
Appeal Decision

Site visit made on 10 February 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th February 2020

Appeal Ref: APP/W3520/W/19/3239180

Land off Cherry Tree Close, Yaxley, Suffolk IP23 8DH

- 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 Dover Farm Developments Ltd against the decision of Mid Suffolk District Council.
 - The application Ref DC/19/03345, dated 13 July 2019, was refused by notice dated 29 August 2019
 - The development proposed is described as 'erection of 2 detached dwellings with garages'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two detached dwellings with garages at Land off Cherry Tree Close, Yaxley, Suffolk IP23 8DH, in accordance with the terms of the application, Ref: DC/19/03345, dated 13 July 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Paragraph 12 of the appellant's statement of case refers to the proposal as an outline planning application with all matters reserved for future consideration. This contradicts the application form and is not the basis upon which the Council considered the scheme. I have therefore considered the proposal as a full application for planning permission.

Main Issues

3. The main issue in this appeal is whether the appeal site is a suitable location for the proposed development, with reference to development plan policies concerned with housing and the accessibility of services and facilities.

Reasons

Development plan policies

4. In order to support existing communities by guiding development to settlements with the greatest range of services and facilities, Policy CS1 of the Mid Suffolk Core Strategy 2008 (CS) sets out a settlement hierarchy which defines the villages and towns to which development is to be directed and the level of growth they are broadly expected to accommodate. Yaxley is identified as a Secondary Village and thus described in the CS as being unsuitable for growth but capable of taking appropriate residential infill and development for

local needs. A settlement boundary has been retained around the village to facilitate this. Policy CS1 and its supporting text explains that areas outside the defined settlement boundaries is 'countryside', where development will be restricted to particular stated examples.

5. I have not been directed to any definition of infilling within the CS. That said, the appeal site is surrounded on three sides by existing residential development and accessed from an existing estate. In physical terms it has the appearance of being within the settlement. Its development could therefore be considered infilling. However, the proposal would not be infilling within the defined settlement boundary of Yaxley. Consequently, it would amount to the erection of two dwellings in the countryside. This would not be the type of development permitted in the countryside by Policy CS1.
6. Policy CS2 of the CS flows from Policy CS1 and is specifically concerned with development in the countryside. It states that development in the countryside will be restricted to defined categories such as rural exception sites, the re-use of buildings and replacement dwellings. The appeal scheme would not fall under any of the defined categories of development listed in Policy CS2 of the CS. There is a negative corollary that development which is not listed in the policy is not to be ordinarily permitted. In addition, Policy H7 of the Mid Suffolk Local Plan 1998 (LP) exercises strict control over development in the countryside and states that new housing will normally form part of an existing defined settlement. The proposed dwellings would not be located within the existing settlement boundary of Yaxley and would therefore be at odds with Policy H7 of the LP.
7. Thus, in conclusion, the proposal would be at odds with, and harmfully undermine, the adopted spatial strategy for rural housing in the development plan and the consistency and relative certainty that should flow from a planning system that is genuinely plan led, as indicated in Policy FC1.1 of the CS.

The accessibility of services and facilities

8. The appeal site encompasses a small field close to the village centre. It is within walking distance of the few facilities in the village, these being a public house, church and village hall. There is a local primary school on the outskirts of Mellis around 1200 metres (m) to the west of the appeal site but there is no continuous pavement and Mellis Road appeared to be reasonably busy. As such, the distance and walking environment would discourage children residing at the development from walking to the school even though the traffic appeared to be limited to 30 miles per hour.
9. In order to satisfy everyday functional requirements such as education, employment and shopping, it would be necessary for future residents of the appeal scheme to travel to nearby settlements. Eye is particularly well served for a town of its size with many everyday services catered for. There is also a large industrial estate at Eye Airfield providing additional employment opportunities. Diss is not far away and has further facilities and a railway station. However, it would be too far to comfortably walk on a regular basis to these locations. The very busy A140 would also be a physical constraint that diminishes the attractiveness of the walking environment.
10. Cycling into Eye would be an option as a mode of travel from the appeal site because the distance would not be great, and the route is reasonably level.

However, the A140 may still provide a perceived barrier and the apparently busy and narrow nature of the intervening lanes could discourage some cyclists. Furthermore, it cannot be relied upon that future occupants of the appeal scheme would have the levels of confidence, fitness and proficiency to regularly cycle. I have not been provided with details of any bus service.

11. Consequently, future residents of the appeal scheme would be highly reliant on private motorised transport. Such journeys would cumulatively add up over the life of the development with the associated carbon emissions. Siting dwellings in such a location would also frustrate attempts to capture the health benefits gleaned from travel by more sustainable means such as walking. Therefore, the appeal site is not particularly well placed in terms of accessibility to services and facilities to accommodate new homes.
12. However, the presence of some limited services within walking distance of the appeal site, the opportunity to walk and cycle on occasion to facilities in nearby settlements, the modest size of the development and the short distance of car journeys to Mellis and Eye would, together, qualify some of the negative impacts. I am also mindful that opportunities to maximise sustainable transport will be inherently more inhibited in rural areas as opposed to urban locations. Therefore, the overall level of harm would be moderate. This would nevertheless result in a conflict with one of the aims underlying the CS to encourage sustainable transport as part of sustainable development.

Other Matters

13. Although not raised as a concern in its reason for refusal, the Council have suggested that the proposal would be a harmful incursion into the countryside. However, the appeal scheme would be enclosed on three sides by existing housing and would utilise an existing access. The dwellings would be commensurate in size to nearby homes and would not stridently expand the village or breach a landscape feature, such as a hedge or bank. Instead, the proposal would be a natural and discrete infilling of previously developed land (at least the eastern part where the houses would be sited, because there are stables and hard surfaces). Thus, the proposal would not harm the countryside.
14. The application was submitted with a dated biodiversity survey and report which related to a previous scheme. Reptiles were previously identified at the site and the report recommends a scheme of mitigation and enhancement. Both the Council and appellant are of the view that the recommendations in the survey should be secured on a precautionary basis through a planning condition and I have no reason to disagree.
15. Concerns have been raised regarding the condition of the access road leading to the appeal site and its unadopted status, but it appeared to be in a reasonable condition and capable of taking the development proposed. Technical evidence to the contrary has not been submitted. The existing dwellings in Cherry Tree Close appear to benefit from off road parking as will the appeal scheme. As such, the proposal would not result in, or contribute to, harmful parking stress. The Local Highway Authority have not raised any objections in respect of these points, suggested the access would be unsafe or indicated that the residual impact on the highway network would be severe.
16. I share the view of the Council that the orientation of the properties and the distance from neighbouring dwellings would ensure the proposal would not

harmfully impact upon the living conditions of the residents of nearby properties. Further development is planned at Eye, but the appeal scheme would support Yaxley as a rural community. Substantive evidence has not been provided demonstrating there is inadequate infrastructure locally to accommodate the demands of future residents of the appeal scheme.

Planning Balance

17. Policies CS1, CS2 and H7 are the most important policies for determining the locational suitability of the appeal scheme. The Council and appellant agree that these policies, as a collective basket, are out of date due to their inconsistency with the Framework. I have no reason to disagree, particularly as this conclusion flows from a reasonably recent appeal decision¹. Furthermore, the Council's emerging Joint Local Plan (eLP) includes a draft strategy that would see the settlement boundary around Yaxley expanded in order to permit further housing growth. The eLP is not at an advanced stage and could be subject to revisions and therefore, as a document, it is of limited weight. However, there is a tension between the Council's decision to resist the appeal scheme due to the poor accessibility of services and facilities, whilst advancing a draft strategy that would see housing directed to Yaxley. This is a further indication that the Council's housing policies are out of date.
18. In such circumstances, Policy FC1 of the CS sets out the mechanism for decision making. However, it is now out of date as it reflects wording from an earlier version of the National Planning Policy Framework (the 'Framework'). Thus, I have reverted to Paragraph 11 of the Framework, which states that when the most important policies for determining a proposal are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole².
19. For the reasons already given, the harm arising from the position of the proposal remote from most services and facilities would be moderate. In respect of the conflict with the spatial strategy in the development plan, Policies CS1, CS2 and H7 are out of date thereby limiting the weight I attach any conflict with them. That said, the use of a settlement hierarchy and settlement boundaries are not prohibited by the Framework and actually chime with some of its objectives, such as locating significant development in locations that are, or can be made, sustainable and providing recognition to the intrinsic character and beauty of the countryside. Therefore, Policies CS1, CS2 and H7 are not entirely inconsistent with the Framework and consequently the conflict with them draws limited weight as an adverse impact.
20. The proposal would modestly support the vitality of Yaxley as a rural community as well as services in nearby villages. However, there is little evidence before me to suggest two additional households would have a notable economic or social effect. For example, it has been suggested that the local primary school is oversubscribed so the appeal scheme would be of little use in sustaining this facility, and there is nothing to suggest local services are failing for lack of patronage. The proposal would provide some support to the construction industry, but this would be limited in scale and short lived. Thus, the weight I attach the potential socio-economic benefits is limited.

¹ APP/W3520/W/18/3194926

² In this instance there are no policies in the Framework that give a clear reason for refusing the proposal

21. Nothing is before me to suggest the Council is currently unable to demonstrate a five-year housing land supply and therefore it is significantly boosting the supply of housing at present. In this context, the benefits to housing supply from two dwellings would be limited. That said, the proposed dwellings would, in practical terms, infill previously developed land in a suitable way within a discernible settlement. Paragraph 118 of the Framework suggests substantial weight should be given to the value of doing this.
22. Overall, the adverse impacts of the appeal scheme would not significantly and demonstrably outweigh its benefits. This is a material consideration that indicates the appeal should be determined otherwise than in accordance with the development plan. This conclusion is similar to other small residential schemes on the edge of, but outside, the settlement boundary approved at Yaxley where the Council has applied the tilted balance to³.
23. In arriving at this conclusion, I am aware that a previous Inspector considering another housing development⁴ proposed at the appeal site reached a different finding. However, this is unsurprising as the previous scheme related to a larger scheme that would have been a more significant departure from the development plan with a more significant number of vehicular movements. The Inspector also found harm to living conditions, which I have not. The impacts of the dismissed scheme would have been different to the proposal before me and therefore my conclusions are not inconsistent with those of the previous Inspector.

Conditions

24. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council and agreed by the appellant. It is necessary in the interests of safeguarding the character and appearance of the area to secure details of external finishing materials and a landscaping scheme (and its subsequent protection). To protect yet unknown archaeology a suite of conditions relating to a scheme of investigation is necessary. To protect living conditions, it is necessary to secure a land contamination investigation. In the interests of highway safety and living conditions it is necessary to secure the parking and manoeuvring spaces and for areas to store bins. In the interests of safeguarding and enhancing biodiversity it is necessary to secure the recommendations in the biodiversity survey/report submitted by the appellant.
25. Some of the conditions require resolution prior to the commencement of development since the works they relate to are so fundamental that it would have been otherwise necessary to refuse the whole permission.
26. In conclusion, the proposed development would not adhere to the development plan but material considerations, namely the Framework, indicate that the appeal should be determined other than in accordance with the development plan. Accordingly, the appeal should succeed.

Graham Chamberlain
INSPECTOR

³ See Appendix 5 and 6 of the appellant's Statement of Case

⁴ APP/W3520/W/18/3197538

Schedule of Conditions

1. The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following drawings (and/or such other drawings as may be approved by the Local Planning Authority in writing pursuant to the other conditions of this permission or such drawings as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard).
 - Site Plan (Phil Cobbold Planning Ltd)
 - Propsoed Grage Type B 6751A G02
 - Plot 1 House Type A 6751A P01
 - Plot 2 House Type B 6751A P02
 - Proposed Site Layout Plan 6751A-SL01 A
3. No development above slab level shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a detailed scheme of hard, soft and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained.
4. All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details [required by condition 3, above] shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use or first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 10 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.
5. No development/works shall be commenced above slab level until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development and fully applied prior to the first use/occupation.
6. No development shall take place until a scheme of archaeological evaluation of the site has been submitted to and approved in writing by the Local Planning Authority (including any demolition needing to be carried out as necessary in order to carry out the evaluation). The evaluation shall be carried out in its entirety as may be agreed to the satisfaction of the Local Planning Authority,
7. No development shall take place until a written report on the results of the archaeology evaluation of the site has been submitted to the Local Planning

Authority and that confirmation by the Local Planning Authority has been provided that no further investigation work is required in writing.

Should the Local Planning Authority require further investigation and works, no development shall take place on site until the implementation of a full programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and: a. The programme and methodology of site investigation and recording; b. The programme for post investigation assessment; c. Details of the provision to be made for analysis of the site investigation and recording; d. Details of the provision to be made for publication and dissemination of the analysis and records of the site investigation; e. Details of the provision to be made for archive deposition of the analysis and records of the site investigation; and f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The written scheme of investigation shall be carried out in its entirety prior to any other development taking place, or in such other phased arrangement including a phasing plan as may be previously approved in writing by the Local Planning Authority.

8. No building shall be occupied until the archaeology evaluation, and if required the Written Scheme of Investigation, have been completed, submitted to and approved, in writing, by the Local Planning Authority. Furthermore, no building shall be occupied until analysis, publication and dissemination of results and archive deposition from the archaeology investigations as agreed under the Written Scheme of Investigation has taken place, unless an alternative agreed timetable or phasing for the provision of results is agreed in writing by the Local Planning Authority.
9. No development shall take place until: i) A strategy for investigating any contamination present on site (including ground gases, where appropriate) has been submitted for approval by the Local Planning Authority. This strategy shall be formulated in line with the recommendations laid down in section 9 of document MSH/15.395/Phase1 dated December 2015 submitted as part of this application; ii) Following approval of the strategy, an investigation shall be carried out in accordance with the strategy; iii) A written report shall be submitted detailing the findings of the investigation referred to in (ii) above, and an assessment of the risk posed to receptors by the contamination (including ground gases, where appropriate) for approval by the Local Planning Authority. Subject to the risk assessment, the report shall include a Remediation Scheme as required; iv) Any remediation work shall be carried out in accordance with the approved Remediation Scheme; v) Following remediation, evidence shall be provided to the Local Planning Authority verifying that remediation has been carried out in accordance with the approved Remediation Scheme.
10. The use shall not commence until the area(s) within the site shown on the approved drawings, for the purposes of manoeuvring and parking of vehicles, has been provided and thereafter that area(s) shall be retained and used for no other purpose(s).

11. Before the development is occupied details of the areas to be provided for storage and presentation of Refuse/Recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for no other purpose(s).
12. The development shall be implemented in accordance with the recommendations contained in the Reptile Survey prepared by Eco-Check dated July 2016.