The Planning Inspectorate

Appeal Decision

Site visit made on 17 March 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2021

Appeal Ref: APP/U2615/W/20/3262258
Site off Martham Road, Hemsby, Great Yarmouth NR29 4NQ

- 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 John Tweed against the decision of Great Yarmouth Borough Council.
- The application Ref 06/17/0540/O, dated 14 August 2017, was refused by notice dated 16 June 2020.
- The development proposed is Proposed residential development of site.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Outline planning permission is sought with matters of access to be considered at this stage. I have dealt with the appeal on this basis. I have taken the proposed plan Drawing Number 1235/1 Rev.C into account insofar as it relates to matters of access and otherwise treated the submitted drawings as illustrative.

3. A legal agreement, prepared under the provisions of Section 106 of the Town and Country Planning Act 1990 (the S106 Agreement), has been submitted during the course of the appeal. It includes obligations relating to affordable housing, library and Natura 2000 contributions. Given the current circumstances in respect of Covid-19, the S106 Agreement has been provided to me in counterpart form with three copies, one signed by the appellant and other owner, one signed by Norfolk County Council and the other by Great Yarmouth Borough Council. The S106 Agreement is dated 13 May 2021. While it would be preferable for the agreement to comprise a single document executed by all of the relevant parties, taken together these documents form a valid deed and so will be enforceable. I have taken the S106 Agreement into account in reaching my decision.

Main Issues

4. The main issues are (i) whether the appeal site is an appropriate location for the development proposed having regard to the development strategy for the area; (ii) the effect of the proposed development on best and most versatile agricultural land; and (iii) whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Location

5. The development plan comprises the Great Yarmouth Core Strategy 2015 (CS) and the saved policies of the Borough-Wide Local Plan 2001 (LP). CS Policy CS2 sets out the Council's spatial strategy for where new development is expected to be focussed. It includes a settlement hierarchy in which Hemsby is identified as a Primary Village with a defined settlement boundary. The settlement hierarchy seeks to direct approximately 30% of new residential development to the 6 Primary Villages. It is reasonable to expect that such development would be spread between them. In this manner, Policy CS2 seeks smaller levels of new residential development within the Primary Villages than is planned for the Main Towns and Key Service Centres.

6. The appeal site is situated to one end of the village in a location where development extends past the site on the opposite side of the road. However, on the appeal site side, the existing dwellings adjoining the site comprise a standalone group of converted barns. A substantial gap exists between these properties and the edge of the settlement further to the east. The appeal site, and the cluster of converted barns lie outside of the settlement boundary and within the countryside for planning policy purposes.

7. Although the site is not in agricultural production, agricultural land wraps around it and the adjacent converted barns. The site presents as part of the countryside, having the appearance of an overgrown paddock. Established hedgerow bounds the site along Martham Road reinforcing its rural character.

8. CS Policy CS2 restricts development in the countryside to particular types of development to help meet rural needs. Saved LP Policy HOU10 relates specifically to housing in the countryside area, limiting new dwellings only to types specified in the policy and subject to a number of listed criteria. The proposal does not meet the policy criteria for a countryside location. As such the appeal proposal is in conflict with CS Policy CS2 and saved LP Policy HOU10.

9. I therefore conclude that the appeal site, being outside of the defined settlement boundary, would not be an appropriate location for the development proposed with regard to the development strategy for the area. I give this matter considerable weight.

Agricultural land

10. It is agreed that the northern fringe of the site is classified as grade 1 agricultural land with the majority of the site being grade 2. Although the Council's reason for refusal only makes reference to grade 1 agricultural land, CS Policies CS6 and CS12 specifically refer to protecting and minimising the loss of the best and most versatile agricultural land (BMV). The appellant acknowledges that grade 2 land is a material consideration and makes reference to paragraph 170 of the National Planning Policy Framework (the Framework). This requires planning policies and decisions to contribute to and enhance the natural and local environment by recognising the economic and other benefits of BMV.

11. Policies CS6 and CS12 do not provide a definition of BMV and I have not been provided with any definition of BMV from elsewhere within the CS. However,

and notwithstanding the Council's specific reference only to the loss of grade 1 agricultural land, the Framework defines BMV as land in grades 1, 2 and 3a of the Agricultural Land Classification. As the Framework post-dates the CS, I consider it reasonable to apply its definition of BMV to the appeal proposal. In essence CS Policies CS6 and CS12 are consistent with the aims of the Framework with regard to this matter. As no distinction is made between grades 1, 2 or 3a within the definition, I consider the policy requirements apply to the appeal site as a whole.

12. Although it is argued that the site has not been in agricultural use since 2003, this appears to have been by choice of the appellant. It is not a remote parcel of land and there is no evidence to demonstrate that an agricultural use could not resume on the site, either alone or amalgamated into the surrounding field. The proposed development would result in a permanent loss of BMV and it has not been demonstrated that there is an overriding sustainability benefit that would result from the proposed development or that there are no realistic opportunities for accommodating the development elsewhere.

13. I therefore conclude that the proposed development would result in unjustified and harmful loss of BMV. Thus, the proposal conflicts with CS Policies CS6 and CS12. I give this matter considerable weight.

Affordable housing

14. On the basis of my conclusions on the main issues, it has not been necessary for me to reach a conclusion on the effectiveness or otherwise of the obligations set out in the submitted S106 agreement. This is with the exception of the obligation relating to the provision of affordable housing. This is because the provision of affordable housing would be a benefit of the proposed development required to be weighed in the planning balance against any identified harms.

15. I am satisfied that there is a development plan policy basis for seeking the provision of affordable housing within the proposed development and that the obligation meets the requirements of CS Policy CS4. The provision of such would satisfy the provisions and tests set out within the Framework and the Community Infrastructure Levy Regulations 2010. In these respects, the delivery of affordable housing is a benefit of the proposal which I return to in the planning balance.

16. It follows that I conclude that the reason for refusal concerning affordable housing would be addressed by the planning obligation and the proposal would be development plan policy compliant in this respect.

Other Matters

17. I note the concerns raised by interested parties including flooding and highway safety matters. However, given my findings in relation to the main issues, I have not considered these matters further.

18. I note the concerns raised by the appellant about the time taken to process the planning application and the changes that have occurred during this time in relation to the Council's 5 year supply of deliverable housing sites. However, I must determine the appeal on the current circumstances and in doing so I have only had regard to the planning merits of the case.

19. The appellant has referred me to a planning permission[1] for 7 dwellings granted by the Council which they consider offers support to the acceptability of the appeal proposal. However, that site already benefitted from extant consent for 8 dwellings. Whilst I am not aware of the precise reasons for that permission, the permission for 7 dwellings was determined against the Council's Interim Housing Land Supply Policy; that is not the case for the appeal proposal. As such, I do not consider that permission to be sufficiently comparable to the appeal scheme proposal as to be afforded weight in the determination of this appeal.

20. I also note an outline planning permission for up to 56 residential units[2] on a site said to be adjacent to, but outside of, the settlement boundary of another Primary Village within the Borough. I have not been provided with the details of why this permission was granted. However, as the scale of development in that case is far greater than the case before me, I consider it reasonable to conclude that the overall circumstances that led to the approval of that scheme are sufficiently different from the case before me, such that it does not alter my conclusions in respect of the main issues.

21. I do not consider paragraph 84 of the Framework to be relevant to this appeal. This is because it is concerned with the identification of sites for the provision of business and community needs in rural areas rather than sites for housing.

22. My attention has been drawn to other appeal decisions where permission was granted for new housing within the countryside. Both of these were in different local authority areas from the appeal scheme and would have been determined under different policy regimes. This limits their relevance to this appeal. Nevertheless, one was a scheme for 2 dwellings and the other for 170. I acknowledge that the benefit of two dwellings was found to outweigh the harm identified, and that this was the case even though paragraph 11 of the Framework was not engaged. I note that in the case for 170 dwellings it was found that the aims of the spatial strategy would not be unacceptably harmed. It is also reasonable to consider that the benefits of the larger scheme would be accordingly greater. The contexts of these appeals are, therefore, materially different to that of the appeal before me, and the weight to be given to both harm and benefits of development proposals will be specific to each individual case. Consequently, these appeal decisions have not been determinative, and I necessarily determine this appeal on its own merits.

23. The site is located within 2.5km of The Broads Special Area of Conservation (SAC), Broadland Special Protection Area (SPA), Broadland Ramsar, Winterton-Horsey Dunes SAC and Great Yarmouth North Denes SPA. I note that the appellant provided a Habitats Regulations Assessment which concluded that in combination with other live plans or projects, likely significant effects on the qualifying features (breeding little terns) of Winterton-Horsey Dunes SAC and Great Yarmouth North Denes SPA at Winterton cannot be ruled out. It further concluded that payment of the Council's agreed Natura 2000 fee would satisfactorily mitigate the likely significant effects. The S106 Agreement includes an obligation to secure this payment. However, as I have found the proposal to be harmful for other substantive reasons, I do not need to consider this matter any further as part of this appeal.

[1] Council ref: 06/18/0106/F
[2] Council ref: 06/18/0149/O

Planning Balance

24. The Council has provided evidence of its most recent housing land supply position statement which concludes that the Council can demonstrate a 6.51 year supply. This is not disputed by the appellant. Therefore, based on the evidence before me, I am satisfied for the purpose of this appeal, that the Council can demonstrate a deliverable supply of housing sites. Nevertheless, the appellant considers that the policies most relevant to the determination of this appeal are inconsistent with the Framework and are therefore out of date for the purposes of paragraph 11 d of the Framework.

25. The limited circumstances in which new dwellings in the countryside beyond settlements are permissible under LP Policy HOU10 and the final bullet of CS Policy CS2 a) means that these policies are not wholly consistent with the Framework, which applies similar limitations to isolated development only. This reduces the weight I can afford to the harm arising from the conflict with them. However, the Framework does not seek to prevent the use of defined settlement boundaries within development plans. Given the 5 year deliverable housing land supply position, there is nothing to suggest that these policies are unduly constraining the delivery of housing within the Borough or preventing sustainable development within settlements. Moreover, I find that other policies most important for determining the appeal, namely CS Policies CS6 and CS12 are consistent with the Framework and should be afforded significant weight.

26. Taking these matters together, I consider that the 'basket' of policies is not out-of-date for the purposes of paragraph 11 d of the Framework. Consequently, I find that the so called 'tilted balance' is not engaged in this case. The proposal falls to be determined against the development plan, taking account of other material considerations, including the Framework.

27. The proposal would add to the housing supply, including the delivery of a policy compliant level and mix of affordable housing, and could be built out quickly following approval of reserved matters. The location would provide opportunities to access services and facilities by means other than by private motor vehicle. I recognise that the proposal would be close to a village that the development plan identifies as suitable for some development and the Framework acknowledges that in rural areas housing should be located where it would enhance or maintain the vitality of rural communities. I acknowledge that there would be economic benefits, including by creation of employment during construction and local expenditure by future occupiers. There would be social benefits including the engagement by future occupiers in community activities and groups. I afford these benefits moderate weight commensurate with the scale of development proposed.

28. In addition, the proposal would not comprise isolated homes in the countryside that the Framework seeks that decisions avoid. Nevertheless, in my opinion the settlement boundary remains relevant in this case as it has served to identify opportunities for Hemsby to grow in conformity with paragraph 78 of the Framework. The boundary serves a role in preventing the unplanned spread of development in a sporadic and piecemeal fashion. The proposal would undermine the Council's plan-led approach to the delivery of housing and would not contribute to any identified shortfall in supply. In doing so it would result in the permanent loss of BMV.

29. These matters attract significant weight and outweigh the benefits associated with the proposed development. The proposal would conflict with the development plan considered as a whole. Material considerations do not indicate that the decision should be made other than in accordance with the development plan.

Conclusion

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

S Tudhope
Inspector