



Appeal Decision

Site visit made on 24 March 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2021.

Appeal Ref: APP/D3505/W/20/3261326

Land North of The Street, Lawshall, Bury St Edmunds IP29 4QA

- 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 Ian Anderson against the decision of Babergh District Council.
 - The application Ref DC/19/05655, dated 4 December 2019, was refused by notice dated 16 April 2020.
 - The development proposed is 5 no. dwellings, alterations to access and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted revised plans in support of the appeal, which involve some design amendments and reduction of the number of bedrooms in two of the dwellings from four to three; the latter change is to address the Council's reason for refusal concerning local housing need. These plans have not been seen by other parties and they have not had a chance to comment on them. Consequently, in the interests of fairness I have determined the appeal on the basis of the original plans submitted with the application.
3. The Lawshall Neighbourhood Plan 2016-2036 (2017) (the NP) has been made and forms part of the Development Plan.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the appeal site and surrounding area;
 - the effect on local housing need; and
 - whether adequate provision is made for affordable housing.

Reasons

Character and Appearance

5. The Street is one of three separate clusters which together comprise the village of Lawshall. The application site is part of a large open grass field that is
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located to the north of The Street behind an ancient hedgerow fronting the road. To the north is Frithy Wood, the remaining part of an historic woodland, which is designated as a Site of Special Scientific Interest. St Peters Church, the village primary school and some dwellings are located west of the site on the northern side of The Street. The southern side of the road opposite the appeal site includes a Grade II listed public house and dwellings fronting The Street. The appeal site is within a Special Landscape Area (SLA), as defined in the Babergh Local Plan (2006) (the Local Plan), and an Area of Local Landscape Sensitivity (ALLS) designated in the NP. The site is outside the Built-up Area Boundaries (BUAB) of this part of the village, which comprise the linear development along The Street and a smaller area to the east.

6. The Council's first two reasons for refusal relate to the effect of the proposed development on the character and appearance of the village setting and on the designated landscape setting. I address both matters under this single main issue. I note that the design and appearance of the five proposed dwellings is not in dispute.
7. Both main parties refer to an earlier unsuccessful application for residential development at the appeal site¹. While I note this earlier application and decision, this appeal involves a separate proposal which I have considered on its own merits.
8. Most buildings within the main part of the BUAB are on the southern side of The Street, with a smaller group of dwellings, the school and church on the northern side, west of the appeal site. The majority of dwellings are relatively close to the road frontage with front boundary hedges or other treatments of typical domestic scale and are positioned on a largely consistent building line. Exceptions to this are the small cluster of bungalows at Hall Mead at the western end of the built-up area and the Swanfield group of dwellings, which are laid out on a gentle curve. Nonetheless, these are limited departures from the strong linear pattern of development close to the road frontage, which characterises this part of Lawshall. While the five dwellings would be linear in layout, the extent of their set back from the road frontage would be materially greater than that of the majority of dwellings. The proposal would, therefore, be positioned in marked contrast to the established pattern of development much closer to the road, which is particularly apparent opposite the appeal site and to the west on the same side of The Street. As such, they would represent an incongruous and uncharacteristic addition to the existing village setting.
9. The open land of which the appeal site is part marks a distinct and substantive gap in the street scene. Despite the tall hedgerow to the road frontage, at the time of the inspection it was possible to gain relatively extensive views through the hedge and access point to the large field and Frithy Wood beyond. I accept that these views may be likely to be less extensive when the hedgerow plants are in leaf. In terms of any wider visibility, based on the appeal submissions - including the appellant's Landscape Appraisal as well as comments made by interested parties - and the site inspection, I consider that the principal effect on the character and appearance of the site and wider area relates to views from The Street rather than longer range views.

¹ Ref DC/17/06198.

10. The appeal site and its surrounds are not a settlement gap and do not comprise an area where there are important views into or out of the village, as defined in the NP. Nonetheless, the openness of the appeal site and surrounding area in contrast to the developed parts of The Street, together with views of the historic woodland, make a positive contribution to the street scene and wider area. As such, the proposed development would harmfully compromise this open setting. I acknowledge that additional landscaping is proposed to the front of the site and to create boundaries for the proposed development. However, this would either be insufficient to prevent views of the dwellings, including across the access; or, alternatively, could have the effect of completely screening the available views of the woodland from the site frontage, thereby harming the character and appearance of the area. Furthermore, the planted boundaries to the east and north would appear as an artificial addition to the open setting.
11. The area surrounding Frithy Wood is part of a more extensive area designated some time ago as an SLA, development in which is addressed by Policy CR04 of the Local Plan. The SLA designation in this location is acknowledged in the NP and effectively carried forward as an ALLS. Policy LAW10, which concerns development in the ALLS, largely reflects the requirements of Policy CR04.
12. The appellant disputes the basis for these landscape designations, including the apparent lack of up-to-date supporting evidence; and contends that the SLA's relevance is diminished as it is not carried forward into the emerging Babergh and Mid Suffolk Joint Local Plan. While I note these arguments, it is not for me to revisit through this appeal the full evidential basis for these landscape designations and whether they are soundly made in the relevant plans; the fact is that they form part of the adopted development plan. Moreover, I give limited weight to matters relating to the Joint Local Plan given its early stage of preparation². However, Policy LAW10 is more recent than Policy CR04 and it requires development to protect or enhance the special landscape qualities of the area identified in the Landscape Character Assessment (LCA), whereas CR04 refers to the relevant landscape appraisal. I have, therefore, considered the proposal against the specific requirements of Policy LAW10.
13. The Council refers to the LCA providing guidance notes for management of the relevant character type, in this case undulating ancient farmlands. It is not fully clear which Assessment this relates to, but it appears to be the Suffolk LCA 2008. I give some weight to the appellant's contention that this is not as up-to-date as it might be, in accordance with the requirements of national planning guidance. However, I acknowledge also that this appears to be the only such LCA available, which Policy LAW10 requires to be considered.
14. The Council contends that the SLA (and by implication the ALLS) was introduced to protect the setting of Frithy Wood and that it provides a visual buffer between the village edge and the wood. I acknowledge the appellant's contention that this does not necessarily equate to special landscape qualities as referred to in Policy LAW10. Nonetheless, I have already found above that the openness of the appeal site and surrounding area, together with views of the historic woodland, make a positive contribution to the street scene and that the proposed development would compromise the open setting and views of it.

² In accordance with paragraph 48 of the National Planning Policy Framework.

15. The guidance in the LCA for this type of landscape requires new development to reflect the local pattern and not to erode the characteristic form of villages. I have already found that the proposal would not comply with these requirements with regard to the effect on the character and appearance of the village setting. As such, in the absence of a more detailed assessment of the special landscape qualities of the area identified in the LCA, as required by Policy LAW10, I find that the particular effect on the designated landscape is largely neutral in adding to my existing findings of the proposal's harmful effect on the character and appearance of the site and surrounding area. Consequently, I find no direct conflict with regard to Policies CR04 or HS28 of the Local Plan, as regards the latter's requirement that a site should remain undeveloped where it is an important feature in environmental terms; or with Policy LAW 10 of the NP as described.
16. The appellant proposes to create additional woodland on land adjacent to the application site. A signed Unilateral Undertaking (UU) has been submitted to secure this and its future management. While these areas are outside the red line area of the appeal site, they are within land owned by the appellant. The creation of the woodland would have environmental benefits in its own right, but the enhanced wooded backdrop that it would create would not overcome the harm that has been found with regard to the siting of the proposed dwellings and effects on the character and appearance of the area. As such, the UU fails a requisite test in the National Planning Policy Framework (the Framework) as it is not necessary to make the development acceptable in planning terms³. There cannot in these circumstances be any basis to justify the funding of the additional planting by the development.
17. I have had regard to the other examples of development referred to by the appellant, which are also outside the BUAB on undeveloped land. However, it is not clear that the setting of these approved developments is directly comparable to that of the appeal site, particularly with regard to the wooded backdrop and degree of set back from the road frontage compared to the strong linear development pattern in the main part of The Street. Therefore, I have considered the proposal in this case on its individual merits and these other developments cannot be considered as direct precedents for the appeal proposal.
18. Accordingly, taking account of the above findings as a whole, I conclude that the proposed development would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. Consequently, it is contrary to Policy CN01 of the Local Plan, Policies CS11 and CS15 of the Babergh Core Strategy & Policies (2014) (the CSP) and Policy LAW13 of the NP. These policies amongst other things require development to be appropriate in character to its setting and to the village, and well-related to the existing pattern of development; and that development makes a positive contribution to local character. The proposal is also contrary to paragraph 127 of the Framework, which includes the requirement that developments are sympathetic to local character, including the surrounding built environment.

³ Paragraph 56.

Local Housing Need

19. Lawshall is classified as a Hinterland Village in the CSP. Policy CS11 provides criteria for assessing development proposals in such villages, including that the proposal should meet a proven local need, such as affordable housing or targeted market housing identified in an adopted community plan/neighbourhood plan. Accordingly, the proposal in this case should be assessed against the local housing need identified in the NP.
20. Policy LAW4 of the NP requires that housing development must contribute to meeting the existing and future needs of the Parish. Planning proposals will be supported where development provides a mix of housing types and sizes that reflects the needs of local people, particularly the need for 2 and 3 bedroom dwellings for first time buyers as well as the needs of an ageing population looking to downsize into homes suitable for lifetime occupation.
21. As well as LAW4 the Council also refers to the proposal being contrary to Policies LAW1 and LAW3 of the NP. LAW1 looks positively on out-of-village development which is small scale, contributes to local needs and is adjacent to the relevant BUAB. Policy LAW3 concerns housing development outside the BUAB. It says that development in such locations will be permitted where it comprises small groups of up to 5 dwellings and is adjacent to the BUAB.
22. There is no dispute that the five dwellings proposed would be small scale as defined in these policies; local housing need is addressed more specifically in Policy LAW4. With regard to the site's location, both policies require development to be 'adjacent' to the BUAB. Taking the proper meaning of adjacent, this can reasonably be defined as lying near to or adjoining. The appeal site is near to the northern boundary of the BUAB and, therefore, I find no conflict with either policy in this regard.
23. The NP is informed by a Housing Needs Survey (HNS) dated April 2016. The main needs in terms of housing types and sizes are summarised as follows: smaller family homes for locals to downsize and a few larger homes for locals to up-size; and a few easy-access one-storey dwellings and some sheltered accommodation⁴. The *Lawshall Housing Survey Summary* provides the relevant evidence behind the summary in the NP. It records that while most respondents would like 3 bedrooms there is also significant interest in both 2 and 4 bedroom properties. Moreover, this mix of dwelling sizes is repeated when respondents were asked what they expected to occupy (as opposed to what they would like)⁵. The proposal is for a 2 bedroom dwelling and two each 3 and 4 bedroom dwellings. Therefore, given that the HNS refers to a need for smaller family homes and a few larger homes, the proposal would meet the requirement in Policy LAW4 for a mix of housing types and sizes that reflects the needs of local people.
24. The proposal would also contribute to the more particular need referenced in the policy for 2 and 3 bedroom dwellings. While the HNS refers to 'a few larger homes', the appellant indicates that two 4 bedroom dwellings have been approved since the adoption of the NP. As I have no other evidence to the contrary, it is reasonable to conclude that the two dwellings of this size

⁴ The Lawshall Neighbourhood Plan 2016-2036, page 18.

⁵ Lawshall Housing Survey Summary, page 3.

proposed here, together with those already permitted, would not constitute more than 'a few'.

25. The Council refers to the proposal not being compliant with Policy LAW4 in part because the dwellings are more than one storey. I acknowledge that the needs of an ageing population looking to downsize into homes suitable for lifetime occupation might in large part be met by single storey dwellings. However, this does not in my view preclude the provision of dwellings of more than one storey to meet other identified needs, particularly for family housing.
26. My attention is drawn to a recent unsuccessful appeal for a 4 bedroom dwelling, in which Policy LAW4 was relevant⁶. In that case the Inspector found that while the proposed dwelling would meet the appellant's personal need, there is little evidence to demonstrate a proven local need. I am unaware what evidence the Inspector had available in that case and I have found on the basis of the evidence in this case that a proven local housing need would be met. As such, I consider that based on the available information the circumstances in the two appeals cannot be compared directly.
27. Accordingly, for all the above reasons, I conclude that the proposal would meet a local housing need and, as such, there is no conflict with Policies CS11 of the CSP or Policies LAW1, LAW3 and LAW4 of the NP, as described.

Affordable Housing

28. Policy CS19 of the CSP says that all residential development will be required to provide 35% affordable housing. No such provision is included in the proposal and a contribution towards provision has not been made. However, Policy CS19 pre-dates the current version of the Framework, which says that provision of affordable housing should not be sought for residential developments that are not major developments, except in limited circumstances that are not applicable here⁷. The Framework defines major development for housing as 10 or more homes or a site area of 0.5 of a hectare or more. Both main parties acknowledge the more recent national policy as they refer to the site's size.
29. The application form indicates that the site area is 0.5 of a hectare and, therefore, the definition of major development in the Framework is relevant. The appellant contends that the site area is actually less than originally indicated and it could in any case be reduced. I am, however, required to consider the proposal based on the available evidence as a whole. In my view there is greater certainty and fairness in using the measurement of 0.5 of a hectare recorded on the submitted application.
30. I note also, however, that the appellant draws attention to the Council's Local Validation list, which was adopted after the latest version of the Framework. This includes a definition of major development for housing as 10 dwellings or more and where the number of dwellings is not given in the application, a site area of 0.5 of a hectare or more should be used. In this case, therefore, the development by this definition would not be major development as five dwellings are specified.

⁶ APP/D3505/W/20/3244343 dated 23 June 2020.

⁷ Paragraph 63.

31. The Council has not clarified how this more recent local definition relates to either that in the Framework or the implementation of Policy CS19. Accordingly, without further clarification of the definition and how it is to be applied it would not be reasonable in the particular circumstances of this appeal to find that adequate provision for affordable has not been made, and I conclude as such. Consequently, for the purposes of this appeal there is no conflict with Policy CS19 of the CSP or the Framework in this regard.

Other Matters

32. I have had regard to all other matters raised, including by interested parties. Based on the appeal submissions and site inspection, there would be no harm to the settings of the nearby listed buildings. An appropriate and safe access could be provided, which would not compromise highway or pedestrian safety, particularly taking account of the Highway Authority's lack of objection and suggested conditions. This would include resolving any apparent discrepancy in the submitted plans about which are the correct visibility splays. While the access is outside the red line site area, I accept the appellant's contention that this could be addressed through an appropriate Grampian condition. I have no evidence to suggest that the access could not be provided without causing harm to the existing designated hedgerow or ditch to the site frontage. While I acknowledge the importance of its role, I have no substantive evidence to find that the proposal would harmfully affect the work of the Green Light Trust.
33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions⁸. It says that plans and decisions should apply a presumption in favour of sustainable development⁹. In the circumstances of this appeal where there are relevant development plan policies, this requires an assessment of whether the policies which are most important for determining the application are out-of-date.
34. The most important policies are included in the Local Plan, the CSP and the NP, all of which pre-date the current Framework. However, the Framework is clear that existing policies should not be considered out-of-date simply because they were adopted prior to the Framework's publication. Due weight should be given to them according to their degree of consistency with the Framework¹⁰.
35. Local Plan Policies CN01 and HS28 are broad policies concerning the design, layout and effects of development; they are consistent with the Framework and so not out-of-date. Local Plan Policy CR04 and NP Policy LAW10 concern the protection and enhancement of valued landscapes and, as such, are consistent and are not out-of-date. The criteria included in CSP Policy CS11 are not wholly consistent with the Framework, notably the reference to a sequential approach to site selection. Consequently, this policy is out-of-date for the purposes of this appeal.
36. CSP Policy CS15 includes a wide range of criteria, which are largely consistent with the Framework and which will be applied flexibly according to the scale and

⁸ Paragraph 2.

⁹ Paragraph 11.

¹⁰ Paragraph 213.

nature of the proposal. As such, this policy is not out-of-date. However, CSP Policy CS19 is out-of-date as it requires affordable housing to be provided in all residential schemes, whereas the Framework indicates that it should be sought from major developments only.

37. NP Policies LAW1 and LAW3 include provisions that limit the location and require a local need for housing, while Policy LAW4 concerns the appropriate housing mix to meet local needs. However, these apply across a limited, localised area in the NP and the Framework allows that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs¹¹. Therefore, these policies are not out-of-date for the purposes of this appeal. NP Policy LAW13 includes design principles and is consistent with the Framework's requirement to promote well-designed places, and so is not out-of-date.
38. CSP Policy CS11 is out-of-date, but I still give some weight to the conflict with it with regard to the first main issue, as this relates to the policy's requirement that development should be appropriate in character to its setting, which is not inconsistent with the design principles advocated in the Framework. CSP Policy CS19 is also out-of-date, but I have not found that the proposal conflicts with this policy. Nonetheless, due to the conflict I have found with other policies that are not out-of-date with regard to the first main issue, I conclude that the proposal conflicts with the development plan as a whole.
39. Two policies which are most important for determining the application are out-of-date. Consequently, despite the Council being able to demonstrate a five year housing land supply, the presumption in favour of sustainable development is engaged. This requires that permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole¹².
40. The Framework indicates that where the presumption applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan, as is the case here, is likely to significantly and demonstrably outweigh the benefits, subject to four criteria¹³. As the NP in this case was made (adopted) and became part of the development plan in October 2017, the circumstances here fail to meet the first criterion that the NP became part of the development plan two years or less before the date on which this decision is made. Consequently, paragraph 14 is not engaged.
41. I have found that the proposal would result in unacceptable harm to the character and appearance of the site and surrounding area. As such, the proposal is contrary to paragraph 127 of the Framework concerning good design. I give significant weight to the conflict with the Framework's objectives and requirements in this regard.
42. Conversely, the proposal would have a number of benefits in accordance with the Framework. It would provide five dwellings, thereby boosting the supply of

¹¹ Paragraph 77.

¹² Paragraph 11(d)(ii).

¹³ Paragraph 14.

homes where the Framework does not place a ceiling on provision despite the existence of a five year supply. Moreover, it would contribute to local housing need and provide some ecological benefits through landscaping associated with the site (although not the off-site woodland planting for the reasons already given).

43. I give moderate weight to the provision of five dwellings and associated landscaping, but greater weight to the provision of housing to meet local needs. Nonetheless, in the particular circumstances of this case, I consider that the extent of conflict with the Framework outweighs the benefits. Therefore, I conclude that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits, and so the presumption in favour of sustainable development does not apply.

Conclusion

44. I have found in the appellant's favour with regard to two main issues, concerning local housing need and affordable housing provision. However, this does not outweigh the fact that the proposal is contrary to development plan policies and to the Framework as it would cause unacceptable harm with regard to its effect on character and appearance. The presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR