
Appeal Decision

Site visit made on 25 August 2020

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th September 2020

Appeal Ref: APP/D3505/W/20/3249004

Holly Oak, Hazel Shrub, Bentley IP9 2DG

- 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 J Osborne against the decision of Babergh District Council.
 - The application Ref DC/19/05429, dated 17 December 2019, was refused by notice dated 11 February 2020.
 - The development proposed is the erection of two detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two detached dwellings at Holly Oak, Hazel Shrub, Bentley IP9 2DG in accordance with the terms of the application, Ref DC/19/05429, dated 17 December 2019, and the plans submitted with it, subject to the following conditions:
 - 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
 - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

Preliminary Matters

2. The application is in outline form with all matters reserved, and I have determined the appeal on this basis.
3. Both parties clarified that the only matter of dispute between them relates to "sustainability in terms of proximity to the limited services and facilities of Bentley." However, I noted from the officers delegated report that the proposal fell within the Zone of Influence for a European designated site, for which mitigation had not been provided and no information had been supplied to the appeal. Both parties were consulted regarding this important outstanding matter and provided comments accordingly. I have taken this matter into account in my decision.

Main Issues

4. The main issues for the appeal are:

- whether or not the site is in an accessible location with regards to national and local policies
- the effect of the development upon the Stour and Orwell Estuaries Special Protection Area (SPA).

Reasons

Whether or not the site is in an accessible location

5. The settlement of Bentley is identified as a hinterland village under local policy CS2 of the adopted Babergh District Local Plan 2011-2031 Core Strategy February 2014 (the Local Plan). Within the village are services including a school, public house, bus stops, church, open space, hairdressers and a few local facilities. Bus routes from Bentley connect into Capel St Mary, a much larger settlement with a greater number of facilities.
6. The appeal site sits on Hazel Shrub, which is a narrow single-track road with no footpaths or street lighting, to the south of Bentley. It is adjacent to a former nursery complex, which has extant permission to redevelop for residential purposes. A public footpath runs from adjacent to the nursery across an agricultural field into Link Lane, providing direct access into Bentley and the services therein.
7. Whilst the proposed two new dwellings would be in an area physically separate from the village of Bentley, they would not be a substantial distance away from the public footpath that connects directly into the settlement and would certainly not be considered isolated. However, to reach the path future occupiers would need to walk within the carriageway of Hazel Shrub, which represents an unsafe route out of the development. Furthermore, the footpath is unlit and unmade, so would not always be attractive for pedestrians and cyclists particularly in inclement weather, leading to a greater reliance on the private car.
8. Therefore, whilst future occupiers of the development may be able to use the path to access the range of facilities and services in the village, it is more likely that there would be a heavy reliance on the private car, with subsequent environmental harm arising from it.
9. I conclude therefore that the appeal site is not in an accessible location for the purposes of national and local planning policy. The proposal would conflict with policies CS1, CS2, CS11 and CS15 that together seek to ensure development is sustainable and accessible.

Effect upon the SPA

10. In 2018 the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage^[1]. This responsibility now falls to me within this appeal.

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

11. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites.
12. The site falls within 13 kilometres of the SPA. It is a site designated at European level for its environmental importance, since they provide habitats for wintering birds, wildfowl and wading birds including pied avocets, brent geese and grey plovers. The estuaries are used for public recreation and there is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have significant effects on the quality features of interest of the SPAs due to the increased recreational use. I have no reason to disagree with the conclusion of the main parties relating to the potential significant effects.
13. Having agreed that the scheme, either alone or in combination with other schemes, would have a significant effect on the quality features of interest of the identified European sites, it is incumbent upon me to undertake an Appropriate Assessment. In this Appropriate Assessment I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow development to proceed in the knowledge that the Conservation Objectives of the two identified sites would be ensured.
14. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the Council's Suffolk Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location.
15. The main parties agree that the mitigation can be delivered via the appellant entering into an agreement pursuant to Section 111 of the Local Government Act 1972. The Council has confirmed that this payment has been supplied during the appeal by the appellant and the Council has listed the specifics of the infrastructure to which the payment would contribute towards, in the technical report underpinning the RAMS.
16. This agreement would therefore serve to mitigate the recreational impacts arising from the proposal. I am therefore able to favourably conclude my Appropriate Assessment.
17. On this basis I am able to conclude that the required mitigation would be properly secured and that the proposals would be unlikely to have a significant effect on the identified SPA.

Other Matters

18. Policy CS1 of the Local Plan duplicates what was in paragraph 14 of the 2012 version of the National Planning Policy Framework (the Framework), so is out-of-date and thereby carries reduced weight. Furthermore, the requirement for exceptional circumstances to be demonstrated for development in the countryside beyond settlements, found in Policies CS2 and CS11 of the Local Plan, is not wholly consistent with the Framework, which only applies to isolated development. My attention is also directed to an appeal decision where, due to its multi-faceted wording, policy CS15 was found to be out-of-date, and I have no reasoned justification before me to find otherwise.

19. In light of policies CS1 and CS15 being out-of-date, despite the Council being able to demonstrate a 5-year housing land supply, paragraph 11 of the Framework is engaged. 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).
20. Notwithstanding the position of the Council regarding housing land supply, the intention of Government policy is to boost the supply of housing. The proposed two new dwellings would add to the housing choice and stock within the locality and, by reason of its close association to Bentley, would modestly increase footfall to local services and facilities thus supporting the rural economy. These are social and economic benefits that support the case for development.
21. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The scale of the proposed development is limited and, combined with the option of using the local public footpath to access services and public transportation, the environmental harm caused through reliance on the private car would be low.
22. Due to policies of the Development Plan being either out-of-date or not wholly consistent with the Framework, the level of conflict with these policies is reduced in weight. On this basis, I consider that the adverse impacts of granting permission, including any conflict with the Development Plan, would not significantly and demonstrably outweigh the benefits. The proposal is therefore acceptable, and the appeal should therefore be allowed.

Conditions

23. I have imposed conditions regarding the submission of reserved matters and the commencement of the development for certainty as to the development hereby approved. Since access is a reserved matter for future detailing and approval, there is no necessity at this stage to condition the provision of details regarding visibility splays.
24. The Council has suggested a condition to remove permitted development rights, but I am not aware of any specific circumstances that would warrant such a restriction being imposed. In this instance such a condition would not be necessary nor reasonable, and as such I will not be imposing this.

Conclusions

25. For the reasons given above, I allow the appeal.

David Wallis

INSPECTOR