



## Appeal Decision

Site Visit made on 19 January 2021

**by Paul Thompson DipTRP MAUD MRTPI**

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

**Decision date: 8<sup>th</sup> February 2021**

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**Appeal Ref: APP/F2605/W/20/3259733**

**Land of the Street and Herne Lane, The Street and Herne Lane, Beeston, PE32 2NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mrs Helen Palmer-wright against Breckland Council.
  - The application Ref 3pl/2020/0489/f, is dated 15 May 2020.
  - The development proposed is No.2 two bedroom semi-detached properties, No. 3, four bedroom detached bungalow two of which will be made available as custom build. Associated new access way and ecological enhancements.
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### Decision

1. The appeal is dismissed and planning permission for No.2 two bedroom semi-detached properties, No. 3, four bedroom detached bungalow two of which will be made available as custom build. Associated new access way and ecological enhancements is refused.

### Procedural Matter

2. The appeal is against the Council's failure to determine an application for planning permission within the statutory timescale. I have had regard to the Council's Statement of Case in so far that it provides clarity in terms of the reasons why the Council would have refused planning permission had it been empowered to do so. This is not a formal determination of the Council, as the jurisdiction to determine the application transferred from the Council upon valid receipt of the appeal, but I have taken these reasons into account in determining the Main Issues.

### Main Issues

3. The main issues are the effect of the proposed development on the ecology and biodiversity of the site and its surroundings; and whether the proposal is consistent with development plan policy in respect of housing in rural areas.

### Reasons

#### *Ecology and Biodiversity*

4. The appeal site, and the appellants' wider landholding, comprise a large parcel of land, enclosed by mature hedge planting. There is a pond towards the northern boundary, in close proximity of the roadside hedge and ditch, which also includes a wider area toward the northeast corner of the site. While my presence at the site during my short visit would not provide any certainty of the frequency of water being contained within the ditch, it was present at this

time and I note that the Council identified the presence of an overgrown pond in the northeast corner. Even if the ditch holds water for some of the year, it could still form habitat for protected species, including Great Crested Newts, which are known to be present in the pond to the south.

5. The proposed access would be taken through the location of the 'overgrown pond' and the driveway would follow the roadside hedge along The Street and Herne Lane. Apart from the small section that would be removed to create the access, the hedge is shown to be retained, with a linear orchard planted behind it. The pond between plots 1-3 and 4-5 would be retained and a newt receptor area and orchard created behind it, to its south. These existing and proposed features are shown to be situated on land outside of the site and would be linked together by a tunnel under the proposed driveway. There would also be extensive areas of hedge planting to plot boundaries.
6. I appreciate that the ditch was not included on previous applications at the site and may have been accepted by the Council. Further information may also have been submitted with regard to newts, which the Council has not commented on. Nevertheless, the evidence before me does not satisfactorily demonstrate that the roadside ditch, including the 'overgrown pond', would not be suitable habitat for Great Crested Newts or other protected species, particularly given the close proximity to the pond to the south. Given the close proximity of the driveway with this feature and loss of it in part to provide the access, the proposed development could have an unacceptably harmful effect upon this as habitat.
7. I have also not been provided with a legal mechanism, such as a planning obligation, to secure the retention of the proposed newt receptor area, orchards and the existing roadside hedges and ditches; and to ensure that the mitigation measures can be maintained in the long term. For these reasons and given that the land is proposed outside of the application site it would not be appropriate to rely on a planning condition to control such matters.
8. Having regard to all of the above and the particular circumstances of this case, I must conclude that there is insufficient evidence before me that the proposed development would not have a harmful effect on the ecology and biodiversity of the site and its surroundings. Hence, the proposal would not accord with the biodiversity protection and enhancement and hedgerow protection aims of policies ENV02 and ENV06 of the Council's Local Plan and the National Planning Policy Framework (the Framework). The proposals would therefore also offend the requirements of the Conservation of Habitats and Species Regulations 2017.

### *Rural housing*

9. The approach to new housing development needs in Breckland is contained in the Council's settlement hierarchy<sup>1</sup>, which directs development to Key Settlements, Market Towns, Local Service Centres and Villages with Boundaries. Areas outside the villages are covered by policy HOU04 of the Council's Local Plan, which allows a 5% increase in the number of dwellings in these villages, for sites adjacent to the settlement boundaries.

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<sup>1</sup> This is contained in policy GEN03 of the Council's Local Plan

10. The appeal site is adjacent to the settlement boundary of Beeston, with houses situated across The Street and immediately to the east.
11. I have been referred to a number of sites with planning permission both inside and outside of the settlement. Based on the evidence before me, these were all approved prior to the adoption of the Local Plan, with the majority permitted prior to the 31 March 2018 baseline of existing dwellings in the settlement<sup>2</sup>. Given that this includes permissions up to that date, it is highly likely that the permissions were included in this calculation.
12. It is unclear whether the completed development at Syers Lane<sup>3</sup>, granted after the baseline date, is inside the settlement boundary. Nevertheless, together with other extant permissions inside the settlement, there would not be a significant increase in the overall number of dwellings in the village, beyond the original baseline figure. Furthermore, there do not appear to have been any additional dwellings granted permission inside or outside the settlement since the adoption of the Local Plan. The number of dwellings that could be built over the plan period in such locations would therefore appear to be no less than the six dwellings referred to in Appendix 5 of the Local Plan.
13. Policy HOU04 requires proposals to be supported by other policies within the development plan, including policy TR01, which seeks to reduce the need to travel by private car in villages and increase the proportion of shorter journeys made on foot or cycle. Like many other villages in rural areas, the range of services and facilities available in Beeston is limited and the majority of the village is not served by dedicated footpaths, particularly to neighbouring settlements. There are also bus services available from Beeston to a number of different locations, but I have not been provided with details of the frequency of these services.
14. Were all development to be limited to instances where such provisions were available it would be likely to restrict the scope and extent of the policy to be applied in villages such as Beeston. This is unlikely to have been the intention for those proposals within the 5% of development permitted by the policy. Nonetheless, as the occupants of the proposed development would be likely to make similar journeys to those made from neighbouring properties, I do not find the availability of such provisions to be determinative in this appeal.
15. Despite the fact that the proposal would not exceed the number of permitted dwellings in Beeston and would help to sustain local shops, services and facilities in the village and beyond through proportionate growth, I conclude that there would not be compliance with other policies of the Council's Local Plan as outlined in the first main issue. Hence, the proposal would not accord with policy HOU04 of the Local Plan in this respect.

### **Planning Balance**

16. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise, which includes the Framework.

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<sup>2</sup> This is referred to in Appendix 5, which provides the methodology used to calculate the number of dwellings in settlements covered by Policy HOU04.

<sup>3</sup> Planning Reference: 3PL/2018/1546/F - Roehampton, Syers Lane.

17. The Council has indicated that it can demonstrate significantly in excess of five years' supply of deliverable housing land in Breckland<sup>4</sup>, including a 5% buffer. Although the appellant has disputed this position, I have not been provided with any substantive evidence to support a different conclusion. In light of this, paragraph 11 of the Framework is not engaged. However, I am mindful that the presence of a five-year supply does not represent a ceiling on the delivery of housing, as the Framework supports the Government's objective to significantly boost the supply of homes.
18. In the context of paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by the appeal proposal, particularly as it could be carried out relatively quickly. The appeal before me would deliver five dwellings, which would contribute to the overall housing mix in Breckland, including properties for the elderly. Nonetheless, the contribution to the supply of housing would be modest, so it would only be afforded moderate weight. Some social and economic benefits would also arise from, for example, employment and procurement of materials during the construction period, which would carry limited weight.
19. I acknowledge that there is support in policy HOU04 of the Local Plan for self-build dwellings. Additional self or custom build properties may therefore help the Council to meet its obligations imposed by the Self-Build and Custom Housebuilding Act 2015<sup>5</sup> (the Act) for housing in the area, which could, in turn, free up other properties for occupation.
20. The primary design input of self or custom build properties should be from an initial occupier. The appeal scheme includes the full details of the design of two four-bedroom bungalows, which would be available to persons on the Council's self-build register. Given that one of these properties would be occupied by the appellant, only that property would qualify as self or custom build. I have also not been provided with a legal mechanism, such as a planning obligation, to ensure compliance with the provisions of the Act and provide certainty that the two properties within the scheme would be for custom build projects, as promoted by the appellant. While the Council may have previously utilised a planning condition, I am not satisfied that this would be an appropriate mechanism for the aforementioned reasons. Even if the proposal was implemented and two custom built properties provided, given the scale of the proposed development this benefit would only be afforded moderate weight.
21. In terms of harm, the proposed development would not comply with development plan policy in respect of housing in rural areas and the harm to the ecology and biodiversity of the site and its surroundings.
22. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission. The proposal would also not amount to sustainable development under the terms of the Framework.

## Conclusion

23. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for

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<sup>4</sup> As expressed in their 'Statement of Five-Year Housing Land Supply' (November 2020).

<sup>5</sup> As amended by the Housing and Planning Act 2016.

the reasons given, I dismiss the appeal and planning permission is therefore refused for the appeal scheme.

*Paul Thompson*

INSPECTOR