



Appeal Decision

Site visit made on 17 February 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2023

Appeal Ref: APP/W3520/W/22/3291011

Land South of Mill Road, Wyverstone IP14 4SE

- 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 R Tustin against the decision of Mid Suffolk District Council.
 - The application Ref DC/21/04323, dated 2 August 2021, was refused by notice dated 9 December 2021.
 - The development proposed is erection of 2 no detached dwellings and garages (following demolition of poultry houses).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was made in outline with all matters reserved. I have dealt with the appeal on this basis.

Application for costs

3. An application for an award of costs has been made by Mr R Tustin against Mid Suffolk District Council. This is the subject of a separate decision.

Main Issues

4. The main issues are i) whether the proposal represents a suitable location for housing, having regard to relevant local and national policy and the accessibility of the site to local services; ii) whether the site would lead to fragmentation of a farm, and iii) the effect on protected species.

Reasons

Location for housing

5. The site is located on Mill Road to the south of the village of Wyverstone. A number of detached dwellings are scattered along the road, with open countryside in between and beyond on both sides. The wider site within the appellant's control contains three large chicken sheds, though the appeal relates only to a smaller area to the front of the site.
6. The development plan for the area comprises the Mid Suffolk District Core Strategy (September 2008) (the CS), the Core Strategy Focused Review (December 2012) (the FR) and saved policies of the Mid Suffolk Local Plan (September 1998) (the MSLP). The appeal site lies outside of any named settlement and is therefore within the countryside for planning purposes.

7. CS Policy CS1 sets out that development in the countryside will be restricted to particular types of development to support the rural economy, meet affordable housing and community needs and provide renewable energy. Supported types of development are set out in more detail under Policy CS2, which does not include market residential housing. The proposal for two market dwellings would therefore conflict with these policies and the overall spatial strategy of the development plan.
8. In terms of accessibility, there are very limited facilities within Wyverstone, with the nearest shop, church, public house, doctor's surgery and schools in Bacton some 1.5 miles away. However, the National Planning Policy Framework (the Framework) recognises that where there are groups of smaller settlements, development in one village may support services in a village nearby. There is a footpath along the length of Wyverstone Road into Becton, which may encourage some recreational walking, although the distance and lack of street lighting may discourage future residents from regularly accessing local services on foot. Facilities are also reachable by bicycle. A bus service exists, albeit there is a relatively infrequent service and a 650m distance to the nearest bus stop.
9. Although options for sustainable transport are not extensive, they nevertheless provide some alternatives which would help to reduce reliance on the private car. Moreover, many journeys to services in Bacton would be short, and the overall number of journeys would be limited given the size of the proposal.
10. I also note that, notwithstanding the Council's current stance, it considered two nearby sites to be accessible to services in Bacton in applications in 2019¹. The Council has sought to draw distinctions with these cases by pointing to an accumulation of unsustainable developments and to other factors, such as its housing land supply position at the time. However, this does not explain the Council's different conclusions on accessibility given these other sites are immediately across the road from the appeal site and were considered acceptable in principle for housing development.
11. Nor has the Council advanced cogent reasoning to support its broader claim that this proposal would exacerbate an unsustainable pattern of development, beyond generalised references to more vehicles using a poor road network, to speculative development 'eroding' an area and to the Council having declared a climate emergency in 2019. However, there is little before me to establish that this particular development would represent a tipping point in terms of harm, particularly when no substantive details of the extent of wider development in the area have been provided.
12. I have also noted the Council's reference to the site as isolated. However, having regard to the relevant Court of Appeal judgment in *Braintree*², I do not regard the site as 'isolated' for the purposes of the Framework, as there are dwellings immediately adjacent to the site on Mill Road.
13. Overall, although the proposal would conflict in locational terms with the spatial strategy as set out under Policies CS1 and CS2, I conclude on balance that the proposal would be a suitable location for housing having regard to its level of

¹ Council Refs DC/19/00440 and DC/19/03972

² *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610

accessibility and would help maintain the vitality of the rural community, as advocated by the Framework.

14. The Council also cites conflict with Policies FC1 and FC1.1 of the FR in its reason for refusal. These are broad policies reflecting the Framework approach to sustainable development and how it is to be achieved. Given my findings above, there would be no conflict with these policies in terms of the locational aspects of sustainable development.

Fragmentation of Farm

15. The Council separately raises concern over the fact that the appeal site, as denoted by the red line on submitted plans, cuts through two of the existing chicken sheds, suggesting they would be only partly demolished and creating uncertainty as to the future use of the land enclosed by the blue line, including whether demolition would lead to an unjustified fragmentation of an agricultural use, contrary to saved Policy CL12 of the MSLP.
16. There is little evidence before me as to the use of the poultry sheds or any wider agricultural operation to which they are connected, apart from their brief description by the appellant as 'redundant.' Nor do I have details of the practicalities of demolition or how the proposed residential use and any agricultural land or buildings which remain would exist in tandem. I accept that the proposal, being in outline, could provide a layout which retains access to the blue line land at the rear, but equally development of the front part of the site for housing could restrict use of the rear part for agricultural purposes due to the potential for noise and odour to affect the living conditions of occupants. Given the limited evidence before me, I am not satisfied that the proposal would not lead to severance of agricultural land and an adverse effect upon the operation of an existing agricultural use, contrary to saved Policy CL12.

Effect on Protected Species

17. The appellant's Preliminary Ecological Appraisal (PEA) identifies the presence of great crested newt (GCN), a protected species, within a pond some 10m from the site boundary on the opposite side of Mill Lane.
18. Due to the proximity of the pond to the site, the PEA sets out that a licence will be required to mitigate the potential impact on GCN. In this case, a District Level Licence (DLL) is recommended, which requires registering the site under Natural England's (NE) licensing scheme. The Council's ecological consultee points out that an Impact Assessment and Conservation Payment Certificate (IACPC) document, countersigned by NE, has not been provided as evidence that the site has been registered, and which is required to demonstrate that the impacts of the development on GCN are capable of being fully addressed in a manner which complies with the requirements of the Conservation Habitats and Species Regulations 2017.
19. The appellant argues that the site is separated from the pond in question by the metalled roadway and the proposal will not have an effect on GCN as a result. It is further pointed out that at a nearby site the Council used pre-commencement conditions on a permission³ in July 2020 to address the effects on protected species, which it is argued could also be used in this instance.

³ Council Ref DC/20/02099

20. Circular 06/2005⁴ states that the presence of a protected species is a material consideration when a development is being considered which would be likely to result in harm to the species or its habitat. It adds at Paragraph 99 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established *before* planning permission is granted (my emphasis).
21. In this case, the appellant's own PEA indicates the presence of a protected species close to the site. The PEA also does not suggest that the separation of the pond and the appeal site by a metalled road is a relevant factor in terms of the potential for the development to affect GCN. Consequently, I cannot rule out a potential effect on protected species from the proposed development.
22. I recognise that the NE licensing scheme is a potential route to addressing the impact on GCN without the need for further surveys or bespoke mitigation measures. However, the purpose of registering with the scheme prior to making the planning application, as recommended in the appellant's PEA, is to enable the applicant to demonstrate that the extent of mitigation measures required has been considered through the NE process, that they are feasible and that a route to securing them has been instigated. I have no evidence that the appellant has registered the site with NE and no other evidence that provides any assurance that mitigation has been considered, such that I can be satisfied that a licence would ultimately be granted by NE.
23. Given this position and the clear guidance of Circular 06/2005 that the effect on protected species is established before planning permission is granted, the use of pre-commencement conditions as suggested by the appellant would not be reasonable in this case. The fact that the Council has used a similar form of conditions in the past does not dissuade me from this view.
24. In the circumstances, the absence of sufficient information means that I cannot rule out potentially significant harm to protected species. The Council's reason for refusal does not cite conflict with a particular development plan policy, but from those policies provided to me, there would be conflict with the aims of Policy CS5 of the CS to protect, manage and enhance Mid Suffolk's biodiversity.
25. There would be further conflict with Paragraph 180 of the Framework which indicates that where significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other Matters

26. The Council did not refuse the application for other reasons. Given the outline nature of the proposal, matters of access, layout, scale, appearance and landscaping would be addressed at reserved matters stage. The Council raises brief concern over the site being tight for two dwellings compared to the more spacious layout of neighbouring dwellings, which may lead to an urbanising effect. Whilst I note this concern, no layout has been put to me, and it is possible that a scheme could be designed at reserved matters stage that suitably addresses matters of layout and appearance. Consequently, this is not a matter weighing against the proposal.

⁴ Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System

27. Similarly, with respect to access, I saw nothing on site that would suggest a suitable access could not be provided, given a wide gate already exists and the road is straight and lightly trafficked.
28. The Council briefly refers to the appeal site falling within the settings of listed buildings in the vicinity. However, it has not elaborated on specific harm that would occur to their settings or overall heritage significance, and this matter is not pursued by the Council as a reason for refusal. For my own part, I saw the dwellings in question to have similar settings of sporadic rural housing within the countryside, in the context of which the addition of two further dwellings, at a distance from each listed building, would not have a harmful effect.

Planning Balance

29. For the reasons set out above, the proposal would not accord with development plan policies when read as a whole. Therefore, it falls to consider whether there are other material considerations which justify a decision other than in accordance with the development plan.
30. The appellant argues that development plan policies related to the location of housing are inconsistent with the approach of the Framework, and that this has been confirmed in past appeal decisions in Mid Suffolk and accepted by the Council in other decisions on planning applications nearby. Nonetheless, the Council argues that Policies CS1 and CS2 in particular remain consistent with the Framework in terms of restricting unsustainable and/or inappropriate development that causes material planning harm.
31. Policies CS1 and CS2 predate the first Framework in 2012. Their overall strategy to direct development to the most sustainable locations is consistent with the Framework, but the approach to development in the countryside is restrictive and does not reflect the more balanced approach of the Framework, which does not explicitly restrict market housing in the countryside, nor does it seek to protect the countryside for its own sake.
32. Consequently, I find that these policies are not consistent overall with the Framework and should be regarded as out-of-date. My view in this respect reflects that of a previous Inspector in a decision at Woolpit⁵ in 2019. I also agree with that Inspector that policies FC1 and FC1.1 are broad policies reflecting the Framework approach to sustainable development and how it is to be achieved. These policies are generally up-to-date.
33. Notwithstanding its position in this appeal, the Council has also accepted Policies CS1 and CS2 are out-of-date in applications made for subsequent developments on Mill Road and found proposals for residential development to be acceptable. The Council also now claims a housing land supply position of over 9.5 years. This improved position relative to earlier applications on Mill Road is a material consideration, but it does not mean policies previously found to be inconsistent with the Framework are now consistent and should be afforded more weight as a result.
34. Policy CS5 is relevant in respect of its biodiversity protections but is not as instructive as the Framework as to the situations where permission should be refused. Nevertheless, it is broadly in accordance with the aims of the Framework to protect and enhance biodiversity and is therefore up-to-date.

⁵ APP/W3520/W/18/3194926

35. Policy H12 dates from the 1998 MSLP and sets a requirement to consider the effect of developing agricultural land on the operation of an existing farm. The Framework does not seek to restrict the development of agricultural land in the same way, but rather promotes the diversification of agriculture and other land based rural businesses. Therefore, I find that this policy is not consistent with the Framework and is out-of-date.
36. Overall, several of the most important policies for determining the application are out-of-date. Therefore, pursuant to the presumption in favour of sustainable development at Paragraph 11 of the Framework, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
37. The proposal would add two dwellings to the housing stock and would contribute towards the Framework objective of significantly boosting the supply of housing, though in light of the Council's claimed housing land supply position, such a benefit would attract limited weight. There would be economic benefits arising from the construction of the dwellings, and subsequently from engagement by future residents in the local economy. However, given the scale of the proposal, such benefits would attract only limited weight.
38. The appellant points to the benefit of replacing the unsightly poultry houses, but whilst they are utilitarian in form, they have an agricultural appearance which is not out of place in the rural surroundings, and their low profile and screening by boundary hedgerows reduces their prominence. As such, any benefit to be gained in terms of the character of the area would be modest.
39. I have also found that the site would be accessible to local services and would help support the rural economy and the vitality of the area in line with the aims of the Framework, albeit at a limited scale. This would offset the minor adverse environmental impact from additional use of the private car and would have a largely neutral effect overall.
40. Set against these benefits, the potential severing of agricultural land would attract limited weight against the proposal. More importantly, however, the identified harm in respect of protected species means that Paragraph 180 of the Framework directs that permission be refused. This is a significant material consideration weighing strongly against the proposal.
41. Drawing these considerations together, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal would not amount to sustainable development and, as a material consideration, the Framework does not indicate that permission should be forthcoming.

Conclusion

42. Therefore, notwithstanding the lesser weight to be afforded to certain development plan policies, I conclude that material considerations in this case do not indicate that a decision should be taken other than in accordance with the development plan. Therefore, the appeal should be dismissed.

K Savage

INSPECTOR