



Appeal Decision

Site visit made on 10 October 2019

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 05 November 2019

Appeal Ref: APP/X3540/W/19/3231711

Street Farm, Brandeston Road, Earl Soham, Framlingham, IP13 7RU

- 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 S and WRV, LCM, MP and LR Somerville-Large and Murrell of Laragh Homes against the decision of Suffolk Coastal District Council.
 - The application Ref DC/18/2335/FUL, dated 31 May 2018, was refused by notice dated 21 December 2018.
 - The development proposed is erection of 12 open market dwellings & 5 affordable dwellings (including conversion of existing timber framed barn into 1 dwelling) together with garages, access road, footway link to village centre, fencing, walling, landscaping, drainage, infrastructure and ancillary works. All other existing buildings to be demolished.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. While I note the Suffolk Coastal Local Plan Final Draft Plan January 2019, since there is no certainty that the policies within will be adopted in their current form, I attribute it limited weight only.
3. I note that Suffolk Coastal District Council (SCDC) and Waveney District Council have been superseded by East Suffolk Council since the application was determined. However, since the application was determined by SCDC, I have not amended the council name in the header above.

Main Issue

4. From the evidence before me including that provided during the appeal process, and that the Council has indicated that it does not wish to pursue its second reason for refusal, the main issue is whether the proposed development would accord with the development plan strategy for the location of housing with particular regard to the loss of an employment site.

Reasons

5. The site is currently in use as a concrete batching plant. There are a number of buildings on the site including utilitarian former agricultural buildings. From the evidence before me, the site employs a number of people and the existing business involves movements of large vehicles to and from the site. The proposal involves the erection of 17 dwellings and associated works including garages, access road and landscaping. Given the proximity of the site to

- nearby buildings, it is not isolated in the terms of paragraph 79 of the National Planning Policy Framework (Framework).
6. Policy DM10 of the Suffolk Coastal District Local Plan Core Strategy & Development Management Policies Development Plan Document July 2013 (LP) relates to employment sites and states that proposals for change to residential use will only be considered where part (a) has been satisfied and only on sites within settlements that have a defined physical limits boundary.
 7. Part (a) of the Policy requires a demonstration that there is no current or long-term demand for the retention of all or part of the site for employment use: (i) within the same use class; (ii) for a mix of employment uses; or (iii) for a mix of employment uses with other non-employment uses, excluding residential.
 8. The Policy states that the form and details of the evidence submitted in support of an application, such as where and for how long a property has been marketed, should be agreed with the planning authority prior to the submission of an application. While I note that the site has not been marketed, the Policy does not exclude other forms of evidence to demonstrate the lack of demand for an employment site.
 9. The appellant has provided a Viability Assessment¹ as part of the appeal which sets out a best-case scenario involving the erection of structures for a use class B1 employment use. However, the Viability Assessment does not demonstrate that the existing use is unviable or include an option for a mix of employment uses with other non-employment uses. As such, it does not demonstrate that there is no current or long-term demand for the retention of all or part of the site for employment use. Furthermore, the Council has not consulted on this document. I note the evidence relating to the existing use including the three employment areas within the Earl Soham area, the complaints regarding vehicle movements and a change in non-domestic rating charge. However, these do not provide a clear demonstration that all or part of the site is not a viable location for employment. The proposal would therefore conflict with part (a) of LP Policy DM10.
 10. Turning my attention to the physical limits boundary, the main parties agree that while the site lies adjacent to the settlement, it falls outside the boundary, and is therefore within the countryside for the purposes of the LP. The proposal would therefore conflict with LP Policy DM10 in this respect. LP Policy SP2 sets out the provision of new homes in the district and requires accordance with the settlement hierarchy outlined in LP Policy SP19 which directs new residential development to within settlement boundaries. In addition, Policy SSP2 of the Site Allocations and Area Specific Policies Development Plan Document January 2017 (SAASP) requires accordance with LP Policy SP19. LP Policy SP29 states that new development outside the physical limits boundaries will be limited to that which of necessity requires to be located there and accords with other relevant policies within the Core Strategy. The proposal is for new market housing and affordable housing, and from the evidence before me, there is no sufficient justification for market housing of these types in this location.
 11. LP Policy DM3 allows housing in the countryside subject to a number of criteria including affordable housing on 'exception' sites in accordance with

¹ Street Farm Earl Soham Viability Assessment for Employment Uses (A 'Best-Case' Analysis) dated September 2019

LP Policy DM1. However, no evidence has been provided to show a particular local need for affordable housing as required by LP Policy DM1. Therefore, given the location of the site outside physical limits boundaries, the proposal would not accord with the Council's strategy for the location of housing.

12. Consequently, the proposal would not accord with the development plan strategy for the location of housing with particular regard to loss of employment sites and would conflict with LP Policy DM10 which seeks to protect such sites.
13. LP Policies SP2, SP19 and SP29 set out the Council's settlement hierarchy and direct development towards larger settlements. As such the proposal would conflict with these Policies.

Planning Obligation and Balance

14. Paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (CIL) require that planning obligations should only be sought, and weight attached to their provisions, 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.
15. The appellant has submitted a signed and completed S106 legal agreement which covers the timetable, management and implementation of the five affordable housing units as well as arrangements for the provision of open space. The delivery of affordable homes and the need for long term arrangements to secure their continued availability for affordable housing use is necessary to make the development acceptable in planning terms. The obligations in this respect in the S106 legal agreement are fairly and reasonably related to the achievement of those objectives. I am, therefore, satisfied that the obligations in relation to affordable housing included in the S106 legal agreement meet the necessary tests and that they can be afforded weight.
16. I acknowledge the appeal cases referred to by the appellant including in Farnham², Woolpit³ and Royston⁴. However, these cases relate to proposals in other districts under different development plans. Therefore, they are not directly relevant to this case. I also note the appeal cases on Church Lane⁵, and in Westerfield⁶, Kelsale⁷ and Yoxford⁸. However, these pre-date the appeal case at Aldeburgh⁹ where although a historic overestimate of housing supply was discussed, the Inspector nevertheless concluded that the Council is able to demonstrate 5.4 years supply of housing land. These cases also did not involve employment sites and are not directly relevant to this appeal. In any event, each case must be determined on its own individual merits.
17. I note that the appellant considers that LP Policies SP2, SP19, SP29 and DM3 are not up-to-date or wholly in accordance with the Framework. However, the

² Appeal ref: APP/N1730/W/17/3185513

³ Appeal ref: APP/W3520/W/18/3194926

⁴ Appeal ref: APP/W0530/W/18/3214057

⁵ Appeal ref: APP/J3530/W/17/3167309

⁶ Appeal ref: APP/J3530/W/18/3200488

⁷ Appeal ref: App/J3530/W/17/3187529

⁸ Appeal ref: App/J3530/W/17/3184636

⁹ Appeal ref: APP/J3530/W/17/3172629

LP post-dates the first publication of the Framework and is therefore likely to have been found to be in accordance with it. While the LP Policies may go further than the Framework in certain aspects, this does not necessarily mean that the Policies are not in accordance with it. The subsequent editions of the Framework have not changed substantially with respect to the main issues of this case and from the evidence before me the LP Policies are in accordance with the Framework. I note the absence of an early review as mentioned in LP Policy SP2, however since the Council are able to demonstrate a five-year supply of housing, this does not have a fundamental effect on the delivery of housing and I consider the Policy to be up-to-date.

18. I note that no Earl Soham sites have been identified in the Council's Strategic Housing Land Availability Assessment or the SAASP. I also note the historic housing supply in the district. However, from the evidence before me the Council are now able to demonstrate a five-year housing land supply, and this is acknowledged by the main parties. In addition, from the evidence before me, the policies which are most important for determining the application are consistent with the Framework. Consequently, the tilted balance in the terms of paragraph 11(d) of the Framework are not engaged.
19. Planning law¹⁰ requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
20. Given the primacy of the development plan and the five-year supply of housing, I attribute the development plan full weight. As such I attach the conflict with LP Policies DM3, DM10, SP2, SP19, SP29 and SAASP Policy SSP2 significant weight. Furthermore, since it has not been demonstrated that there is no current or long-term demand for the retention of all or part of the site for employment use, the proposed loss of employment land has not been justified and there would be significant harm in this respect.
21. I note the benefits of the scheme including the provision of 17 dwellings including social benefits from the provision of affordable housing to which I attach considerable weight. There may also be some environmental benefit by removing the existing unrestricted use which has not been operating at full capacity and introducing some landscaping. In addition, I note some temporary economic benefit during the construction phase.
22. I also acknowledge the comments regarding the effect of the proposal on the character and appearance of the site and the upgrade of the public footpath. While I note that the site is previously developed land and that the design of the proposal is supported by the Council, given the agricultural appearance of the existing buildings and that the site is surrounded on three sides by open fields, the site currently is in keeping with the rural character of the area. While the proposal would preserve the barn, which is a non-designated heritage asset, I note that the barn is not listed and has undergone extensive changes that have resulted in the loss of historic fabric and consequent loss of significance. Therefore, I attribute limited weight to the benefits of the scheme in terms of its contribution to the character and appearance of the area.
23. However, although no evidence has been provided to show a particular local need for affordable housing in accordance with LP Policy DM1, even if there was

¹⁰ S38(6) of Planning and Compulsory Purchase Act 2004 and s70(2) of Town and Country Planning Act 1990

a local need and the S106 agreement was compliant with the Policy, the benefits would not outweigh the significant weight attached to the development plan conflict and loss of employment land.

24. Consequently, while the benefits of the scheme in the terms identified by the appellant would be considerable, given the significant weight attached to the conflict with the development plan as a whole and loss of employment land, the harm arising from the development would be of a greater magnitude and would not outweigh the benefits.

Other Matters

25. The application proposal lacks substantial detail relating to the public footpath. From the evidence before me, since the footpath lies on land that is not controlled by the appellant, the main parties have reached a consensus that this issue could be dealt with by a condition.
26. The Planning Practice Guidance (PPG) states that conditions requiring action on land that is not controlled by the appellant should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
27. A section of the western part of the footpath is owned by The Earl Soham Townlands Trust who have confirmed that they have no objections to the upgrade of the footpath subject to a number of restrictions. Given the requirement of the PPG it would be necessary to include a clause stating the timing of implementation. Notwithstanding this, given the evidence before me and the relatively modest scale of the works to the footpath compared with the overall development, I see no reason why the upgrade works could not be performed prior to first occupation of the dwellings. Therefore, a suitably worded condition could be reasonably imposed to ensure that the accessibility of the site is acceptable.
28. I acknowledge local concerns regarding the footpath including highway safety. However, given the evidence before me I am satisfied that a condition could adequately mitigate these issues.
29. I note concerns regarding the service provided by the Council including the pre-application process and Development Management Planning Committee meeting. I also note local concerns including those relating to consultation, contamination, precedent, parking and wildlife. However, these have not altered my overall conclusion.
30. I note that Street Farmhouse is a Grade II listed building and is located near the site. The site also lies adjacent to the boundary of Earl Soham Conservation Area (CA). Furthermore, the barn on the site while not listed is considered by the Council to be a Non Designated Heritage Asset. I am required, as a statutory consideration, to have regard to these matters when determining the appeal. The significance of the listed building and CA lies in the evidence of historic architecture and given the traditional vernacular appearance, they contribute to the rural character of the area. Similarly, the barn on the site has a historic association with Street Farmhouse and contributes to the rural character of the area.
31. The Council has not objected to the proposal on this basis and from the evidence before me I have no reason to disagree. The effect of the proposed

development on the setting of the listed building, CA and existing barn would preserve their significance. However, the lack of harm in this respect does not override the loss of employment land or development plan conflict identified above.

32. I acknowledge the other matters raised including the government's objective to significantly boost the supply of housing and the evidence regarding previously developed land, the accessibility of services and facilities and proximity to the Key Service Centre of Earl Soham. However, these matters do not override the policy conflict identified above.

Conclusion

33. The appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

R Sabu

INSPECTOR