

Appeal Decision

Site visit made on 20 December 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st February 2023

Appeal Ref: APP/D3505/W/22/3298935

Land adjacent to Plough Lane, Leavenheath CO6 4PH

- 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 Kerridge against the decision of Babergh District Council.
 - The application Ref DC/22/00821, dated 9 February 2022, was refused by notice dated 12 April 2022.
 - The development proposed is erection of 2no detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2no detached dwellings at land adjacent to Plough Lane, Leavenheath CO6 4PH. The permission is granted in accordance with the terms of the application Ref DC/22/00821, dated 9 February 2022, subject to the conditions included in the Schedule at Annex A.

Main Issues

2. The main issues are:
 - the suitability of the location for the proposed dwellings, having regard to development plan policy concerned with development in the countryside; and, related to this, whether future occupants would have adequate access to services and facilities without undue reliance on private vehicle use; and
 - whether the proposal would provide a safe and suitable vehicular access.

Reasons

Suitability of the Location

3. The appeal site is an area of open land with a frontage on the A134 and adjacent to Plough Lane, a narrow lane running off the main road. Leavenheath village is located on the opposite side of the A134, with smaller hamlets to the north around Harrow Street and to the south at Honey Tye. There are a small number of dwellings immediately to the north and south of the appeal site on the same side of the main road.
 4. Policy CS2 of the Babergh Core Strategy & Policies (2014) (the CSP) sets out the settlement pattern with regard to the plan's development strategy to 2031. Leavenheath is identified as a Hinterland Village, which together with the other
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listed villages in this category, will accommodate some development to help meet the needs within them. However, the appeal site is located within the countryside outside the settlement boundary where Policy CS2 says that development will only be permitted in exceptional circumstances subject to a proven justifiable need.

5. Policy CS2 requires all proposals within Hinterland Villages to be assessed against Policy CS11 of the CSP. Policy CS11 also includes the requirement that development proposals should meet a proven local need, such as affordable housing or targeted market housing identified in an adopted community local plan/neighbourhood plan. The Council indicates that the proposal for the large three bedroom properties does not meet a proven local need.
6. I am not aware that a neighbourhood or community plan exists for Leavenheath and no other evidence is provided about need. The proposal is for two dwellings and in such circumstances where there is no local evidence related to need in the form of a neighbourhood plan or other published needs survey, some flexibility should be applied. I am also mindful that the National Planning Policy Framework (the Framework), which is a material consideration, does not preclude residential development in these circumstances where there is no proven need.
7. Policy CS15 includes the requirement that development should seek to minimise the need to travel by car. Leavenheath has a village hall, but no other services or facilities required for day-to-day needs. Permission has been granted recently for a community village shop at the Hare & Hounds Public House at Harrow Street to the north of the appeal site¹. While this is not within close walking distance, there is a footpath alongside the main road and this facility would reduce otherwise longer journeys to provide for day-to-day needs.
8. The nearest core villages, which provide a wider range of services and facilities, are Boxford, which is just over three miles to the north, and Nayland, which is just over two miles to the south-east. Access to these settlements would not involve significant travel distances within the context of a rural setting, although such journeys are most likely to be undertaken by private vehicle than by walking or cycling. However, the Framework recognises that opportunities to maximise sustainable travel solutions will vary between urban and rural areas, and this should be taken into account in decision-making².
9. There is a bus stop around 250 metres from the appeal site on the eastern side of the A134, which provides services to Colchester and Sudbury. While the main parties have different views about the extent of services to and from this stop, there is some evidence of regular if infrequent services that would provide a sustainable alternative to private vehicle use for some journeys. I do not consider that crossing the A134 in this location is a barrier to use of this bus service, particularly as visibility is good and this will already occur for some existing residents. While there is a bus stop on High Road, there is little evidence about the service it provides and the lack of a footpath along the road makes it less easily accessible from the appeal site. Bus services can be

¹ Ref DC/21/05720.

² Paragraph 105.

changed or removed, as the Council contends, but conjecture about the future sustainability of such services cannot have a determinative bearing on the decision in this case.

10. There is a policy conflict due to the proposal's location outside defined settlement boundaries and I acknowledge the intention behind Policy CS2 to focus development within settlements. However, the appeal site is close to dwellings within Leavenheath and to other residential properties on the same side of the road and Plough Lane. Therefore, two further dwellings would not add significantly to the journeys that already occur from the nearby village and other nearby dwellings outside the settlement. There are some opportunities to use public transport from this location and a new village shop is likely to be provided relatively close to the site. Moreover, Policy CS15 allows some flexibility in its application by recognising the scale and nature of a particular proposal and the Framework does not preclude residential development in the circumstances of this case. Therefore, in the particular circumstances of this case, for the reasons given, no material harm would result from the two dwellings.
11. Accordingly, I conclude that the location would not be unsuitable for the proposed development and, consequently, there is no conflict with Policies CS11 and CS15 (xviii) of the CSP, as referred to above. Any such conflict with Policy CS2 of the CSP is outweighed by the considerations set out above for the reasons given. The Council also refers to the proposal being contrary to other criteria in Policy CS15, relating to the local economy, provision and retention of services and addressing climate change. However, no further details or evidence is provided with regard to this policy conflict and, as already noted, Policy CS15 recognises that the scale and nature of a particular proposal will have a bearing. As such, based on the appeal submissions, I find that the provision of two dwellings would not result in any direct conflict with these elements of Policy CS15. In addition, there is no conflict with the Framework.

Vehicular Access

12. The Highway Authority (HA) requires visibility from the site access of 90 metres to the nearside edge of the carriageway in both directions. The appellant submitted a revised plan to demonstrate that this is achievable, although the Council expresses concerns about whether the requisite visibility is sufficiently clearly shown and whether it can be achieved on land within the appellant's control. I am not aware that the Highway Authority has commented on the revised plan.
13. The appeal site is located on a long, straight stretch of the A134 with good visibility in both directions in the vicinity of the appeal site, the junction with Plough Lane and the accesses from other nearby residential properties. I am not aware that the Council has specified which particular areas of land outside the appellant's control will be affected by the proposed access. In circumstances where this is unclear but conditions on the ground indicate that the requisite visibility can be achieved, it would not be reasonable to find against the appellant on this issue.
14. Accordingly, based on the appeal submissions and the site inspection, there is no evidential basis to conclude that the requisite visibility cannot be achieved.

The HA proposes a condition to require appropriate visibility splays, which I agree is necessary in the interests of highway safety.

15. Therefore, for these reasons, I conclude that with the necessary conditions in place the proposal would provide a safe and suitable vehicular access. Consequently, there is no conflict with Policy HS28 of the Babergh Local Plan (2006), insofar as it concerns the effect of development on highway safety. Policy TP15 of the Local Plan is not directly relevant to this issue as it concerns car parking standards. There is also no conflict with the transport provisions of the Framework.

Other Matters

16. I have had regard to the representations made by an interested neighbouring party. The proposed dwellings would be sited forward of the existing building line of the neighbouring dwelling to the north. However, this would be to a limited extent and would not, therefore, result in a harmful effect on the occupiers' outlook or privacy. The submitted plans before me show the correct current access as well as the proposed new access. With regard to site boundaries, I was able to assess the effects of the proposal based on the appeal submissions and site inspection. I have no basis to conclude on the available evidence that the proposal would result in material harm with regard to local ecology or drainage.
17. The Framework says that plans and decisions should apply a presumption in favour of sustainable development³. I note the substantive arguments made by the parties about whether relevant development plan policies are out-of-date or not. However, given the above conclusions in the appellant's favour on the main issues it is not necessary to consider this matter further.
18. While the Council can demonstrate a housing land supply of more than five years, the Framework does not preclude additional dwellings where the five year minimum supply is met or exceeded, particularly bearing in mind the national objective of significantly boosting the supply of homes.

Conclusion and Conditions

19. For the reasons given above, the appeal should succeed.
20. Of the Council's suggested conditions I have imposed the standard time condition and, to ensure the proper implementation of development in accordance with the submitted details, one requiring development to be carried out in accordance with the approved plans. I have, however, shortened this second condition as the other details it includes are not strictly necessary.
21. The Framework says that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so⁴. While I note the Council's reason for the suggested condition restricting such rights in the interests of amenity, I consider that in the light of the circumstances of this case and guidance in the Framework, sufficient justification does not exist to restrict the relevant permitted development rights. Accordingly, I have not imposed the suggested condition.

³ Paragraph 11.

⁴ Paragraph 54.

22. Conditions concerning implementation of the ecological appraisal and a biodiversity enhancement strategy are necessary in the interests of species protection and biodiversity. The suggested conditions related to the site access are necessary in the interests of highway safety. Provision of electric vehicle charging should be secured by condition in the interests of sustainable development. Provision and retention of the area for bin collection should be controlled by condition to prevent these uses occurring inappropriately elsewhere.
23. Three of the suggested conditions are pre-commencement conditions. The Framework indicates that this type of condition should be avoided unless there is clear justification⁵. No specific justification is provided and, therefore, I have amended these conditions so that submission of the relevant details in each case should be required within three months of commencement of the development.

J Bell-Williamson

INSPECTOR

Annexe A

Schedule – conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 384-101 (elevations and floor plans), 384-102 (elevations and floor plans) and 384-103 Revision A (location and site plans).
- 3) All mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Adonis Ecology Ltd, December 2021) as already submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination.
- 4) Prior to the commencement of any works above slab level, a Biodiversity Enhancement Strategy for protected and priority species shall be submitted to and approved, in writing, by the Local Planning Authority. The content of the Biodiversity Enhancement Strategy shall include the following:
 - a) Purpose and conservation objectives for the proposed enhancement measures;
 - b) Detailed designs to achieve stated objectives;
 - c) Locations of proposed enhancement measures by appropriate maps and plans;

⁵ Paragraph 56.

- d) Timetable for implementation demonstrating that works are aligned with the proposed phasing development;
- e) Persons responsible for implementing the enhancement measures;
- f) Details of initial aftercare and long term maintenance (where relevant);

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

- 5) Visibility splays of 90 metres to the nearside edge of the carriageway in both directions (Y-Value), measured 2.4 metres from the edge of the metalled carriageway at the centre of the access (X-Value) shall be provided at all times. No obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays and they must not encroach on third party land.
- 6) No later than three months following the commencement of the development hereby permitted, details of refuse and recycling bin presentation within the site boundary outside of the public highway shall be submitted to, and approved in writing by, the Local Planning Authority. This provision shall be in place prior to the occupation of each dwelling hereby approved and shall be retained at all times.
- 7) No later than three months following the commencement of the development hereby permitted, details of ducting and a suitable consumer unit to allow for the installation of one electric vehicle wall charging unit per dwelling shall be submitted to, and approved in writing by, the Local Planning Authority. Such measures shall be in place prior to the occupation of each dwelling and shall be retained at all times thereafter.
- 8) No later than three months following the commencement of the development hereby permitted, details shall be submitted to and subsequently approved in writing by the Local Planning Authority showing measures to prevent surface water ingress onto the highway. Such measures shall be implemented prior to the occupation of either dwelling and shall be retained at all times thereafter.
- 9) The access shall be constructed with a bound material for a minimum distance of 5 metres from the carriageway edge prior to the occupation of either dwelling. Such provision shall remain in place at all times thereafter.

[End of Schedule]