



Appeal Decision

Site Visit made on 13 July 2021

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal Ref: APP/U2615/W/20/3263268

Land west of Pound Lane, Filby NR29 3HP

- 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 M Chapman against the decision of Great Yarmouth Borough Council.
 - The application Ref 06/18/0631/F, dated 9 November 2018, was refused by notice dated 29 October 2020.
 - The development proposed is the erection of 15 no. dwellings, 3 of which are affordable units, with associated parking and garages, the creation of a footpath from the site access to Main Road along Pound Lane and an attenuation lagoon on site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and I have taken account of any responses from them in my determination of the appeal.
3. The Great Yarmouth Local Plan Part 2 Final Draft Plan -2020- (the Draft Local Plan) has been published but has yet to be examined and found sound. The Filby Neighbourhood Plan has yet to be examined, found sound and adopted. Therefore, having regard to paragraph 48 of the Framework these attract limited weight as a material consideration.
4. The appellants have provided a Unilateral Undertaking (UU) which makes provision for three of the dwellings to be made available as affordable housing units and for the future management of the attenuation lagoon. The Council have had the opportunity to comment on the UU during the course of the appeal. The UU fulfils the tests stipulated by the Framework and I do not consider that any party would be disadvantaged by my taking the UU into account in my consideration of the proposal before me.

Main Issues

5. The main issues are: -
 - Whether the site is a suitable location for 15 new dwellings, with particular regard to local policy for the delivery of housing,

- The effect of the proposal on the safety of highway users and efficient movement of traffic, with particular reference to the junction of Pound Lane with Main Road.
- The effect of the proposal on the availability of agricultural land, and : -
- The effect of the proposal on Trinity Broads, with particular regard to foul water contamination.

Reasons

Suitable location for dwellings

6. The appeal site is an open area of land currently containing an arable crop, accessed from Pound Lane by means of an existing agricultural access running between two pairs of semi-detached dwellings.
7. Great Yarmouth Borough Council Local Plan: Core Strategy -2015- (the Core Strategy) sets out a spatial strategy which seeks to locate development, including housing, in locations with access to goods and services and reduce the need to travel. Filby is identified within the Core Strategy as a Secondary Village where only 5% of new development will take place. The site lies outside of the identified settlement boundary. It is therefore in the countryside for planning purposes where development will only be permitted subject to the exceptions set out in the Council's countryside policies. Policy CS2 of the Core Strategy seeks to restrict development in the countryside to conversions/replacement dwellings/buildings and schemes that help to meet rural needs.
8. There is no dispute that the development lies outside the development boundary of Filby and is not one of the exceptions to development set out in Policy CS2 of the Core Strategy.
9. The site lies adjacent to the development boundary. It is not, therefore 'isolated' in respect of the 'Braintree' judgement¹. Whilst adjacent to the built up area of the village, the site nonetheless lies outside of the development boundary and thus, in planning terms, is in the countryside. It is not development of a type specifically identified as requiring a rural location. Therefore the proposal is in conflict with Policy CS2 of the Core Strategy.
10. The Council, in their Statement, refer to policies within the Draft Local Plan and explain that no further development is proposed in villages such as Filby for the duration of that Plan. My attention has also been brought to the emerging Filby Neighbourhood Plan. However, for the reasons set out above, these emerging plans carry limited weight.

The movement of traffic

11. Pound Lane has a varying carriageway width. In the vicinity of the proposed development and as it approaches its junction with Main Road it is approximately 5 metres wide. It is lit and subject to a 30 MPH speed limit, although it lacks footways. Beyond the site entrance, travelling from Main Road, Pound Lane makes a sharp right turn and narrows to a single track road with passing places. Main Road is also subject to a 30MPH speed limit but is lit and has a footway on its northern side.

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

12. The proposed development would use the existing point of access to provide a 4.8 metre wide road with a footway, on one side only, of 1.8 metres. A footway would be provided on one side of Pound Lane between the site access and the junction with Main Road. This would generally be 1.8 metres wide, but, closer to the junction, the width would be reduced to 1.5 metres. This footway would be provided by a combination of using existing verge and reducing the carriageway width. However, a minimum width of 4.8 metres of carriageway would be retained.
13. Both Main Road and Pound Lane are rural village roads. Main Road is a classified County Road, linking larger settlements, whilst Pound Lane links smaller settlements to the strategic network. The layout of the junction reflects these roles and Main Road has priority over Pond Lane.
14. A carriageway 4.8 metres in width would accommodate two-way flow for light vehicles, but would be very constrained for heavy vehicles, including farm vehicles. During my site visit I observed traffic movements at the junction. There is restricted space for manoeuvring within the junction and vehicles turning left into Pound Lane reduced their speed to make the turn, yet many still crossed the centreline marking. On occasion I noted that a vehicle turning into the junction from Main Road stopped on the main carriageway until a vehicle emerged from Pound Lane before it was able to make the turn.
15. The proposal would reduce the available space within the junction still further and, whilst the reduction in space would be relatively small there would be an increase in conflict associated with that reduction, possibly, in combination with the reduction in width of the carriageway to the north, resulting in vehicles being forced to stop close to the junction, reverse back towards, or onto, Main Road or to mount the proposed footway putting pedestrians at risk or causing them distress. Taken overall, there would be an increase in the risk of collision between vehicles at, or close to the junction with resultant risk to life and property, and, in this case, the risk would be so significant as to amount to harm.
16. Increased conflict for available manoeuvring space within the junction would be likely to increase delays to through traffic on Main Road as the occasions on which vehicles would have to wait would be more frequent. However, whilst there may be increased delays at the junction, overall the nett increase in delay on the network is unlikely to be significant and would not be harmful.
17. I note the comments of the Local Highway Authority (LHA) that, should the Council be satisfied with the information they would not raise a highway related objection, subject to the imposition of planning conditions. However, I further note that the LHA had concerns regarding the practical deliverability of the scheme and the geometry of the junction.
18. It has been suggested that any safety issues associated with the junction could be addressed through the imposition of suitable planning conditions. However, from the information provided it has not been demonstrated that the issue of conflict within the junction could be successfully addressed and so the use of a condition would, in this case, be unreasonable. No safety audit process has been undertaken, even at Stage 1, and there is no certainty that, should planning permission be granted, the fundamental issues that I have identified above could be overcome.

19. I therefore find that, whilst not having a harmful effect on the efficient movement of traffic, the proposal would have a harmful effect on the safety of highway users and would therefore be in conflict with Policy CS16 of the Core Strategy in as much as this seeks to ensure that new development does not have an adverse impact on the safety of the local road network for all users.

Availability of agricultural land

20. The proposal would build over a field which, at the time of my site visit, contained an arable crop. The land is classified as Grade 1 agricultural land according to the maps within the Core Strategy. However the appellant has provided an Agricultural Land Classification Assessment which concludes that the land should be classified as Grade 2 agricultural land. I have no reason to dispute the detailed analysis and findings of this report.
21. Whilst of less agricultural value than Grade 1 land, Grade 2 land nonetheless provides a resource that contributes positively to the rural economy and food production and falls within the definition within the Glossary of the Framework as best and most versatile agricultural land. Policy CS06 seeks, amongst other things, to minimise the potential loss of the best and most versatile agricultural land by ensuring that development on such land is only permitted if it can be demonstrated that there is an overriding sustainability benefit from the development and there are no realistic opportunities for accommodating the development elsewhere. It has not been demonstrated in the evidence before me that there are no realistic alternative sites that could accommodate the development.
22. The policy does, however, allow the loss of agricultural land, even that which is the best and most versatile, where there is an overriding sustainability benefit. As will be seen later I have found no such overriding benefit.
23. The proposal would thus decrease the amount of available agricultural land and would, therefore, be contrary to Policy CS6 of the Core Strategy.

Effect on Trinity Broads

24. Concerns were raised during the course of the application regarding the proposed foul drainage provision proposed. Subsequently the drainage company that will be adopting the system has indicated that the proposal accords with their requirements and that there would be capacity within the foul sewerage system. The Council have indicated that this addresses their concerns.
25. On the evidence before me I have no reason to disagree with the main parties and so conclude that the proposal would have no harmful effect on Trinity Broads and would, therefore, accord with Policy CS11 of the Core Strategy in as much as this seeks to avoid any harmful impacts of development on the biodiversity, priority habitats and species of the borough.

Other Matters

26. The site is located within the zone of influence of sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policy CS11 of the Core Strategy seeks to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. The Natura 2000 Sites Monitoring Mitigation

Strategy incorporates strategic mitigation measures to be delivered to avoid adverse impacts. The appellants have provided a financial contribution towards mitigating the effects of the proposal on the protected sites.

27. However, it the decision maker, when considering the effect that a proposal may have on a protected site, who must consider mitigation within the Framework of an Appropriate Assessment (AA). This responsibility now falls to me within this appeal.
28. Had I been minded to allow the appeal, it would have been necessary for me to undertake an AA. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the protected sites. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Planning Balance

29. Whether development plan policies are considered out-of-date in terms of paragraph 11d) of the Framework will depend on their degree of consistency with its policies, whether matters have changed on the ground or new local policies have been adopted or whether there are other material considerations which render the policy out of date.
30. The policies in the development plan that are most important in this case (Policies CS2, CS6, CS11, and CS16 of the Core Strategy) pre-date the current version of the Framework and accordingly, it is necessary to consider whether these Policies are out-of-date by their consistency with the Framework.
31. Policy CS2 relates to the spatial strategy for Great Yarmouth Borough and seeks to ensure that the overall housing provision will be distributed in accordance with the settlement hierarchy. The policy also identifies the rest of Great Yarmouth Borough outside of settlements identified in the policy as being designated as countryside and restricts the types of development that would be appropriate in these areas. The Core Strategy identifies the limits of these settlements, outside of which the land would be in the countryside, by means of development boundaries.
32. Policy CS2 limits the types of development that would be appropriate in the countryside. In this sense CS2 is a protective policy to a degree and more restrictive than the overall approach taken within the Framework.
33. The Core Strategy sets out a spatial strategy which seeks to locate development, including housing, in locations with access to goods and services whilst protecting the natural environment from inappropriate development.
34. The Framework seeks to promote sustainable development, balancing growth with the need to conserve and enhance the natural environment, recognising, amongst other things, the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land. Policy CS2 of the Core Strategy seeks to restrict inappropriate development in the Countryside, limiting development to within identified settlement boundaries or that require a countryside location.

35. Policy CS6 seeks to protect the best and most versatile agricultural land from inappropriate development and Paragraph 174 of the Framework seeks to recognise the benefits of such land. Policy CS11 seeks to protect important habitats and biodiversity and reflects similar aims set out in the Framework.
36. Policy CS16 seeks to ensure that new development does not have an adverse impact on the safety and efficiency of the local road network for all users. Paragraph 110 of the Framework identifies similar aims. As such, notwithstanding the restrictive nature of Policy CS2 of the Core Strategy, these policies are broadly in compliance with the aims of Sections 2, 5, 9 and 15 of the Framework and, therefore, the basket of most important policies is not out-of-date.
37. The Framework does not impose a blanket restriction on development outside defined settlements, nor does it explicitly prevent the use of such boundaries. The appeal site is located in close proximity to existing dwellings and is not isolated and so the countryside location does not conflict with paragraph 80 of the Framework. Paragraph 79 supports new housing where it will enhance or maintain the vitality of rural communities. Thus, whilst the site is outside the settlement boundary this in itself does not persuade me that the site is in an unsustainable location.
38. Filby has a range of services and facilities, including a school, branch medical surgery, village hall, restaurant, public house, church, post office and shop and various social, sport and other clubs and organisations. The intervening roads are lit and subject to a 30 MPH speed limit. The proposal would provide a footway, albeit of restricted width, connecting to the footways on Main Road, and thereby to nearby bus stops and the facilities within the village. There is a bus service serving the village providing connection to Great Yarmouth with a full range of shops and services. However, on the basis of the evidence before me, the service is restricted in frequency.
39. The nature of the local roads outside of the village, with their lack of lighting and footways, vehicular speeds and the distances involved, are such that they would deter pedestrians and cyclists, particularly after dark, with children or during inclement weather and so residents of the site would still be likely to rely to a large degree on the private car for their day-to day needs.
40. The Framework promotes sustainable development in rural areas, requiring that housing should be located where it will enhance or maintain the vitality of rural communities especially where this will support local services. The Framework recognises that rural housing development in smaller settlements can support services in a village nearby and that sustainable transport solutions will vary between urban and rural areas. Given the position of the proposal, abutting the boundary of the existing settlement, and whilst there would remain heavy dependence upon the private car, the proposal would provide support to shops and services within the village.
41. The site is currently an arable field and provides limited opportunity for biodiversity. The proposal would introduce more varied soft landscaping, including an attenuation feature for drainage, and this would provide an opportunity for ecological enhancement.
42. The Council's development plan policies may also be considered out-of-date in terms of paragraph 11d) of the Framework if the Council is unable to

- demonstrate a five year supply of housing land. There is dispute between the parties as to whether they are able to do so.
43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
44. The development would provide benefits in terms of delivering and additional fifteen dwellings to boost the Council's housing supply, three of which would be affordable homes, in a location which is well-related to the village and thus the future occupiers of the proposal would not rely entirely upon the use of the private car to meet their day-to-day needs. The Council's identified housing need figure is not a maximum and the additional homes would provide a modest benefit, given the Government's aim of significantly increasing the delivery of housing. There would be minor benefits to the local economy in terms of short term employment in the construction industry and longer term support to local shops and businesses in the village and the local towns.
45. The proposal would provide a footway, albeit limited in width, connecting to the main footway network within the village and provide an opportunity to enhance the green environment of the site, providing an ecological benefit. Taken together, given the scale of development, these benefits carry moderate weight.
46. As will be seen above I have found that the proposal would conflict with the Council's spatial strategy and thus the development plan in relation to its location outside the defined development boundary. The policy establishes the broad strategy for the delivery of sustainable development and should not lightly be set aside. I have identified harm to the safety of highway users, and the loss of agricultural land, with associated harm to the local agricultural economy. Taken together these are significant factors weighing against the proposal.
47. Whilst the issue of the effect of the site on protected sites remains unresolved the effects could only be, at best, neutral in my considerations.
48. In conclusion, even if I were to accept the appellants view that the policies most relevant to the supply of housing within the Development Plan are out of date, either by virtue of lack of a five year supply of housing land, or lack of compliance with the Framework, the identified harm would significantly and demonstrably outweigh the moderate benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.
49. My attention has been drawn to an appeal decision² where weighting was allocated to benefits accruing from the proposal and a balance was carried out of those benefits against the harm resultant from the proposal. Whilst it is needful that there be consistency of approach in assessing weight, the balance and its outcome are specific to each case and I have, in any case, considered the proposal before me on its own merits.

² PINS Ref: APP/K2610/W/19/3239986

50. I note that the appellant had sought to engage positively with officers. However, such engagement is not a guarantee of a successful outcome and the Council's Members are entitled to reach a different conclusion on the acceptability of a proposal than their Officers, provided that they are able to justify that decision in sound planning terms. As will be seen above I am satisfied that they have done so.

Conclusion

51. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I Dyer

INSPECTOR