
Appeal Decisions

Site visit made on 14 September 2020

Hearing Held on 23 September 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal A Ref: APP/X3540/W/20/3245440 **Wood Farm, Helmingham Road, Otley IP6 9NS**

- 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 David Hook of Wood Farm Developments Ltd against the decision of East Suffolk Council.
 - The application Ref DC/19/3435/OUT, dated 30 August 2019, was refused by notice dated 24 October 2019.
 - The development proposed is a phased development of nine self-build dwellings.
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Appeal B Ref: APP/X3540/W/20/3256782 **Wood Farm, Helmingham Road, Otley IP6 9NS**

- 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 David Hook of Wood Farm Developments Ltd against the decision of East Suffolk Council.
 - The application Ref DC/20/1726/OUT, dated 7 May 2020, was refused by notice dated 7 July 2020.
 - The development proposed is a phased development of nine self-build dwellings.
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Decision

1. Appeals A and B are dismissed.

Preliminary Matters

2. The East Suffolk Coastal Local Plan (the Local Plan) was adopted by the Council on the day of the hearing. This supersedes the Suffolk Coastal District Local Plan – Core Strategy and Development Management Development Plan Document adopted July 2013 and the East Suffolk Council Suffolk Coastal District Local Plan – Site Allocations and Area Specific Policies Development Plan Document January 2017 and the policies that these development plans contained. I, therefore, have had regard to the newly adopted Local Plan and the policies within that document.
3. As set out above there are two appeals at this address. Given that the nature of the proposals are similar, I have dealt with both proposed developments in this single decision letter.
4. The applications were made in outline with approval being sought for access only. Matters relating to layout, appearance, scale and landscaping have been

reserved. I have dealt with the appeals on this basis, treating the proposed site layout plans as illustrative only.

5. Completed Unilateral Undertakings (UU) have been submitted which are intended to ensure that the dwellings would be self-build, mitigation for Great Crested Newts would take place and to provide an offsite footway alongside the public highway.

Application for costs

6. An application for costs was made by East Suffolk Council against Mr David Hook of Wood Farm Developments Ltd. That application is the subject of a separate Decision.

Main Issues

7. The main issues raised by these appeals are: -
 - a) Whether the appeal site is an appropriate location for new residential self-build development having regard to the spatial strategy of the development plan and the Self-build and Custom Housebuilding Act 2015 (as amended) (the 2015 Act);
 - b) Accessibility and highway safety;
 - c) The effect of the proposed developments upon ecology and in particular Great Crested Newts; and
 - d) The effect of the proposed developments upon Suffolk Coast European designated sites.

Reasons

Location

8. The Local Plan identifies Otley as a 'large village' which permits residential development within the defined settlement boundary (Policy SCLP 3.2). The appeal site falls beyond the settlement boundary of Otley and is within a countryside location. Policy SCLP3.3 of the Local Plan sets out that new residential development will not be permitted in the countryside except where specific policies in the Local Plan indicate otherwise.
9. Policy SCLP5.3 of the Local Plan sets out criteria to which new residential development will be limited outside of the defined settlement boundaries. Those criteria of that policy relevant in these cases are b) and g).
10. Criterion b) of Policy SCLP5.3 limits development to within an existing cluster (in accordance with Policy SCLP5.4). Policy SCLP5.4 supports new dwellings within 'clusters' in the countryside subject to criteria. Criterion b) of Policy SCLP5.4 allows for development consisting of infill within a continuous built up frontage in a clearly identifiable gap within an existing cluster or located adjacent to existing development on two sides. Whilst the developments could be considered to be infill within this context, criterion a) of Policy SCLP5.4 limits the number of dwellings to a maximum of five. The proposals being for nine units would not meet this criterion.
11. Criterion g) of Policy SCLP5.3 limits residential development to "other residential development consistent with policy on residential development in

the countryside contained in the National Planning Policy Framework (the Framework)". I accept that the proposals would not be spatially isolated in the context of the existing development along this part of Helmingham Road. Nonetheless, the Framework promotes sustainable development in rural areas indicating that housing should be located where it will enhance or maintain the vitality of rural communities. It also indicates that planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.

12. The recently adopted development plan directs new development to defined settlement boundaries. In doing so this supports sustainable development in rural areas by directing development to villages where development will enhance or maintain the vitality of rural communities. The site's countryside location would, therefore, not be consistent with the objectives of the Framework, and as such would not satisfy criterion g) of Policy SCLP5.3.
13. The nine dwelling schemes have been put forward as self-build properties and Policy SCLP5.9 of the Local Plan deals specifically with meeting the needs for self-build development. However, this policy states that self-build plots "will be supported where in compliance with all other relevant policies of this Local Plan", which I have found would not be the case. Notwithstanding this, the duty to provide suitable development permissions in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area is found in the 2015 Act. The appellant contests that the Council is not meeting its requirement under the 2015 Act.
14. The Council keeps a register of self-build interest as required by the 2015 Act. The 2015 Act sets out a base period and subsequent yearly periods from which the Council has to permit an equivalent number of plots of land to those on the register. The Council produces an annual progress report in the form of a list of planning permissions in which self-build CIL exemptions apply or where the developments were restricted to self-build developments by means of planning condition or legal obligation.
15. On scrutiny it was established at the hearing that a number of those planning permissions listed would not come forward as self-build development for various identified reasons. It appears also from information obtained by the appellant that few CIL exemption self-build developments have been successfully granted CIL exemption over recent years. This casts some doubt as to whether or not the self-build planning permissions recorded by the Council are being or will be realised. Furthermore, the majority of those planning permissions upon the Council's list rely solely on CIL exemption albeit this does not necessarily bind the applicant or successor in title to undertaking a development as a self-build project as this relies on the completion of Form 7 part 2 which may not take place. On this point, I have been directed to an appeal at Droitwich Spa (appeal ref: APP/H1840/W/19/3241879) in which the Inspector concluded that it is insufficient to rely on CIL exemption forms.
16. At the hearing a representative from Custom Build Homes (a leading enabler of custom build housing) advised that the appeal site is on the edge of an area of high demand for serviced plots for self-build homes as the area is considered a favourable place in which to live. Indeed, the register held by the Council reflects this.

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17. The list of CIL exempt planning permissions illustrates that there are a considerable number of planning permissions in place that are suitable for self-build development for which relief from CIL could be obtained from the Council. It, therefore, appears to me that the high desire for self-build projects in this particular area would likely result in a considerable number of those self-build planning permissions recorded by the Council coming forward as self-build developments.
 18. In addition, the Council advises that it has recently adopted a Housing Enabling Strategy, amongst other initiatives, to support the Council meeting its self-build housing requirements. This could assist directing those expressing self-build interest on the register to suitable self-build sites or locations. Whilst the mechanism to secure the permissions as self-build development may be open to scrutiny, the evidence before me does not substantively indicate that the Council is not meeting its requirement under the 2015 Act or that the Council is failing in its duty to permit an appropriate number of suitable planning permissions. I, therefore, attribute little weight to the proposals being self-build schemes to justify departure from recently adopted development plan policy that resists residential development in the countryside.
 19. I have been directed to appeal decisions at Woodville (appeal references APP/G2435/W/18/3214451 & APP/G2435/Q/18/3214498) in which the Inspector considered whether the Council's provision in place would be developed in a manner that accords with the legal definition of self-building as set out in the 2015 Act. In that case the Council had not provided sufficient relevant information which I do not consider to be the case here. I have also been directed to appeals ref: APP/P1615/W/18/3213122 and APP/W0530/W/19/3230103. Whilst both involved self-build housing the character and appearance of development at the edge of settlements was a matter before those Inspectors. Therefore, the circumstances of those cases are not directly comparable to the proposals that is before me.
 20. For the above reasons, I conclude that the appeal site would not be an appropriate location for residential self-build development. The proposals would conflict with Policies SCLP3.3, SCLP5.3, SCLP5.4 and SCLP5.9. The appellant has put forward suggested planning conditions and, or, alternatively UUs to secure the developments as self-build. Given my findings above, neither the conditions nor an UUs would make the developments acceptable in planning terms.
 21. At the hearing the appellant asserted Policy SCLP 12.34 of the Local Plan to be critical to this case. This policy is an overarching policy that sets out the strategy for the rural areas. I consider those Local Plan policies cited in the paragraph above to be more directly related to the proposals before me.

Accessibility and highway safety

22. Clarification was provided at the hearing that it is the appellant's intention to create a footpath along Helmingham Road. This would create a pedestrian footpath of a minimum width of 1.2m between the appeal site and the existing Public Right of Way (PROfW) some distance south of the appeal site on the opposite side of Helmingham Road (as shown on drawing number 212931-540-P4). From there, PROfWs would provide pedestrians access to Chapel Road where there is a footpath that would enable future occupiers to walk into the village where there is a school, services and access to public transport.

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23. A large portion of the PRoFW is through paddock land. This is an attractive walk during clement weather and during the hours of daylight. However, this part of the route is unsurfaced, and I do not consider that it would be a suitable route for the elderly, less mobile and those with young children in pushchairs throughout the year. Furthermore, this is a longer and less direct route to reach service and facilities than that of walking south along Helmingham Road from the appeal site. Taken collectively, these factors are very likely to dissuade future occupiers from choosing to walk this route to access services and facilities.
24. In addition to the above, the grass verge is narrow along Helmingham Road and I saw that the field hedges have grown outward over the verge. At the hearing the appellant's highway engineer sought to provide some reassurance explaining that highway and topographical records have provided accurate information which indicate that a footway of 1.2m width could be created adjacent the existing carriageway without encroaching on private land or the carriageway.
25. I have not been provided with any details of the limits of the highway or that of private land adjacent to it or to whom the field hedges may belong. From what I saw it is extremely unlikely that the engineering works required to create a footway could be undertaken without removal of the hedgerow and given the limited width of parts of the verge this does not assure me that the works would not involve private land. Furthermore, the presence of a ditch forming part of the highway verge area could create engineering difficulties to creating a footway. These matters, therefore, raise uncertainty as to whether or not a footpath of an appropriate width could be created.
26. Helmingham Road is a B classified highway. Despite there being other highways in the area that would lead traffic past Otley rather than through it, Helmingham Road is reasonably well used by both cars and lorries. Interested parties, some of whom are members of a local Speedwatch group, advise that traffic often travels in excess of the 30mph speed limit within the vicinity of the appeal site. Further north on-street parking acts as a traffic calming mechanism. However, the indicative drawings show an intention to provide parking within the appeal site and as such the speed of traffic travelling along Helmingham Road where the footpath is proposed would not change.
27. Consequently, I find that the proposed route would not provide future occupiers with a suitable and safe pedestrian route with which to access services and facilities at Otley village. I acknowledge that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nonetheless, this does not infer that creating residential development at a location that would not host safe pedestrian access to services and facilities is justified. It is suggested that a footpath is better than no footpath and it would bring about improved accessibility to Otley for those existing residents further north on Helmingham Road. Creating a footpath would potentially encourage its usage but if it is inherently unsafe for use, this would put pedestrians using the footpath at a highway safety risk, which I do not consider to be acceptable.
28. The appellant has put forward a suggested planning condition to secure the provision of a footpath. As I have found that it is unlikely that a safe pedestrian footway could be achieved along Helmingham Road I do not

consider this issue could be satisfactorily mitigated by the imposition of a planning condition. Furthermore, the appellant has sought to secure the footpath by means of UUs. However, with uncertainties as to whether or not the footpath would necessitate land in private ownership, I am not persuaded that this would provide an appropriate legal mechanism that could make the developments acceptable in planning terms.

29. For these reasons, I conclude that the proposed developments would not provide its future occupiers with suitable and safe pedestrian access to services and facilities within Otley village. The proposals would, therefore, conflict with Policies SCLP3.5 and SCLP7.1 of the Local Plan and the provisions of the Framework. These policies seek, amongst other matters, development proposals to be designed from the onset to incorporate measures that will encourage people to travel using non-car modes to access home, school, employment, services and facilities and be located where it would be close to and provide safe pedestrian and cycle access to services and facilities.
30. These policies reflect the Framework's objectives for development proposals to ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location and for safe and suitable access to the site to be achieved for all users giving priority first to pedestrian and cycle movements. Facilitating electric vehicles as part of the schemes would not overcome these development plan objectives.

Great Crested Newts

31. Great Crested Newts have been recorded in ponds to the south and south-east of the appeal site and are likely to use the appeal site as terrestrial habitat. Great Crested Newts are legally protected species and UK Priority species under Section 41 of the Natural Environment and Rural Communities (NERC) Act (2006). The Great Crested Newt and Reptile Survey report identifies the need for a mitigation strategy for Great Crested Newts.
32. The appellant proposes to set aside an off-site area of land adjacent and south of the appeal site that is within his ownership and control as terrestrial habitat for Great Crested Newts. Following discussion at the hearing it became clear that the Council's Ecological adviser considered that whilst an area on-site would be an added benefit for Great Crested newts, the land off-site would be acceptable to mitigate developing the appeal site. I consider that this could be secured either by means of the appellant's suggested planning condition or the UUs provided by the appellant.
33. For the above reason, I conclude that the proposed developments would not harm ecology and in particular Great Crested Newts. As such, the proposed developments would not materially conflict with Policy SCLP10.1 of the Local Plan and the provisions of the Framework that seek to minimise impact on biodiversity.

Suffolk Coast European designated site

34. The developments fall within the 13km zone of influence of the European designated site. The proposals would have a likely significant effect upon the designated site adversely affecting its integrity as a result of increased levels of

recreational use arising from the future occupiers of the proposed developments.

35. The Council has advised that it has received a financial contribution that would go toward the Suffolk District Coast Recreational Disturbance Avoidance and Mitigation Strategy. On this basis the Council has withdrawn refusal reason number four that related solely to Appeal A. In view of this and given that I am dismissing these appeals for other reasons, it has not been necessary for me to consider the impact of either of the proposed developments upon this European designated site or to undertake an appropriate assessment to assess the development's effect upon the integrity of the protected habitats.

Other Matters

36. I acknowledge that a number of interested parties have raised other concerns about the proposals but in view of my conclusions on the main issues there is no need for me to address these in the current decision.

Conclusion

37. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that the determination of proposals must be made in accordance with the policies and proposals in the Development Plan, unless material considerations indicate otherwise. The conflict with the development plan and the Framework is a significant and overriding factor. Consequently, the material considerations in these cases, including the limited social contribution to self-build housing supply, do not indicate that the applications should be determined otherwise than in accordance with the development plan.
38. For the reasons given, I conclude that both Appeal A and Appeal B should be dismissed.

Nicola Davies
INSPECTOR

ATTENDANCE

FOR THE APPELLANT:

Mr Steven Bainbridge
Mr Paul Shadarevian QC
Mr Howard Cardus
Mr Daniel Thomas
Mr Simon Neesam
David Hook (appellant)

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Natalie Webb
Mr Ben Woolnough
Mrs Liz Beighton
Mr James Meyer
Mr Dickon Povey

FOR THE COUNTY COUNCIL:

Mr Luke Barber
Mr Ben Chester

INTERESTED PERSONS:

Sandra Grant
Martin Liddell
Martin Hunt
Ben Norton
Mario Wolf
Cllr Tony Cooper

DOCUMENTS SUBMITTED LEADING UP TO, AT, AND FOLLOWING THE HEARING

- Copy of letter confirming date and time of virtual hearing, along with list of recipients;
- Front cover of the East Suffolk Council Suffolk Coastal Local Plan 23 September 2020 and confirmation of adoption on that date;
- Copies of Policies SCLP3.5 and SCLP12.34 of the Suffolk Coastal Local Plan;
- Self-build monitoring data: spreadsheet of CIL exempt planning permissions granted by the Council for base period 2;
- Suggested conditions relating to self-build, great crested newts and footway;
- Copies of legal cases; Braintree District Council v SSCLG 28 March 2018 & Corbett v Cornwall Council 9 April 2020;
- East Suffolk Council decision notice Council reference DC/20/2842/OUT dated 22 September 2020;
- Confirmation of appeal lodged pursuant to East Suffolk Council decision notice reference DC/20/2842/OUT dated 22 September 2020; and
- Two completed Unilateral Undertakings both dated 2 October 2020.