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## Appeal Decision

Site visit carried out on 9 November 2020

**by Mrs J A Vyse DipTP DipPBM MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 November 2020**

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**Appeal Ref: APP/W3520/W/20/3253966**

**Land south of Spring Farm, The Green, Hesselton,  
Bury St Edmunds IP30 9BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Winstanley against the decision of Mid Suffolk District Council.
  - The application No DC/20/01265, dated 24 March 2020, was refused by a notice dated 2 June 2020.
  - The development proposed is described as the construction of a new two-storey dwelling with ecological enhancements and a double garage with covered area adjacent and first floor accommodation over.
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### Decision

1. For the reasons that follow, the appeal is dismissed.

### Background Matters

2. The application is a resubmission following refusal of an earlier application for a dwelling on the site.<sup>1</sup>

### Main Issues

3. The main issues in this case relate to whether this is a suitable site for the development proposed having regard to local and national policies concerned with the location of new development and accessibility to services and facilities; the effect of the development on the character and appearance of the surrounding area; and its effect on a protected species.

### Reasons for the Decision

#### *Locational Suitability*

4. The development plan for the area includes the Mid Suffolk Local Plan (1998) the Mid Suffolk Core Strategy (2008) and the Core Strategy Focussed Review (2012). Together and among other things, policies CS1 and CS2 of the Core Strategy, and policy H7 of the Local Plan, supported by policies FC1 and FC1.1 of the Focussed Review, direct new housing development to a hierarchy of existing settlements. Villages like Hesselton, which are not identified by policy CS1 as a possible location for future development, do not have settlement boundaries and are treated as part of the countryside.
5. The appeal site comprises the south-east corner of a large open field. It does not lie within, or immediately adjacent to any settlement boundary as defined

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<sup>1</sup> Application No DC/19/05349

by the development plan and is separated from the nearest buildings within Hesselton by the remainder of the field within which it sits. For the purposes of planning policy therefore, it lies within the open countryside. Local Plan policy H7 and policy CS2 of the Core Strategy Policy limit housing in the countryside to specific circumstances, none of which apply here, bringing the development into conflict with the development plan. Conflict with Policy CS1 and CS2 also brings conflict with Policies FC1 and FC1.1 of the Focused review which seek to ensure that development proposals reflect a presumption in favour of sustainable development and require, amongst other things, that proposals contribute to meeting the objectives and the policies of the Core Strategy.

6. The appellants refer to the emerging Babergh and Mid Suffolk Joint Plan. However, that is still at an early stage and carries little, if any material weight in this case. Whilst I recognise that the plan may designate Hesselton as a Hinterland Village, including identification of areas of possible housing growth, there is no suggestion that the appeal site is likely to be identified as such.
7. The only facilities in Hesselton referred to are a farm shop/café and a public house and the settlement is not served by public transport. Although it is suggested that bus stops in Beyton are within cycling distance from the appeal site, there is no suggestion of any secure cycle parking provision there that might make that an attractive proposition. There is a rail station at Thurston, but that is sufficiently distant that it would involve a car or cycle journey. Even taking account of the two pubs in nearby Beyton referred to, and a pub and shop in Rougham, future occupiers would, it seems to me, be largely, if not wholly reliant on the private car to access the everyday services and facilities that would be required. That is the least sustainable travel option.
8. Whilst the Framework acknowledges that development in one village may support services in others it also, when read as a whole, seeks to strike a balance ensuring that new development can be made sustainable through limiting the need to travel and offering genuine choice of transport modes even recognising that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I recognise in this regard that Mid Suffolk is a rural District and that public transport is not readily available. I am well aware in this regard, of the Braintree judgement referred to by the appellant,<sup>2</sup> in which the judge in the lower court noted, among other things, that in rural areas where public transport is limited, people may have to travel by car to a village or town to access services and that the general policy in favour of locating development where travel is minimised and use of public transport is maximised, has to be sufficiently flexible to take account of the differences between urban and rural areas growth. I fully recognise that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. In this case however, there is no identified need for the dwelling proposed to be located here. The high car dependency I have identified would conflict with the policy of the National Planning Policy Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.

### *Character and Appearance*

9. The open undeveloped nature of the field, and its vegetated boundaries, are an

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<sup>2</sup> *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610* on appeal from the Administrative Court Planning Court

integral part of the attractive rural surroundings of this countryside village. Although there are buildings to the north/north-east of the site, the combination of distance separation and intervening vegetation means that they are not seen in conjunction with the appeal site.

10. The development proposed would be set apart from and would not relate to that existing building cluster. Notwithstanding that the building has been designed to resemble a traditional Suffolk Barn, the introduction of the substantial dwelling proposed in this location, together with a large garage (comprising a double garage with a pitched roof over extending to accommodate an additional covered parking space) the associated vehicle hardstanding and turning space and the domestic curtilage, would materially erode the distinctive open rural character and appearance of the area. That impact would be exacerbated by the removal of the vegetated roadside boundary. I recognise that it is proposed to plant a new hedgerow, but in order to accommodate the required visibility splay, it would be set back some metres back from the existing roadside hedge line here, a feature that is a well-established part of the character of this very rural area.
11. The proposal is promoted as a self-build dwelling. However, there is no substantive evidence before me in terms of any supply and demand analysis for self-build dwellings in the area. In any event, the Planning Practice Guidance confirms that the duty to grant planning permission for self/build and custom houses relates to plots of land that are 'suitable' for housing.<sup>3</sup> As set out above, I have found that the appeal site is not suitable location for housing development.
12. I am in no doubt that the development would be constructed to a high standard, incorporating sustainable construction measures including an air source heat pump and an electric car charging point. Be that as it may, it is not, in my view, of sufficiently outstanding or innovative design that it benefits from any weight that might be afforded by paragraph 131 of the Framework. In any event, that paragraph includes a requirement that such dwellings fit within the overall form and layout of their surroundings. For the reasons explained, this scheme does not do that.
13. The harm I have identified brings the development into conflict with Local Plan policies GP1, H13, H15, and H16 and policy CS5 of the Core Strategy, which together and among other things seek to conserve and enhance the character and appearance of the area by ensuring that new development is consistent with the scale, pattern and form of existing development. There would be conflict too with paragraph 127 of the Framework, which requires that development should add to the overall quality of an area and be sympathetic to local character.

#### *Protected Species*

14. The Ecology Report submitted with the planning application identifies the potential for a protected species (Hazel Dormouse) to be present within the hedgerows that run along the road frontage and the southern site boundary. As already noted, it is proposed to remove the frontage hedge.

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<sup>3</sup> Paragraph: 023 Reference ID: 57-023-201760728.

15. The presence of a protected species is a material consideration when a development is being considered which would be likely to result in harm to the species or its habitat. It is not clear at this stage, whether the species is present or not, with the Report recommending further surveys to establish the degree of use. Whilst the appellant suggests that this is a matter that could be dealt with by condition, Government advice for local planning authorities on protected species and development advises that conditions requiring surveys should not usually be used, with the Planning Practice Guidance making it clear that an ecological survey will be necessary in advance of a planning application.<sup>4</sup> To do otherwise would mean that all relevant material considerations may not have been addressed in making the decision.
16. I do not know whether the same Ecology advice was before the Council when it determined the previous application and do not know why this was not a reason for refusal then. Nonetheless, my decision has to be based on the evidence that is before me. The presence of a protected species is clearly a material consideration and I am bound to take it into account. That it was not a reason for refusal on the previous scheme does not undermine that.

#### *Other Matters*

17. The appellant refers to a 2019 planning permission granted by the Council for the erection of two dwellings on Hubbard Lane, a short distance to the north east of the appeal site. In that case however, the site was considered to lie within the settlement pattern and character of the existing village, adjacent to a significant number of existing residential developments to the south, west and north-east. On that basis, it was concluded that the development would not intrude into open countryside and that the dwellings would not be isolated. That is a quite different physical context from that relating to the appeal scheme and does not set a precedent for the development currently proposed.
18. The report sets out that some travel by private vehicle is likely in rural areas and that services in nearby settlements were not so distant that long car journeys would be required. In coming to an overall view on the matter though, whilst there is no suggestion that services and facilities were readily accessible other than by private car, the officer found that due to the significant number of dwellings in Hessett, two additional dwellings would not add significantly to the journeys that already occur from that location. The appeal site is not located within, or even in close proximity to existing buildings within the settlement and the same consideration does not apply.

#### **Overall Conclusion and Planning Balance**

19. The starting point for any planning decision is the development plan. For the reasons explained, I have found that there would be conflict with the relevant policies, bringing the scheme into conflict with the development plan as a whole. In this case, the Council can demonstrate a five year supply of housing land. Whilst it may have a long history of undersupply (as alleged by the appellant) that will be accounted for in the current supply position. However, as readily acknowledged by the Council, some of the policies most important for determination of this appeal, namely policies CS1, CS2 and H7, are inconsistent with the Framework. They set out a blanket approach that resists development in the countryside, which is more restrictive than the approach

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<sup>4</sup> Paragraphs: 016 Reference ID: 8-016-20190721 and 018 Reference ID: 8-018-20190721

adopted by the Framework which does not seek to protect the countryside for its own sake, requiring instead that a balancing exercise be carried out. Those policies are therefore out of date which engages the so-called 'tilted balance' set out at paragraph 11d) of the Framework. However, that a policy is out of date does not mean, necessarily, that it has no currency. Inasmuch as those policies seek to manage additional housing in rural areas in order to secure an overall sustainable pattern of development, they still have a resonance with the policies of the Framework and are a material consideration.

20. The development would contribute a single family home to the local housing supply, although that is at a time when the Council can currently demonstrate a five year supply. I recognise that there are likely to be some social benefits through the contribution of future occupiers to the local community in Hessett and other nearby settlements, plus some temporary economic benefits during the construction process. However, given the scale of the development proposed, the weight to be afforded those benefits is limited.
21. The scheme includes some 35m of compensatory hedgerow planting behind the site frontage to offset the loss of the roadside hedgerow required to facilitate the necessary visibility splays. Although provided as compensation, there would be some benefit to biodiversity through the use of native species and hedgerow management. The plans also show planting around the other three boundaries of the appeal site. Whilst provided primarily as screening for the development proposed, they would also help improve biodiversity. IN addition, the Ecology Report refers to the installation of bat/bird boxes and insect houses, the use of pollen rich climbers within the hedgerows and the leaving of a wildflower margin adjacent to the western and part of the northern site boundaries, which could be secured by conditions. At present, the site comprises predominantly of periodically sheep grazed meadow with an unmanaged roadside species-rich hedgerow and ditch. On that basis, the enhancement measures proposed would provide a biodiversity net gain although, given the scale of the site, that is a consideration that attracts only modest weight. The weight is further tempered by the potential disruption to a protected species.
22. Although the plans also show proposed planting of 110 metres new species rich hedgerow and trees along part of the boundary of the larger field, that land lies outwith the appeal site and is not shown as land over which the appellant has control. As such that cannot be secured by condition and no other means is before me to secure that planting. I cannot, therefore, take that into account as a benefit of the scheme.
23. In the overall planning balance, the harm that I have identified, in particular the harm to character and appearance of this rural area, is such that it significantly and demonstrably outweighs the benefits when assessed against the Framework taken as a whole. The outcome would be the same even if the additional planting outwith the site had been secured, and if it were shown that there was no harm to a protected species. The proposal does not therefore benefit from the presumption in favour of sustainable development provided by the Framework. On that basis I conclude, on balance, that the appeal should not succeed.

*Jennifer A Vyse*  
INSPECTOR