



Appeal Decision

Site visit made on 20 January 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2020

Appeal Ref: APP/W3520/W/19/3239405

Emily House, Stonham Road, Mickfield IP14 5LS

- 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 Mr Chris Lacey against the decision of Mid Suffolk District Council.
 - The application Ref DC/19/01546, dated 28 March 2019, was refused by notice dated 21 June 2019.
 - The development proposed is Erection of a self-build, energy efficient dwelling on land to the rear of Emily House, Stonham Road, Mickfield, Stowmarket, Suffolk IP14 5LS.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Despite the description of development set out above, I consider the description found on the Decision Notice and the Appeal Form better reflects the scheme that is before me and that which the Council considered. The development proposed is therefore for 'Erection of a self-build, energy-efficient dwelling with new vehicular access'. I have therefore dealt with the appeal on this basis.
3. The Decision Notice does not refer to Policy CL8 of the Mid Suffolk Local Development Framework Core Strategy Development Plan Document 2008 (CS). However, this is referred to in the Officer Report, I am therefore satisfied that no party would be prejudiced by my reference to that policy. Similarly, the Decision Notice refers to Policy HB01 of the Mid Suffolk Local Plan (Adopted September 1998) (LP). However, as this appears as 'Policy HB1' in the LP, I have omitted the zero when referring to the policy. I have therefore determined the appeal on this basis.
4. The Conservation of Habitats and Species Regulations 2010 have been revoked and replaced by the Conservation of Habitats and Species Regulations 2017, which came into force on 30 November 2017. I have therefore determined the appeal in relation to the latest Regulations.
5. I am aware that the Council is in the process of producing a new Joint Local Plan (the JLP) with Babergh District Council. The JLP is not at an advanced stage of preparation. Emerging policies and site allocations are not therefore matters that have a significant bearing on my consideration of the merits of this appeal, particularly as there may be unresolved objections to contend with. Therefore, in accordance with the requirements of paragraph 48 of the National

Planning Policy Framework (the Framework), the JLP has attracted very limited weight in my consideration of the merits of the appeal.

Main Issues

6. The main issues are the effect of the proposed development on:-

- the setting of the listed buildings known as The Old Rectory and the Church of St. Andrew; and
- the ecology and biodiversity of the site and its surroundings.

Reasons

Setting of listed buildings

7. The appeal site is a grassed paddock situated to the rear of a linear group of dwellings to the western side of Stonham Road. It is accessed by a shared unmade track between Emily House and Coram House. The site is enclosed by post and rail fencing and mature planting in parts but particularly to the public footpath to the west, which separates the site from agricultural fields. The paddocks immediately to the south and north separate the site from the grounds of The Old Rectory and the Church of St. Andrew respectively.
8. The Old Rectory is a grade II listed building, dating from the 17th Century but with extensive remodelling in the early 19th Century, the significance of which is derived from its architectural and historic interest. The building is a timber frame and plaster structure, with a gault brick chimney, ground floor bay windows, decorative glazed trefoil heads to sash windows and a fluted pilastered entrance porch. As the former rectory to the Church of St. Andrew, the building was designed to face the southern façade of the Church, as this contained its main entrance. The Old Rectory is now a private residence and has been altered since its listing, but the main parties are in agreement that this has not harmed the historic fabric of the building.
9. Formerly the parish church, the Church of St. Andrew is a grade I listed building emanating from the 14th Century but altered in the 16th Century. Its significance is also derived from its architectural and historic interest. The Church incorporates a low pitched and leaded nave; a plain tiled chancel with parapet gables including grotesque carved corbels to the eastern gable; and a tower with a deeply-chamfered doorway and two cusped porch side windows. Despite the building and its grounds being converted primarily to domestic use and now entered primarily from the north, the Church retains much of its historic character and interest.
10. I accept that there is not a clear architectural relationship between the two listed buildings and the historic association between the buildings has curtailed given their separate use and ownership. Nonetheless, I am mindful of the Framework's definition of 'setting' as being the surroundings in which a heritage asset is experienced.
11. The appeal site was formerly part of the historic field-system between the heritage assets and forms part of their shared setting, which resembles the setting at the time the assets were constructed. Moreover, both are set back behind the line of dwellings fronting Stonham Road, that incorporate extensive

rear gardens enclosed by mature planting, beyond which the site and other undeveloped paddocks are situated.

12. Although mature planting around both heritage assets reduces the visibility between them, when trees are not in leaf during autumn and winter there is a greater degree of visibility. The openness of the site therefore provides a rural context which forms an integral part of the historic setting that endures. This also points to the functional relationship that once existed between the heritage assets, both of which remain visible from the surrounding streets. Furthermore, while the physical link between the heritage assets has been severed with the rerouting of the public footpath, the revised route still allows them to be appreciated and contributes to the understanding and significance of both heritage assets. Therefore, the absence of visual and physical connections between the heritage assets would not be a determinative factor.
13. I note that the Council found the appearance of the proposed development to be acceptable, particularly as the application drawings and a 3D image demonstrate that the proposed dwelling would have traits of an agricultural barn. The proposal would also be beyond the street frontage like The Barn House. However, this was formerly a barn associated with The Old Rectory and its position does not appear to have altered. Whilst it is now in separate use, it still forms part of the setting of The Old Rectory and does not affect the ability to appreciate its significance.
14. The proposal would be directly aligned between the heritage assets in a position east of The Barn House, closer to the street frontage. Landscaping of the site would include native species hedges and trees. However, this would be unlikely to mature in time to provide screening of the proposal commensurate with the existing mature planting in the locality. Nonetheless, the physical presence of the proposal would significantly and permanently erode the openness of the land between the heritage assets. Accordingly, landscaping should not be relied upon to hide the development from view, as its presence within the site would be harmful.
15. The other outbuildings that I experienced to the rear of the houses in Stonham Road and the garage at the Church are not comparable with the appeal scheme, as they do not have the same effect given their position and scale. Similarly, I note that there are examples of development in depth in the village but these are not in situations comparable to the appeal scheme. The presence of these developments does not therefore lead me to a different conclusion in relation to the appeal proposal.
16. I have had regard to the English Heritage guidance documents¹ referred to in the evidence, in so far as they are relevant to the appeal. I have also been referred to several appeal decisions² and a decision by the Council³, the circumstances of which are not before me. Therefore, I am unable to give those decisions much weight. In any event, I have determined this appeal on its own individual merits.

¹ Building in Context: New development in historic areas, English Heritage (2001); Shared Interest: Celebrating Investment in the Historic Environment, English Heritage (2006); Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision-Taking in the Historic Environment, English Heritage (2015); Historic Environment Good Practice Advice in Planning Note 3: the Setting of Heritage Assets, English Heritage (2017); and Heritage Works: A toolkit of best practice in heritage regeneration, Historic England (2017).

² Appeal Refs: APP/W3520/16/3164676, APP/W3520/18/3207786, APP/W3520/W/19/3219736, and APP/W3520/W/19/3226049.

³ Planning Reference: DC/18/00562.

17. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The proposals would erode the distinctive setting of the listed buildings, which would have a negative effect on their significance as designated heritage assets. This would equate to less than substantial harm to the significance of the designated heritage assets. Paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals. I undertake this assessment later in the Planning Balance.
18. For the reasons outlined above, I conclude that the appeal scheme would be harmful to the setting of the listed buildings known as The Old Rectory and the Church of St. Andrew. Hence, the appeal scheme would not accord with Policy HB1 of the LP, which requires particular attention to be given to protecting the settings of listed buildings.
19. The proposal would also not accord with paragraph 193 of the Framework, which states when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Ecology and biodiversity

20. The Council is concerned that the proposed development could have a harmful effect on protected species, as no ecological appraisal of the site and its surroundings has been undertaken. As an alternative, the appellant has provided an assessment in his Statement of Case which seeks to address those concerns.
21. I accept that the site is some distance from the Mickfield Meadow SSSI, so would be unlikely to have a direct effect on the habitat therein. Similarly, the site is predominated by mown grass so this would be unlikely to form habitat, in itself. The proposal would add to the native species hedgerows and trees around the site, which would make a positive contribution to the biodiversity of the site.
22. Nonetheless, there is no substantive evidence before me to suggest that nearby ponds or watercourses would not be suitable habitat for protected species, particularly great crested newts, or that the development of the site would not have a harmful impact on these as habitat. Furthermore, the assessment does not satisfactorily address the potential for existing hedges and trees to be used by other protected species for foraging, commuting or nesting. The proposed development could therefore also have an unacceptably harmful effect upon these as habitat.
23. I have been referred to a recent decision by the Council in Barham⁴, as the Council did not require an ecological survey in relation to the site and a watercourse situated nearby. I appreciate that the Council carried out its own assessment of the likelihood of the presence of protected species within that site and did not find harm. However, this would not provide justification for the proposal, as I have considered this appeal proposal on its own merits and consider that it could result in harm for the reasons set out above.

⁴ Planning Reference: DC/19/05663.

24. In light of the above, I conclude that the proposed development has the potential to cause unacceptable harm to the ecology and biodiversity of the site and its surroundings. Hence, the proposal would not accord with Policy CL8 of the CS, which states that development will be refused where it is likely to bring about threat to rare or vulnerable species, especially those protected by law.
25. The proposals would therefore also offend the requirements of the Conservation of Habitats and Species Regulations 2017; and be in conflict with paragraph 170 of the Framework. In particular, the latter requires that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

Other Matters

26. The appellant has suggested that he could erect an outbuilding within the limits set by the relevant statutory instrument⁵ but no such scheme is before me. Nonetheless, as the proposal would be in excess of ten metres tall, it is unlikely that a scheme for 'permitted development' would be comparable. I cannot therefore consider this to be a 'fallback' position. This would not therefore be sufficient justification to allow the appeal, as I have adjudged the proposed development to be harmful for the reasons set out above.
27. The appellant has referred to the conduct of the Council in the determination of the planning application, particularly their approach to the information required to be able to determine the application, and the consistency of their decision-making. These are primarily not matters for me to consider as part of this appeal and I have considered the individual merits of the appeal scheme in relation to the relevant policies and evidence before me.

Planning Balance

28. Paragraph 47 of the Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
29. In the first main issue I indicated that the proposals would lead to less than substantial harm to the significance of The Old Rectory and the Church of St. Andrew, as designated heritage assets. Paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals.
30. In the context of Paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. There is no threshold for the assignment of weight to the quantum of residential development and the proposal would deliver a 5-bedroom dwelling. This would contribute to the overall housing mix in the district.
31. I appreciate that the proposal would make more efficient use of land but Paragraphs 117 and 122 of the Framework are clear that this should also include taking into account the desirability of maintaining an area's prevailing

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

character and the importance of securing well-designed, attractive and healthy places. Similarly, the possibility of landscaping providing biodiversity enhancement of the site should not be considered to constitute benefits, particularly as it would not be unique to the development proposed and could be carried out without it.

32. Most of the benefits associated with the energy efficient design of the house, using 'Scandia Hus' principles, would be private benefits restricted to the occupiers of the proposed dwelling, particularly in terms of minimising heat loss, albeit that there would be a small public benefit in terms of the minimisation of energy consumption linked to the high levels of thermal insulation.
33. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period. Future occupiers would also contribute to the local economy through expenditure and there is public transport available through the village to do so.
34. In accordance with paragraphs 195 and 196 of the Framework, considered together, I conclude that the public benefits I have outlined above do not outweigh the less than substantial harm that I have identified.
35. The development plan for the area comprises the LP, CS and the Mid-Suffolk Core Strategy Focused Review 2012 (the CSFR), all of which predate the Framework. However, paragraph 213 of the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework.
36. The appellant considers that Policies CS1 and CS2 of the CS are out-of-date and has referred to appeals at Woolpit⁶ and Weybread⁷ as they refer to the applicability of these policies. However, the Council have acknowledged that the principle of the development of the site, in relation to the site's location and accessibility, would be acceptable having regard to the age of the policies of the development plan. Therefore, the policies do not apply to this appeal.
37. In terms of Policies HB1 of the LP and CL8 of the CS, these are closely aligned with the aims of the Framework to conserve heritage assets such as listed buildings and protect and enhance biodiversity and so are up to date. I have therefore afforded the policies full weight in the determination of the appeal.
38. The Council has referred to their latest Housing Land Supply Position Statement. It is suggested that this demonstrates five-years supply of deliverable housing land within the district, which the appellant does not dispute. Clearly should I determine that the Council cannot demonstrate a 5-year housing land supply, in line with footnote 7 to paragraph 11 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, the tilted balance. However, I am mindful that in light of my finding in relation to heritage matters, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the

⁶ Appeal Ref: APP/W3520/W/18/3194926 (Land on East Side of Green Road, Woolpit, for 49 dwellings).

⁷ Appeal Ref: APP/W3520/W/19/3223075 (Eversley, Harleston Road, Weybread, for one dwelling)

proposed development, the tilted balance would not be engaged, and the normal planning balance applies.

39. I have already identified the benefits of the scheme above. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the setting of the listed buildings and the ecology and biodiversity of the site and its surroundings. Overall, the adverse impacts of the proposal are matters of significant weight against the grant of planning permission and the absence of harm in respect of other planning issues relevant to the consideration of the development would neither weigh for nor against the appeal scheme.
40. In the final balance, I consider that the harm to the setting of the listed buildings and the ecology and biodiversity of the site and its surroundings would outweigh the benefits of the proposed development outlined above. Therefore, there are no material considerations that would indicate that the appeal scheme should be determined other than in accordance with the development plan.

Conclusion

41. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR