



Appeal Decision

Hearing Held on 15 January 2020

Site visit made on 15 January 2020

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/H3510/W/19/3233802

The Plough Inn, 62 The Street, Icklingham IP28 6PL

- 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 Elveden Farms Ltd against the decision of Forest Heath District Council.
 - The application Ref DC/17/0630/OUT, dated 23 March 2017, was refused by notice dated 24 January 2019.
 - The development proposed is: (i) Change of use of Public House (Use Class A4) to 2 no. dwellings (Use Class C3) (following demolition of existing extensions); (ii) construction of 7 no. dwellings and (iii) associated landscaping and car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The decision to refuse planning permission was made by Forest Heath District Council, which ceased to exist on 1 April 2019, following a merger with St Edmundsbury Borough Council to form the new West Suffolk Council. Provisions within the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 allow for any "plan, scheme, statement, or strategy" prepared by one of the merging authorities to be treated as if "it had been prepared and, if so required, published by the single tier council for the whole or such part of its area as corresponds to the area to which the particular plan, scheme, statement or strategy relates". The status of the following elements of the development plan has not therefore changed as a result of the merger:
 - Forest Heath Local Development Framework Core Strategy Development Plan Document 2001-2026 (with housing projected to 2031) (adopted 2010) (the Core Strategy)
 - Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document (adopted 2015) (the Local Plan)
3. There have been changes to the development plan since the council's decision. A Single Issue Review Local Plan and a Site Allocations Local Plan were adopted in September 2019. The Statement of Common Ground (SOCG) does not refer to any policies from these documents, and the parties agreed at the Hearing that none were relevant to the appeal.

4. The Council referred to the National Planning Policy Framework 2018 in its reasons for refusal. The Government's planning policies for England are now contained in the National Planning Policy Framework 2019 (the Framework). Both parties have had the opportunity to consider the change in national policy since the Council's decision and have referred to the current Framework in their appeal documents and at the Hearing.
5. The proposal has been made in outline, with all matters apart from access reserved for future consideration. Plans have been submitted showing a site layout, street elevation and site section. The appellants confirmed at the Hearing that these plans had been submitted for indicative purposes only, so I have considered them accordingly.
6. The description of the proposed development varies between the planning application and appeal forms. The description that I have used in the banner heading was agreed by both parties at the Hearing.

Main Issues

7. The first reason for refusal on the council's decision notice related to the loss of a community facility. Since the decision, the Red Lion public house in the village has re-opened after refurbishment. As a result, the SOCG confirms that there is no longer an objection to the loss of The Plough as a community facility. The main issues in the appeal are, therefore:
 - a) The impact of the development on the Breckland Special Protection Area (the SPA); and,
 - b) The effect of the development on the landscape character of the area.

Reasons

The impact on the SPA

8. The SPA is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). It is designated as such because it supports populations of European importance of Nightjar, Woodlark and Stone Curlew. The SPA surrounds Icklingham village, and the site falls within 1,500 metres of components that are designated for Stone Curlew. Policy CS2 of the Core Strategy therefore requires that a project level Habitats Regulations Assessment is carried out. A smaller buffer of 400 metres is identified for the components of the SPA that are designated for Nightjar and Woodlark. The appeal site is beyond this buffer.
9. The Habitats Regulations require that permission for the development may only be granted after it has been ascertained that it will not affect the integrity of the SPA. Research has shown that Stone Curlews nesting in the SPA avoid land near buildings. It is also known that they can be disturbed by walkers. Icklingham and its surroundings are thought to contain one of the densest concentrations of Stone Curlew within the SPA. Natural England's model for calculating the impact of development on Stone Curlew nesting concludes that the development would result in the loss of 0.42 nests per year. The appellants presented evidence to demonstrate that the model may overstate the likely impact of the appeal proposals. However, they do not contest that, in the

absence of any mitigation, the development would have a likely significant effect on the SPA.

10. The Court of Justice of the European Union (ECJ) has ruled¹ that, when considering the effect that a development proposal may have on a European Designated Site, the decision maker must consider any proposed mitigation through an Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me, as the competent authority, in determining this appeal.
11. In my AA, I may consider any conditions or other restrictions which could secure mitigation of this harm. In this regard, the appellants have been in discussion with the council and Natural England throughout the course of the planning application and the appeal. It was originally proposed that 7Ha of new Stone Curlew habitat would be created within the SPA, through the removal of a conifer plantation. Natural England withdrew its support for this proposal in the light of ECJ decisions, which suggested that this would amount to compensation rather than mitigation. An amended mitigation proposal was submitted with the appeal, whereby two new Stone Curlew nest plots would be created within the SPA, on arable land within the appellant's control. In its correspondence with the council (Document 2), Natural England agreed a set of parameters that should be secured for the plots, and also indicated that, in order to maximise their success, the plots should remain in the same place long-term, rather than being moved annually.
12. The appellant has concerns regarding the impact of fixed nest plots on revenues, because high value vegetables are part of the crop rotation, alongside less valuable cereal crops. Consequently, shortly before the Hearing, the mitigation proposals were amended again, so that they could involve either the creation of 7Ha of chalk grassland, or two rotational Stone Curlew nest plots. As the proposals did not identify the exact mitigation, it was advocated that a condition should be imposed to allow consideration of the details to continue after the grant of planning permission. During the Hearing, the appellants submitted an e-mail from Natural England (Document 1), which confirmed that it had no objection to this approach.
13. At the Hearing, the council conceded that, in principle, mitigation could be secured through a planning condition. However, as the condition proposed by the appellants did not identify the method, scale, location or timing of mitigation, it was not considered that it gave sufficient certainty that suitable mitigation would be delivered. Following discussion between the parties, the appellants submitted an amended draft condition (Document 3), which I have used to inform my AA.
14. The draft condition clarifies that the mitigation should comprise the provision of two Stone Curlew nest plots, each of 2Ha. However, the location of the plots, even for the first year, is not identified. The purpose and objectives of the works; detailed design; methodology for agreeing the locations; timetable for implementation; management strategy; and monitoring details are all left to be considered after planning permission has been granted. These matters would therefore have to be resolved through a discharge of condition process, which is subject to a less rigorous consultation procedure than a planning application.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

15. Furthermore, the condition would allow for the appellant's preferred yearly, or biennial rotation of the plots. This would require an annual approval process involving the appellants, the council and Natural England. It is not clear whether this process would involve an official discharge of condition application each year, or whether it would become a less formal exchange of letters. Either way, this would be onerous to all parties. It is unclear what mitigation, if any, would be delivered if the parties failed to agree details prior to the breeding season in any particular year.
16. For these reasons, leaving significant details of the mitigation to be dealt with by condition would not give certainty, at the decision-making stage, that appropriate and timely mitigation would be securely delivered in the short or long-term. As the competent authority, I am therefore unable to conclude through my AA that the proposal would not affect the integrity of the SPA. Consequently, I must conclude that, following AA, the proposal would cause harm to the SPA without clear and certain mitigation. Therefore, the proposal would conflict with Policy CS2 of the Core Strategy and Policies DM10, DM11 and DM12 of the Local Plan. These policies seek to avoid adverse impact on protected species and ensure that the integrity of the SPA is protected.

Landscape character

17. The Plough Inn lies at the south-eastern edge of Icklingham, which is a linear village where the historic pattern of buildings is closely associated with the road running through the settlement. There are, however, intermittent clusters of development that extend back from the frontage on both sides of the road. The existing buildings on the site are located on the road frontage, with the pub garden occupying land to the rear and to the northwest. The pub carpark lies to the southeast of the buildings. The appeal site and its associated carpark are bordered to the southwest and southeast by open countryside, which slopes down to the tree-lined River Lark.
18. Icklingham and its surroundings lie within The Brecks National Character Area. The Brecks landscape is characterised by an open gently undulating landscape; regular geometric plantations; agricultural land-use, with regular field layouts; lowland heath and grassland; and a sparse settlement pattern. The Landscape and Visual Impact Assessment (LVIA) submitted with the appeal identifies that the landscape characteristics present at the site are commensurate with this description. Policy DM13 of the Local Plan indicates that The Brecks is a valued landscape with a limited capacity to absorb change without significant effect to its character.
19. Whilst the surrounding landscape is characteristic of The Brecks, the site itself comprises a domesticated pub garden and carpark, which is enclosed and divided by fences and contains close-clipped yew hedges, hard-surfacing and buildings. It therefore does not relate closely to the surrounding landscape, and it does not make a particularly positive contribution to its character. The fact that the appearance of the site contrasts so markedly with the surrounding countryside may have been a factor in the definition of the settlement boundary for the village, which encompasses the buildings and the pub garden. Within this boundary, Policy CS1 of the Core Strategy allows for nominal housing growth.
20. The council's reason for refusal relates to the scale of the development, and the perceived visual dominance of buildings to the rear of the site, rather than the

principle of housing development. At the Hearing, the council clarified that it was the proposed development in depth that gave rise to their objections, rather than the infilling of the frontage between The Plough and The Old Forge. I agree that, subject to design details, a building on the road frontage would reinforce the historic linear pattern of development in Icklingham.

21. The LVIA considers the impact of the proposed development on the landscape, with reference to a set of representative viewpoints. The council did not identify any others that I should consider. From most of these viewpoints, the LVIA concluded that the visual impact of the development would, at worst, be Minor-Moderate/Adverse. I viewed the site from Icknield Way (Viewpoints E and F) and the unnamed lane to the west (Viewpoints G to K). From Icknield Way, to the north and north-east, only the roof of the existing building on the site is visible, screened to some extent by intervening vegetation and seen against the backdrop of trees beyond. Any frontage development would be partially visible from here, but any development to the rear would be on lower ground, and largely hidden by the frontage development. In principle, there would therefore be little visual impact on the historic pattern of development or landscape character from these viewpoints.
22. From the unnamed lane to the southwest, I saw that the site was almost completely obscured by the trees that line the banks of the River Lark. My visit was in winter, so the proposed development would be even less visible in the summer months. Only the top of the church tower, on the opposite side of the road from the site, was visible above the trees. As the development would be at a lower level than the church, its visual impact would be very limited from viewpoints along this lane.
23. There are two viewpoints from which the LVIA concludes that the development would have a Moderate/Adverse visual impact. These are relatively close views from All Saints Church to the north (Viewpoint B) and the public footpath in the field to the south (Viewpoint D). Viewed from the church, the development would block views through the site to the river valley beyond. However, the site itself comprises a pub garden that is divided by a close-board fence and has little planting within it. Consequently, it does not make a positive contribution to the view. A well-designed building on the frontage would not, therefore, have a significantly harmful impact, particularly as the riverside trees would still be visible over the roof, thus maintaining a visual connection with the countryside beyond. Any development to the rear of the site would be largely hidden by the frontage building, so would not harm the historic linear character of the settlement to any marked degree.
24. Looking back at the site, from the footpath to the south, the church is visible through the gap between the pub buildings and The Old Forge. The proposed development would introduce additional buildings into this view, in front of the church. However, as the site is at a lower level, most of the church tower would still be visible over the roof of any houses on the road frontage. Buildings on the rear part of the site would be lower again, so would be seen against the backdrop of the existing and proposed frontage development, rather than contributing to any loss of view to the church. Any buildings to the rear would be closer to the surrounding countryside than the existing buildings are, so there would be a harsher transition between built development and the surrounding agricultural landscape. The submitted Landscape Strategy identifies that native hedgerows could be planted on adjoining land in the

appellant's control, to soften this impact over time. Nevertheless, I concur with the conclusion of the LVIA that there would be a moderate adverse impact on the landscape from this viewpoint.

25. The appeal site has been described as a gateway site by the council, as it is the first building that is encountered when entering the village from the south-east. However, the rear of the site is largely screened by existing roadside hedges on the approach to the village, and only becomes readily visible from relatively close views across the existing carpark. During the Hearing, the council accepted the appellant's evidence that this land was in their control. Therefore, the proposals shown on the Landscape Strategy, which include native hedges and parkland trees, could be secured by condition. This would result in a significant improvement, as the hard-surfaced carpark does not contribute positively to the landscape setting of the village. The landscaping would also ensure that, over time, the visual impact of buildings at the rear of the site, would not be significantly harmful to the character of the surrounding landscape or the historic pattern of development in the village.
26. Overall, therefore, I find that the development would only result in a moderate adverse impact on the surrounding landscape from one viewpoint. Policy DM13 of the Local Plan states that development will be permitted where any harm to the landscape will not significantly and demonstrably outweigh the benefit of the proposal. In this respect, the appeal site lies within the settlement boundary and has been vacant and unused for a considerable period. Paragraph 118 of the Framework advises that substantial weight should be given to the value of using previously developed land within settlements for housing. Furthermore, although there is no dispute that the council can demonstrate a deliverable 5-year supply of housing sites, the proposals would nevertheless contribute to the Government's objective of significantly boosting the supply of housing. The houses would be located within the settlement, so would help to maintain the vitality of the rural community in accordance with the advice at paragraph 78 of the Framework. The limited harm to the landscape setting of the village would not significantly and demonstrably outweigh these benefits.
27. The National Design Guide (NDG) was issued in October 2019 to support paragraph 130 of the Framework, which states that permission should be refused for development of poor design, that fails to take the opportunities available for improving the character and quality of an area, and the way it functions. The site lies within the settlement boundary, and the proposals would not have a significant impact on the surrounding landscape or the historic linear settlement pattern. I therefore find no conflict, in principle, with the NDG advice relating to the consideration of context and local identity, when assessing development proposals. High quality and attractive design, comprising appropriate building types and forms, could be secured through the approval of reserved matters.
28. I therefore conclude that the limited impact on the landscape character of the area would not outweigh the benefits of the proposal. The development would therefore comply with Policies CS3 and CS5 of the Core Strategy, and Policies DM2 and DM13 of the Local Plan. These policies seek to protect the landscape character of the area, and to ensure high quality design that has regard to its local context. The proposal would also accord with paragraph 170 of the Framework, which advises that valued landscapes should be protected in a

manner commensurate with their statutory status or identified quality in the development plan.

Conclusion

29. I have found that the benefits of the proposal outweigh the limited harm to the landscape character of the area. However, I cannot be certain, on the evidence before me, that the integrity of the SPA would not be harmed. Paragraph 177 of the Framework makes it clear that the presumption in favour of development does not apply where a proposal is likely to have a significant effect on a SPA, unless an AA has concluded that the proposal will not adversely affect its integrity. Overall, therefore, the benefits of the development do not outweigh the harm to the SPA, which has international importance.
30. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Tilley (RPS Group) – Agent
Lorenzo Pandolfi (RPS Group) – Agent
Michael Douglas (Elveden Farms Ltd) – Appellant
Simon Neesam (The Landscape Partnership)
Nick Sibbett (The Landscape Partnership)

FOR THE LOCAL PLANNING AUTHORITY:

Charlotte Waugh – Senior Planning Officer, West Suffolk Council
Jaki Fisher – Senior Ecology and Landscape Officer, West Suffolk Council
Julie Barrow – Principal Planning Officer, West Suffolk Council

INTERESTED PERSONS:

Cllr Susan Glossop, West Suffolk Council
Frank Glossop, local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. E-mail chain between Agents and Natural England
2. E-mail chain between Council and Natural England
3. Draft planning condition relating to stone curlew mitigation