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# Appeal Decision

Site visit made on 29 September 2021

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

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

**Decision date: 06 December 2021**

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**Appeal Ref: APP/V2635/W/20/3263368**

**Allotment Gardens, Vicarage Lane, Marham, Kings Lynn PE33 9HY**

- 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 Joshua Matthews against the decision of King's Lynn and West Norfolk Borough Council.
  - The application Ref 20/01042/O, dated 16 July 2020, was refused by notice dated 29 October 2020.
  - The development proposed is described as "one family home".
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The application has been submitted in outline with all matters reserved for future consideration. I have dealt with the appeal on that basis.
3. A revised version of the National Planning Policy Framework has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for this appeal. I have considered these as far as they are material to the outcome of the appeal. The references to 'the Framework' made within my decision are to this revised version.

## Main Issues

4. The main issues are (i) whether the appeal site would be in a suitable location for a dwelling having regard to the development strategy for the area and its effect on character and appearance; and (ii) the risk of land contamination.

## Reasons

### *Location and character and appearance*

5. It is not disputed that the appeal site lies outside of a defined settlement boundary identified within the Council's Site Allocations and Development Management Policies Plan 2016 (DM) and therefore lies within the open countryside for planning policy purposes. New development within the open countryside is restricted by Policy CS06 of the King's Lynn and West Norfolk Local Development Framework Core Strategy 2011 (CS) and DM Policy DM2. Policy DM2 lists a number of exceptional circumstances where development within the open countryside may be supported. The proposal does not fit within any of the defined exceptions. As such the proposal is contrary to Policy CS06 and Policy DM2.

6. Policy CS06 also states, amongst other matters, that the strategy for rural areas is to promote sustainable communities and sustainable patterns of development to ensure strong, diverse, economic activity and to maintain local character and a high quality environment. Beyond the villages and in the countryside the strategy will be to protect the countryside for its intrinsic character and beauty.
7. The appeal site comprises part of a larger parcel of land, the boundaries of which are largely demarcated by paddock type electric fencing. At the time of my visit the site was comprised rough grassed areas toward the south and east boundaries, with the remainder of the site being more overgrown amongst various disused sheds and bird pens, farm and other vehicles, building materials and general detritus, presenting an unkempt yet still rural appearance. It is accessed via an unsurfaced narrow track which joins the highway on the corner of Squires Hill.
8. Development is largely linear along Squires Hill but there is development at depth north of the site access, namely Grove House, a dwelling set within a substantial plot. South of the appeal access a row of three detached dwellings of varying sizes and styles front the road. There is no backland residential development. Beyond these properties and surrounding the appeal site are a series of paddocks, established mature tree belts and agricultural fields which give a distinctly rural quality to this part of the Squires Hill area.
9. This contrasts with the more built up environment and character of housing north east of the site, at Church View and Lime Close which appear to me to define this part of the settlement's edge. A dwelling at the appeal site would be separated from existing development by some margin. Although development at the site would be largely screened from public view, it would be visible from the rear of the properties south of the site access where it would appear unrelated to the established pattern of development.
10. A dwelling in this location, irrespective of its scale and design, would occupy a contrived position, detached from existing development. In this context, even when considering the existing appearance of the site and its wider parcel of land, which could in any case be improved, a residential use of the site would result in an ad hoc form of development that would unacceptably harm the character and appearance of the surrounding rural area.
11. The appellant considers the site to be previously developed land (PDL). However, the Framework defines PDL as land which is or was occupied by a permanent structure, including the curtilage of the developed land. This excludes land that is or was last occupied by agricultural buildings and allotments. Although the appellant advises that the land has not been used as allotments since they have owned it and that it has been used for storage and to keep pets, mostly pigeons, there is no substantive evidence to demonstrate that, in planning terms, the site has a lawful use other than for allotments or agriculture. In any case, the Framework at paragraph 120.c), is concerned with the use of suitable brownfield land within settlements. The appeal site is within the countryside and therefore, even if I were to accept the site as PDL, I could only afford it limited weight in my considerations. As such, this matter does not alter my findings with regard to the effect of the proposal on the character and appearance of the area.

12. I do not consider paragraphs 64 and 65 of the Framework to be relevant to this appeal, as they are concerned with the provision of affordable housing as part of major developments. The appeal proposal for outline permission for a single dwelling does not fall within the definition of major development.
13. Taking all these matters together, I conclude that the appeal site, being outside of the defined settlement boundary, would not be in a suitable location for housing, the proposal would conflict with the strategic and rural housing aims of the development strategy and would result in unacceptable harm to the character and appearance of the area. Thus, the proposal would be contrary to CS Policies CS06 and CS08 and DM Policies DM2 and DM15 which, together and amongst other matters, set sustainable patterns of development and protect the character of an area.
14. The proposal would also conflict with the requirements of paragraph 130 of the Framework, which seeks, amongst other matters, developments that are sympathetic to local character.

#### *Contamination*

15. The appellant's evidence and that of the Council indicate that the appeal site lies in close proximity to a landfilled former chalk quarry. The Council advised that because the land is on chalk bedrock there is a possibility that any contamination from the landfill could migrate from the filled area towards the development site. Detailed information on ground conditions, in the form of either a very detailed screening assessment by the appellant, or a desk study and preliminary risk assessment carried out by a suitably qualified person are required, prior to a grant of planning permission, to determine the risk of contamination at the site and any consequent risk to future site users.
16. The appellant has indicated their willingness to comply with these requirements. However, no such evidence is before me. I recognise that this is an outline application, and the level of information sought at this stage should be proportionate to the decision. There is also a cost involved in undertaking surveys, which may be wasted if planning permission is not granted. However, insufficient information has been provided to allow the condition of the site to be understood, and it is unknown whether any remediation measures, if necessary, would be viable or practicable. It would not therefore be appropriate to leave such matters to be dealt with by condition.
17. Consequently, it has not been demonstrated that the site would be suitable for the proposed development with regard to the risk of land contamination. The proposal would be contrary to DM Policy DM15 which seeks to protect the amenity of future occupiers.
18. Similarly, the proposal would conflict with the Framework, which seeks, amongst other matters, that planning decisions ensure a site is suitable for its proposed use, taking account of ground conditions and any risks arising from land contamination.

#### **Other Matters**

19. I note that the proposal is to provide a home for the appellant's family at the appeal site, including someone with a disability. I am sympathetic to the appellant's personal circumstances and desire to care for their family member

- at home, in a location close by to other family members who would be able to provide additional support.
20. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nevertheless, it does not follow from the PSED that the appeal should succeed.
21. No substantive evidence has been provided that demonstrates that a dwelling at the appeal site is necessary to meet the needs of a disabled person or that there would be an adverse impact on a person with relevant protected characteristics were the appeal to be dismissed. Consequently, this matter does not outweigh the harm that I have found, or the conflict with the development plan.
22. The appellant has offered to amend the proposal by altering the position of the site. However, within the scope of this appeal, I am unable to comment on any suggested amendments. These should be referred to the Council for consideration.
23. The appellant contends that the proposal benefits from the exceptions set out within paragraph 80 of the Framework. However, no details have been provided in relation to the smallholding that the appellant states they would be taking over the running of. It has not been demonstrated that there is an essential need for a rural worker to live at the site. Further, as the design of the proposed dwelling is reserved for future determination it cannot be argued to be of exceptional quality. These matters do not alter my conclusions in respect of the main issues.
24. I note the appellant's arguments regarding Section 6 of the Framework and their personal productivity, future economy and what they hope to develop and do should the appeal be allowed. However, Section 6 is concerned with how planning policies and decisions can help to create conditions in which businesses can invest, expand and adapt. I have not been supplied with evidence of sufficient detail to justify support for the proposal from this section of the Framework, including paragraphs 82, 84 or 85.
25. I also note the potential to reduce travel by motor vehicle. However, given the location of the site in relation to services and facilities, any benefits of the proposal in this regard are likely to be minimal and would not be sufficient to outweigh the identified harm.
26. Reference has been made to other development being granted permission outside of the settlement boundary. The site referenced as G56.1 is land allocated for development under DM Policy G56.1. The principle of residential development at that location being established through the adoption of the DM. Consequently, this matter does not offer support for the appeal proposal. The appellant has mentioned that permission has been granted for other developments outside of the defined settlement boundary in the last couple of years, suggesting that this provides support for the appeal proposal. No details have been provided of those permissions. However, it is unlikely that their site-specific circumstances would be directly comparable with those which apply in

this case and I, therefore, necessarily reach my own conclusions on the proposal before me.

27. I acknowledge that development of the appeal site may provide a cost effective solution for the appellant that may not be available in other locations. However, this would be a personal benefit that does not outweigh the harm identified.
28. Reference has been made to potential support for the proposal from a policy in the Council's emerging Local Plan. Policy LP31 is concerned with residential development reasonably related to existing settlements and refers amongst other matters to rounding off the existing settlement boundary and additional weight being given to proposals for custom and self build development. However, the emerging plan is at an early stage and therefore subject to change. I afford this matter very limited weight in my considerations.
29. I note the support for the proposal; however, this does not lead me to a different overall conclusion on the main issues.
30. The Council's evidence indicates that the development would be likely to effect one or more European sites<sup>1</sup>. No detailed information was provided in this regard. However, given my overall conclusions it is not necessary that I consider the effect of the proposal on European sites, as such an assessment would have no bearing on my decision.
31. The appellant indicates that the proposed dwelling would remain in the family and would be self-build. However, whilst not doubting the appellants' intentions, there is no mechanism in place to ensure that the plot would be built out in accordance with the provisions of the Self-Build and Custom Housebuilding Act of 2015. Nor is there evidence to demonstrate that the proposal would meet unmet demand on the Council's self-build register. These factors greatly diminish the positive weight which I afford to the potential provision of a self-build house.
32. In acknowledging the limited benefits associated with a single dwelling, I do not consider that they outweigh the harm and the policy conflicts I have identified and to which I attribute significant weight. Accordingly, there are no material considerations which indicate that a decision should be made other than in accordance with the development plan.

## **Conclusion**

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

*S Tudhope*

INSPECTOR

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<sup>1</sup> 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.