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## 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: 2<sup>nd</sup> July 2020**

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**Appeal Ref: APP/D3505/W/20/3246576**

**The Mane Riding Centre, Old London Road, Copdock and Washbrook IP8 3JF**

- 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 & Mrs A Coe against the decision of Babergh District Council.
  - The application Ref DC/19/05526, dated 24 October 2019, was refused by notice dated 23 January 2020.
  - The development proposed is erection of up to nine dwellings for over 55s.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The planning application was submitted in outline with all matters reserved except for access. I have had regard to the location and site plans (Drawing Ref 1791/19/01 Revision A) but have treated each element of the drawings as indicative, apart from the details of the access, when considering the likely impact of the proposal on the matters set out in the main issues below.
3. I note that an appeal has been lodged for a single dwelling on land to the north of the appeal site, which would be the subject of a separate decision by the appointed Inspector.

### Main Issue

4. The main issues are: -
  - whether the proposal is consistent with policies relating to housing in rural areas, including with regard to accessibility to local shops, services and facilities;
  - the effect of the proposed development on the character and appearance of the area; and
  - the effect of the proposed development on the Stour and Orwell Estuaries Special Protection Area and Ramsar Site.

### Reasons

#### *Rural housing*

5. The appeal site concerns a grassed paddock to the eastern side of the dual carriageway known as Old London Road, some distance to the north and south

of the more consolidated built-up areas of Copdock and Washbrook. There are smaller groupings of dwellings and other buildings scattered between these areas, including the appellants' house to the north.

6. 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 Capel St Mary and Copdock and Washbrook. 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. Policy CS11 of the CSP elaborates on this further and development in such locations should meet a proven local need, such as targeted market housing identified in an adopted community local plan / neighbourhood plan. Policies CS15 and CS18 of the CSP also respectively refer to the wider needs of an ageing population and the mix and type of housing development is expected to reflect the established needs in Babergh, particularly those of older people.
7. I appreciate that the Council's Strategic Housing Officer supported the proposal and the Ipswich Housing Market Area – Strategic Housing Market Assessment identifies a need for homes for older people, such as bungalows and chalet bungalows to reflect the ageing demographic profile of Babergh. Accordingly, although the appeal proposal would help to meet this need and its occupation by persons over the age of 55 could be controlled by planning condition, there is no substantive evidence before me to demonstrate that the proposal would specifically need to be located at the appeal site.
8. Moreover, Policy CS11 of the CSP is supportive of development that has a close functional relationship with Core and Hinterland Villages. I take the same view as the Inspector for an appeal in relation to the land to the south of the appeal site<sup>1</sup>, that the proposal would neither have a close functional relationship or be well related to Copdock and Washbrook, as it would be situated some distance away in the countryside. Furthermore, it is not the intention of Policy CS11 to consolidate small clusters of development that are spatially detached from settlements.
9. 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.
10. 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 judgement<sup>2</sup>, 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.

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<sup>1</sup> Appeal Ref: APP/D3505/W/15/3133257.

<sup>2</sup> *Braintree DC v SSCLG* [2018] EWCA Civ. 610

11. Taking the physical dimension of isolation first, the proposed dwellings would be located fairly close to other dwellings so could not be said to be isolated from other dwellings. However, they would do little more than add to existing development in the open countryside, some distance away from Ipswich, Capel St Mary and Copdock and Washbrook.
12. The nearest local shops, facilities and services are some distance away and would be unlikely to meet the day-to-day needs of future occupiers. The reality is therefore that future residents would be obliged to travel further to Ipswich, where there are a greater range of facilities and services available.
13. 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. The access to the site would be taken from an existing vehicular access and shared with a development of seven dwellings to the south of the site<sup>3</sup>. The necessary highway works required as part of that development, for a pedestrian crossing point to the western side of the dual carriageway, have been agreed with the Council<sup>4</sup>. However, neither the crossing point nor the development of the associated dwellings appear to have been commenced. Given that the pedestrian crossing would be delivered through a separate development, the appeal proposal may well not link up with the onward footway across the carriageway.
14. The consequences of failing to provide a suitable crossing would be to the safety of the passage of pedestrians across Old London Road and greater dependency on the use of private vehicles and thereby the extent of such journeys made from this location. Moreover, the closest shops and community facilities would not be within a reasonable and convenient walking distance of the site, as the road lacks street lighting and the footway is across the fast-flowing dual carriageway. 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 road that offer journeys to Colchester and Ipswich throughout the day and that the southbound bus stop could be accessed directly as part of the proposal. However, for the reasons outlined above, the location of the northbound bus stop may not necessarily be convenient for travel onward to Ipswich or when returning from the south. I am therefore not able to conclude that the bus services available would sufficiently discourage further use of private motorised transport.
16. The proposed development is for up to nine dwellings and there is no substantive evidence before me to suggest that persons over the age of 55 would be less likely to make journeys from their place of residence. Accordingly, the proposal could generate a large number of traffic movements from this location. I am 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, amongst other things, retail and healthcare. Therefore, the cumulative effect of allowing developments in locations such as

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<sup>3</sup> Planning Reference: DC/18/00765 – outline planning permission, with access considered.

<sup>4</sup> Planning Reference: DC/19/02680 for the discharge of Condition No 6.

the proposal would be likely to increase the amount of unsustainable journeys made.

17. Unlike the consented scheme immediately to the south of the appeal site, the proposal would not be directly associated with a place of employment which, in that case, will reduce the need for future residents to commute to their place of work. I have also had regard to the geographical differences between the appeal site and the sites referred to by the main parties to the south of the site and they have a closer spatial relationship to the Built-up Area Boundary of Copdock and Washbrook South. I have also been referred to an appeal at Boxford<sup>5</sup> which addresses the accessibility of that site. Whilst I note its findings, that appeal scheme is not comparable with the proposal, as the location of the development in the countryside was not a determinative matter and the site was formerly occupied by a business. I have considered the individual merits of the appeal before me and identified harm associated with the particular circumstances of the site. The decisions and appeals 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 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, 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.

### *Character and Appearance*

20. The appeal site is situated to the west, north and south of existing houses, including those consented in the adjacent paddock. These are part of a number of loosely grouped clusters of residential and commercial buildings in the vicinity that are interspersed between undeveloped fields and paddocks beyond the main built-up parts of Copdock and Washbrook. The design of buildings and their layout within the clusters varies, particularly in terms of their relationship to the street, with a mix of linear and in-depth development. However, the undeveloped land between buildings provides a rural setting and transition to the undeveloped agricultural fields that envelope the settlement. This makes a significantly positive contribution to the character and appearance of the area.
21. Even with the approved development to the south, the clusters of buildings would remain separated by fields and the roads nearby. However, the proposed development would significantly and permanently change the character of the area, to the extent that it would combine the existing clusters of buildings to the north and south. Moreover, the scattered and spacious arrangement of built development within the separate clusters would be eroded and a larger continuous built form would be created. The proposed development would therefore be a strident built incursion that would appear discordant when

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<sup>5</sup> Appeal Ref: APP/D305/W/19/3240526 (Greenlawns Bonsai Nursery, Hadleigh Road, Boxford, CO10 5JH).

viewed against the established grain of development. Accordingly, there would be a significantly detrimental effect on the character of the area.

22. The western boundary of the appeal site is formed of continuous mature hedge planting. I am mindful that the proposal is in indicative form only but regardless of the scale, appearance and layout, the proposed dwellings would be likely to be visible over the existing landscaping. It is also unlikely that additional planting within the site would have a meaningful effect, in softening the effect of the presence of built development within the site, for some time. Nevertheless, landscaping should not be relied upon to hide development from view that would otherwise be visually harmful, as it could fail to establish. The proposal would therefore introduce development that would have a significantly detrimental effect on the appearance of the area.
23. For the reasons outlined above, despite the fact that the proposal could be constructed as a minimum to meet Part L of Building Regulations, requiring a high level of energy efficiency, I conclude that the proposed development would have a significantly detrimental effect on the character and appearance of the area. Hence, the proposal would not accord with Policies CS11 and CS15 of the CSP which require, amongst other things, that proposals are well designed and appropriate in layout and character to its setting and to the village.
24. The proposal would also be in conflict with paragraph 127 of Framework, which states that planning decisions should ensure that developments will, amongst other things, function well and add to the overall quality of the area and are sympathetic to local character, including the surrounding built environment and landscape setting.

*Stour and Orwell Estuaries Special Protection Area and Ramsar Site*

25. The Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar Site is internationally important for nature conservation as the area is a wetland and supports wintering water birds and migrating birds. There is evidence to suggest that recreational activity is causing disturbance to the important biodiversity that this accommodates. Consequently, any intensification of these activities could lead to further disturbance.
26. From the evidence before me the appeal site is located within the 13km Zone of Influence of the site. With that in mind, the appellant has committed to make a financial contribution to the Council to ensure that appropriate mitigation is implemented. The Council have confirmed that this is acceptable to them by agreement through a planning condition.
27. I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on the SPA. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposed development.
28. Given that I have found that the site would not represent an appropriate location for housing and would be harmful to the character and appearance of the area, unless there is another material planning consideration which suggests that permission should be granted, it is not necessary for me to consider this matter in any further detail.

## **Other Matters**

29. The appellant submitted the proposal following pre-application advice<sup>6</sup>. The Framework stresses the benefits of early engagement and of good quality pre-application discussion. Whilst I am mindful that this is not binding, in any event, I have considered the individual merits of the proposal afresh and any positive feedback given in respect of any matters does not warrant allowing this appeal.
30. Although the site lies in an area of archaeological potential, I note that the Council and Suffolk County Council's Archaeological Service have not raised concern with regard to the proposal in respect of this matter, subject to planning conditions. Furthermore, I understand that the proposal is located some distance from the nearest designated heritage asset, which would not be affected by the proposal.
31. Given the intervening distances that could be achieved from existing and consented development, there would not be harm caused to the living conditions of the occupants of neighbouring houses, particularly in terms of privacy and daylight.
32. I note that the planning application was supported by a Preliminary Ecological Appraisal and a Phase 1 Geoenvironmental Desk Study, which respectively demonstrate that the proposal would not lead to harm to the ecological interests of the site or its immediate surroundings or be at risk from land contamination. Furthermore, the proposal would make use of an existing, well established vehicular access. I note that the Council and its advisors did not raise any concerns in respect of any of these matters and there is no substantive evidence that would justify me coming to a different conclusion.
33. None of these matters alter or outweigh my conclusions on the main issues.

## **Planning Balance**

34. 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.
35. The development plan for the area includes the CSP, which predates 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.
36. 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.
37. 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

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<sup>6</sup> Planning Reference: DC/19/02754.



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 Policies C2, CS11 and CS18 respond to local circumstances as required by 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 Policies CS2 and CS11 in the light of their approach to exceptional circumstances for development in the countryside, which lessens the magnitude of that conflict.

38. I have been referred to an appeal decision in neighbouring Mid Suffolk<sup>7</sup> in relation to the wording of Policy CS2 of the CSP. I am aware of the circumstances of that case, as I was the appointed Inspector, and that appeal referenced others in Mid Suffolk where development plan policies had been assessed in relation to their consistency with the Framework. In that case, a policy was multifaceted and required consideration against different parts of the Framework. Policy CS2 is not such a policy, as it only refers to the spatial distribution of development.
39. Such an approach would apply to Policy CS15 of the CSP, which is multifaceted. Although it is consistent with the Framework in terms of its aims to achieve well designed places and the accessibility of services and facilities, it fails to acknowledge the balancing exercises required by paragraphs 195 and 196 of the Framework. Whilst the Council did not find harm in respect of heritage, a policy should be assessed as a whole. Accordingly, Policy CS15 is out-of-date for the purposes of the Framework. Hence, I attach only moderate weight to the conflict of the proposal with this policy, which lessens the magnitude of that conflict.
40. The Council has suggested that it can demonstrate in excess of five-years supply of deliverable housing land within Babergh. The appellant has pointed to the potential fragility of the Council's position, particularly in light of the implications of COVID-19 on the economy. I am also mindful that the presence of a five-year supply 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. Clearly should I determine that the Council cannot demonstrate a 5-year housing land supply, paragraph 11 of the Framework would be engaged. Nevertheless, it is engaged as a policy most important for determining the appeal is out-of-date, in this case Policy CS15 of the CSP. This requires that permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (paragraph 11(d)(ii) of the Framework).
41. I note the contribution that would be made to the supply of housing by this site. 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 up to nine dwellings. This would make a meaningful contribution to the overall supply and mix of housing in Babergh. Given the scale of development proposed, I afford this benefit moderate weight.

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<sup>7</sup> Appeal Ref: APP/W3520/W/19/3239632.

42. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period but this would be short term and future occupiers would also contribute to the local economy through expenditure but they would be likely to do so using private means of transport. I therefore afford these benefits limited weight.
43. The proposed development would not comply with development plan policy in respect of the harm to the character and appearance of the area and its location. Whilst one of the development plan policies 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, the adverse impacts of the proposal are matters of significant weight against the grant of planning permission.
44. The adverse impacts identified would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This does not indicate the proposal should be determined other than in accordance with the development plan.

### **Conclusion**

45. 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