
Appeal Decision

Site visit made on 29 September 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2020

Appeal Ref: APP/X3540/W/20/3251334

Plot, 32 Somerleyton Road, Lowestoft, Suffolk NR32 4RD

- 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 C Nicholls against the decision of East Suffolk Council.
 - The application Ref DC/20/0604/FUL, dated 12 February 2020, was refused by notice dated 8 April 2020.
 - The development proposed is described as 'construction of house, fences, materials, parking'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) whether the proposal would provide acceptable living conditions for future occupiers with regard to privacy; and (ii) the effects of the proposal on European sites.

Reasons

Living Conditions

3. The development would be served by a private garden area located to the side and rear of the dwelling. However, a significant part of this garden, including the patio area adjacent to the rear elevation, would be heavily overlooked by first floor windows in the side elevation of No 30 Somerleyton Road (No 30). This relationship would undermine the privacy of this space. Whilst I note that this land is currently used as a garden to No 32, it forms part of a larger garden area serving that property. I do not consider that the current arrangements are directly comparable to those proposed in terms of impact on privacy.
4. Under the existing arrangements for No 32, although overlooking by No 30 is present, there are areas of that garden which provide private space away from the direct view of No 30. The appeal proposal would result in the subdivision of the existing garden of No 32. The areas of garden which would remain capable of providing acceptable levels of privacy for their users, would be situated toward the rear of the original plot. These areas would be associated with No 32. The proposed dwelling would have its external space in close proximity to No 30 and would be overlooked. This would not be an acceptable arrangement in my view.

5. Notwithstanding that overlooking from the ground floor flank windows of No 30 could be mitigated by the erection of a 2 metre high boundary fence, overlooking from the first floor windows would persist. Even if one of those windows serves a bathroom, their generous size and proximity to the proposed garden and the rear of the proposed dwelling, lead me to conclude that the future occupiers would not be provided with acceptable levels of privacy.
6. Consequently, the proposal would be contrary to Policy WLP8.29 of the East Suffolk Council Waveney Local Plan 2019 (LP) which requires development to provide a good standard of amenity for future occupiers of proposed development.

European Sites

7. The appeal site lies within the zone of influence of the Benacre to Easton Bavents Special Protection Area (SPA). In these circumstances the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) and LP Policy WLP8.34 seek to secure financial contributions from proposed developments as a form of mitigation for recreational impacts upon European sites. Failure to make the required payment, or to provide information to demonstrate how the proposed development would not result in any significant harmful effects on the integrity of the special interest features of the European site, formed the Council's second reason for refusal.
8. Following the refusal of the planning application the appellant provided an agreement pursuant to Section 111 of the Local Government Act 1972 securing the requisite financial contributions. Evidence of this payment being made to the Council has been submitted as part of this appeal. The Council has not indicated whether or not it considers this matter to be addressed. However, since the appeal fails on other grounds, this is not a matter which needs to be considered further here. Should I have found no harm with regard to the other main issue, it would have been necessary for me to give further consideration to the impact upon the protected site in accordance with the Habitats Regulations.

Other Matters

9. The appellant suggests that the Council's five year supply of deliverable housing sites is in doubt but provides no substantive evidence in respect of this matter. I therefore afford this suggestion no weight in my determination of this appeal.
10. The proposal would provide an additional dwelling in a suitable location for development where there is good access to services and facilities, thereby boosting the supply of housing. The proposed development could be built out quickly. The development would also seek to make an efficient use of land. The limited social and economic benefits to the area resulting from the construction of one dwelling would be very modest.
11. The proposal would incorporate 'green' technologies and provide level access at ground floor. These are benefits to which I attribute modest weight. Compliance with current building regulations is a requirement for any development and does not amount to a benefit of the proposal. Other issues where no material harm has been identified would be neutral in the planning balance.

12. Conversely, I have found that the proposal would not provide acceptable living conditions for future occupiers. This harm carries significant weight against the appeal. I consider that the benefits of the proposal are not sufficient to outweigh the harm that I have identified and do not justify a decision being made other than in accordance with the development plan.

Conclusion

13. For the reasons given above the appeal is dismissed.

S Tudhope

Inspector