



Appeal Decision

Site visit made on 20 October 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 09 December 2020

Appeal Ref: APP/F2605/W/20/3246826

Development site, land off Elm Close, Yaxham, NR19 1RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of 3PL/2014/0820/O.
 - The appeal is made by Flagship Housing Development Limited against the decision of Breckland District Council.
 - The application Ref 3PL/2018/0021/D, dated 9 January 2018, sought approval of details pursuant to conditions No 3 of planning permission Ref 3PL/2014/0820/O, granted on 11 January 2016.
 - The application was refused by notice dated 5 September 2019.
 - The development proposed is residential development.
 - The details for which approval is sought are appearance, landscaping, layout and scale.
-

Decision

1. The appeal is allowed, and approval granted under the provisions of section 78 of the Town and Country Planning Act 1990 for the appearance, landscaping, layout and scale of 42 dwellings which include affordable housing and public open space on development site land, off Elm Close, Yaxham NR19 1RW in accordance with the terms of the application Ref 3PL/2018/0021/D, dated 9 January 2018, subject to conditions attached in appendix 1.

Procedural Matters

2. This is an appeal against the decision of Breckland District Council to refuse planning permission for the approval of reserved matters relating to the appearance, landscaping, layout and scale of a development of 42 houses at Elm Close, Yaxham.
3. The circumstances of this application are not straight forward and require some explanation prior to any examination of the merits of the case. These matters relate to the consistency between the outline planning permission and the reserved matters application, the approval of the drainage details, the reserved matter relating to access and the policies of the development plan which are relevant at the time of this decision.
4. In terms of the number of dwellings approved at the outline stage it is clear that the appellant, in the description of development on the application form for outline planning permission, described the development as, '*Development of land with access off Elm Close, Yaxham for up to 45 dwellings*'. The Council in considering this application at the Planning Committee described the proposal as '*residential development*'. This description of development is how

the development is described in the notice of decision granting outline planning permission 3PL/2014/0820/O.

5. From the Planning Committee report on application 3PL/2014/0820/O the Council regarded the plans submitted with this outline application as indicative, illustrating how the site could be developed. In other parts of the report it is apparent that there were concerns over the housing numbers proposed for the site. Despite this it is clear from the notice of decision granting outline planning permission 3PL/2014/0820/O that the Council granted permission for residential development without any reference to the number of dwellings approved. Moreover, whilst the outline permission contains 21 conditions, there is no condition which limits the number of houses to be constructed on the site.
6. I acknowledge that after condition 21 there are a series of notes attached to the permission. Note 28 states that '*This planning permission grants permission for residential development only, and not for 30 dwellings*'. There is no further explanation as to how this note should be construed, whether it is a maximum or minimum number. In any event it is clearly not one of the conditions attached to the outline planning permission 3PL/2014/0820/O.
7. Planning permission for the residential use of the appeal site has already been granted by virtue of the decision on planning application 3PL/2014/0820/O. In this appeal I can only consider the acceptability of the reserved matters that are before me.
8. The reserved matters application is for 42 dwellings. In the original outline planning permission, the appellant applied '*for up to 45 residential dwellings*', and the Council issued an outline planning permission for '*residential development*'. Therefore, as there is no reference to the number of dwellings approved by the outline planning permission 3PL/2014/0820/O, I regard the reserved matters application 3PL/2018/0021/D as consistent with the outline planning permission. The application is for residential development and below 45 dwellings specified on the application form submitted for outline planning permission.
9. Consequently, there is no scope for me to reconsider matters that were dealt or should have been dealt with at the outline stage, that includes the number of dwellings, unless the number of dwellings causes any of the reserved matters before me to be unacceptable.
10. I will therefore consider the acceptability or otherwise of the reserved matters which have been applied for by the appellant. These are appearance, landscaping, layout and scale of the development which were specified on the application form for the approval of reserved matters.
11. The issue of drainage has been referred to in the statement of case provided by the Council. I also note that drainage is the subject of condition 16 of 3PL/2014/0820/O which requires the submission of a surface water drainage scheme to be part of any reserved matters application. I have also been supplied with a completed planning obligation under Section 106 of the Town and Country Planning Act 1990, signed by the parties. I have had regard to this inasmuch as it complies with the tests for planning obligations and without it there would be material planning harm should the appeal be allowed, and planning approval granted.

12. With regard to access, the outline planning application 3PL/2014/0820/O included the approval for the access. However, in granting the outline application the Council included reference in condition No 3 to access as being one of the reserved matters for which approval needed to be sought. The applicant in seeking approval for the reserved matters has applied for approval of appearance, landscaping, layout and scale, but not access. I note these circumstances and the general agreement between the parties that access is not an area for disagreement between them. However, as I stated earlier, I can only deal with the matters before me and that does not include the consideration of the suitability of the access to the site. I shall therefore determine this appeal on the basis of the matters applied for by the appellant and considered by the Council.
13. Since the Council made its decision on this application it has adopted the Breckland Local Plan (BLP). In this appeal I am required to make my decision based on the development plan in place at the time of my decision. I note that the appellant and the Council have referred to the policies contained in the BLP in their statements of case. I will therefore use the policies of the BLP along with any other relevant development plan policies in order to decide this appeal.

Main Issues

14. The main issues in the consideration of this appeal are:

- whether the layout and appearance of the development is acceptable having regard to its effect on the character and appearance of the area; and,
- the effect of the layout on the living conditions of the potential occupiers of the proposed dwellings, with particular reference to the occupiers of plots 1 and 2 and the usability of the proposed public open space.

Reasons

Character and Appearance

15. The site lies on the southern edge of Yaxham. It is proposed that it is accessed through the existing development on its northern edge, known as Elm Close. Elm Close is a mid-20th century development of bungalows grouped around two short culs de sac. The bungalows themselves stand in plots of generous size with mature vegetation.
16. The appeal development would have the effect of extending Elm Close into what is currently a field of rough grass with three culs de sac. It would be developed at a higher density than the existing Elm Close development. However, density in itself is not a reserved matter and the principle of developing the land for housing has been established through the outline planning permission with no condition controlling the number of units.
17. In terms of its layout and appearance the proposed development is predominantly of two storey housing and has housing much closer to the roads throughout the development than Elm Close. However, whilst the appeal proposal does not reflect the type of development in Elm Close, it is common in villages to have development close to or on the back of the pavements, where the development itself, rather than any boundary feature, defines the street.

18. Furthermore, to have the first two dwellings in the development closer to the street than those further in, helps to define the transition from Elm Close to the new development. These dwellings are set off the boundary with the neighbouring dwellings in Elm Close. This would assist in differentiating the new development from the existing. Moreover, the inter-visibility between the appeal proposal and Elm Close is limited so the effect of the differences between the appeal site and Elm Close would not be readily apparent.
19. The appeal proposal would also border the properties in Gagman's Lane, a dead-end road to the east of the appeal site. As the property most affected by the development on Gagman's Lane is bordered by the proposed public open space on the appeal site there would be no discernible effect of the proposed appearance or layout of the development on the character and appearance of Gagman's Lane.
20. Whilst the layout of the appeal site would limit the opportunity for planting between the dwellings and the street there would still be opportunities to plant trees, shrubs and hedgerows in some of the front gardens of the dwellings and in the public open spaces. This is shown on the landscaping plans submitted with the appeal proposal. Therefore, the layout would allow for adequate planting and greening of the development along its principal roads and around the proposed public open space.
21. In terms of the development's relationship to the open countryside to the south of the site, 4 of the proposed dwellings face out over the open countryside, 4 are side on to the open countryside and 4 have their back gardens facing on to the open countryside. There is no road or public vantage point to the south of the appeal site and the mixture of fronts, backs and sides of the houses would not be that different to the way that the existing Elm Close addresses the countryside at the present time. I therefore consider that the relationship of the southern edge of the development to the open countryside to the south is acceptable.
22. The BLP at Policies GEN 02 and COM 01 seeks, amongst other things, to promote development that is of a high quality of design, sensitive to local character and integrates with a high degree of compatibility with the surrounding area. The proposed layout, whilst being of greater density than the neighbouring development, reflects the layout of Elm Close through the use of culs de sac and turning heads. The separation of the appeal proposal from Elm Close and the dwellings in Gagman's Lane further assist this integration with the surrounding area through the use of landscaping. I also consider that the proposed development does not harm the countryside setting as set out above as there are no readily available public vantage points from which the development can be viewed to its south. As a consequence, I find no conflict between the appeal proposal and the policies of the BLP.
23. The Yaxham Neighbourhood Plan (YNP) is part of the development plan for the area. Policies HOU 03 and HOU 02 relate to housing density and the scale of development. In this respect Policies HOU 02 and 03 of the YNP, whilst the appeal proposal appears to be in conflict with them, are more relevant to the principles of development that are established at the outline application stage. At that stage it is clear that there was no condition imposed to control housing numbers on the site and therefore density. The outline planning permission which has been granted does not specifically control the number of

dwelling to be constructed on a site. The number of dwellings are controlled through the acceptability or otherwise of the appeal proposal, in terms of the reserved matters. In the case of this appeal the layout and appearance. Therefore, if the layout and appearance are satisfactory then the numbers on the site and the density are satisfactory.

24. Moreover, scale in the in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) is defined as meaning height, width and length of each building proposed within the development in relation to its surroundings. Therefore, the density of the proposed development or the numbers proposed are not part of the specific considerations at this appeal.
25. The definition of layout within the DMPO states that layout means the way buildings, routes and open spaces within the development are provided, situated or orientated in relation to each other and to buildings and spaces outside the development.
26. Therefore, whilst number and density are not specifically controlled through layout regard can be had to how buildings and spaces outside the development relate to it. I have had regard to how the appeal proposal relates to the development in Elm Close and Gagman's Lane above and for the reasons given consider that the layout is acceptable in relation to the buildings and spaces outside the development.
27. Furthermore, at paragraph 123 the Framework advises that it is '*especially important*' that planning decisions avoid homes being built at low densities in areas where there is an existing or anticipated shortfall of land to meet housing need. This indicates to me that it is still important to ensure that homes are not built at a low density in all areas, taking account of the factors set out in paragraph 122, in order to make effective use of land.
28. I have found that in terms of its effect on the character and appearance of the locality, that the layout and appearance of the proposal is acceptable for the reasons given above.
29. On balance therefore, and notwithstanding the conflict which I have identified with the YNP, I find the appeal proposal is acceptable in terms of the effect of its scale and layout on the character and appearance of the locality, having regard to the reserved matters that are before me. It is therefore not in conflict with Policies GEN 02 or COM 01 of the BLP.

Living conditions

30. There is no dispute between the parties that the quantum of land provided for public open space within the development complies with the requirements of the BLP. The main issue relates to the usability of the public open space as it is split between two areas, one in the west and another in the east.
31. I acknowledge that a larger area of open space, which could be created by combining the two areas, might mean that people using the open space would be further from the road. However, it is my view given where the two areas of open space are located, almost at the end of the culs de sac, and the anticipated volume and speed of the traffic at that point, that the location and size of these areas would not result in them being any less usable than a larger, single area of public open space. Consequently, two smaller areas of

open space would not unacceptably harm the living conditions of the potential occupiers of the development.

32. The Council has referred to the proximity of the parking at the eastern end of the development to the dwellings on plot 1 and 2 and how this might affect the living conditions of the potential occupiers. It is clear that plots 1 and 2 would have parking to their fronts. However, this parking would be separated from their front windows by a small front garden and it would be their cars which would potentially occupy the spaces nearest to their houses. It is also not uncommon to have cars parked in the street outside houses, even where those houses do not have front gardens. On balance therefore, I do not consider the parking arrangements outside the dwellings on plots 1 and 2 to harm the living conditions of the potential future occupiers of these dwellings.
33. The Policies GEN 02 and COM01 of the BLP deal with design matters and seek to promote high quality design throughout the District. Policy COM 01 seeks to ensure that residential amenity of current and future residents is protected. I find no conflict between the aims of these policies and the layout of the appeal proposal, as set out above.

Other matters

34. The Council has referred to drainage issues in its statement of case. I also note that surface water drainage has been the subject of a completed planning agreement under s106 of the Town and Country Planning Act 1990 which has been submitted as part of the appeal documentation.
35. I am satisfied that without the s106 agreement submitted with the appeal there would be material planning harm caused by the development should the appeal be allowed, and planning approval be granted. I am also satisfied that the obligation meets the required tests for planning obligations, in that it is necessary to make the development acceptable in planning terms, directly relates to the development and is fairly and reasonably related to the development in scale and kind.
36. My attention has been drawn to the proximity of the appeal site to the boundary of Yaxham Conservation Area and a Grade II listed building referred to as Boronia Cottage. It appears to be common ground with the main parties that there is no harm to either the setting of the Conservation Area or the setting of the listed building caused by the proposed development.
37. I have assessed the effect of the proposal on the setting of the Conservation Area. I find that due to the very limited visual relationship between the site and the Conservation Area, at its north west corner, there is no adverse impact on the setting of the Conservation Area. Moreover, the setting of the Grade II listed building would be preserved due to the distance of the listed building from the appeal site and the presence of intervening buildings.
38. Reference has also been made to the existence of a 5-year supply of deliverable housing sites within the District and therefore development is not required at the proposed density in order to comply with the National Planning Policy Framework (the Framework). The Framework at section 11 '*Making effective use of land*' requires decision makers to support development that makes efficient use of land. It highlights that this should take into account the desirability of maintaining the areas prevailing character.

39. I have set out above that the development makes efficient use of land and that it does not harm the areas prevailing character. In any case the Framework sets out that meeting the objectively assessed housing need, which helps establish the housing requirement for the District, should be regarded as a minimum. Therefore, the existence of a five-year housing land supply should not be regarded as an overriding impediment to the development.
40. I note that reference has also been made in the representations to the appeal to the village's lack of facilities and poor accessibility to public transport. These are matters which relate to the principle of the development and would have been considered at the outline planning application stage.
41. Reference has also been made to the volume of traffic likely to use the access point from Elm Close into the development. Whilst access is a reserved matter it is not before me as I explained at the beginning of this decision. However, neither of the main parties have expressed concern about the access point.

Conditions and Conclusion

42. The appeal proposal relates to reserved matters approval for appearance, landscaping, layout and scale. The Planning Practice Guidance (PPG) is clear that the only conditions which can be imposed when approval for reserved matters is granted are those which directly relate to the reserved matters. In this case in relation to appearance, landscaping, layout, and scale.
43. I have considered the suggested conditions in the light of this guidance and that of the Framework. I have also had regard to the conditions which were attached to the outline planning permission.
44. I note that the appellant has suggested that 'corrected drawings' be referenced in the conditions to take account of the Nationally Described Space Standards (NDSS). However, I do not consider that this is necessary as compliance with the NDSS has not been raised by the parties as a main issue. Furthermore, it is important that the appeal decision is based on the plans upon which the Council made its decision.
45. I note landscaping was considered by the Council in the report to the Planning Committee and this matter has not been in dispute as part of this appeal. However, the Committee report indicates that the landscaping scheme considered by the Council was not based on the most up to date plans. I therefore consider a condition relating to landscaping is necessary to ensure that it is based on the most up to date plans and therefore results in a well landscaped site.
46. A condition referring to the plans considered by the Council is necessary in the interests of clarity. I note that the appellant has sought to amend condition 2 suggested by the Council which refers to the outline planning application and to an application to vary that permission. In the interests of clarity, I consider it is important that both permissions are referenced.
47. Conditions relating to the appearance of the development suggested by the Council to control external lighting, the type and colour of the materials to be used on the external walls and roofs of the buildings are necessary in order to ensure the appearance of the development is acceptable to an edge of countryside location.

48. Bearing in mind the edge of village location of the site a tree protection condition is necessary to ensure that the development blends quickly into its location.
49. The Council have suggested a condition relating to securing net gain for biodiversity. This matter does not relate to any of the reserved matters specified in the application. Therefore, it is not appropriate to impose such a condition at this stage.
50. For the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

Peter Mark Sturgess

INSPECTOR

Appendix 1

Conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed below.
- Site location plan, ref: 2000 Rev P2, 29-07-18
 - Accommodation scheduled plan, ref: 0300 Rev P15, 01-07-19
 - Affordable, plans and elevations (Plots 5 and 6) ref; 0010 Rev P3, 01-05-19
 - Affordable, plans and elevations (Plots 1,2,7,8,9,10,36,37,38,39), ref:0020 Rev P3, 01-05-19
 - Plans and elevations (Plots 3,4,33 and 34), ref:0040 Rev P3, 01-05-19
 - Plans and elevations (Plots 32 and 42), ref:0060 Rev P3, 01-05-19
 - Plans and elevations (Plots 25,26 and 31), ref: 0080 Rev P3, 01-05-19
 - Plans and elevations (Plots 27 and 30), ref:0090 Rev P3, 01-05-19
 - Plans and elevations (Plots 15,16,40 and 41), ref:0100 Rev P3, 01-05-19
 - Plans and elevations (Plots 13 and 14), ref 0120 Rev P3, 01-05-19
 - Plans and elevations (Plots 18,19 and 20), ref 0130 rev P3, 01-05-19
 - Plans and elevations (Plots 12,22,23,28,29 and 35), ref:0140 Rev P3, 01-05-19
 - Plans and elevations (Plots 17 and 24), ref 0150 Rev P3, 01-05-19
 - Plans and elevations (Plots 11 and 21), ref 0160 Rev P3, 01-05-19
 - Arboricultural Impact Assessment, Tree Protection Plan, Method Statement, December 2017 by C J Yardley
 - Ecological Survey, Phase 1 and Phase 2 prepared by Norfolk Wildlife Service, reference: 2017/014.4, 21-08-19

- Foul and Surface Water Drainage Strategy, ref:C-100 Rev P2, 22-05-19
 - Flood Risk Assessment/Surface Water Drainage Strategy Addendum, 23-05-19
- 2) This approval is granted following the grant of Outlined Planning Permission reference 3PL/2014/0820/O dated 11 January 2016 and 3PL/2018/0024/VAR dated 28 November 2018. The timescales for implementation of the development are set out at condition 1 of the earlier Outline Planning Permission.
 - 3) No external lighting shall be installed without the prior written approval from the Local Planning Authority. Only such approved lighting shall be installed. Such lighting shall be kept to a minimum for the purposes of security and site safety, and shall prevent the illumination of mature trees and boundary hedges, and shall be: 1) fully shielded (enclosed in full cut-off flat glass fittings), 2) directed downwards (mounted horizontally to the ground and not tilted upwards), 3) be sensor or timer operated, 4) white light low energy lamps (LED, metal halide or fluorescent) and not orange or pink sodium sources.
 - 4) No development above the laying of foundations shall take place until the type and colour of the materials to be used in the external walls of the proposed buildings have been submitted to and agreed in writing by the Local Planning Authority. Only materials agreed by the Local Planning Authority shall be used in the construction of the proposed buildings.
 - 5) Prior to the occupation of any of the dwellings hereby permitted a scheme of landscaping which shall take account of any existing trees or hedges on the site, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out during the planting season November/March immediately following the commencement of the development or within such longer period as may be first agreed in writing with the Local Planning Authority. The details shall take account of the Council's leaflet 'Tree pack' (Landscaping advice for applicants). Any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, or are removed or become seriously damaged or diseased shall be replaced during the next planting season with others of the same size and species unless the Local Planning Authority first gives written consent to any variation.
 - 6) Tree Protection Condition Operations on site shall take place in complete accordance with the approved Arboricultural Impact Assessment (AIA), Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) supplied by C J Yardley dated December 2017. No other operations shall commence on site in connection with the development until the tree protection works and any other pre-emptive tree works required by the approved AIA or AMS have been carried out and all tree protection barriers are in place as indicated on the TPP. The protective fencing shall be retained in a good and effective condition for the duration of the construction period and shall not be moved or removed, temporarily or otherwise, until all site works have been completed and all equipment, machinery and surplus materials removed from the site, unless prior written approval of the Local Planning Authority has been sought and obtained.

End