



Appeal Decision

Site visit made on 7 April 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2021

Appeal Ref: APP/X3540/W/20/3266109

Ottawa Lodge, London Road, Gisleham NR33 7QN

- 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 Mrs Susan Barrett-Kelly against the decision of East Suffolk Council.
 - The application Ref DC/20/1775/OUT, dated 14 May 2020, was refused by notice dated 29 July 2020.
 - The development proposed is Outline Application for erection of single storey dwelling with garaging and new highway access.
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Decision

1. The appeal is allowed and outline planning permission is granted for erection of single storey dwelling with garaging and new highway access at Ottawa Lodge, London Road, Gisleham NR33 7QN in accordance with the terms of the application, Ref DC/20/1775/OUT, dated 14 May 2020, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was submitted in outline with all matters reserved for future consideration. I have assessed the appeal on this basis and treated the block and visibility splays plans as being submitted for indicative purposes.
3. The appellant has made the payment sought by the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy (Suffolk Coast RAMS), to mitigate any impacts on European sites. I deal with this as a main issue.
4. The Council does not make specific reference in its decision notice to Policy WLP8.7 of the East Suffolk Council Waveney Local Plan 2019 (LP), which sets out circumstances in which small scale residential development in the countryside will be permitted. However, it is clear from the appeal submissions that the Council considers the appeal scheme conflicts with this policy. Concern is also raised regarding the accessibility of the site to services and facilities. Although the appellant asserts that the Council has not objected to the principle of the location of the proposed development, they nevertheless, address this matter in their evidence. I am therefore satisfied that no party would be prejudiced by me considering this matter as a main issue.
5. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. No comments were received. The references

to 'the Framework', including any paragraph numbers, made within the decision are to this revised version.

Main Issues

6. The main issues are (i) the effect of the proposed development on the character and appearance of the area; (ii) whether the appeal site is an appropriate location for the development proposed having regard to the development strategy for the area; and (iii) the effect of the proposed development on the integrity of the qualifying features of nearby European sites.

Reasons

Character and appearance

7. The Council considers that the siting of a new dwelling in front of the existing dwelling (Ottawa Lodge) would break from the existing linear form of development whereby dwellings front onto the highway. I do not share this view for a number of reasons. With the exception of Ottawa Lodge, the properties along this side of the street are built towards the front of their plots following a general but not entirely uniform building line. The proposed siting of the appeal building could, however, be reflective of the predominant build line in this part of the street. When viewed from the street the proposed development would be read as part of a small cluster of dwellings.
8. Although the proposed development would result in a form of tandem development, I do not consider that this would be out of keeping with the character and appearance of the area. There is development in depth on the opposite side of the road, with a touring caravan park being present behind a frontage dwelling. Further, my attention has not been drawn to any policy that would preclude such a tandem development, which in this case would be capable of retaining spaciousness and a good separation between the existing and proposed dwellings.
9. The introduction of a dwelling to the appeal site would alter the appearance of the site. However, the visual effects would be localised and would not extend beyond an existing domestic curtilage. The frontage of the site is currently bound by a substantial close boarded fence which indicates its domestic nature. Although several trees from within the site would be lost, there is no suggestion that these particular trees warrant protection. As it would be possible to retain the mature trees alongside the site frontage, I consider that the general appearance of the site would be preserved.
10. The appeal proposal shows a new access, within the site's frontage, to serve the proposed dwelling. However, the plans are indicative only. The Highway Authority has indicated that it would be possible to achieve safe access arrangements by way of sharing the existing access to Ottawa Lodge. There is no substantive evidence to indicate otherwise. Whilst the proposal may result in some alterations to the form of the existing access, the development could be designed in a way that the access would not appear out of keeping with the established street scene, thereby minimising the impact of the proposal on the appearance of the site. I am satisfied that safe access could be achieved at the reserved matters stage without causing unacceptable harm to the character and appearance of the area.

11. While all matters are reserved for future consideration, from the indicative drawings before me, and having regard to the above context, there appears to be no reason to consider that a detailed design cannot come forward that would be of a suitably high quality without leading to any harm to the character and appearance of the area.
12. I therefore find no conflict with LP Policy WLP8.29 which seeks to ensure high quality design. I also find no conflict with the Framework in this regard.

Location

13. In essence, the Council's development strategy, in line with the Framework, seeks to ensure that development is guided to locations where people have good and easy access to services and facilities, including shops, schools and employment opportunities, whilst minimising reliance on private motor vehicles. The supporting text of LP Policy WLP8.7 indicates that this policy is intended to provide a limited amount of housing in the countryside, provided such development does not adversely affect the intrinsic character of a settlement or the surrounding landscape.
14. The appeal site is situated within the countryside for the purposes of planning policy. The proposal meets the opening criterion of Policy WLP8.7 of 'up to 3 dwellings'. It would have existing residential development on two sides and would not, by virtue of its position within an existing garden, extend development further into the countryside. I also note that although there is no built form next to the northern boundary of the site, this adjacent land is not open countryside, it is outdoor space associated with a holiday park. Nevertheless, the site is not situated within a clearly identifiable gap within a built-up area of a settlement within the countryside. This is in direct conflict with Policy WLP8.7.
15. However, I have already concluded that the proposal would not result in harm to the character and appearance of the area and limited information has been provided in relation to the harm that would result from the conflict with Policy WLP8.7.
16. With regard to access to services and facilities, the site would be near to the settlement boundary for Lowestoft. Whilst concern has been raised that the proposal would result in a reliance by future occupiers on the use of private motorised vehicles, there is a shared cycleway / footpath immediately outside the site which travels both north and south, towards Lowestoft and Kessingland respectively. It is hard surfaced and of a width that could accommodate mobility aids and pushchairs. Bus stops are available on this stretch of the road between the two roundabouts in both directions and, although not lit for its length, street lighting is provided at each end at both roundabouts. In addition, the speed limit along this section of the busy A12 is restricted to 40 mph.
17. Although I have not been provided with details of the bus service, taking all of the above matters into consideration, I am satisfied that there would be opportunity for future occupiers to access services and facilities by other means than private motorised vehicles. Also, supermarkets, tourist businesses and an industrial estate are close to the site. Therefore, there would be access to some employment opportunities close to the site.

18. Overall, I consider that there would be reasonable opportunities to access services and facilities by means other than private motorised vehicles.
19. Consequently, whilst the proposal to erect a dwelling in the countryside would conflict with part of LP Policy WLP8.7 and be contrary to the development plan in that respect, the reasonable accessibility of the site to services and facilities, lack of encroachment into the countryside and the absence of harm to the character and appearance of the area, leads me to conclude that the proposal would not undermine the overall intention of this policy or the development strategy as a whole. I afford significant weight to the absence of harms in these respects, and in accordance with the Framework, I attribute great weight to the provision of housing on a small site in an accessible location. This leads me to conclude that the conflict with the development plan is outweighed by other considerations in this case.
20. Accordingly, for the reasons set out above, the site is a suitable location for a dwelling having regard to the development strategy for the area.

European sites

21. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on European sites¹, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal.
22. The Habitats Regulations² require that planning permission may only be granted after having ascertained that the proposed development will not affect the integrity of the site or sites within the national site network. The appeal site falls within the 13 kilometre Zone of Influence for Benacre to Easton Bavents Special Protection Area (SPA), Benacre to Easton Bavents Lagoons Special Area of Conservation (SAC), Minsmere to Walberswick Heaths and Marshes SAC and Minsmere to Walberswick SPA. These sites are designated for their environmental importance, including supporting specialist lagoonal vegetation species, nationally important breeding bird populations such as Little Tern, Great Bittern and Eurasian Marsh Harrier, habitats for breeding, wintering and passage birds and European dry heaths. The overarching conservation objectives for these sites is to avoid a deterioration of habitats and minimise disturbance, thereby ensuring the integrity of the sites is maintained.
23. These sites are used for public recreation and it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have likely significant effects on the aforementioned qualifying features of the sites due to the increased recreational use. These effects include disturbance of birds, resulting in increased stress affecting their ability to breed, risk of trampling of important vegetation and of chicks and eggs of ground nesting bird species and increased fire risks linked to cigarettes and barbeques. It is therefore necessary that I undertake an AA. In doing so I may consider any conditions or other restrictions which could secure mitigation of this harm and which could therefore allow development to proceed in the knowledge that the conservation objectives of the identified sites would be secured.

¹ Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

² Conservation of Habitats and Species Regulations 2017.

24. I have had regard to the Suffolk Coast RAMS, and the underpinning Technical Report³ which forms an agreed strategic solution to mitigate the effects of development proposals by the provision of a mix of measures that would be secured by financial contributions from developments, based on a standard tariff. These include a range of habitat-based measures including education, communication and monitoring and have been endorsed by Natural England (NE). Payment has been made by the appellant by way of an accompanying S111 agreement in accordance with the agreed strategy. Natural England consider that mitigation secured in line with the Suffolk Coast RAMS would avoid the development having an adverse effect on the integrity of the European sites.
25. Given the evidence before me, I am satisfied that the mitigation measures have been secured, would be used for their intended purpose and that the level of further recreational disturbance resulting from the proposed dwelling would be effectively offset by the contribution made to the strategic mitigation measures. On this basis, I am able to conclude that the proposal would not have an adverse effect on the integrity of the identified European sites.

Other Matter

26. Natural England advised that the appeal proposal triggered an Impact Risk Zone for Pakefield to Easton Bavents Site of Special Scientific Interest (SSSI). This suggests that impacts to the SSSI caused by foul drainage arrangements need to be considered. Both parties provided comments in respect of this matter. The appellant has confirmed that foul water drainage to the mains sewer would be available. This would be an acceptable arrangement and could be controlled by the imposition of a condition.

Conditions

27. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording of the suggested conditions and omitted those that are repetitive or unnecessary in the interests of reasonableness, precision and clarity, and in order to comply with advice in the Planning Practice Guidance. The appellant has given written agreement to the pre-commencement condition attached to this decision.
28. Planning permission is granted subject to the standard reserved matters conditions. I have specified the relevant plan in the interests of certainty. There is a reasonable possibility that the site could be contaminated. Therefore, a pre-commencement condition requiring the investigation and remediation of any contamination, including any unexpected contamination, is required in the interests of the safety of construction workers, neighbouring residents and future users of the site. I have amended and consolidated the Council's suggested contamination conditions for clarity and preciseness. A condition is required in the interests of protected species, to secure the ecological measures contained within the Extended Phase 1 Ecological Assessment Report that supported the application.
29. In order to prevent pollution and to protect habitats, a condition is necessary to ensure that appropriate foul drainage is provided.

³ Recreational Disturbance Avoidance & Mitigation Strategy for Ipswich Borough, Babergh District, Mid Suffolk District and East Suffolk Councils. Footprint Ecology 23 May 2019

30. I consider a condition requiring the development to be single storey to be unnecessary as details of scale are a matter reserved for future determination.

Conclusion

31. For the reasons given, I conclude that the appeal accords with the development plan, taken as a whole, and other material considerations in this case do not indicate that permission should be withheld. Therefore, the appeal is allowed.

S Tudhope
Inspector

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Site Location Plan Drawing No 2129.1.
- 5) (i) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority.

(ii) If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

(iii) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 15 days of the report being completed and approved in writing by the local planning authority.

- 6) The development hereby permitted shall be carried out in accordance with the ecological avoidance, mitigation, compensation and enhancement measures identified within the Extended Phase 1 Ecological Assessment Report that accompanied the application (undertaken by Phillips Ecology dated May 2020).
- 7) The development hereby permitted shall not be occupied until foul water drainage has been provided to serve the development, in accordance with details that have first been submitted to and approved in writing by the local planning authority. Thereafter, the foul water drainage shall be maintained and retained in accordance with the approved details.

End of Schedule.