



Appeal Decision

Site visit made on 14 December 2021

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th January 2022

Appeal Ref: APP/V2635/W/21/3275687

Land adjoining 99 Small Lode, Upwell, PE14 9BG

- 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 Ashwood Bond against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 20/01442/F, dated 22 September 2020, was refused by notice dated 25 November 2020.
 - The development proposed is erection of a single dwellinghouse and garage .
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a single dwellinghouse and garage at land adjoining 99 Small Lode, Upwell, PE14 9BG in accordance with the terms of the application Ref 20/01442/F dated 22 September 2020, subject to the conditions set out below.

Preliminary matters

2. Since the determination of the planning application the subject of this appeal the Upwell Neighbourhood Plan (The NP) passed the local referendum and came into force on the 27th July 2021.
3. As part of its appeal submission the appellant has submitted a Preliminary Ecological appraisal dated January 2021 (the EA), together with a revised site plan 001F to address the Council's reason for refusal 3 regarding biodiversity. The amendment to the plan is small and the Council has provided comment on both submissions in its statement. I do not therefore consider that parties would be prejudiced if I were to accept both documents. I have therefore proceeded on that basis.
4. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties have had the opportunity to make submissions on this matter and I have taken those comments into account. I have therefore determined the appeal in accordance with the revised Framework.

Main Issues

5. The main issues are:
 - the effect of the proposal on the spatial strategy for the Borough;
 - whether or not the proposal would lead to an appropriate loss of agricultural land; and

- the effect of the proposal on biodiversity.

Reasons

Spatial strategy

6. Policy CS01 of the Core Strategy seeks to ensure that new investment is directed to the most sustainable places by using the settlement hierarchy contained in Policy CS02. Policy CS02 allows limited growth of a scale and nature appropriate to secure the sustainability of each settlement, within its development limit, in accordance with Policy CS06. This policy states that provision will be made for a total of 2,880 new homes within or adjacent to selected Key Rural Service Centres such as Upwell where the appeal site is located.
7. Policy DM2 of the Site Allocations and Development Management Policies Plan 2016 (SADMP) states that development will be permitted within development boundaries of settlements. Outside of those limits, the area will be treated as countryside where new development is more restricted in accordance with a number of criteria. This is also reflected in Policy H1 of the NP. The appeal site is outside of the settlement limit for Upwell and does not meet any of the criteria for development within the countryside being an open market dwelling. The proposal is therefore in conflict with Policies CS01, CS02 and CS06 of the Core Strategy, Policy DM2 of the SADMP and Policy H1 of the NP.
8. The overriding aim of the policies when taken together is to ensure that development is directed to the most sustainable places as well as protecting the countryside for its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife. Upwell is a relatively accessible location as a Key Rural Service Centre and I saw at my site visit that the appeal site is in walking distance of a number of services and facilities. While Small Lode itself is narrow and unlit, the appeal site would have a similar level of accessibility to other nearby properties within the settlement boundary.
9. There is housing beyond the settlement boundary along Small Lode and while it is intermittent, particularly on the northern side of the road where the appeal site is located, the character is very much one of dispersed housing in landscaped settings. On the southern side of the road, opposite the appeal site is a short row of properties. The appeal site is largely overgrown with brambles and bound by hedgerow being the former garden of No 99.
10. While the proposal would extend the built form, it would do so no further than the row of houses on the opposite side of the road. Furthermore, the contained nature of the site, particularly along the frontage to Small Lode, formed by a high hedge, means that there would only be glimpsed views of the house which would be viewed, from further afield, against the back-drop of houses. Moreover, there would remain a sufficient distance to the adjacent property to the east, to retain the dispersed character of the built form on the northern side of the road. Therefore, there would be no unacceptable harm to the intrinsic character and beauty of the countryside.
11. The Council has referred to a number of appeal decisions¹ including one on Small Lode which was for the erection of a dwelling closer to the settlement boundary than the site before me now, which was dismissed by the Inspector.

¹ APP/V2635/W/21/3243783, APP/V2635/W/21/3268880, APP/V2635/W/21/3266885, APP/V2635/W/21/3268386,

However, from the information before me that was for a dwelling to the rear of one fronting Small Lode, which is not the case here. The other appeal decisions referred to are also in respect of dwellings outside the settlement boundary which were dismissed. However, I have assessed this proposal on the specific circumstances of the appeal site and the aims of the spatial strategy and found that there would be no unacceptable harm. These circumstances will be different for each appeal site.

12. Nevertheless, as the appeal site is outside of the settlement confines of Upwell the proposal is contrary to policies CS01, CS02 and CS06 of the Core Strategy, Policy DM2 of the SADMP and Policy H1 of the NP.

Agricultural land

13. Policy EN2 of the NP seeks to preserve Grade 1 agricultural land for agriculture and food production. The majority of the land in Upwell Parish is Grade 1 as shown on Figure 5 of the NP. There is nothing before me to suggest that the land at the appeal site is anything other than Grade 1 land.
14. However, following the submission of evidence by the appellant, the Council concedes, in its appeal statement, that the land is part of the garden historically associated with 99 Small Lode. I see no reason to disagree. In any case the small size and location of the site, together with its physical separation from surrounding agricultural land by drainage ditches, makes it difficult to see how it would be commercially viable to operate as agricultural land. I therefore find no conflict with Policy EN2 of the NP.

Biodiversity

15. At the time of the determination of the planning application the Council considered that it had insufficient information to demonstrate that the site can accommodate the development and avoid or sufficiently mitigate adverse impacts to biodiversity as required by the Framework at that time. In addition, Policy CS12 of the Core Strategy requires that development should seek to avoid, mitigate or compensate for any adverse impacts on biodiversity as well as seeking to enhance sites through the creation of features of new biodiversity. Paragraph 174d of the current Framework requires that development minimises impacts on, and provide net gains, for biodiversity.
16. The EA acknowledges that the assessment was undertaken outside the optimum period of April to the end of September, however it was possible to identify key habitats present and assess their likelihood of supporting a greater range of species. I have seen no substantive robust evidence to question the findings of the EA, even given the time of year it was undertaken.
17. The EA states that the site would be cleared and finds a number of habitats on the site which are important for birds, and invertebrates as well as hedgehogs. With the exception of foraging bats, the likelihood of presence of which is assessed as moderate, the likelihood of the presence of protected species was negligible. However, it makes a number of recommendations to not only compensate for the loss of existing habitat, but to provide enhancements on the site as well. I have no substantive evidence before me that contradicts the appellant's ecologist and therefore, I have no reason to disagree with this assessment. I am satisfied therefore that the proposed development would ensure that opportunities to enhance biodiversity would be integrated into the

site if carried out in accordance with the recommendations of the EA which would be secured by condition.

18. The Council has suggested such a condition, while expressing concern regarding the effectiveness of achieving the long term maintenance and monitoring of the proposed bee lawn. I share those concerns and have amended the wording of the proposed condition accordingly. A separate condition is required to ensure light pollution is minimised to protect foraging bats.
19. For the reasons above, I conclude that the proposal would not be harmful to biodiversity and would provide suitable enhancement. There would therefore be no conflict with Policy CS12 of the Core Strategy or the Framework.

Other matters

20. The proposed house would be set back within the appeal site in line with No 99, behind the existing hedge. There would therefore be a similar relationship to existing residential properties on the southern side of Small Lode as currently exists. The intervening distance would be sufficient to maintain the privacy of the residents of existing properties.
21. The proposed access would be opposite the existing driveway on the opposite side of the road. However, the level of vehicular activity associated with one dwelling would not be significant. The Highway Authority has raised no safety concerns regarding the operation of the access and I see no reason to disagree.
22. While there would inevitably be some noise from construction this would be for a temporary period only and therefore would not be unacceptably harmful.

Conclusion

23. The proposal would be contrary to the spatial strategy within the development plan and therefore the development plan as a whole. The Council states that it has a 7.96 year housing land supply. That is not a cap on new housing, and one new house in an accessible location would have some appreciable social and economic benefits. In addition, there would be some biodiversity enhancement.
24. While I am mindful of the importance of the plan led system, I am of the view that the benefits outlined above are sufficient in this case, given the very site specific context of the scheme, and my finding that there would be no unacceptable harm to the intrinsic character and beauty of the countryside to outweigh the harm arising through the conflict with the development plan as a whole. On that basis, I find no conflict with the Framework when assessed overall and I conclude, on balance, that the scheme can be considered as sustainable development and that the appeal should succeed.
25. Therefore, for the reasons given, I conclude that the appeal should be allowed.

Conditions

26. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the PPG, making such amendments as necessary to comply with those documents.

27. In the interests of certainty, it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
28. As well as the conditions referred to above in respect of biodiversity, conditions 6-8 are necessary to protect highway safety.

Zoe Raygen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development is hereby permitted in accordance with the following approved plans: 3168_s3_001 f, 3168_s3_100 A & 3168_s3_110 B. 3.
- 3) The development shall be undertaken in accordance with recommendations 1-5 and 7-9 contained in the Preliminary Ecological Appraisal (Project number 105120) produced by MKA Ecology and dated 15 January 2021.
- 4) No works above slab level shall take place until details of the biodiversity enhancements, including their management and long term maintenance, as detailed in recommendations 10, 11, 12 and 13 of the Preliminary Ecological Appraisal (Project number 105120) produced by MKA Ecology and dated 15 January 2021 have been submitted to and approved in writing by the Local Planning Authority. Development shall proceed in accordance with the approved details.
- 5) No works above slab level shall take place until details of the method of lighting and extent of illumination to the buildings and site have been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be implemented as approved prior to the occupation of the development and thereafter maintained and retained as agreed.
- 6) Prior to the first occupation of the development hereby permitted the vehicular / pedestrian / cyclist access / crossing over the verge shall be constructed in accordance with the highways specification TRAD 5 and thereafter retained at the position shown on the approved plan. Arrangement shall be made for surface water drainage to be intercepted and disposal of separately so that it does not discharge from or onto the highway.
- 7) Any access gates / bollard / chain / other means of obstruction shall be hung to open inwards, set back, and thereafter retained a minimum distance of 5 metres from the near channel edge of the adjacent carriageway.
- 8) Prior to the first occupation of the development hereby permitted the proposed access / on-site car parking area shall be laid out, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.