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## Appeal Decision

Site visit made on 13 August 2019

**by C Beeby BA (Hons) MIPROW**

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

**Decision date: 29 November 2019**

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**Appeal Ref: APP/F2605/W/19/3229905**

**Land to the north of Rookery Farm, Litcham Road, Great Dunham, King's Lynn PE32 2GZ**

- 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 Mrs Carine Offord against the decision of Breckland District Council.
  - The application Ref 3PL/2018/1261/O, dated 27 September 2018, was refused by notice dated 21 January 2019.
  - The development proposed is the erection of 4 dwellings.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mrs Carine Offord against Breckland District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The proposal seeks outline planning permission, with all matters reserved except access. I have considered the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative.
4. Reference is made to policies from the emerging Local Plan ("the eLP"). Whilst the eLP is not yet adopted, an Examiner's Report has been issued on the matter since the appeal was made. This concludes that, with the recommended main modifications, the eLP satisfies the necessary requirements and meets the criteria for soundness. Therefore, in view of the advanced stage of preparation of the eLP and in accordance with paragraph 48 of the National Planning Policy Framework 2019 ("the Framework"), I attach moderate weight to the relevance of policies within the eLP to the appeal proposal. Accordingly, I have determined the appeal on this basis.

### Main Issues

5. The main issues are:
  - The effect of the proposed development on the character and appearance of the area;
  - The effect of the removal of hedgerow to accommodate the proposed development; and

- Whether the proposed development would provide a suitable location for housing, having regard to the spatial strategy for the area and the accessibility of services and facilities.

## **Reasons**

### *Character and appearance*

6. The appeal site is an overgrown area of land which is bordered by mature trees or hedgerow on all sides. As a result, views from the highway into or through the site were restricted to glimpses of the undergrowth within the site at the time of my visit, although views may be increased in the winter months due to leaf loss. The site's natural borders therefore form its main contribution to the area's character and appearance.
7. The site's boundary with Litcham Road comprises a substantial length of mature hedgerow. This is an attractive feature as a result of the variety, height and density of plant species within it. It lies on a slight bank above the road where adjacent to the site, which increases its prominence. It makes a positive contribution to the verdant appearance of the lane, which enhances the rural appearance of the village. The scheme proposes the removal of this section of hedgerow in order to allow for the construction of a new footway.
8. The mature trees and hedgerow on the site's northern boundary similarly contribute a significant verdant and rural appearance in the open views across the adjacent field which are available from the highway. Whilst landscaping is a matter reserved for future consideration, the Tree Protection Plan ("the TPP") submitted with the proposal shows the retention of this feature and there is nothing to suggest that it would be necessary to remove it to enable the site to be developed.
9. The TPP also shows the retention of trees and hedgerow along the site's southern boundary. These include a prominent line of mature poplars which make a significant positive contribution to the area's rural appearance in views from the surrounding highways, and which support an established rookery.
10. Whilst dwellings are shown to lie behind others on the illustrative plan, the plot size and layout of development in the village is relatively diverse and there is nothing to suggest that acceptable arrangements in respect of the layout, scale and appearance of the properties could not be agreed at the reserved matters stage. The development would be of a lower density, relatively small and well screened, and it would not extend the edge of the village beyond that set by development on Station Road and Litcham Road. Therefore I do not consider that the proposal would be likely to conflict with the established pattern of development by any harmful degree.
11. However, the loss of the roadside hedgerow would inevitably reduce the rural and verdant appearance of the area, due to the replacement of natural features and views by built form, domestic gardens and drives. This would cause harm to the area's character and appearance. This harm would be moderate and localised due to the proposed retention of mature trees and hedgerow along the northern and southern boundaries of the site, which would provide screening of the development and would maintain a level of verdant and rural appearance in both longer and close-range views of the area. Furthermore, new hedgerow planting towards the site frontage is proposed. Whilst it would

take some time to mature, would be less extensive than existing hedgerow and would be set a little farther back within the site, this would offer a level of mitigation for the effect of the loss of the roadside hedgerow on the character and appearance of the area. There is additionally nothing to suggest that adequate arrangements for the protection and general retention of natural boundaries to the north and south of the site could not be secured at the reserved matters stage.

12. I therefore conclude that the harm to the character and appearance of the area would be moderate and localised. The proposal consequently has a moderate conflict with Policy CP11 of the Breckland Core Strategy and Development Control Policies Development Plan Document ("the DPD") and Policy ENV 05 of the eLP, which seek, amongst other things, to ensure that developments maintain the aesthetic qualities of natural features such as hedges within the landscape. Further conflict exists with Policy HOU 06 of the eLP, which states that proposals for lower density development in rural locations should have regard to local character.

#### *Removal of hedgerow*

13. The Hedgerows Regulations 1997 ("the Regulations") provide for the protection of hedgerows, making it an offence in certain circumstances to remove a hedgerow without notifying the local planning authority.
14. Regulation 4 provides that a hedgerow is "important" if it has existed for 30 years or more and if it satisfies at least one of the criteria in Part II of Schedule 1. These include those hedgerows which contain at least 5-7 woody species, depending on the number of associated features (such as banks, walls and ditches) in a 30 metre length. There is a presumption that important hedgerows will be protected<sup>1</sup>. This is because such hedgerows have significant biodiversity, landscape and historical value.
15. The ecological appraisal states that the total length of the roadside hedgerow outside the site is approximately 70 metres. It states that 5 species were counted in a 20 metre length. It notes that the hedgerow lies on a low bank, with a dry ditch adjacent to its southern portion.
16. The Council contends that the hedgerow is over 30 years old and contains sufficient woody species and associated features (i.e. the bank and ditch) for it to be classed as an important hedgerow according to the Regulations.
17. The Regulations require that the number of woody species<sup>2</sup> present in the central stretch of 30 metres are counted in a hedgerow of this length, in the assessment of whether a hedgerow is "important". Neither the evidence of the appellant or the Council consequently confirms that the requirements of the Regulations have been complied with in reaching their assessment.
18. However, I noted that the hedgerow appears to contain at least 7 of the designated woody species along its full length. Furthermore, my observations were restricted to those available from the road only, as the site side of the hedge was not accessible due to undergrowth. When considered together, and given the density and age of the hedgerow, my observations and the appellant's finding of 5 species in 20 metres suggest that at least 6 woody

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<sup>1</sup> DEFRA, 1997: The Hedgerow Regulations 1997: A Guide to the Law and Good Practice

<sup>2</sup> As set out in Schedule 3 to the Hedgerows Regulations 1997

species are likely to be present along a 30 metre length. The bank and ditch are likely to form 2 of the 3 associated features which would, consequently, additionally be necessary in order for the hedgerow to be classified as "important". Given the number of mature and substantial tree species within the hedge it is additionally likely that at least 2 standard trees are present within the hedgerow, which would form the third of the necessary associated features.

19. I therefore conclude, in the absence of substantive contradictory evidence, that the hedgerow is likely to be protected by the Regulations. Whilst the proposal includes replacement hedgerow planting towards part of the front of the site, the existing hedgerow's protected status raises a presumption in favour of its retention. This presumption is moderate, as the evidence does not conclusively prove that the hedgerow is protected.
20. The removal of hedgerow to accommodate the proposed development would therefore have a harmful effect. Thus, the proposal conflicts with Policy DC12 of the CS, which states that development that results in the loss of important natural features, including protected hedgerows, will not normally be permitted. Conflict also exists with Policy ENV 05 of the eLP, which has similar aims to Policy DC12.
21. Whilst I have found below that the provision of the footway would form a moderate benefit, this does not comprise the substantially improved overall approach to the design of the development which would be necessary in order for the proposal to comply with Policy ENV 06 of the eLP. Furthermore, I do not concur that the proposed new planting would offer a substantially improved overall approach in terms of landscaping as I have found above that the hedgerow is an attractive feature. Thus, additional conflict exists with Policy ENV 06 of the eLP.

#### *Location of development*

22. Policy SS1 of the DPD describes 7 types of place and their potential to accommodate new development. Great Dunham is a rural settlement for the purposes of the policy, and has only nominal allocated housing growth due to its minimal local services.
23. Policy CP14 of the DPD sets out that settlement boundaries for rural communities will be identified on a Proposals Map. The appeal site lies outside these boundaries and is therefore in the countryside for local policy purposes.
24. Policy DC2 of the DPD indicates that new housing development will be permitted within settlement boundaries. It has similar aims, in terms of the accessibility of new housing to services and facilities, to Policy HOU 06 of the eLP.
25. The appeal site remains outside the settlement boundaries of the eLP. Thus, the provisions of Policies GEN 03 and HOU 05 of the eLP apply. These set out a settlement hierarchy, and criteria which development proposal in smaller villages and hamlets must meet. These include that the proposal must comprise sensitive infilling and rounding off of a cluster of dwellings to an existing highway.
26. The appeal site has a relatively central location within the village and it lies opposite existing residential development on Litcham Road, and close to

development on Station Road. As such, it is closely related to the village in visual and physical terms.

27. This section of Litcham Road has no footway, and it is relatively narrow and unlit. Limited verges, which appear to be part of the highway, are available for pedestrians to seek refuge as the road approaches the appeal site towards the village. However, clear highway verges are not generally available on the road outside the site. Pedestrians must consequently walk within the carriageway. The road carried regular traffic on the day of my visit, and is subject to a 30 mile per hour speed restriction.
28. The proposal includes the provision of a footway along the entirety of the site frontage, which would extend to meet an existing footway within the village, which passes its main facilities. The proposal would therefore provide safe pedestrian access to the village's primary school, village hall and play area and church for residents of the new development. It would additionally improve pedestrian access for residents along Litcham Road and Station Road. Given the limitations and narrowness of the highway outside the appeal site for pedestrian use, and the substantial length of new footway which would be provided, this is a benefit to which I attach moderate weight. The weight is limited by the relatively small number of dwellings which the new footway would serve and the continuing lack of a footway farther south along Litcham Road, with the verge the only place of refuge for pedestrians. This is likely to discourage some pedestrians from accessing the new provision, for example those accompanied by a pushchair.
29. The limited services provided in the village would not meet the day-to-day needs of residents of the development. The neighbouring village of Litcham lies approximately 3.1 kilometres from the appeal site and is a designated service centre village in Policy SS1 of the DPD. As such, it is deemed to have adequate services and facilities to meet the day-to-day requirements of existing residents. Services within Litcham include shops, a medical centre, a secondary school, a post office and a public house. A limited number of employment opportunities are available at local businesses.
30. Great Dunham has some limited bus services which offer term time only access to a college via Dereham, a "ring and ride" facility and a school bus to the secondary school in Litcham. However, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary from urban to rural areas, and sets out that this should be taken into account in decision-making.
31. The road between Great Dunham and Litcham is a country lane of a reasonable width which is subject to a 60 mile per hour speed restriction for most of its distance. It is unlit but visibility is generally good due to the presence of lengthy straight sections of road. Verges are available, offering refuge to cyclists. It was lightly trafficked at the time of my visit and there is no evidence to suggest that it is generally subject to heavy traffic. Given these factors and the limited distance involved I therefore consider that the route offers a reasonable option for access between the two villages by cycle. Furthermore, journeys to Litcham by private car would be of a relatively short duration.
32. Occupiers of the development would consequently need to undertake car, bus or cycle journeys to Litcham or farther afield in order to meet the majority of

their day-to-day needs. However, the distance to Litcham is relatively short and residents of the development could be expected to use and thereby support existing services in both Great Dunham and Litcham. The Framework lends support for this, stating that housing should be located where it will enhance or maintain the vitality of rural communities. The Framework also acknowledges that, where there are groups of smaller settlements, development in one village may support services in a village nearby. I consider this to be the case with regard to the appeal proposal.

33. The Framework does not provide a definition for the term infill, however the term is generally understood to denote the development of a relatively small gap between existing buildings. The appeal site is bounded to both sides by woodland or open fields. Thus, I conclude that the appeal site does not form a gap between existing buildings and consequently that the proposal does not fulfil the requirements of Policy HOU 05 of the eLP.
34. The proposed development would lie outside the settlement boundary, with resulting conflict with Policy DC2 of the DPD. Conflict additionally exists with Policy HOU 05 of the eLP. However, the proposal complies with the overall aims of adopted locational policies cited in the Council's decision notice which seek to create communities with adequate access to facilities and services. It therefore complies with the aims of Policy HOU 06 of the eLP in this regard, which set out that proposals at such locations should have regard to wider sustainability issues. It would have a moderate beneficial effect by the provision of the new footway, which would improve access to such services for residents of the area. The proposal consequently complies with Policies SS1 and CP14 of the DPD, the aims of which are set out above. As a result, it would provide a suitable location for housing, having regard to the spatial strategy for the area and the accessibility of services and facilities.

### **Other Matters**

35. The ecological appraisal which accompanies the appeal identified the presence of one great crested newt ("GCN") in a pond approximately 30 metres from the appeal site. Surveys were carried out in May 2018 and the results are therefore reasonably up-to-date. Accordingly, it is reasonably likely that the site provides some terrestrial habitat for GCNs.
36. GCNs are a European Protected Species ("EPS") under Schedule 2 of the Conservation of Habitats and Species Regulations 2017. The proposal would alter the site's character from undergrowth and woodland to dwellings and domestic gardens, and there is consequently a risk that the EPS would be adversely affected by the proposed development.
37. Accordingly, I have a duty under Regulation 9(3) of the Conservation of Habitats and Species Regulations 2010 to have regard to the requirements of the Habitats Directive 92/43/EEC in reaching my decision. Thus, a mitigation licence must have been granted in order for development to proceed.
38. The ecological appraisal proposes measures to mitigate the proposal's effect on the EPS. The mitigation proposed for habitat loss is the provision of a 5 metre wide strip of enhanced habitat within the site which would follow the east boundary and would be retained in perpetuity, the construction of hibernacula and cover features along this boundary, soft landscaping works and reinforcement planting. The mitigation proposed for the risk of injury to the

EPS is a trapping and translocation scheme prior to the start of works. Such measures could be secured through the imposition of conditions.

39. Having regard to the 3 tests used to establish whether a mitigation licence may be issued, the evidence before me does not suggest any reason in principle why such a licence would not be granted. Furthermore, the survey identified the presence of only one GCN at the pond, and the effect of the proposal on the EPS would consequently be limited. As a result of these factors, I am satisfied that any harm caused by the development to the habitat of the EPS could be adequately mitigated by the use of the licence and a condition to require (i) compliance with the mitigation and compensation measures outlined in the appraisal and (ii) the submission of a biodiversity enhancement plan to the Council.
40. I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the proposal on the nearby Grade II listed buildings at Rookery Farmhouse and the adjacent piggery and I am mindful of the content of the Framework in relation to heritage assets. The significance of the buildings is summarised by the list description. The location of the proposed dwellings is such that, taking into account the presence of intervening mature tree screening and the likely subservience of the proposed development to Rookery Farmhouse, the setting of the listed buildings and their significance would not be adversely affected.
41. The appellant refers to an appeal decision<sup>3</sup> of March 2019 which permitted a residential development in the same district and also considered locational issues. Whilst the Inspector similarly considered access to a nearby service centre village by cycle or short car journey to be a realistic option from the site, the appeal site was located within a rural settlement for local policy purposes, rather than in the countryside. Different policy considerations therefore applied, and consequently I attach only minimal weight to the relevance of the decision in question in making my decision.
42. In refusing permission on character and appearance grounds the Council refers to conflict with paragraphs 12, 14 and 17 of the previous (2018) version of the Framework. The relevant paragraphs are unchanged within the Framework (2019). These relate to the statutory status of the development plan, conflict with neighbourhood plans and a requirement for strategic policies, and therefore they have only limited specific relevance to the main issues of this appeal.
43. Policy HOU 03 of the eLP sets criteria which must be met by development proposals outside the boundaries of local services centres, where the Local Plan does not identify sufficient sites to achieve the housing target. As the eLP has not yet been adopted, it is not possible for me to assess whether this is the case. Therefore I have not considered the relevance of this policy further.
44. The Council relies in part on the provisions of Policy DC16 of the DPD in its appeal submissions. This requires development to complement its surroundings. However, the policy is not relied on in the Council's Decision Notice on the application. Nevertheless, I have found that the proposal would cause moderate harm to the appearance of the area, and hence that it would conflict with other policies which concern design. Accordingly, I have not found

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<sup>3</sup> APP/F2605/W/18/3214704

it necessary to reach a view on the applicability or otherwise of Policy DC16 to the appeal proposal. In any event, any compliance with the policy would represent only a relatively neutral matter and hence would not attract any particular weight in the overall balance.

45. The appellant provides details of pupil numbers at the village's primary school, and contends that the proposal would support the viability of this facility. However, there is no broader evidence to suggest that viability may be compromised, and the submission of an interested party contends that the school's pupil numbers are at maximum capacity. Whilst I attach weight to the support of new residents of the development for local services and facilities in general, the evidence on the matter of school viability is insufficient for me to consider this as a specific benefit of the proposal.
46. The appellant contends that the proposal would offer serviced plots for self-build projects, and that this would weigh in its favour. Whilst I acknowledge the appellant's intention for this to be the case, there is no evidence before me to confirm that the dwellings would be likely to be self-built. In the absence of such evidence, there would be nothing to prevent the scheme from evolving into a different type of development, potentially due to factors beyond the appellant's control. Accordingly, I cannot be certain of the likelihood of this element forming a benefit of the proposal, and I therefore attach minimal weight to it in determining the appeal.
47. I have had regard to other matters raised including concerns about highway safety, drainage and the proposal's effect on wildlife. However, as I am dismissing the appeal on the main issues for the reasons given above, I have not pursued these matters further.

### **Planning Balance and Conclusion**

48. As the Council cannot currently demonstrate a 5-year housing land supply ("HLS"), in accordance with paragraph 11 d) of the Framework, and this is an application for the provision of housing, the development policies which are most important for determining the application are considered to be out-of-date. I am therefore required to consider, as set out in Framework paragraph 11 d) ii, if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
49. There would be some economic uplift during construction through short-term employment and the purchase of building materials. Future occupiers would also contribute to the local economy. Socially, the development would add to the supply of housing. That would be in accordance with the Government's objective of significantly boosting the supply of homes, especially in a context where there is no 5-year HLS. Occupiers would also be likely to participate in the local community and use relevant services, and the new footway would provide a moderate benefit in improving access to these.
50. Against that, the proposed development would cause moderate harm to the character and appearance of the area, and moderate harm by the loss of an important natural feature. Furthermore, I have been provided with only limited information regarding the extent of the shortfall in HLS, and consequently I am not able to attach particular weight to the ability of the development to meet local housing need. However, even if I were to accept that the Council had a

shortfall in HLS of the maximum possible extent, the benefits of the appeal proposal would not outweigh the harm I have identified.

51. For these reasons the harm caused by the development would significantly and demonstrably outweigh the relatively modest benefits when assessed against policies in the Framework taken as a whole. Consequently, the proposal cannot benefit from the presumption in favour of sustainable development.
52. There are no other material considerations to indicate that the proposal should be determined otherwise than in accordance with the development plan, with which I have already found conflict. Therefore, I conclude that for the reasons given above, the appeal should be dismissed.

*C Beeby*

INSPECTOR