
Appeal Decision

Site visit made on 29 May 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2020

Appeal Ref: APP/D3505/W/19/3242170

Walnut Cottage, Bower House Tye, Polstead CO6 5DA

- 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 M Watling against the decision of Babergh District Council.
 - The application Ref DC/19/01705, dated 3 April 2019, was refused by notice dated 29 May 2019.
 - The development proposed is a bungalow to the rear of Walnut Cottage.
-

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 single storey dwelling'. I have therefore dealt with the appeal on this basis.
3. Outline planning permission is sought but with all matters reserved for future consideration. I have had regard to the drawings that accompanied the planning application (Drawing Refs 1238_SK01, 1238_SK02 and 1238_SK03) but I have treated these as being indicative when considering the likely impact of the proposal on the matters set out in the main issues below.
4. The appeal site is adjacent to The Bower Close¹, a Grade II listed building. In determining the planning application, the Council did not undertake the statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that they have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The main parties have therefore had the opportunity to comment on the implications that the setting of the listed building would have for this appeal.

¹ The property is now known as 'Thatchers House'.

Main Issues

5. The main issues are: -

- whether the proposal is consistent with policies relating to housing in rural areas, including with regard to need and accessibility to local shops, services and facilities; and
- whether the proposal would preserve or enhance the setting of the Grade II listed building known as The Bower Close.

Reasons

Rural housing

6. The appeal site concerns the rear garden of Walnut Cottage, which adjoins the driveway of The Bower Close, which is a Grade II listed building. There are also dwellings situated to the north and east of the site.
7. Policy CS2 of the Babergh Local Plan 2011-2031 Core Strategy & Policies (Adopted February 2014) (CSP) sets out the Council's spatial strategy to 2031. The policy outlines a settlement hierarchy and suggests that development is directed to towns or urban areas, and to the Core and Hinterland Villages, in the immediate context this respectively means Boxford and Polstead. However, for the purposes of the policy, the site is situated in the countryside where development is only permitted in exceptional circumstances, subject to a proven justifiable need.
8. I appreciate that the proposal could help to meet the needs of the local community, such as a small family or older residents wishing to downsize, but there is no substantive evidence before me to demonstrate that there would be a proven justifiable need, in either respect, in this location.
9. Policy CS11 of the CSP is supportive of development that has a close functional relationship with Core and Hinterland Villages but the appeal site is situated in the countryside some distance from the nearest settlements.
10. In light of the above, the proposed development would be contrary to the spatial strategy in Policies CS2 and CS11 of the CSP, as it would encompass housing outside a defined settlement boundary where no exceptional circumstances have been demonstrated.
11. Whilst the appeal site is situated within an area of countryside, in terms of whether the dwellings would be 'isolated' in the language of the National Planning Policy Framework (the Framework) and the Court of Appeal judgement², it is important to have regard to the site's relationship to existing built development as well as accessibility to services and facilities. Paragraph 78 of the Framework seeks to restrict housing in rural areas to locations where it will enhance or maintain the vitality of rural communities.
12. Taking the physical dimension of isolation first, the proposed dwelling would be located fairly close to other dwellings to the north and east. The proposal, therefore, could not be said to be isolated from other dwellings. However, it would do little more than add to existing development in the open countryside,

² *Braintree DC v SSCLG* [2018] EWCA Civ. 610

some distance away from the nearest Town of Hadleigh, Core Village of Boxford and Hinterland Villages of Polstead and Layham.

13. The Brewers Arms Public House is a short distance to the south and there is a shop at the touring caravan site to the south along the A1071. However, it is unclear what range of services and produce are available at either. Nevertheless, this does not constitute a range of facilities and services that would be likely to meet the day-to-day needs of future occupiers. The reality is therefore that future residents would be obliged to travel further to the aforementioned settlements, where there are a greater range of facilities and services available.
14. In terms of accessibility, the appeal site is poorly located. Paragraph 103 of the Framework suggests that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Apart from the public house, the closest shops and community facilities are not within a reasonable and convenient walking distance of the site. Moreover, the local road network lacks street lighting and pedestrian footways. Accordingly, the opportunities to walk or cycle to the services and facilities available nearby would not be convenient or realistic ones, particularly after dark or in bad weather.
15. I appreciate that there are bus stops to either side of the A1071 offering journeys to Sudbury, Hadleigh and Ipswich throughout the week, including to nearby schools, but the location of bus stops may not necessarily be convenient having regard to the fast-flowing nature of the road and absence of bus shelters. I am therefore not able to conclude that the bus services available would sufficiently discourage further use of private motorised transport. The proposal would not, of itself, generate a large number of traffic movements. I am also mindful that a greater dependency on car use is inevitable in more rural locations and there are existing residential properties in the immediate vicinity. Nevertheless, given the location of the proposal, future residents would be highly likely to be required to travel regularly by private motorised transport to access retail, employment and healthcare. Therefore, the cumulative effect of allowing developments in locations such as the proposal would be likely to increase the amount of unsustainable journeys made.
16. I have been referred to the inclusion of a settlement boundary for Bower House Tye³, as a 'Hamlet Village' in Policy SP03 of the emerging Babergh & Mid Suffolk Joint Local Plan Preferred Options (July 2019) (the JLP). Whilst the proposal would be situated within the proposed settlement boundary and this policy states that development will be permitted subject to a number of criteria, including in relation to design, 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, whilst I have had regard to the policy, in accordance with the requirements of Paragraph 48 of the Framework, the JLP has attracted very limited weight in my consideration of the merits of the appeal.
17. I have had regard to the geographical differences between the appeal site and the sites referred to by the main parties for Miracle Barn⁴, Bower House Tye;

³ Identified as 'Polstead – Bower House Tye' in the emerging Policy.

⁴ Appeal Ref: APP/D3505/W/18/3211126 – Miracle Barn, Bower House Tye, Polstead CO6 5BZ.

Land east of the Street, Assington⁵; and Land to the east of Appleshaw, Newman's Green⁶. In particular, the proximity of those sites to other properties and their accessibility to local shops, services and facilities. However, I have considered the individual merits of the appeal before me and identified harm associated with the particular circumstances of the site. The appeal decisions to which I have been referred do not, therefore, lead me to a different conclusion.

18. In light of the above, I conclude that the site would not represent an appropriate location for housing, having regard to the need for the development and its accessibility to local shops, services and facilities. Hence, the proposal would conflict with Policies CS2, CS11 and CS15 of the CSP. Moreover, Policy CS15 seeks to minimise the need to travel by car using the following hierarchy: walking, cycling, public transport, commercial vehicles and cars. The proposal would also be in conflict with paragraphs 78 and 103 of the Framework.
19. I have not found against Policy CS1 of the CSP or Paragraph 8 of the Framework, in relation to this main issue, as the Council appears to have referred to these in the context of whether the proposal would amount to sustainable development, which I address within the Planning Balance.

The setting of the listed building

20. The Bower Close is a grade II listed building, which probably dates from the 16th to 17th Century, the significance of which is derived from its architectural and historic interest. The building is a two-storey house of box-frame timber construction, largely plastered and with a plain-tiled roof. The building appears to have been restored and the closely spaced timber studs exposed to the front. The roof is topped by a chimney stack with four diagonal shafts, the surfaces of which are enriched with necking and linked together by capping that is intricate and corbelled out. The front façade also incorporates four windows at ground and first floor and a central gabled porch.
21. Along with outbuildings to the east and west, The Bower Close is situated within extensive manicured grounds enclosed from the street by a low deciduous hedge and mature trees, which offer intermittent views of the front of the house. It is likely that the building was designed to face north across its grounds.
22. I am mindful of the Framework's definition of 'setting' as being the surroundings in which a heritage asset is experienced. In so far as is relevant to this appeal, although the buildings in the grounds of the listed building appear to have a closer historical association with the house, the largely undeveloped nature of the land surrounding The Bower Close provides a rural context which forms an integral part of the historic setting of this listed building and contributes to its understanding and significance. Moreover, the presence or absence of other existing buildings in the roads surrounding the listed building has influenced the setting of the listed building, as there are no houses or larger curtilage buildings to the southern side of the road in the foreground of the listed building. Houses are contained within linear frontage development to the northern side of the road and to the east, where houses with extensive

⁵ Appeal Ref: APP/D3505/W/18/3217096 – Land east of The Street, Assington CO10 5LH.

⁶ Appeal Ref: APP/D3505/W/18/3196882 – Land to the east of Appleshaw, Mills Lane, Newman's Green, Suffolk CO10 0AB.

rear gardens have a frontage with the old main road. This includes the existing property known as 'Walnut Cottage'.

23. Although mature planting around the site and to the grounds of the listed building reduce the visibility between them, when this is not in leaf during autumn and winter, there would be a greater degree of visibility. Nevertheless, I do not find the absence of a visual connection to be a determinative factor. It is the physical presence of the proposed built development that would be harmful to the significance of the heritage asset. Moreover, the proposed development would significantly and permanently alter the undeveloped nature of the land to the southern side of the road and compete with The Bower Close, which is the only purpose designed and built house in the long stretch of the southern side of the road that encompasses its grounds.
24. I appreciate that there is a house situated to southern side of the road to the west of the listed building and that this will have changed the setting of the listed building. However, that house is separated from the western extent of the grounds of the listed building by a field, the disruption to the setting of the listed building is not therefore comparable with the appeal proposal. Similarly, the summerhouse that I experienced to the rear of Walnut Cottage, adjacent to the driveway of the listed building, would not be comparable with the appeal scheme, as it would not have the same effect given its position and scale.
25. 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 proposal would be harmful to the setting of the listed building, which would have a negative effect on its significance as a designated heritage asset. This would equate to less than substantial harm to the significance of the designated heritage asset. Paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals.
26. 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. Whilst there is no threshold for the assignment of weight to the quantity of proposed dwellings within the planning balance, the appeal before me would deliver one family home, which would contribute to the overall housing mix and supply in the District.
27. 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 but would be likely to do so by utilising private motorised transport.
28. 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 great weight to be given to the less than substantial harm that I have identified.
29. For the reasons outlined above, despite the fact that the layout, scale and appearance of the proposal is indicative and it could be designed to reflect other housing found within the immediate locality, I conclude that the appeal scheme would have an unacceptably harmful effect on the setting of the listed building. Hence, the proposed development would not accord with Policy CS15 of the CSP and Policy CN01 of the Babergh Local Plan Alteration No 2 (Adopted

June 2006) (LP). Together these policies require that development proposals should respect heritage assets and pay particular attention to the scale, form and nature of adjacent development and the environment surrounding the site; and retain and incorporate local features, both natural and built.

30. The proposal would also conflict with paragraphs 192 and 193 of the Framework. In particular, paragraph 193 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.

Other Matters

31. Due to the intervening distances achieved the indicative details of the proposal suggest that there would not be harmful effects on the living conditions of the occupants of neighbouring houses or the proposal, particularly in respect of privacy, traffic noise and the external space afforded to the proposed house. Similarly, there is no evidence that highway safety would be compromised as a result of the indicative access arrangements and I note that the Highway Authority did not raise any concerns in this respect. Furthermore, there is no evidence to suggest that the proposal would affect surface water drainage, the ecology or biodiversity of the site or its surroundings (including trees) or be required to provide open space or recreational facilities. However, consideration of these matters does not lead me to a different conclusion on the main issues, as I have adjudged the proposed development to be harmful.
32. I note that the Council's Environmental Health Officer objected to the proposal due to insufficient information to assess the suitability of the site in relation to land contamination. The Council did not refuse permission on this ground but suggested that this would need to be considered at appeal. However, given that I have found harm in relation to the main issues, it is not necessary for me to consider this matter in any further detail.

Planning Balance

33. 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.
34. The development plan for the area comprises the LP and CSP, both of which predate the current Framework. However, 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.
35. Policy CS1 of the CSP only unnecessarily duplicates what was in paragraph 14 of the 2012 version of the Framework, so is out-of-date and thereby carries reduced weight. I have not found in relation to Policy CS1 of the CSP, however, I address whether the proposal would amount to sustainable development below.
36. The blanket approach to the application of settlement boundaries, in isolation of other considerations, would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework.

Furthermore, exceptional circumstances for development in the countryside beyond settlements, found in Policies CS2 and CS11 of the CSP, are not wholly consistent with the Framework, which only applies to isolated development. However, Policy CS2 is consistent with the aim of the Framework to direct housing to locations where it is supported by local facilities and services through an established pattern of distribution; and Policy CS11 responds to local circumstances as required by Paragraph 77 of the Framework. In light of this I have regarded the underlying objectives of the policies, as being consistent with the revised Framework but I have afforded reduced weight to the conflict of the proposal with these policies in the light of their approach to exceptional circumstances for development in the countryside, which lessens the magnitude of that conflict.

37. Policy CN01 of the LP exceeds the statutory duty referred to above and goes further than paragraph 192 of Framework, which requires decision makers to "take account of the desirability of sustaining and enhancing the significance of heritage assets". Moreover, the policy advocates strict control of development that protects and enhances the built environment. Policy CS15 of the CSP does not exceed these requirements and is consistent with the Framework in terms of its aim to achieve well designed places and the accessibility to services and facilities. However, both policies fail to acknowledge the balancing exercise required by paragraph 196 of the Framework, so are out-of-date for the purposes of the Framework. Hence, I attach only moderate weight to the conflict of the proposal with these policies, which lessens the magnitude of that conflict.
38. The Council has referred to their latest Housing Land Supply Position Statement⁷. It is suggested that this demonstrates five-years supply of deliverable housing land within the district. Other than pointing to the Council's position being based on data published in September 2019, the appellant has not provided any substantive evidence to dispute this position. Nevertheless, as with the appeals at Assington and Newman's Green, this does not represent a ceiling on the delivery of housing, as the Framework supports the Government's objective to significantly boost the supply of homes.
39. Nonetheless, as two of the policies most important for determining the appeal are out-of-date, namely Policy CS15 of the CSP and Policy CN01 of the LP, 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. 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 proposed development, the proposal is not sustainable development, for the purposes of the Framework and therefore, the presumption in favour of sustainable development does not apply.
40. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage assets, in this case the setting of a Grade II listed building. In terms of harm, the proposed development would not comply with development plan policy in respect of its location and the harm to the setting of

⁷ Babergh District Council Housing Land Supply Position Statement 2019/20 – 2023/24.

the listed building. Whilst a development plan policy most important for determining this appeal is out-of-date, the proposal would not amount to sustainable development under the terms of the Framework. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.

41. In the final balance, I consider that the location of the proposal outside a designated settlement boundary and the harm to the setting of the listed building would outweigh the benefits of the proposed development outlined above. Therefore, the other material considerations in this case do not indicate that the appeal scheme should be determined other than in accordance with the development plan.

Conclusion

42. 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