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## Appeal Decision

Site visit made on 4 February 2020

**by Andrew Smith BA (Hons) MA MRTPI**

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

**Decision date: 11 March 2020**

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**Appeal Ref: APP/D3505/W/19/3240526**

**Greenlawns Bonsai Nursery, Hadleigh Road, Boxford CO10 5JH**

- 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 Mr D Paget, Mr J Paget & Miss C Harbottle, Mr & Mrs L Paget and Mr & Mrs Powell against the decision of Babergh District Council.
  - The application Ref DC/18/04967, dated 8 November 2018, was refused by notice dated 10 July 2019.
  - The development proposed is erection of four detached dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of four detached dwellings at Greenlawns Bonsai Nursery, Hadleigh Road, Boxford CO10 5JH, in accordance with the terms of the application, DC/18/04967, dated 8 November 2018, subject to the conditions set out at the end of this decision.

### Procedural Matters

2. The planning application that is now the subject of this appeal was originally refused for 2 separate reasons. However, the Council has confirmed in writing that it no longer wishes to defend its second reason for refusal. This related to the Stour and Orwell Estuaries Special Protection Area (the SPA). I shall determine the appeal accordingly.
3. The emerging Babergh and Mid Suffolk Joint Local Plan (the JLP) has been referred to in the evidence before me. Nevertheless, it is my understanding that the JLP is at a relatively early stage such that its policies and designations currently carry limited weight. I shall consider the appeal on this basis.
4. The appeal proposal is for outline planning permission with all detailed matters reserved for future approval. Whilst not formally part of the scheme, I have treated any details submitted with the appeal application relating to matters of access, appearance, landscaping, layout and scale as a guide to how the site might be developed.

### Main Issues

5. The main issues are:
  - Whether or not the site represents an appropriate location for housing, having particular regard to access to facilities and services; and
  - The effect upon the SPA.

## Reasons

### *Access to facilities and services*

6. The appeal site is located outside of any defined settlement boundary and is thus designated as countryside in local planning policy terms. The site contains a now closed plant nursery and garden centre business as well as an associated single dwelling. The site makes up part of a linear row of development that runs the southern side of Hadleigh Road and that is typically comprised of residential properties. Other than nearby bus stops, I did not observe any facilities or services to be in place within the site's immediate locality. Boxford, the nearest Core Village, contains a range of facilities, including a primary school, shops and public houses, and is located relatively nearby.
7. The route between the site and Boxford is not served by footway, nor any specific facilities for cyclists (such as a defined cycle lane). Furthermore, part of the route is made up of a main road (the A1071) that accommodates regular traffic flows. The journey to/from Boxford would thus be unlikely to appear attractive to future occupiers of the proposal to either navigate on foot or by cycle. This is not least due to the not insignificant distance involved.
8. Nevertheless, it is important to note that the site is served by bus stops that are situated a realistic walking distance away, along Hadleigh Road to the west. I am of the understanding that buses typically run from these stops at fairly frequent intervals to a range of destinations including Boxford, Hadleigh, Sudbury and Ipswich. Whilst the walking route to these stops is not lit nor served by footway, I noted very few traffic movements along Hadleigh Road during inspection. Indeed, it has the character of a quiet rural road that would appear to be navigable on foot in a safe manner. However, this option may not suit all future occupiers of the development who may not be conveniently able to depend upon these bus services to serve their day-to-day needs.
9. It has been suggested by the appellant that buses can be flagged down upon request along Hadleigh Road, which would further promote bus travel as a realistic option. Whilst the rural nature of the road could potentially allow for buses to pick up and drop off on an impromptu basis, no formal arrangements in this regard have been clearly evidenced. My considerations are thus based on the signposted stops that are in place. In this context, particularly when noting the lack of walking opportunities, the site's location would be likely to promote private modes of transportation.
10. That said, the National Planning Policy Framework (February 2019) (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and states that this should be taken into account in decision-making. Indeed, relatively short journeys (by private car or otherwise) would be required in order to access the various facilities and services that are on offer in Boxford. Furthermore, the bus stops that serve the site would offer future residents a genuine option to utilise local bus services as an alternative to private car travel should they desire to do so.
11. Although the JLP is at a stage that attracts limited weight, it is still a material consideration in the determination of this appeal and offers an indication of the likely future direction of the development plan. It is apparent from the evidence before me that a potential settlement boundary is emerging for the Calais Street area. A noteworthy proportion of the appeal site is contained

within where this boundary is currently drawn and it is my understanding that infill development within this boundary would, in principle, be supported. Indeed, this approach would be broadly consistent with the Framework's aim to enhance or maintain the vitality of rural communities in acknowledgement that development at a smaller settlement may support services in other nearby rural settlements.

12. Nevertheless, for the above reasons, the proposal would cause some harm by virtue of the site not representing an appropriate location for housing, having particular regard to access to facilities and services. The proposal conflicts with Policies CS2 and CS15 of the Babergh Core Strategy and Policies (February 2014) (the Core Strategy) in so far as these policies state that development in the countryside will only be permitted in exceptional circumstances and require that all new development shall seek to minimise the need to travel by car using the following hierarchy: walking, cycling, public transport, commercial vehicles and cars, thus improving air quality.

#### *The SPA*

13. The appeal site lies within the Zone of Influence (ZoI) of the SPA. I must therefore consider the appeal against The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). These regulations require that, where the project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment (AA) of the implications of the project in view of the relevant site's conservation objectives.
14. New housing development within the ZoI would be likely to increase the number of recreational visitors to the SPA, potentially resulting in disturbance to the integrity of the habitat's qualifying features. Taking a precautionary approach, I consider that the proposal would, in combination with other projects, be likely to have a significant effect on the SPA. As a result, it is necessary for me to carry out an AA.
15. The qualifying features for the SPA designation relate to its extensive mudflats, low cliffs, saltmarsh and small areas of vegetated shingle and the support these habitats provide to major concentrations of water birds as well as breeding Avocet. The impact on the SPA from recreational pressures is considered within the emerging joint Habitats Regulations Assessment Recreational Disturbance and Avoidance and Mitigation Strategy for Suffolk (May 2019) (the RAMS).
16. The RAMS sets out detailed mitigation measures, such as through access management, signage and other targeted projects, in the interests of reducing recreational pressures. These are to be predominantly funded by developer contributions at a specified tariff per dwelling.
17. With specific respect to this appeal, NE has confirmed that the scheme should be considered against the RAMS (or any future adopted version of the RAMS) and has advised that the deliverability of an appropriate financial contribution could be adequately secured via a planning condition that requires an associated planning obligation to be entered into. Such a condition would specifically reference the RAMS and would require evidence to be submitted to demonstrate that a legal agreement has indeed been completed before any development takes place. Both main parties to this appeal have confirmed

their agreement to this approach and I am satisfied that such a condition would meet the relevant tests for conditions as set out in the Framework and Planning Practice Guidance.

18. Whilst a condition would not place any requirements upon the Council with respect to the deployment of funding, I am sufficiently content that the contribution would be spent expediently should planning permission be granted given the range of mitigation initiatives that I understand are either underway or planned for. I conclude that the proposed development would not adversely affect the integrity of the SPA.

### **Other Matters**

19. Policy EM24 of the Babergh Local Plan Alteration No.2 (June 2006) requires that proposals to redevelop vacant employment land for non-employment purposes will only be permitted where potential alternative employment uses have first been fully explored. In this case a commercial viability report (January 2019) has been produced on behalf of the appellant. This notes factors such as the local garden centre competition that exists, the site's poor state of repair and an oversupply of employment land in the area and concludes that the appeal premises are not capable of beneficial use as existing. I am satisfied that this conclusion is robust and that the scheme accords with Policy EM24. Indeed, any potential viable commercial use of the site would likely involve substantial works to redevelop it.
20. It is my understanding that the appeal site is made up of various parcels of land in independent ownership. It is apparent from the evidence before me (and from inspection) that these circumstances have motivated the recent installation of additional vehicular access points. Nevertheless, the full details of the intended access arrangements relating to the scheme before me are not for consideration at this outline stage. Even so, no objection has been raised to the proposal by the Highway Authority and I am content that the site offers the potential to provide safe and suitable access arrangements for the 4 dwellings that are proposed.
21. The Parish Council has raised concern that the type of housing proposed would not meet identified local needs. However, other than being detached, no specific details as regards the proposed property types have been confirmed at this stage. These details would become apparent as part of any future reserved matters application(s) and would be for consideration then.
22. I have noted references by interested parties to bat sightings in the area. Nevertheless, the proposal is supported by a Preliminary Ecological Appraisal (August 2018) (the PEA) which finds the risk of significant impact on roosting, foraging or commuting bats to be low. The PEA concludes that the site is generally low in ecological value, which is consistent with my own observations on-site, and recommends several mitigation/precautionary measures for protected species and the provision of habitat compensation for any treeline reduction (to the roadside) and general loss of trees. These measures include replacement planting of native trees and hedgerow (the full details of which would become apparent at detailed planning stage), the phased trimming of grassland and the addition of bird and bat boxes. I am satisfied that the PEA's various recommendations are appropriate and can be suitably secured via planning condition.

23. In response to concerns raised by interested parties to this appeal, the appellant has stated that recent selected tree removals have been motivated by interference with overhead lines. In any event, full landscaping details, including of existing trees to be retained, would become fully apparent at detailed planning stage. I also note that interested parties have suggested that the proposal, if allowed, would set a precedent for permitting residential development in the District's rural areas. However, each proposal must be considered upon its own individual merits in accordance with the specific site circumstances to hand.

### **Planning Balance**

24. I have identified conflict with Policy CS2 of the Core Strategy. However, this is a restrictive policy that offers support to development in the countryside only in exceptional circumstances. It is not wholly consistent with the Framework in terms of its approach to rural housing. Indeed, the Framework is less restrictive and sets out that housing should be located where it will enhance or maintain the vitality of rural communities and that planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Thus, the fact that the site is located outside of any defined settlement boundary is not a determinative factor in this case and I apportion limited weight to the proposal's conflict with Policy CS2.
25. Nevertheless, there would be some limited harm arising by virtue of the site's lack of accessibility to local facilities and services and that this would lead to some conflict with Policy CS15 of the Core Strategy, which is broadly consistent with the Framework in terms of its aim to promote walking, cycling and public transport use.
26. Turning to the scheme's benefits, whilst the Council has confirmed that it is currently able to demonstrate a 5.67 year supply of housing land and the appellant has not challenged this assertion, it would deliver 4 additional housing units within a District where the housing land supply surplus is marginal. Indeed, the Framework reaffirms the Government's objective of significantly boosting the supply of homes. The proposal would also promote an effective use of land through the redevelopment of a redundant former business premises. Jobs would be created during the construction phase and support to the local economy and local community facilities would be provided once occupied. These benefits outweigh the identified harm and the policy conflict therewith.
27. There are material considerations that indicate that the proposal should be determined otherwise than in accordance with the development plan in this case.

### **Conditions**

28. The Council has suggested a number of conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments for consistency and clarity purposes and added a further condition with respect to the SPA. A pre-commencement condition relates to the submission of reserved matters, which is a standard requirement where outline planning permission is sought. It was not therefore necessary to attain the appellant's agreement in writing for the imposition of Condition 1.

29. In the interests of certainty, a condition specifying the approved plans and documents is required. As the application is in outline form and the layout of the development has yet to be considered, I have not listed the submitted indicative site layout as an approved plan. In the interests of ensuring that protected species are properly safeguarded, a condition is reasonable and necessary that secures the implementation of the various recommendations that are set out in the PEA as well as the phased strimming of grassland during construction as suggested by the Suffolk Wildlife Trust.

### **Conclusion**

30. For the reasons set out above, the appeal is allowed subject to conditions.

*Andrew Smith*

INSPECTOR

### **Schedule of Conditions**

- 1) Before any development is commenced, approval of the details of access, appearance, scale, layout and landscaping (hereinafter called "the reserved matters") shall be obtained in writing from the Local Planning Authority.
- 2) Application for approval of the reserved matters shall be made not later than the expiration of three years beginning with the date of this permission, and the development shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) The development hereby permitted shall be carried out in full accordance with the following approved plan and documents: Location Plan (scale 1:1250); Phase 1 Land Contamination Risk Assessment (August 2018); Preliminary Ecological Appraisal including a Protected Species Assessment (August 2018).
- 4) No development shall be carried out until proposals for the mitigation of the recreational impact of the development upon the Stour and Orwell Estuaries Special Protection Area have been submitted to and approved in writing by the Local Planning Authority, which shall include evidence of completion of a legal agreement to secure the proposed mitigation. Such proposals shall provide for mitigation in accordance with the emerging/future adopted joint Habitats Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy for Suffolk (RAMS), or for mitigation to at least an equivalent effect. The development shall be carried out in accordance with and subject to the proposals as may be approved.
- 5) All recommendations contained within the Preliminary Ecological Appraisal (August 2018), as set out under Section 5 of this approved document, shall be carried out in full prior to the first occupation of the development hereby permitted. The strimming of grassland shall be undertaken in two phases with a high cut (to 15cm) initially followed by a low cut (to ground level) with at least a 24-hour period between cuts.