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# Appeal Decision

Site Visit made on 7 July 2021

**by S Tudhope LLB (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 November 2021**

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**Appeal Ref: APP/U2615/W/20/3264145**

**Philmar Lodge, Ormesby Lane, Filby NR29 3HX**

- 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 & Mrs Green against the decision of Great Yarmouth Borough Council.
  - The application Ref 06/20/0469/F, dated 29 July 2020, was refused by notice dated 17 November 2020.
  - The development proposed is described as "Development of site to create 10 no. dwellings and widening of Green Lane to improve access into site. Resubmission of planning application 06/18/0656/F. Proposal includes plot 1 which is deemed of use for Section 106 Agreement.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. 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 and Natura 2000 contributions. The S106 Agreement is dated 30 July 2021. I have taken the S106 Agreement into account in reaching my decision.
3. 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. The references to 'the Framework' made within my decision are to this revised version.
4. The emerging Filby Neighbourhood Plan (eNP) and the Great Yarmouth Local Plan Part 2 Final Draft Plan 2020 (the Draft LP) have been drawn to my attention. Both of these plans are currently under examination and are therefore subject to change. Having regard to paragraph 48 of the Framework these attract limited weight as material considerations.

## Main Issues

5. 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*

6. 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 Filby is identified as a Secondary Village, which are those that contain few services and facilities with limited access to public transport and few employment opportunities. The settlement hierarchy seeks to deliver approximately 5% of new residential development in such locations. The site lies outside but adjacent, on one of its boundaries, to the identified settlement boundary. It is therefore in the countryside for planning purposes.
7. The site is not currently in use for agricultural production but is, nevertheless, in agricultural use for the grazing of horses, and appears as an established part of the countryside. Other agricultural land lies to the north west and north of the site, with linear residential development alongside Main Road and Ormsby Lane backing onto the other boundaries of the site.
8. CS Policy CS2 restricts development in the countryside to particular types of development to help meet rural needs. The proposal does not meet the policy criteria for a countryside location. As such the appeal proposal is in conflict with CS Policy CS2.
9. Policy CS3 of the CS considers the borough's housing need and seeks, amongst other matters, to focus new development in accessible areas and those areas with the most capacity to accommodate new homes. The appeal site is adjacent the settlement boundary and its development would not result in isolated homes in the countryside due to the proximity to other dwellings. However, services and facilities to meet the day to day needs of future occupiers are somewhat limited, as indicated by its identification as a Secondary Village.
10. Taking all of these matters into account, I conclude that the appeal site, being outside of the defined settlement boundary, would not be an appropriate location for the proposed development with regard to the development strategy for the area. I give this matter considerable weight.

### *Agricultural land*

11. The Council considered that the appeal site comprises land classed as Grade 1 agricultural land. The appellants have 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 findings of this assessment. CS Policies CS6 and CS12 seek to protect and to minimise the loss of the best and most versatile agricultural land (BMV) by ensuring that it is demonstrated that there are no realistic opportunities for accommodating the development elsewhere and to protect the BMV as a valuable resource for future generations. The Framework defines BMV as land in Grades 1, 2 and 3a of the Agricultural Land Classification. In the absence of any specific definition of BMV within the CS, I consider it reasonable, given that the Framework post-dates the CS, to apply the Framework's definition to the appeal proposal.

12. The appellant acknowledges that paragraph 174 b) of the Framework requires planning policies and decisions to contribute to and enhance the natural and local environment by recognising the economic and other benefits of BMV. Paragraph 175 of the Framework requires that plans should allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 58 of the Framework recognises that in areas where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The appellants argue that the appeal proposal is not a significant development, thereby suggesting that the amount of BMV that would be lost would not conflict with the aims of paragraphs 175 or 174 b) and can therefore be justified. However, Filby, as one of a number of Secondary Villages deemed suitable to only accommodate approximately 5% of new residential development in the borough, is not an area where significant development of agricultural land has been demonstrated to be necessary. I do not, therefore, consider that the requirements of paragraph 175 of the Framework provide support for the appeal proposal.
13. Although it is argued that the appeal site is unused agricultural land, this is not the case as it is in use for the grazing of horses. Even if it was not currently in active agricultural use, it is not a stand-alone parcel of land and, whilst its size and position near to residential properties may cause some restrictions on the type of agricultural use that could occur, I have not been presented with any substantive evidence that demonstrates that agricultural production could not take place on the site, either separately or in combination with the adjacent fields.
14. The proposed development would result in a permanent loss of BMV. 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.
15. I therefore conclude that the proposed development would result in unjustified and harmful loss of BMV. Accordingly, the proposal conflicts with CS Policies CS6 and CS12. I afford this matter considerable weight.

#### *Affordable housing*

16. The Section 106 Agreement submitted during the course of the appeal seeks, amongst other matters, to address the Council's third reason for refusal. That being the lack of means, provided in the application, by which to secure a policy compliant level of affordable housing on the site. Notwithstanding my conclusions on the other main issues, because the provision of affordable housing would be a benefit of the proposed development required to be weighed in the planning balance against identified harms, it is necessary for me to reach a conclusion on the effectiveness or otherwise of the relevant obligation.
17. 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 two affordable homes would satisfy the provisions and tests set out within the Framework and the Community Infrastructure Levy Regulations 2010. The delivery of affordable housing is a benefit of the proposal to which I return in the planning balance.

18. Consequently, I conclude that the reason for refusal concerning affordable housing would be addressed by the planning obligation and the proposal would comply with CS Policy CS4.

### **Other Matters**

19. I acknowledge the concerns raised by interested parties, including in relation to sewage, highway safety, protected trees, protected species and the location of a main drain and an electricity substation. However, given my findings in relation to the main issues, I have not considered these matters further.
20. The appellants have referred me to an appeal decision where permission was granted for new housing within the countryside. This was in a different local authority area from the appeal proposal and would have been determined under a different policy regime, which limits its relevance to this appeal. That scheme was for 170 dwellings and it was found that the aims of the spatial strategy would not be unacceptably harmed. It is reasonable to consider that the benefits of a scheme for 170 dwellings would be greater than a scheme for 10 dwellings. The context of that appeal is, therefore, materially different to that of the appeal before me. The weight to be given to both benefits and harms of development proposals are specific to each case. Accordingly, the decision to which I have been referred has not been determinative in this instance.
21. I do not consider paragraph 85 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. The Section 106 Agreement includes an obligation to secure payment of the Council's Natura 2000 fee to mitigate the likely significant effects of the development on the integrity of nearby European sites. Had I found the proposal otherwise acceptable an Appropriate Assessment (AA) to explore the specific impact of the scheme would have been required. However, as the appeal is being dismissed for other substantive reasons, upon which an AA would have no bearing, it is not necessary to explore this issue any further.

### **Planning Balance**

23. The appellants acknowledge that just because development plan policies are over five years old it does not automatically mean that they are to be considered out of date in terms of paragraph 11 d) of the Framework. Their consistency with the policies of the Framework needs to be considered. It is argued that the policies most relevant to the determination of this appeal are inconsistent with the Framework and therefore the so-called tilted balance is engaged.
24. The limited circumstances in which new dwellings are permissible under CS Policy CS2 means that this policy is 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 this Policy. Although the housing figure predictions set out within CS Policy CS3 are out of date due to the age of the policy, it seeks to ensure that residential development meets the housing needs in the borough and seeks to direct these developments to certain areas, including to allocated sites. Generally, these policies seek to direct growth to areas with access to jobs and services in order

to reduce the need to travel, while protecting the natural environment from inappropriate development. This aligns with the aims of the Framework, where it requires new development to be accessible to services. There is nothing in the Framework that prevents the use of defined settlement boundaries within development plans. Taking these matters together, I find that these policies should still carry considerable weight and are not rendered out of date due to age or lack of consistency with the Framework.

25. Furthermore, I find that other policies most important for determining the appeal, CS Policies CS6 and CS12 are consistent with the Framework and should be afforded significant weight. Overall, I find that paragraph 11 d) 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.
26. In relation to the Council's five year supply of deliverable housing land, at the time of determination of the planning application, it was common ground that there was a shortfall in supply of around two years. The Council has not provided up-to-date evidence in this respect. However, interested parties have asserted that the Council's latest position is that it can now demonstrate a 6.51 year supply. The appellants do not specifically agree nor dispute this figure, instead it is argued that with such a short timeframe between an under-supply situation and being able to demonstrate a deliverable five year supply, there has not been any significant boost to the delivery of homes that the Framework supports. On the basis of the evidence before me, I am satisfied for the purposes of this appeal, that the Council can demonstrate a deliverable supply of housing sites.
27. Nevertheless, the provision of a deliverable five year housing land supply is not to be considered as an upper limit and the proposal would align with the national aim to boost the supply of housing. The scheme would provide ten dwellings and would support small scale development. It would be built out quickly. Thereby making a modest but important contribution to the supply of housing, in a location where future occupiers would have opportunities to access some services and facilities by means other than by private motor vehicle. The development would be close to a village that the development plan identifies as suitable for some development, and the Framework recognises that in rural areas housing should be located where it would enhance or maintain the vitality of rural communities. These are social benefits which I afford moderate weight, commensurate with the overall scale of development proposed. Two of these homes would be affordable, secured by the Section 106 Agreement. This would be a public benefit to which I attribute moderate weight.
28. I acknowledge that there would be economic benefits, including those arising from council tax revenue, local trade during the construction phase and ongoing local expenditure by future occupiers. There would also be social benefits including the engagement by future occupiers in community activities and groups. I afford these benefits modest weight commensurate with the scale of development proposed.
29. Further, the proposal would not comprise isolated homes in the countryside that the Framework seeks that decisions avoid. However, an absence of harm is neutral, not a matter to be weighed in favour of the proposal.

30. Conversely, the proposal would undermine the Council's plan led approach to the delivery of housing at a time when it would not contribute to an identified shortfall in supply. In doing so it would also result in the permanent loss of BMV. 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. Accordingly, there are no material considerations which indicate a decision should be made other than in accordance with the development plan.

### **Conclusion**

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

*S Tudhope*

INSPECTOR

