



Appeal Decision

Site visit made on 14 December 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Friday, 19 February 2021

Appeal Ref: APP/D3505/W/20/3253754

Abbey Farm House, Bury Road, Cockfield IP30 0LB

- 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 M Smith against the decision of Babergh District Council.
 - The application Ref: DC/19/05790, dated 3 December 2019, was refused by notice dated 10 February 2020.
 - The development proposed is erection of two detached dwellings. Construction of new vehicular access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved except for access. A plan has been provided showing the proposed siting of the new dwellings. I am advised that this is indicative only and therefore I have considered the appeal on this basis.
3. The Council's first reason for refusal referred to Policy CS02 of the Babergh Local Plan Alteration No.2 (2006)(LP). The Council confirm this was an error. The correct policy was Policy CS2 of the of the Babergh Core Strategy (2014)(CS). The appellant's evidence had regard to the CS rather than the erroneous LP. I have therefore had regard to CS Policy CS2 in my determination of this appeal.

Main Issues

4. The main issues are:-
 - i) the effect of the proposed development on the setting and significance of Abbey Farm House, a Grade II listed building;
 - ii) whether the appeal site is a suitable location for residential development having regard to the settlement strategy of the development plan and the accessibility of services and facilities;
 - iii) the effect of the proposal on protected species;
 - iv) the effect of the proposal on highway safety; and
 - v) whether the appeal site is a suitable location for residential development with particular regard to potential land contamination.

Reasons

Heritage asset

5. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA), requires the decision maker in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
6. Abbey Farm House (AFH) is a Grade II listed timber-framed and plastered building. It's origins date from the 17th century. Whilst there are dwellings to the north of AFH it is otherwise surrounded by agricultural land. Given its 17th century origins, AFH would once have been dominated by farmland. Subsequent development to the north has intruded into this setting, but there is still a clear sense that it remains within an agricultural landscape. Based upon the evidence before me, including the appellant's planning statement, the significance of AFH as a heritage asset is largely derived from its age, architectural features and its historic use.
7. Albeit the proposal is in outline with matters of scale, appearance and design reserved for consideration at a later date, the scheme would introduce two detached dwellings together with associated domestic paraphernalia. The proposal would reduce the relationship of AFH with the open countryside. I observed that views of AFH and its curtilage are restricted by existing trees, vegetation and the higher grounds positioned to its rear and side. Nevertheless, some glimpsed views remain. In any event, experience in terms of setting has a broader definition than just views.
8. I accept that AFH and its ancillary buildings are presently in residential use rather than agricultural. Nonetheless, the openness and lack of development within its curtilage reflects its historic relationship with the open countryside. The effect of the proposed dwellings and additional accessways would be to sever the relationship of AFH from the open countryside and erode its remaining undeveloped setting. This would be harmful to the setting of AFH, and thereby the significance of the designated heritage asset.
9. The proposed dwellings would be set some distance away from AFH and intervening vegetation would limit visibility. Nevertheless, planting is not permanent and moreover, screening harmful development in this manner does not make it justifiable.
10. For the reasons set out above, the proposal would have a negative impact on the setting and significance of the designated heritage asset. It would conflict with CS Policy CS15 insofar as it requires development to respect heritage assets.
11. I consider that the harm identified to the heritage asset would be less than substantial. The appellant takes issue with the Council's finding of a 'low to medium level of less than substantial harm'. However, having regard to the fuller transcript of the case¹ provided by the Council, I am not persuaded by the appellant's view.

¹ R.(oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-operative Group Limited [2019].

12. Accordingly, paragraph 196 of the National Planning Policy Framework (the "Framework") provides for a balancing exercise to be undertaken between "less than substantial harm" to the designated heritage asset and the public benefits of the proposal.
13. The proposal would generate temporary economic benefits from the construction of the scheme and further economic benefits from residential use and increased local spend. An enhancement of the vitality of the rural community would ensue. There would be some social benefits generated from the provision of new housing which would add to the mix and choice of housing. However, given the scale of the proposed scheme the associated public benefits of two additional dwellings would be limited.
14. Although I have found that the harm to the designated heritage assets would be less than substantial, it is not to be treated as a less than substantial objection. The limited public benefits arising from the proposed scheme, as set out above, would not outweigh the considerable importance and weight to the harm to the heritage asset. The proposal would conflict with the aims of the Framework to conserve and enhance the historic environment.

Settlement strategy

15. CS Policy CS2 seeks to direct development towards the most sustainable locations in accordance with the settlement hierarchy. The appeal site is located outside of the defined settlement boundary for Cockfield and for the purposes of applying planning policy it is located within the countryside where development will be permitted only in exceptional circumstances subject to a proven justifiable need. CS Policy CS15 has similar aims in terms of directing new development to sustainable locations and sets out a number of criteria to assess a proposed scheme against.
16. In the absence of anything to suggest that the scheme would satisfy a proven justifiable need and demonstrate exceptional circumstances, the proposed dwellings would not be consistent with countryside policies. Thus, the appeal site is not a location towards which new housing is directed. To do so would undermine the development plan in this regard. The proposal would conflict with CS Policies CS2 and CS15, the requirements of which are set out above.

Accessibility of services and facilities

17. The appeal site sits within a group of dwellings known as Windsor Green some 500 metres from the nearest settlement boundary of Cockfield, taking the Council's measurements, which have not been disputed by the appellant. Cockfield consists of a limited range of services and facilities including a village store and post office, primary school, church, public house and a village hall. It is a fragmented village which results in its services and facilities being spread out. Albeit they would meet some limited day to day needs, future occupants of the proposed dwellings would need to travel further afield to access employment, leisure and secondary education opportunities.
18. Access to Cockfield's services and facilities would be along the A1141. In the absence of a continuous footpath, access on foot would be along grass verges, or, where vegetation has overgrown the verge, walking within the highway.
19. At the time of my site visit I observed there to be a constant flow of traffic including vans and Heavy Goods Vehicles (HGVs). I appreciate that my visit

- provided only a snapshot of highway conditions, however, I have seen nothing to suggest that what I saw was untypical. I find that the majority of pedestrians would not feel safe having to walk within the highway or seek refuge when being regularly approached by vehicles.
20. To my mind, given an absence of street lighting and the nature of the route, it is such that it would be highly unlikely that anyone with a young child, pushchair or wheelchair would attempt to walk these routes, particularly during inclement weather or at night, as the verges described above would not provide refuge for them. In addition, I do not find that the nature of the route, given the volume of traffic and high quantity of vans and HGVs would encourage its use by cyclists.
21. I am advised that a bus service operates on roughly an hourly basis. The service links to Bury St Edmunds and Sudbury. However, the bus stop is located approximately 100 metres from the appeal site and, for the reasons explained above, the nature of the route is unlikely to discourage future occupiers of the proposed dwellings from utilising the bus service.
22. The Framework recognises that opportunities to maximise sustainable transport solutions will not be the same in rural areas as in urban locations. Nevertheless, by reason of my findings above, notwithstanding the availability of some limited opportunity to access a sustainable mode of transport, I consider the location is not well served in terms of walking, cycling and public transport. Therefore, it is likely that the majority of journeys by future occupiers would be made by private motor vehicle.
23. Overall, I find the appeal site would not be a suitable location for new dwellings given its inaccessibility to services and facilities and an undue reliance on the use of the private car. Therefore, the proposal would fail to accord with CS Policy CS15 insofar as it requires an appropriate level of services, facilities and infrastructure are available or provided to serve the proposed development.
24. The Council's reasons for refusal also cite a conflict with criterion (xvii) of CS Policy CS15. It is the appellant's case that by reason of the appeal site's location there would be no compromise upon the Cross Street (Sudbury) Air Quality Action Plan. The Council have not sought to dispute this matter. However, the first limb of criterion (xvii) requires a proposal to protect air quality. Given my findings above that there would be undue reliance on the use of a private motor vehicle, I therefore conclude that there would be conflict with criterion (xvii) of CS Policy CS15. In addition, the proposal would fail to accord with the aims of the Framework insofar as it seeks to limit the need to travel and offer a genuine choice of transport modes.

Ecology

25. Circular 06/2005 states that the presence of a protected species is a material consideration when a proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to state that it 'is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'. This is in tune with the

Framework's aims to protect and enhance biodiversity. CS Policy CS15 has similar aims.

26. The circular sets out an expectation that the potential impact of the proposed scheme is well understood before planning permission can be safely granted. However, it also advises that ecological surveys should only be required where clearly justified, for instance, where there is a reasonable likelihood of species being present and affected by the proposal.
27. It is the appellant's evidence that the appeal site does not provide a habitat for protected species. As such, no ecological survey report has been provided by the appellant.
28. Although, the appeal site forms part of the garden curtilage to the host dwelling and is largely maintained grassland, it contains areas of established vegetation and trees and is partly bounded by woodland and open fields. I observed an informal pond was present. It is in close proximity to the proposed southern plot and its accessway. The accessway would necessitate the removal of some trees and vegetation.
29. The site's layout at this stage is indicative only. However, in light of the circumstances of the site and adjoining land, I consider that it is likely that protected species may be present or use the site. In the absence of any compelling evidence, the proposal fails to adequately assess the potential impact of the proposed development on protected species. This is in the case of the construction phase and in the longer term when lighting, in particular, in and around the proposed dwellings would have an adverse effect on protected species such as birds and bats.
30. I accept that there may be cases where it would be appropriate to deal with such matters by conditions. However, given the potential for such species and in adopting the precautionary principle enshrined in the Habitats Regulations, I consider that it needs to be clearly demonstrated why the proposed development would not have a detrimental effect on local habitat at this stage.
31. Without any evidence to the contrary, I therefore conclude that the proposed development would be in conflict with CS Policy CS15, the requirements of which are set out above. In addition, it would conflict with the aims of the Framework which seeks to minimise the impact of development on biodiversity and halt its overall decline.

Highway safety

32. Access to the proposed dwellings would be taken from the existing access point from the A1141. At the point of the access the road is subject to a 30mph speed limit, although this increases to the national speed limit a short distance to the south. Southward visibility from the access point is currently satisfactory. Whilst the existing high hedge on the boundary of the appeal site was adequately maintained at the time of my site visit, if it were not to be the case in future, it would reduce the visibility to the south for drivers egressing the appeal site.
33. Northward visibility is constrained by existing vegetation and the highway bending out of view. Given the close proximity of the change of speed limit to 30 mph, vehicles are generally travelling at significant speed as they approach

- the appeal site. Thus, vehicles slowing down to turn into the site and those egressing the site would pose a significant hazard to the free flow of traffic.
34. No accidents have been reported in this location. However, any increase in the intensity of the use of the access onto the A1141 could reasonably lead to potential conflict at this point within the highway.
35. The Highway Authority requires the proposal to demonstrate the provision of visibility splays measuring 2.4metres by 2.15metres in each direction as per the guidance of the Design Manual for Roads and Bridges. Given the site specific circumstances, I find there is no compelling evidence before me to adequately justify a reduction in visibility.
36. No plans have been submitted to illustrate that the aforementioned splays would be achievable. The appellant suggests that to provide the necessary splays may result in an 'over engineered access with a car dominant layout'. However, there is little information before me to justify this statement and moreover, this does not warrant a development where safe and satisfactory access cannot be achieved. To do so, would be prejudicial to the health and safety of users of the highway.
37. Therefore, I conclude that there is insufficient evidence to demonstrate that safe and suitable access to the site would be achieved. This would be contrary to the Framework insofar as it requires development not to have an unacceptable impact on highway safety and ensure safe and suitable access to all users.

Land contamination

38. CS Policy CS15 states at criterion (vii) that, among other things, a development must ensure any risk of contamination is identified and adequately managed. Paragraph 170(e) of the Framework states that new development should be prevented from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution.
39. Paragraph 178 of the Framework continues that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from, among other things, contamination. This includes risks arising from natural hazards or former activities, and any proposals for mitigation including land remediation.
40. The Council have raised concerns regarding a historical use of the site. There is no compelling evidence before me to support the appellant's assertion that no chemicals were manufactured or stored at the site. The Planning Practice Guidance states that if there is a reason to believe contamination could be an issue, developers should provide proportionate but sufficient site investigation information (a risk assessment) to determine the existence or otherwise of contamination, its nature and extent, the risks it may pose and to whom/what (the 'receptors') so that these risks can be assessed and satisfactorily reduced to an acceptable level. Whilst I have had regard to the appellant's land contamination questionnaire and Environscreen Report, no risk assessment has been submitted to address the matters referred to above.
41. I have considered whether this matter could be addressed by the imposition of a condition requiring an appropriate assessment prior to the commencement of

the development. My attention has been drawn to an example of a development² where the Council considered this to be satisfactory. However, there is little information before me relating to the particular circumstances of this development and whether the circumstances in terms of likely contamination are therefore comparable to the appeal scheme. A comparison is therefore of limited relevance in this instance.

42. As I am unable to assess the potential contamination levels at the appeal site in accordance with paragraph 178(c) of the Framework and therefore a precautionary approach is justified. There is insufficient evidence before me to reach a conclusion on whether the site is a suitable location for residential development with particular reference to potential land contamination.
43. Accordingly, I conclude that the site would not be a suitable location for residential development with particular reference to potential land contamination in the absence of such information. As such, the proposed development would be in conflict with criterion (vii) of CS Policy CS15, the requirements of which are set out above. It would be contrary to the Framework insofar as it seeks to ensure that development sites are suitable for their proposed use taking into account ground conditions (including risks from former uses such as contamination).

Other Matters

44. My attention has been drawn to the development of three dwellings³ on land opposite the appeal site. These were under construction at the time of my site visit. The appellant refers to inconsistencies on the Council's part in determining similar applications. However, there is limited evidence before me relating to the particular circumstances of this development and I therefore cannot undertake any meaningful assessment of the circumstances that led to the grant of planning permission, nor can I consider whether the circumstances are comparable to the appeal scheme.
45. Similarly, I have had regard to the development of one dwelling at Windsor Green Farmhouse⁴. However, I note that the circumstances of that scheme are not directly comparable to the appeal proposal. That scheme concerned an identified local need for a single storey dwelling and it was considered to be within cycling distance of services. There was no adverse impact upon any listed building. Given my findings above, a comparison with the appeal scheme is of limited relevance in this instance. I have considered the appeal before me on its individual planning merits.
46. Reference has been made to the Council's historic undersupply of housing land. There is little information before me to consider this matter in any detail and I note that the Council are presently able to demonstrate a five-year housing land supply.
47. There is no substantive evidence before me that supports the proposal would be self-built. In the absence of such evidence, there would be no restriction preventing the scheme from evolving into a different type of development. I therefore attach minimal weight to this benefit of the proposed scheme.

² Planning Reference: DC/19/05371 Ivy Farm House, The Street, Redgrave, Diss, Suffolk

³ Planning Reference: DC/18/01213 The Abbey, Bury Road, Cockfield, Bury St Edmunds, Suffolk

⁴ Planning Reference: DC/20/00128 Windsor Green Farmhouse, Windsor Green, Cockfield

Planning Balance

48. CS Policy CS2 is not wholly consistent with the Framework which is less restrictive in terms of residential development in the countryside. As such, it is out of date. Paragraph 11 of the Framework requires permission to be granted where the development plan policies which are most important for the determination of the appeal are out of date, unless the application of Framework policies that protect areas or assets of particular importance, including designated heritage assets, provide a clear reason for refusal (footnote 6).
49. I have concluded that the proposal would result in 'less than substantial harm' to a designated heritage asset which would not be outweighed by the public benefits of the scheme. This harm carries considerable weight and amounts to the requisite clear reason to dismiss this appeal, in terms of Framework paragraph 11d(i). In my judgement, the adverse impact by way of the less than substantial harm to the significance of designated heritage asset in this case would alone justify dismissal of the appeal.
50. Furthermore, it is also appropriate to take into account other harms I have identified by way of protected species, highway safety and land contamination. These are matters to which I attribute significant weight. I have concluded that the appeal site is not a suitable location for housing development, however, given my findings above regarding CS Policy CS2 being out of date, I afford the proposal's conflict with this policy moderate weight in the overall planning balance.
51. There are no material considerations that outweigh the identified harm and conflict with the development plan.

Conclusion

52. Accordingly, for the reasons given above, the appeal is dismissed.

E Brownless

INSPECTOR