
Appeal Decision

Hearing (Virtual) held on 8 February 2022

Site visit made on 9 February 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th March 2022

Appeal Ref: APP/X3540/W/21/3276418

Land west of PROW 21, Woods Lane, Melton, IP12 1PH

- 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 N Wright against the decision of East Suffolk Council.
 - The application Ref DC/20/1636/OUT, dated 24 April 2020, was refused by notice dated 3 December 2020.
 - The development proposed is Outline Application for up to 27no. Self Build and Custom dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised on 20 July 2021. The Council and appellant have had an opportunity to comment on the implications of these changes through their submissions.
3. Following the closure of the hearing the appellant submitted further tables of evidence in relation to whether the Council has made adequate provision for self build dwellings, in accordance with the provisions of the Self Build and Custom Housebuilding Act 2015. I have not taken this evidence into account in the interests of fairness to all the parties present at the hearing where this matter was discussed in detail and figures agreed upon. Therefore, my decision is based upon the evidence presented at the hearing.

Main Issues

4. A unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) was submitted as part of the appeal documents. The statement of common ground confirms that this secures, the mitigation required by the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy and I have considered this under other matters. However, the parties have not reached agreement on the matters relating to the adequate provision for affordable housing.

5. The statement of common ground confirms that further information has been provided to address the omissions identified with the proposed surface water drainage strategy as set out within the fifth reason for refusal and that this matter no longer remains in dispute. The Lead Local Flood Authority have also confirmed that based on the evidence submitted during the appeal that they raise no objection to the proposed development, and I have no reason to disagree given the content of the submitted evidence.
6. The Council's delegated report sets out a number of concerns relating to the impact of the development on the rural character of the area and the erosion of the buffer between Melton and Woodbridge.
7. I note from the evidence that a reason for refusal was omitted from the final decision and that this would have covered the concerns cited above. I consider that this matter is significant, and the appellant has provided a response to this area of concern within their appeal statement.
8. It is also noted that impact on character and appearance of the area is a matter of dispute listed within the statement of common ground and formed a reason for refusal on a previous application and therefore the appellant has produced evidence in the form of a Landscape and Visual Impact Assessment to address this.
9. Therefore, I am content that no one would be prejudiced by my taking this matter into consideration in the determination of the appeal.
10. In light of the above the main issues are:
 - whether the council has made adequate provision for self build dwellings, in accordance with the provisions of the Self Build and Custom Housing Act 2015;
 - whether the site represents an appropriate location for the proposed dwellings;
 - whether the proposal makes appropriate provision for affordable housing; and
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Adequate provision for self-build dwellings

11. The Self Build and Custom Housebuilding Act 2015 requires local planning authorities to establish and publicise a local register of custom-builders who wish to acquire suitable land to build their own home. The Housing and Planning Act 2016 added a duty to grant planning permission and provides that authorities must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.

12. The legislation does not specify how authorities must record suitable permission, but the Planning Practice Guidance (PPG) provides examples of what methods they may wish to consider to determine whether an application or development is for self-build or custom housebuilding. It also indicates that at the end of each base period authorities have 3 years to give permission for an equivalent number of plots of land.
13. The parties submitted two sets of evidence to demonstrate whether the Council had met its duty to provide sufficient self build plots. The appellant provided data in the form of Self-build and custom housebuilding data which is published by the Government¹ and whilst this data is provided by the Council in order to compile the register it was not agreed by them. They were, however, unable to articulate why at the hearing when I asked. As a result, I have no substantive reason to depart from the published figures.
14. The Council provided their own evidence and during the hearing the parties agreed the following figures represented their positions with regard to the number of individual entries on the register and the number of permissions granted for both Base Period 3 and 4 as follows:

Base Period		No of individuals on the register	No of permissions granted for serviced plots suitable for self and custom build that base period
3	LPA	298	298
	Appellant	385	156
4	LPA	232	97
	Appellant	390	126

15. Base Period 3 covers the period between 31 October 2017 – 30 October 2018 and the Council had until October 2021 to provide sufficient plots to meet the demand. Base Period 4 covers the period between 31 October 2018 – 30 October 2019 and the Council has until October 2022 to deliver the required number of plots. Therefore, the appeal proposal, if allowed, would count towards meeting the demand identified within Base Period 4.
16. The Council's approach is to identify the required number of permissions granted which have had a CIL exemption granted and then roll forward any further permissions to future base periods. The Council's evidence indicates that for each base period from the start of the accounting period in 2016 that they have met 100% of the demand arising from the register. Albeit that the number of individuals on the register have not reduced significantly.
17. The use of the CIL exemption is one of the methods suggested within the PPG to enable the Council to determine if a permission could count towards meeting its duty and the Council considers that this provides clear evidence that enough serviced plots will come forward to meet demand.

¹ <https://www.gov.uk/government/publications/self-build-and-custom-housebuilding-data-2016-2016-17-2017-18-and-2018-19>

18. The appellant disagrees with this approach and considers that a legal mechanism is required, such as the one put forward within the submitted UU, to ensure that permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding.
19. The appellants have provided a legal opinion which considers two appeal decisions where the use of CIL exemptions were considered in relation to self build and custom homes. They have cited the appeal decision² at land off Hepworth Road, Woodville where the Inspector in that case discounted all single dwelling permissions that were not subject to a planning condition or planning obligation requiring a self-build or custom build house to be built on the site. This is juxtaposed by the Otley decision³ where the Inspector accepted the limitations of using the CIL exemption and referenced a further appeal decision⁴ but ultimately accepted that there was sufficient supply, arising from the high desire for self build in the area. These cases highlight the difficulties in relying solely on this method in evidencing whether the duty has been met.
20. The Council in this appeal confirmed that only 46 permissions granted since 2016 were subject to a Section 106 or condition requiring them to meet the definition of self build and custom house building.
21. Whilst I am not persuaded that in order for a permission to meet the definition of self build or custom build, and therefore count towards meeting the identified need, it is necessary for them all to be restricted by a Section 106 or condition, I do not accept the Council's position that all permissions granted a CIL exemption would go on to become self build or custom build housing. Whilst the PPG sets out that a CIL exemption can be used to determine if a permission could count towards meeting its duty, with regard to this appeal the evidence provided in support of the Council's case is not sufficiently robust due to the lack of scrutiny of the list of permissions provided to lead to certainty that this is the case.
22. It has also been put to me that a number of these permissions may include replacement dwellings and the conversion of agricultural buildings which should not be counted. However, the PPG does allow for the conversion of an existing building to be considered as a self build plot and states that a serviced plot of land could be an opportunity for converting an existing building to residential use (rather than a new build) provided the plot otherwise meets the statutory definition.
23. I have not been provided with any evidence that replacement dwellings can be considered as being capable of meeting a demand for self build plots and I have had regard to the fact that any replacement dwelling would not represent an increase in housing provision within the district.

² APP/G2435/W/18/3214451

³ APP/X3540/W/20/3245440

⁴ APP/H1840/W/19/3241879

24. Therefore, taking all of the above into account and the extent of the evidence provided about the type of development included within the permissions granted, I share the appellants concerns that the numbers of permissions cited by the Council are overly generous and that therefore in previous years a level of unmet demand would have existed. Had I been minded to take the Appellant's post-hearing evidence into account this would not have changed my conclusions.
25. The lack of any significant reduction in the number of persons on the register adds to my concerns in this regard. The Self Build and Custom Housebuilding Regulations 2016 Section 10 (2) is clear that a relevant authority may remove an entry from the register where the person has acquired land suitable for building a house.
26. However, the Council have other opportunities to meet any unmet demand for self build and custom build housing. Policy SCLP5.9 of the Suffolk Coastal Local Plan 2020 states that developments of 100 or more dwellings will be expected to provide a minimum of 5% self or custom build properties on the site through the provision of serviced plots. Table 3.5 of Policy SCLP3.2 provides a list of new housing allocations and a number of these would be required to comply with this policy, including two sites in neighbouring Woodbridge which are in excess of 100 units each.
27. It has been put to me, by the appellant, that the policy doesn't give any additional weight to self build homes and therefore there would be a lack of incentive to deliver this type of housing above normal market housing. Also, that having regard to the total level of allocations, if all of the sites delivered 5% serviced plots this would only provide 212 plots over the plan period up to 2036.
28. Whilst this argument has some merit, the wider policy strategy set out within the Local Plan does allow flexibility in the Countryside, where new housing will be permitted within clusters of existing dwellings and the Council are confident that this will continue to enable a sufficient supply of windfall development that would meet the definition of self build and custom build housing.
29. If I accept the appellants position that the council has an unmet demand of 229 plots for base period 3, which needed to be delivered by October 2021 then this undersupply would be a material consideration to which I would afford significant weight. However, if I accept that the Council has previously delivered 100% of its demand for plots then it might be possible to conclude that it would continue to be able to meet this demand in the remainder of the period up to October 2022.
30. However, the Council were unable to provide any evidence to indicate the total number of permissions that had been granted each year as it stopped counting once it had enough to meet the total number on the register and the data has been provided on a rolling basis. This means that based on the figures agreed by the Council that it needs to grant planning permission for a further 135 serviced plots before the end of October 2022.

31. The Council has recently considered a scheme for 49 custom/self build homes on a site in Framlingham and at the hearing advised that this had a resolution to approve, albeit a formal decision has not yet been issued. This site was allocated in the Neighbourhood Plan for residential development and the report to committee on this application states that whilst it had sufficient permissions to meet the needs derived from the register the site was welcomed as part of the long term provision of these plots. This site, if approved, would contribute to the 135 identified serviced plots required by October 2022, leaving a shortfall of 90 plots.
32. Taking into account the number of permissions granted in previous years, according to the right to build monitoring figures, this indicates that in the preceding 2 base periods this has been between 47-57 dwellings. This figure accords with paragraph 3.48 of the LP which indicates that it is anticipated that a windfall allowance of 50 dwellings per year will be achieved. Therefore, based on this evidence I am not persuaded that the shortfall could be met by either allocations or windfall development.
33. Therefore, taking into account all of the evidence before me, noting the limited reduction in the number of persons on the register and the number of plots required to enable enough to be provided by the end of October 2022, the proposed development would contribute to the councils requirement to make adequate provision for self build dwellings, in accordance with the provisions of the Self Build and Custom Housing Act 2015 for Base Period 4. This is a material consideration to which I afford significant weight.

Appropriate location for housing

34. The appeal site lies outside of the settlement boundary for both Woodbridge and Melton. Policy SCLP3.3 of the Suffolk Coastal Local Plan 2020 (LP) sets out that proposals for new development outside of the settlement boundary will be carefully managed in accordance with national planning policy guidance and the strategy for the Countryside. Policy SCLP5.3 sets out the strategy for the Countryside and permits development only in limited circumstances. The parties agree that the proposed development is contrary to policies SCLP3.3 and SCLP5.3.
35. The site lies within the parish boundary of Melton, which is defined within Policy SCLP3.2 as a larger village and is adjacent to Woodbridge which is a Market Town. Policy SCLP3.2 permits development in these locations through site allocations, development and infill within Settlement Boundaries and windfall development in accordance with other policies within the LP. As the site is outside of the defined settlement boundary it would fail to accord with policy SCLP3.2.
36. The Melton Neighbourhood Plan 2018 (NP), was adopted prior to the LP and therefore contains references to superseded policies within its policy MEL1. However, it focuses development within the physical limits boundary (now referred to in the LP as settlement boundary). Development outside of this boundary will not be permitted unless they are in accordance with the Local Plan policies on appropriate uses in the Countryside. Therefore the proposed development fails to accord with the policy MEL1 of the NP.

37. These policies are intended to ensure the protection of the countryside and to ensure housing is located in areas which are accessible and sustainable. However, the site is well located in terms of its proximity to services and is of a scale appropriate to the size of the existing settlements of both Woodbridge and Melton and as such lies within a sustainable location. It is also located adjacent to a recently completed housing development, which was allowed on appeal. Although, I am advised that this was at a time when the Council was unable to demonstrate an adequate 5 year supply of housing.

However, whilst I have not identified any harm arising from the location in terms of access to services, the proposed development would fail to adhere to the relevant policies relating to housing in rural areas. The LP is recently adopted and the Councils strategic approach is to meet its housing need through housing allocations within its largest settlements and this is an approach shared by the NP which directs new development within the settlement boundary.

38. In conclusion, the introduction of the proposed development into the appeal site, would fail to adhere to the relevant policies relating to housing in rural areas. It would conflict with policies SCLP3.2, SCLP3.3 and SCLP5.3 which seeks to direct development to the most appropriate locations.
39. The development would also conflict with policy MEL1 of the NP which sets out the settlement strategy for Melton.
40. I have afforded the conflict with the Councils housing strategy and the NP significant weight.

Affordable Housing

41. Policy SCLP5.10 states that proposals for residential development with capacity for ten units or more will be expected to make provision for 1 in 3 units to be affordable dwellings and be available to meet an identified local need.
42. The policy expects that 50% should be for affordable rent/social rent, 25% should be for shared ownership and 25% should be for discounted home ownership. With provision expected to be made on site.
43. The proposal does not make any provision for affordable housing either on site, or through an off site contribution. No case has been made to demonstrate that the site is not viable if affordable housing were to be provided.
44. I have been directed to paragraph 65 of the Framework which sets out that planning decisions should expect at least 10% of the total number of homes to be available for affordable home ownership. Footnote 31 indicates that this is part of the overall affordable housing contribution from the site. An exemption to this provision is given where the proposal is to be developed by people who wish to build or commission their own homes.
45. The appellants have provided a legal opinion that was sought in connection with a different development. It sought to clarify whether that application was exempt from any requirement to provide affordable housing or a payment in lieu by virtue of the exemption provided within paragraph 65. This concluded that in the opinion of the writer that a complete exemption to affordable housing was conferred to self build and custom build housing.

46. However, the legal opinion states that it has not quoted the footnotes as they do not bear upon their analysis. I am not persuaded by this argument. The footnote clearly states that affordable home ownership is part of an overall affordable housing contribution and that the exemption is made therefore in relation to this part. Having regard to the Council's own policy this would relate to the 25% set out as for shared and discounted home ownership
47. Annex 2 of the Framework provides a glossary of terminology and in particular Affordable Housing is broken down into 4 definitions and this includes starter homes, discounted market sales housing and other affordable routes to home ownership. These are separate and distinct from the definition for affordable housing for rent.
48. This breakdown provides a definition of the types of housing which can be considered to be affordable housing and therefore would relate to the wording in Footnote 31 which makes reference to an overall affordable housing contribution. The definitions are provided as a footnote to paragraph 63 which sets out that planning policies should specify the type of affordable housing required, which is what has been done within policy SCLP5.10.
49. Paragraph 64 provides complete exemption for affordable housing for developments less than 5 units and also enables a reduction to be applied for the redevelopment of vacant buildings. The legal opinion suggests that if a complete exemption was not intended it would have been found within paragraph 63. However, conversely if it had been intended to apply a complete exemption from the requirement to provide affordable housing for self and custom build housing then it would have been listed within paragraph 64.
50. Therefore, I am not persuaded that the Framework intended to exempt self build and custom build housing entirely from the requirement to provide affordable housing, only that it would not be required to provide affordable homes for ownership.
51. In conclusion the development fails to make appropriate provision for affordable housing, contrary to policy SCLP5.10 of the LP which sets out the requirements of affordable housing provision. This is a matter to which I attach significant weight.

Character and appearance

52. The appeal site is currently subdivided into paddocks and enclosed by landscaping on three sides. A public right of way runs parallel with the side boundary of the site and on the opposite side is a recently constructed residential development. The site is part of the transition between the built up development of Woodbridge and the settlement of Melton.
53. The Settlement Sensitivity Assessment Volume 2: Suffolk Coastal by Alison Farmer Associates 2018, takes note of the recently constructed development at the junction of the A12 and Woods Lane. It states that further development should be avoided along Woods Lane as this will undermine the separate identity of Melton and Woodbridge, which it accepts has already been significantly eroded. It notes that the landscape is sensitive to future development given its rural character and as a setting and approach to the existing settlement.

54. The recently constructed development is located at the entrance to Woods Lane and provides a dominant feature when travelling up Woods Lane towards the A12. However, there is a loosening of built development as you travel along Woods Lane towards Melton. Therefore, Woods Lane performs an important function in preventing urban sprawl and settlement coalescence between Melton and Woodbridge.
55. It has been put to me that the wooded group of properties just beyond the appeal site provide the strongest sense of a gap and therefore the appeal site plays a less important role in preventing coalescence of the two settlements. However in travelling along Woods Lane on foot, as you reach this wooded area and you begin to descend towards Melton it is already possible to see the urban development of Melton ahead of you. Equally coming up from Melton as you come past the entrance into Woodpecker Cottage you can already see the recently constructed development. The extent of the gap between the two settlements is therefore already compromised and as such any further erosion would be detrimental to its overall appreciation of two distinct settlements.
56. The proposed development would result in the loss of the undeveloped and open character of the site and the existing hedgerow along the frontage of the site, which contributes positively to the rural character of this part of Woods Lane. The introduction of housing within the appeal site would reduce and partially enclose the glimpsed views of the landscape beyond which is currently possible through access into the appeal site and when walking along the public footpath. This would diminish and erode the function that the site performs as a gap between the two settlements and the visual connection with the landscape beyond.
57. Whilst I accept that the development of the site would still enable a gap to be maintained, with land further along Woods Lane remaining undeveloped, I consider that the development would erode the importance of this gap which contributes positively to the open nature and rural character of the area. This would lead to an uncharacteristic interruption of this gap and lead to a built form and suburbanisation that would be at odds with the open quality of the area.
58. The introduction of development in this location would result in harm to the character and appearance of the area. This is a matter to which I attach significant weight.
59. The development would therefore conflict with policy SCLP10.4 of the LP which requires development proposals to demonstrate that their location, scale and form will protect and enhance the visual relationship and environment around settlements and their landscape settings.
60. It would also fail to accord with policy SCLP10.5 which states that intensification of developed land between settlements will only be permitted where it does not lead to the coalescence of settlements through a reduction in openness and space or the creation or urbanising effects between settlements.

Other matters

61. It would appear that the appeal site falls within a 'Zone of influence' for a designated site and the appellant has provided a UU to secure the necessary mitigation. However, the wording of the UU has not been agreed by the Council. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme and consider such an obligation against Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
62. The UU also includes a commitment to custom/self build housing. However, as I have determined to dismiss the appeal on the grounds set out above, I need not address this matter further here.

Planning Balance

63. The proposal would conflict with the development plan for the reasons previously outlined. However, the proposal would deliver self build and custom build housing, which would meet an identified need and this is a material consideration to which I have attributed significant weight.
64. The site is well located in terms of its proximity to services and is of a scale appropriate to the size of the existing settlement and as such lies within a sustainable location. The access and parking arrangements would be satisfactory and there is no evidence that highway safety would be compromised, or that local infrastructure would be unable to meet the needs of the development. The development would also give rise to some economic benefits during the construction phase and provide limited support to local services.
65. The appellant set out within their appeal statement that the development would provide significant environmental benefits to biodiversity that they considered were material. However, whilst the development would lead to some enhancements arising from the proposed landscaping and enhanced boundary planting, it has not been demonstrated that these measures in isolation would result in a significant environmental benefit. Therefore, I have only attributed limited weight to the benefits outlined.
66. Local finance considerations, such as increased council tax payments, are also cited by the appellant as a benefit. However, the PPG states that whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. In this case, I do not consider that the local finance considerations would outweigh the conflict I have identified with the Council's spatial strategy and therefore I have not attributed it any weight in my overall decision.
67. However, the identified adverse impacts of the development, the conflict with the development plan to which I have afforded significant weight and the adverse impacts arising from the lack of affordable housing provision and to the character and appearance of the area which I have also afforded significant weight, would significantly and demonstrably outweigh the benefits outlined above.

68. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

69. For the reasons given above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Richard Clews BA (Hons) Dip.TP MRTPI	Strutt & Parker
Mr Sam Bampton	Pelham Structures Ltd
Mr Bill Bampton	Pelham Structures Ltd
Ms Hayley Morley BA (Hons) BPL MRTPI	Strutt & Parker
Mr Nigel Cowlin BA (Hons) DipLA CMLI	Nigel Cowlin Landscape Assessment & Design

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Rachel Smith	Senior Planner
Mr Dickon Povey	Principal Planner
Mr Jason Beck	Planner

INTERESTED PARTIES:

Mr Nigel Brown	Melton Parish Council
Mr Alan Porter	Melton Parish Council
Dr Kathryn Jones	Ufford Parish Council
Mrs Judi Hallett	Ufford Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

1. DC/20/3326/OUT Report to Committee. Land at Victoria Mill Road, Framlingham.