



Appeal Decision

Site visit made on 24 January 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/R3515/W/22/3298073

26 Humber Doucy Lane, Ipswich, Suffolk IP4 3NP

- 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 S Wellfare against the decision of Ipswich Borough Council.
 - The application Ref IP/22/00005/FUL, dated 30 December 2021, was refused by notice dated 10 March 2022.
 - The development proposed is erection of two detached chalet bungalows and off-road parking/turning areas in rear garden (accessed off private drive from Humber Doucy Lane).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Ipswich Local Plan, incorporating the Core Strategy and Policies Development Plan Document (DPD) Review, and the Site Allocations and Policies (Incorporating IP-One Area Action Plan (AAP)) DPD Review (2022) – the Local Plan, was adopted by the Council on 23rd March 2022. This is now the adopted Local Plan of the Council. The Council have provided a list of the policies that they consider most relevant to this appeal and the appellant has had the opportunity to comment on these.
3. Subsequent to the Council's decision the appellant has made a payment to the Council in an agreement under Section 111 of the Local Government Act 1972 and in accordance with the Suffolk Recreational Disturbance Avoidance and Mitigation Strategy (Suffolk RAMS) Supplementary Planning Document (2020). The Council have confirmed receipt and as a consequence the Council no longer wish to uphold the fourth reason for refusal. Although this issue is no longer in dispute between the parties, it is a matter that I will return to later in my decision.

Main Issues

4. The main issues in this appeal are the effect of the proposed development on:-
 - The character and appearance of the site and the surrounding area;
 - Biodiversity, with particular reference to trees; and
 - European Protected Sites.

Reasons

Character and appearance

5. The appeal site (the site) lies behind 26 Humber Doucy Lane (No 26) and forms part of a long, narrow, garden for the dwelling. No 26 is a substantial two storey detached dwelling at the end of a row of residential development of varying design, generally in long plots and set back from Humber Doucy Lane behind ample front gardens. Beyond No 26, across a metalled track accessing a sports ground behind the site, lie open arable fields interspersed with trees and hedges which separate Ipswich from the village of Rushmere. Across Humber Doucy Lane from No 26 lies a row of dwellings, again of varying scale and design in long plots, and also set back behind ample front gardens.
6. Humber Doucy Lane varies in width and is lit by streetlights but lacks a footway.
7. The overall character and appearance of the vicinity of the site is of dwellings facing the street with large rear gardens which define a strong pattern and grain of development. Each dwelling establishes a presence in the public realm with its own street frontage. The spacious nature of the street, together with the existing verdant appearance of the front gardens and open fields combines to give the area the character and appearance of the fringe of a town as urban development gives way to countryside.
8. The site lies within the land covered by the Council's Urban Characterisation Study for the North-East Character Area. This identifies the importance of the relationship between the open countryside and the buildings along Humber Doucy Lane in signifying the edge of the town and providing a buffer zone between the built-up area and the countryside. The verdancy and openness of the site, lying behind the built form fronting Humber Doucy Lane and on the edge of the gardens and the open fields makes a positive contribution towards this transition.
9. From Humber Doucy Lane to the south of the site, views of the development would be obscured by existing development and planting. However, approaching from the north the proposed development would be seen over a considerable length, through gaps in hedges for pedestrians and car drivers, or from viewpoints above the hedge, such as higher vehicles. The proposal would appear as a distinct urban form, extending back from the frontage development.
10. This urbanisation would appear against a backdrop of trees. Buildings and structures on the eastern side of Humber Doucy Lane to the rear of the dwellings are largely screened by existing planting and fencing, the notable exceptions being the lighting for the sports ground and fencing.
11. Whilst the sports ground contains low structures and fencing, these are largely screened from the north by planting and/or lie to the south of the site. The tall lighting structures do appear above the existing planting, but these are slender in profile, making them inconspicuous in the general view.
12. The proposed development would, therefore, visibly extend the urban form into the softer, more verdant hinterland of the town, undermining the existing transition which I have identified above as important to the character and

appearance of the area. In this instance that urbanisation in this location would amount to material harm.

13. The access track lies between the proposal and the open countryside. The intrusion of this feature into the landscape is visually limited by its flat nature. In closer views the access does not appear dissimilar to a farm access in form.
14. The proposed development would subdivide the existing garden of No 26. In so doing it would create two additional plots with outdoor amenity space that would be comparatively small when considered against the gardens in the immediate vicinity of the site. In so doing the proposal would be out-of-keeping with the existing grain of development that I have identified above. This would be noticeable from neighbouring properties and would, in this instance amount to material harm.
15. My attention has been drawn to a development to the west of Humber Doucy Lane, Summerfield Close. Whilst this occupies a location behind frontage properties, it appears as a side road, extending towards existing dwellings, which can be seen behind. Further, due to its access being flanked on both sides by buildings, views of the development from Humber Doucy Lane are more limited. I do not, therefore, consider that Summerfield Close provides a contextually similar comparison to the site. Further, Summerfield Close is some distance from the site and does not inform the immediate context of the proposed development. Similarly the appellant has drawn my attention to smaller back gardens within the wider area, principally in the vicinity of the junction of Humber Doucy Lane with Playford Road. Again these are some distance from the site and do not inform its immediate context. I have, in any case, determined this appeal on its own merits.
16. The appellant disputes the description of the proposal as "backland" and that policies relating to backland development should not apply. The site lies behind No 26 and, although not sharing the access to the host dwelling, forms its rear garden. The development is wholly behind the line of dwellings facing onto Humber Doucy Lane. As such, whilst there is no definition of "backland development" in the National Planning Policy Framework (2021) – the Framework - I consider that the proposal may reasonably be described as such, on the basis of common interpretation of the term.
17. I therefore conclude that the proposal would result in significant harm to the character and appearance of the site and the surrounding area. The proposal would therefore be contrary to Policies DM12 and DM17 of the Local Plan. Together these policies seek to ensure that all development, including backland, amongst other things, protects the character and appearance of the area and reinforces attractive physical characteristics of local neighbourhoods.

Biodiversity

18. There is no dispute between the parties that the proposal would result in the loss of trees within the site. However, there remains disagreement as to the feasibility of the provision of replacement trees. No details of biodiversity mitigation or net gain measures were included as part of the application. However the appellant considers that suitable provision could be made within the site, and that this could be controlled by condition.

19. The gardens shown on the plans show open areas within each plot. These are, however, modest in scale and trees located within them would lie to the west and south of the proposed dwellings, in areas providing residential amenity for future occupiers, including patios. It would be likely that any new trees in this location would increase shadowing in the garden, and leaf fall, leading to pressure from future occupiers for their removal.
20. By virtue of the limited space available and likely pressure to seek removal of any future trees within the site, it has not been demonstrated to my satisfaction that the site would provide a viable location for the required number of replacement trees. There is no substantive evidence before me to demonstrate that suitable replacements would be provided elsewhere.
21. Whilst the replacement of trees could be required within a suitably worded planning condition, it has not been demonstrated that such replacement would be achievable and consequently such a condition would not meet the tests of being reasonable or enforceable.
22. The Council acknowledges that the existing trees do not benefit from any formal protection and could have been removed by the appellant. However, they form part of the development and Policy DM9 of the Local Plan applies.
23. The Council have raised concerns that the proposal would set a precedent for development to the rear of neighbouring properties. Such development would be determined on its own merits and, therefore, I have given such concerns limited weight in my deliberations.
24. I find that the proposed development would result in material harm to biodiversity, with particular reference to trees and would therefore be contrary to the aims of Policy DM9 of the Local Plan in as much as this seeks to ensure that development should retain existing trees of biodiversity value where possible and, where removal of a mature or semi-mature trees is proposed, suitable replacement is provided.

European sites

25. The site is located within the zone of influence of one or more European Designated Sites (the Protected Sites) afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policy DM8 of the Local Plan, seeks to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Suffolk RAMS incorporates strategic mitigation measures to be delivered to avoid adverse impacts. The appellant has provided a financial contribution towards mitigating the effects of the proposal on the Protected Sites and the Council is satisfied with this.
26. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

27. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of any site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Planning Balance

28. At the time of the determination of the application the Council was unable to demonstrate a five year supply of housing land. Since the adoption of the Local Plan the Council considers that it is now able to demonstrate a five year supply of housing land and the "tilted balance" no longer applies in determining this appeal. However, the housing targets are not maximum figures, and the ability to demonstrate a five year supply of housing land does not mean that development should be capped in such cases as the Government's objective is to significantly boost the supply of homes.
29. The development would provide benefits in terms of delivering two additional homes to boost local housing supply. Paragraph 68 provides some support for development of limited scale, as these have potential to be built-out quickly. However, there is no proposed timescale for development in the evidence before me. Irrespective of the Council's position in regard to housing supply, two additional dwellings would only be a limited benefit.
30. There would be likely benefits to the local economy in terms of short term employment in the construction industry and longer term support to local businesses. There would be social benefits in terms of the support that the proposal would provide to the community. However, benefits would be limited by the scale of the development.
31. It is argued that the development constitutes an effective use of land which is currently underutilised. However the Framework recognises the desirability of maintaining an area's prevailing character and setting (including residential gardens) and I have little evidence before me to demonstrate that the land currently has no beneficial purpose and I have found that the land makes a positive contribution to maintaining the positive aspects of the area's character and appearance.
32. The appellant has identified an intent to improve biodiversity through new native landscaping, log piles, swift bricks and bat and bird boxes and such measures could be secured by a suitable planning condition, and this would provide a benefit from the development.
33. As a result of the limited scale of the development, taken together the benefits of the proposal would be of limited weight overall.
34. The proposal would result in a substantial level of harm to the character and appearance of the site and the surrounding area. It would, further, have a harmful effect on local ecology, with particular reference to trees. These are important matters in accomplishing the Framework's aims of achieving well-

designed places and conserving and enhancing the natural environment and so, taken together, I attribute them significant weight.

35. I note that the proposals would accord with certain policies within the development plan, however accordance with other policies has a neutral effect on my considerations.
36. Whilst the issue of the effect of the site on European Sites remains unresolved the effects could only be, at best, neutral in my considerations.
37. In conclusion, even were I to consider the proposal against the “tilted balance” set out in Paragraph 11 d) of the Framework, the identified harm would significantly and demonstrably outweigh the limited benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.

Conclusion

38. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I A Dyer

INSPECTOR