant planning permission, subject to the applicant entering into a legal agreement under section 106 of the Town and Country Planning Act 1990 and once this is in place, permission can be granted. However, my decision must be to either grant or refuse planning permission, on the basis of the documents and evidence before me.

25. The Council state that 30% of the development should be affordable homes to comply with Policy 4 of the Core Strategy. It also requires additional contributions towards open space and play equipment. The appellant states that the affordable housing element of the scheme would be dealt with via a legal agreement and it should not come as surprise to him that one would be required to overcome this particular issue. However, I have not been provided with such an agreement, either by way of one entered into with the Council or alternatively a unilateral undertaking, which would secure the appropriate level of affordable housing and financial contributions which would be triggered following the grant of planning

[3] Interim Greater Norwich Area Housing Land Supply Assessment at 1st April 2018.

permission. This is clearly a fundamental obstacle to allowing the appeal and granting planning permission for the development at this point in time.

26. I have considered whether such matters could be secured through an appropriately worded condition. However, the Planning Practice Guidance makes it clear that a negatively worded condition to require a planning obligation or agreement to be entered into will only be acceptable in exceptional circumstances or where the development is complex or strategically important. In this case, no exceptional circumstances have been put forward by the appellant and I do not find the case before me to be particularly complex, nor strategically important. Furthermore, under those circumstances the provision of affordable housing or financial contributions should not be secured by a planning condition.

**Conclusion**

27. Therefore, notwithstanding my findings above, in the absence of a completed legal agreement to secure appropriate affordable housing and other contributions as part of the development in line with the Council's adopted policies, renders the development in conflict with Policy 4 of the Core Strategy. I consider this to be an overriding reason to refuse planning permission and dismiss the appeal.

*Graham Wyatt*

**INSPECTOR**