
Appeal Decision

Hearing held on 26 April 2022

Site visit made on 26 April 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th May 2022

Appeal Ref: APP/F3545/W/21/3279689

West Stow Pods, Ingham Road, West Stow, Bury St Edmunds, IP28 6EX

- 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 H Lengyel against the decision of West Suffolk Council.
 - The application Ref DC/21/0165/FUL, dated 26 January 2021, was refused by notice dated 14 May 2021.
 - The development proposed is for provision of a dwelling (temporary) to support a 'new' rural enterprise at West Stow Pods, with associated landscaping. Existing cabin to be removed.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2019 St Edmundsbury Borough Council was dissolved and along with Forest Heath District Council became a new non-metropolitan district council known as West Suffolk Council.
3. The development plans for the merged local planning authority remain in place for the former area of the St Edmundsbury Borough Council until such a time as they are revoked or replaced. It is therefore necessary for me to determine this appeal with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.
4. I have amended the description of development in the banner heading above to ensure that it accurately captures the scope of the proposal noting the parties statement of common ground. This agreed that the reference to the relocation of the existing cabin should be removed and during the hearing the parties agreed that the appeal should proceed on that basis.
5. 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.
6. As part of the appeal the appellant has submitted amended plans to reposition the proposed dwelling further from existing trees to negate the need for their removal. Furthermore, during the hearing there was also a discussion about the number of trees to be removed, which differed from the submitted Arboricultural Impact Assessment.

7. I have not considered these changes as part of this appeal as I consider that these changes would materially alter the nature of the application and would prejudice the interests of interested parties¹.

Main Issues

8. The main issues are:

- whether there is an essential need for a dwelling to accommodate a rural worker; and
- whether the proposed development would preserve or enhance the character or appearance of the West Stow and Culford Park Conservation Area, including its effect on trees.

Reasons

Policy Context

9. Policy CS1 of the St Edmundsbury Core Strategy 2010 (CS) sets out the spatial strategy for the area and directs residential development to the most sustainable settlements and I have no substantive evidence before me to indicate that the site is well served by public transport. I therefore consider that occupiers of the proposed development would be likely to be reliant on the private car to access a full range of community facilities such as shopping, healthcare, leisure and entertainment, given the distance to the nearest town.
10. Therefore, the proposed development would not provide a suitable location for general market housing, having regard to the accessibility of services and facilities. Consequently, it would not accord with policies CS1, CS2 and CS7 of the CS. These policies protect the countryside from unsustainable development and direct development to the most sustainable locations where a range of transport options are available.
11. Policy DM5 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 (DMPD) restricts new residential development in the countryside to a number of exceptions, including a dwelling for a key worker in accordance with policy DM26. Policy DM26 of the DMPD deals with dwellings for essential workers in agriculture and forestry or commercial equine related businesses and sets out a number of criteria which need to be met in order for permission to be granted. These include, whether there is functional need for a worker in that location; no suitable alternative dwellings are available; the business is viable with secure future prospects and that the development is not intrusive.
12. Whilst part (a) of policy DM26 does not include reference to workers in tourism-based enterprises, the policy is relevant to the appeal. It makes reference to other rural based enterprises, such as West Stow Pods, in the supporting text and the opening to the policy. Furthermore, whilst some of the criteria are beyond that required by the Framework, I am satisfied that these criteria form an appropriate basis for establishing whether or not there is an essential need for a rural worker to live permanently on the site. Therefore, I afford the policy full weight.

¹ Annex M of the Procedural Guide Appeals – England advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

13. It has been put to me that the development would be in accordance with Policy DM27 of the DMPD. This policy sets out that proposals for dwellings in the countryside will be permitted where two criteria are met. Firstly, that the development is within a closely knit cluster of 10 or more dwellings adjacent to or fronting a highway and secondly, that the scale of development is commensurate with the scale and character of existing dwellings within an otherwise continuous built up frontage.
14. The site's location on the edge of the settlement and the level of separation between the nearest dwelling, Old School House means that even if developed, there would be a considerable gap between the proposed dwelling and the cluster of development located further along Ingham Road. Furthermore, the existing gap between the built development and the degree of setback of Old School House within the site, does not contribute to a continuous built frontage. It is for these reasons that the site would not be in accordance with policy DM27 of the DMPD.
15. Paragraph 80 of the National Planning Policy Framework (the Framework) states planning decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. During the hearing the parties agreed that the site was isolated for the purposes of paragraph 80, and I can see no reason from the evidence before me to disagree with this assessment.

Functional Need

16. West Stow Pods comprises tourist accommodation in the form of glamping pods and chalets. In total there are 4 pods, 2 lodges and a hobbit hole with the site having a total capacity of 26 people. The site sits within a wooded area with car parking provided at the front of the site, with access off Ingham Road.
17. The description of development refers to the business being a new enterprise, but the site has operated for approximately 10 years with the appellant's parents operating the site and living in the adjacent property, Old School House, which has recently been sold. Since the submission of the appeal, the appellant is no longer intending to run the business, which is currently being managed remotely by the appellant's father Mr Jan Lengyel and is being marketed for sale as a separate business.
18. The site is located close to the nearby towns of Bury St Edmunds and Mildenhall, which the appellant confirmed would take approximately 10-15 minutes to travel to from the appeal site. The villages of Ingham, Culford and Fornham All Saints are also close by and could also enable a reasonable travel distance to the site. I do not doubt the appellant's evidence that it is more difficult to manage the business remotely, than when residing on site. However, the appellant would have been aware that as the residential property had been sold separately from the appeal site, the business would no longer have a presence on site overnight.
19. Whilst a search of properties for sale in the immediate area has taken place this did not take account of properties within the nearest towns. Therefore, the appellant has not demonstrated that other properties within these nearby settlements are not available in order to provide suitable alternative accommodation within a reasonable travel time to the business.

20. At the hearing, Mr Jan Lengyel confirmed that he lives within 10-15 mins travel time of the site and gave oral evidence of responding to call outs after working hours following the departure of the most recent manager who had been living on site in one of the existing holiday lodges. It was acknowledged at the hearing that this occupation was without the benefit of planning permission.
21. The site is located within an existing woodland and risks associated with the lack of a permanent on-site presence including uncontrolled fires, trespass and criminal damage have been set out within the evidence. Furthermore, Mr Jan Lengyel outlined how as a family friendly venue those on site welcomed the safety aspects of having someone on hand in order to answer queries and concerns at all times of the day and night.
22. It has been put to me that the presence of an on-site manager would act as both a deterrent and enable pre-emptive action to be taken to avoid an unfortunate event which could place visitors in danger or lead to damage to the environment. However, I am not persuaded that this is the only option available to the appellant to manage these risks.
23. The site has previously benefited from planning permission for a reception office, firstly in 2013² and then following the conversion of that building to holiday accommodation, planning permission was granted for another reception office³. This building was subsequently converted to holiday accommodation in 2019⁴. The appellant has not explored formally the possibility of providing further reception office accommodation on the site, but the planning history demonstrates that this type of facility has been previously found acceptable to the Council.
24. The provision of a reception building would enable the appellant to employ a manager to be present on the site including at the weekends and evenings to ensure that visitors arriving on change over days (Monday, Wednesday and Friday) were met and taken to their accommodation. Furthermore, a late night patrol could take place to ensure fires were safely extinguished by a certain time in the evening and that there were no problems arising from noise and disturbance before the manager departed the site.
25. The out of hours log submitted by the appellant indicates that very few problems occurred after 10pm. Although Mr Jan Lengyel put forward at the hearing that this evidence was limited as many incidents were not logged, I have to deal with the appeal on the basis of the evidence before me. Therefore, it has not been demonstrated that even during the peak summer periods that the number of calls received would be so significant to warrant a permanent on site presence and that this could not be dealt with by an individual living within a reasonable travel distance of the site.
26. I have had regard to the evidence submitted regarding the limitations of the mobile phone network for some providers, and this is not uncommon in rural areas. The appellant has advanced a case that this means there is a greater need for a permanent presence on site as occupiers of the tourist accommodation would not be able to make contact in an emergency.

² SE/13/0811/FULCA Erection of log cabin to use as reception office

³ DC/16/1372/FUL (i) Convert existing reception office building to holiday let accommodation (ii) New log cabin to use as reception office (iii) Extension to existing car park.

⁴ DC/19/0301/FUL Change of use from B1 (reception office) to C1 (holiday let).

27. However, I am not persuaded that the appellant has explored all available technical solutions that could overcome this problem. For example, the provision of a fixed line which could provide access to an employee on-call out of hours, which could be operated on a rota.
28. Mr Jan Lengyel also confirmed that he had ruled out the use of CCTV as he considers that this would be intrusive to occupiers of the tourist accommodation. However, I am not persuaded that this could not be used to deter trespass along the boundaries of the site with the adjacent stud farm and to ensure shared areas such as car parks are monitored for security without compromising privacy.
29. Therefore, I am not persuaded, on the basis of the evidence before me, that there is an essential need for a rural worker to live on the site given the availability of other options to the appellant to undertake the management requirements of the site and to manage and mitigate the risks associated with fire, safety and security.
30. The appellant's agent has referred to the need to take a leap of faith in considering whether to grant a temporary permission, as if the business is not successful after three years then the appellant would not be able to justify a permanent dwelling. However, it is not a leap of faith but a planning judgement that must be made as to whether the proposal before me accords with planning policy and taking a view based on the evidence presented.
31. Whilst a temporary permission can be appropriate for new enterprises, this is so that confidence can be gained as to whether a viable business can be built, before allowing for a permanent dwelling. This does not remove the need to demonstrate a functional need for someone to live on the site in connection with the proposed rural enterprise.
32. In conclusion there is insufficient evidence to demonstrate that there is an essential need for a rural worker to live at the appeal site for a period of three years having regard to the limited number of times when the appellant has had to deal with an out of hours emergency and the lack of evidence that any functional need could not be met by alternative dwellings within the locality. Therefore, in this regard the development conflicts with policy CS1 of the CS and policies DM5 and DM26 of the DMPD.

Conservation Area

33. The site is located within the West Stow and Culford Park Conservation Area, which covers not only the settlements of Culford and West Stow but encompasses a number of areas of woodland and the Grade II registered park and garden Culford Park.
34. The site is distinct from the historic core of West Stow and has a rural setting, which contrasts further with the open sweeping parkland of Culford Park. Therefore, the significance of the Conservation Area as a whole is derived from both the built and natural environment and in particular the trees within the site contribute to this.

35. The proposed dwelling would be located just beyond the existing lodge and would require the removal of a number of trees, including 2 oak trees. As part of the oral evidence presented at the hearing, it was evident that Mr Jan Lengyel, as the current owner of the site, was keen to maintain and enhance the woodland and also saw value in its wider setting to the business. He also indicated that it was not his intention to remove any oak trees, however the submitted arboricultural impact assessment (AIA)⁵ and the tree removal plan does indicate that these trees would be removed. Therefore, I have dealt with the appeal on this basis.
36. The trees shown to be removed form part of a group of trees which are located close to the boundary of the site and include a common oak (T5) which is in fair condition with an expected life span of more than 20 years. A number of sycamore trees are also to be removed, one individual tree (T6) and a group of larger sycamore trees (G7) all are noted to be in fair condition. Part of a second group of trees (G8) are also to be removed and include an oak and sycamore which are stated to be of average form and condition.
37. I accept that the AIA confirms that the higher value mature pines and oaks will be retained and protected and that the trees to be removed are low quality category C trees. However, this does not diminish the contribution that as a whole these trees make to the significance of the Conservation Area, which is in part derived from the natural environment. Furthermore, the visual impact that will arise from their removal will be evident from both inside and outside of the site, thus failing to preserve or enhance the Conservation Area.
38. The appellant's heritage statement⁶ recognises that the established tree growth forms an important part of the setting of the Conservation Area but concludes that the cabin will continue to be screened by this established tree growth. However, the existing cabin is already visible from the road and the proposed dwelling would be larger than the cabin it would replace. In particular the proposed elevation to the road as a result of its greater depth would be more prominent than the existing cabin when viewed from within the Conservation Area.
39. Whilst the Council have suggested that the positioning of a dwelling close to the trees would place additional pressure on those trees to be harmfully pruned or removed in the future, given the trees are protected by virtue of their location within the Conservation Area, the Council would have control over any future works proposed to the trees. Therefore, I have given this matter limited weight.
40. The introduction of a dwelling into this area would likely result in associated domestic paraphernalia, however I am not persuaded that this would be inherently different from that associated with the use of the site as tourist accommodation. Mr Jan Lengyel outlined at the hearing that at times washing is hung out to dry and gazebos erected and that there are no planning controls currently on the site which restrict this. The submitted plans do not indicate any garden associated with the proposed dwelling and the amenity space would be limited to a small area of decking at the front of the dwelling. Therefore, I have given this matter limited weight.

⁵ Arboricultural Impact Assessment Report, Roberts Arboriculture Limited January 2021

⁶ Heritage Statement by Janice Gooch Heritage Consultancy dated July 2021

41. In conclusion, the increase massing of development in close proximity to the boundary of the site would erode the visual separation which currently exists between the road and result in the removal of a number of existing trees, which in combination would be harmful to the significance of the Conservation Area.
42. For the above reasons, the proposed development would result in less than substantial harm to the Conservation Area. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Given that the proposal would be of a relatively small scale, I find the harm to the setting of the Conservation Area to be less than substantial in this instance but nevertheless of considerable importance and weight.
43. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. In this case, the proposed development would result in the provision of a dwelling in connection with an existing tourism business, which in turn would support the local economy. However, the business can function without a dwelling and has not met the high threshold required for the provision of an isolated dwelling in the countryside and as a result these benefits would be modest. Therefore, there is no public benefit sufficient to outweigh the harm identified.
44. There would be some benefits associated with a reduction in travel to and from the site in order to manage the site. However, there would still be travel associated with traveling between the proposed dwelling and the need to access other services such as shopping, healthcare, leisure, and entertainment. Therefore, this is a neutral effect in terms of the travel undertaken by the proposed occupier of the dwelling.
45. I conclude that the development proposed would fail to preserve or enhance the character or appearance of the West Stow and Culford Park Conservation Area. This would be contrary to policies DM2 and DM22 of the DMPD which require development to maintain local character and create a sense of place. It would also conflict with policy DM17 which requires development to preserve or enhance the character or appearance of the Conservation Area. It would also be contrary to policy CS3 of the CS which requires proposals to protect the natural and historic environment.

Conclusion

46. In conclusion, the proposal would conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict and the appeal should be dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jonny Rankin	Durrants
Miss Jasmine Philpott	Durrants
Mr Jan Lengyel	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Dave Beighton	West Suffolk
Mr Connor Vince	West Suffolk