



Appeal Decision

Site visit made on 11 August 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/X3540/W/19/3238214

Land at Mill House, Mill Street Middleton IP17 3NG

- 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 Mrs Rita Pateman against the decision of East Suffolk Council
 - The application Ref DC/19/2104/OUT, dated 22 May 2019, was refused by notice dated 18 July 2019.
 - The development proposed is the erection of dwelling and associated works, including provision of a new vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of dwelling and associated works, including provision of a new vehicular access at Land at Mill House, Mill Street Middleton IP17 3NG in accordance with the terms of the application, Ref DC/19/2104/OUT, dated 22 May 2019, subject to the following conditions:
 - 1) Details of the 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.
 - 4) Prior to first occupation the site access shall be provided in accordance with the details shown on plan: TL-4217-18-1B with a properly bound surface for a minimum distance of 5 metres from the edge of the metalled carriageway. Once provided, the access, including visibility splays, shall thereafter be retained.
 - 5) No development shall be carried out until proposals for the mitigation of the impact of the development on protected Suffolk European Sites have been submitted to and approved in writing by the Local Planning Authority, which shall include evidence of completion of the required legal agreement to secure the proposed mitigation. Such proposals must provide for mitigation in accordance with the emerging joint (Draft) Habitats Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy, or for mitigation to at least an equivalent effect.

- 6) The development shall be completed in accordance with the recommendations contained in the Greenleaf Tree Survey, Arboricultural Implication Assessment and Method Statement dated November 2018.

Procedural Matters

2. The application was submitted in outline with only access to be determined at this stage. I have dealt with the appeal on that basis.

Application for costs

3. An application for costs was made by Mrs Rita Pateman against East Suffolk Council. This application is the subject of a separate decision

Main Issues

4. The main issues are:
- Whether the development would comply with local planning policy regarding housing in the countryside;
 - The effect on the character and appearance of the area, and
 - Whether the appeal proposals should benefit from the presumption in favour of sustainable development contained in the Development Plan and the "*National Planning Policy Framework*" (the Framework)

Housing in the countryside

5. There is no dispute that the appeal site is located outside but immediately adjacent to the Middleton Physical Limits Boundary (PLB) as defined by Policy SSP2 of the "*East Suffolk Council - Suffolk Coastal Local Plan (Core Strategy & Development Management Policies 2013*" (the CS),
6. It is therefore in the countryside for planning purposes where in accordance with CS Policy DM3 housing will be primarily directed to and integrated within the settlements for which physical limits boundaries have been defined. There is no suggestion from the appellant that the proposal would accord with any of the exceptions in Policy DM3. Accordingly, the principle of the development in the countryside would be contrary to Policy DM3.
7. However, in view of advice in paragraph 11 d) of the Framework, the matter clearly does not end there. Instead it is incumbent on the decision-maker to consider whether Policy DM3 is consistent with the Framework, to assess what weight should be attached to it. The Council has not undertaken this exercise either in its Officer Report or Appeal Statement. Paragraph 213 explains that due weight should be given to relevant policies according to their degree of consistency with the Framework, the closer the policies in the plan to those in the Framework, the greater the weight that may be given.
8. As is made clear by the supporting text, the aim of Policy DM3 is to strictly control development and to protect the countryside for its own sake. In seeking to protect all countryside, the policy patently goes some way beyond the advice in paragraph 170(b) of the Framework, which, inter alia, seeks recognition of the intrinsic character and beauty of the countryside.
9. Policy D3 is also inconsistent with the cost/benefit approach advocated in the Framework where the merits of the proposal are weighed in the balance. The

balancing of harm against benefit is a defining characteristic of the Framework's overall approach embodied in the presumption in favour of sustainable development. In light of the above, where Policy D3 is used to restrict the principle of housing outside PLB's, as is the case here, it cannot be seen to be consistent with the language of the Framework. The fact that other Inspectors have come to similar views adds weight to my findings above.

10. The key issue in this case is not whether the site is outside a settlement boundary but whether it would satisfy the other relevant requirements of the Framework and thus benefit from the presumption in favour of sustainable development.

Character and appearance

11. The appeal site comprises a broadly rectangular plot of open land on the northern side of Mill Street towards the western edge of Middleton. The site is fairly flat and mainly laid to grass with established landscaping along its boundaries. To the east but separated by a large garden is Mill House. To the south on the opposite side of Mill Street, is a new development comprising approximately five large houses arranged around a small cul-de-sac.
12. Bearing in mind the new and somewhat prominent development immediately opposite the appeal site, the area has a semi-rural character to it. However, I do not accept that the introduction of a dwelling into this loose ribbon of development would lead to a physical extension of the village as there is a large group of buildings at Rose Farm, a short distance to the west.
13. Moreover, given that the dwelling could be set back generously from Mill Street behind established landscaping, it would be a fairly inconspicuous addition to the street scene. One would in effect need to make a conscious effort to view the property unlike those new dwellings opposite which are highly prominent and quite frankly unmissable. In my view, any harm would be at the very lowest end of the scale and not sufficient to bring the development into conflict with the Development Plan.
14. I note that the site is within a locally designated Special Landscape Area. However, the Officer report confirms that the scheme would be visually contained and would not have a material adverse impact on the Special Landscape Area. I see no reason to disagree with that assessment.
15. I therefore conclude that the development would not cause unacceptable harm to the character and appearance of the area. As a consequence, there would be no conflict with CS Policies SP15 and DM21 nor Policy SSP38 of the "*East Suffolk Council - Suffolk Coastal Local Plan (Site Allocations and area Specific Policies 2017*".

Other Matters

16. Visibility splays of 2.4m x 43m are shown on the submitted Illustrative Layout (Plan No. TL-4217-18-1B). In light of the speed and volume of traffic I observed along Mill Street these splays are more than adequate to ensure the safety of drivers egressing the site.
17. The appeal site falls within the 13km zone of influence for the Stour and Orwell Estuaries Special Protection Area/SPA and is approximately 2km from the border of the 'Minsmere-Walberswick SPA/SAC/Ramsar.

18. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC and SPA. The effects arising from the proposal need to be considered in combination with other developments in the area and adopting a precautionary approach.
19. In accordance with the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) all residential proposals within the zone of influence are required to make a contribution towards the measures outlined in the RAMS in order to avoid and mitigate adverse effects from increased recreational disturbance.
20. Although there is no objection from the Appellant to the payment of the sum requested by the Council, I need to be satisfied that such a contribution would meet the necessary tests. Whilst I appreciate that the impact of a single dwelling on the habitat sites is likely to be extremely small, the in-combination effect with other developments could be more significant. I consider that the effect can be adequately mitigated by the proposed contribution towards the RAMS. Whilst the Council's preference is for the contribution to be secured via a planning obligation, no specific reason has been provided why the mitigation could not be secured through a 'Grampian' style planning condition similar to that used by neighbouring planning authorities and as suggested by the Appellant. For that reason, I am satisfied that this matter can be addressed by the suggested planning condition.

Conclusion and Planning Balance

21. Paragraph 2 of the Framework states that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
22. The proposal would conflict with CS Policy DM3. However, for the reasons set out above, I have found that policy to be inconsistent with the provisions of the Framework and it is therefore out-of-date.
23. The effect of this is that the default position identified in paragraph 11(d) of the Framework and CS Policy SP1A is engaged and the planning balance shifts in favour of the grant of consent. Only if the Council is able to demonstrate harm which "*significantly and demonstrably*" outweighs the benefits of the development should consent be refused.
24. In environmental terms I have found that the development would not cause unacceptable harm to the character and appearance of the area given the site's high level of visual containment and close relationship to the existing built form of Middleton. As such there would be no conflict with the aims and objectives of Policy DM3 which is to protect the countryside for its own sake.
25. The site is located on the edge of Middleton identified as a 'Local Service Centre' in the CS. Although Mill Street is substandard in a number of respects, I do not consider it represents a significant impediment to walking or cycling. There are a range of facilities in Middleton including a primary school, shop, and public house all of which are within walking distance of the site. Nonetheless, I concede that future occupiers are still likely to depend on a

private motor car to access higher order services in other larger settlements. However, the Framework makes clear that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. In this case I do not consider that the number and distance of car-borne trips by future occupants would exceed that envisaged in paragraph 103 of the Framework.

26. The development would make a very small contribution towards the Council's housing stock. The purchase of materials and services in connection with the construction of the dwelling, employment during the construction period, an increase in local household expenditure are all modest economic and social benefits that weigh in favour of the scheme.
27. Based on the foregoing, and in the absence of harm, it is clear that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits which would arise from this development.
28. I am thus satisfied that the appeal scheme would constitute sustainable development in accordance with Policy SP1A. Accordingly, and taking all other matters into account, I conclude that the proposal should be allowed.

Conditions

29. The Council has suggested a number of planning conditions which I have considered against the advice in the "*Planning Practice Guidance*" (the PPG). In some instances I have amended the suggested conditions in the interests of brevity and to ensure compliance with the PPG.
30. Those conditions covering time limits and specifying the approved plans are necessary in the interests of proper planning and to provide certainty. A highway condition is necessary to ensure safe access. To secure compliance with the Regulations, I have imposed a condition to ensure adequate mitigation is provided in line with the RAMS. An Arboricultural Report containing various measures, was submitted with the application. There is no suggestion from the Council that the report is unsatisfactory in any way. I have therefore amended the suggested tree conditions to ensure compliance with the report. Finally, there is no credible evidence of contaminated land, this suggested condition therefore fails the necessity test.

D. M. Young

Inspector