



Appeal Decision

Site visit made on 1 August 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2023

Appeal Ref: APP/W3520/W/22/3302285

White Hall Barn, Stowmarket Road, Debenham, Suffolk IP14 6BU

- 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 David Winch against the decision of Mid Suffolk District Council.
 - The application Ref DC/21/04754, dated 24 August 2021, was refused by notice dated 6 May 2022.
 - The development proposed is 'two new dwellings together with new access off the highway and associated garages and hardstanding'.
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Decision

1. The appeal is allowed and outline planning permission is granted for two new dwellings together with new access off the highway and associated garages and hardstanding at White Hall Barn, Stowmarket Road, Debenham, Suffolk IP14 6BU in accordance with the terms of the application Ref DC/21/04754 dated 24 August 2021 subject to the conditions in the attached schedule.

Preliminary Matters

2. The application is made in outline with all matters reserved except for access which is to be considered at this stage. I have had regard to the plans submitted as part of the application, but have regarded elements other than the details of the access as indicative.
3. The Council's reason for refusal refers to the development of one new dwelling. However, it is clear that the proposal is for two dwellings, and I have considered the appeal on that basis.

Main Issue

4. The main issue is whether or not the proposed dwellings would be in a suitable location having regard to relevant development plan policies, their position within the countryside, and accessibility to services and facilities.

Reasons

5. The appeal relates to land to the south west of Debenham adjacent to White Hall Barn, comprising a section of the curtilage of this dwelling together with part of a large field. There is no dispute between the main parties that the site is not part of a settlement and that it is within the countryside in planning policy terms. Within the countryside, Policies CS 1 and CS 2 of the Core Strategy 2008 ('the CS') restrict development to certain specified categories. The proposed dwellings would not fall within any of these categories, resulting in conflict with Policies CS 1 and CS 2. The development would also be contrary

to Saved Policy H7 of the Mid Suffolk Local Plan 1998 ('the LP') insofar as it sets out that there will be strict control over proposals for new housing outside settlement boundaries and that the provision of new housing will normally form part of existing settlements.

6. Debenham is identified under Policy CS 1 of the CS as a Key Service Centre and offers some local services. The most direct route to reach these services from the site on foot would be along Stowmarket Road. For a significant proportion of this route, Stowmarket Road is a fairly narrow road subject to a 60mph speed limit with no lighting or footways, and verges that I saw were often narrow, sloping and/or overgrown so that potential for pedestrians to take refuge off of the carriageway is limited. The appellant highlights alternative routes using footpaths, bridleways and byways, but these would be longer, and would also lack lighting and formal surfacing. Given these factors together with the distances involved of over a mile, I consider that few occupiers would consider walking to be an attractive or realistic option.
7. However, the appellant refers to 3 bus routes that run along Stowmarket Road which could provide access to destinations including Diss, Stowmarket, Needham Market and Ipswich offering a broad range of services and facilities as well as employment opportunities and links to rail services. Although the nearest bus stops are a little way from the site, the Council has not disputed the appellant's assertion that the bus operators have an informal 'request' stopping policy in rural areas such as this. On that basis, it seems to me that bus services could offer future occupiers a realistic alternative to the private vehicle for at least some trips.
8. I accept that travel by bus may not be suitable for all future occupiers or trips, and there would be likely to be some dependence on private vehicles. This would not support moves to a low carbon economy as sought by the National Planning Policy Framework ('the Framework'), and while the appellant refers to provision for electric vehicle charging, there is no mechanism before me which could restrict occupiers to using only electric vehicles.
9. Even so, journeys to Debenham would be fairly short. Given the scale of the proposal, the number of journeys would also be likely to be relatively low, and while I acknowledge the potential for cumulative impacts over time, these factors would help to minimise the overall effect of travel by private vehicle. Moreover, the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and there would be some option to access services by sustainable travel modes reducing reliance on private vehicles. These factors would temper the harm caused by additional vehicle journeys.
10. For these reasons, I conclude that the location of the development in the countryside would result in conflict with saved Policy H7 of the LP and Policies CS1 and CS2 of the CS. There would also be some dependency by occupiers of the development on private vehicles, but the harm in this regard would be minor.

Planning Obligation

11. Although the proposal is for only 2 dwellings, the size of the site exceeds the threshold within Altered Policy H4 of the LP for an element of affordable housing provision of up to 35% on sites of 0.17ha and above. It also means

that the proposal would be considered a major development. As a consequence, the provision within the Framework that affordable housing should not be sought for residential developments that are not major developments other than in designated rural areas does not indicate that the requirement of Altered Policy H4 should not apply here.

12. The appellant comments that the reason for the site size threshold in Altered Policy H4 is to prevent developers circumventing requirements by reducing the number of units below the threshold which is not the case here where the size of the site reflects flood risk and drainage requirements. However, the Policy itself does not make such a distinction in respect of when the thresholds should apply. While I also note the appellant's view that a requirement to contribute towards affordable housing would not be in accordance with the spirit of Government policy in the Framework, I am not persuaded that these factors offer a sufficiently compelling justification to set aside the adopted development plan requirement. Moreover, there is no firm evidence before me to indicate that the contribution would render the development unviable or otherwise place a disproportionate burden on it. In my judgement, it is reasonable to apply the requirements of Altered Policy H4 to the proposal.
13. The appellant has submitted a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 ('the UU') intended to secure the required financial contribution sought by the Council. Definitions of 'Affordable Housing', 'Affordable Housing Contribution' and 'Affordable Housing Contribution Purposes' are provided only in the Schedule to the UU rather than in the Definitions at part 1. Irrespective of the location of these definitions within the UU though, their meaning is clear. Given also the provision within the UU to perform the covenants in the Schedule, I see no reason that there would be uncertainty or room for dispute that would negate the effectiveness of the obligation.
14. The UU binds the appellants as landowners, but it does not bind a mortgagee. However, it includes an obligation to enter into a Supplemental Agreement with the Mortgagee before development may commence. The Council has not objected to this approach which reflects the timescales imposed, and I am satisfied having regard to the specific circumstances in this case that it would be reasonably justified and that there is sufficient certainty as to what is being agreed. The appellant has referred to potential for a planning condition to also require that the mortgagee were bound by the terms of the Agreement, but this would effectively duplicate requirements within the UU and I consider it would be unnecessary.
15. The obligations within the UU would be necessary to meet the requirements of the development plan. On the basis of the evidence before me, I find that they would be necessary to make the development acceptable in planning terms, would be directly related to the development, and be fairly and reasonably related in scale and kind to the development. They would therefore meet the tests set out in the Community Infrastructure Levy Regulations 2010 which are reflected in the Framework, and are a material consideration to which I give weight in determining the appeal.

Other Matters

16. The main parties have referred in their evidence to policies of the emerging Joint Local Plan ('the eJLP') which is undergoing examination. However, the

examination is ongoing and I cannot be sure that the eJLP will be adopted, nor whether there will be changes to the form and wording of policies within it. I therefore give very limited weight to these policies.

17. The small scale of the proposal means that there would be a relatively small increase in traffic from the site, and there is no compelling information before me that vehicle or pedestrian movements from the site would raise unacceptable safety concerns or cause congestion.

Planning Balance

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.
19. In this case, I have found that the location of the development in the countryside would result in conflict with saved Policy H7 of the LP and Policies CS1 and CS2 of the CS. These policies were adopted before publication of the Framework, but the Framework indicates that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework and that due weight should be given to them according to their degree of consistency with the Framework.
20. Taken together, Policies CS1 and CS2 of the CS outline an approach seeking to direct development generally towards sustainable locations with provision of services and facilities in accordance with the settlement hierarchy defined in the CS. This reflects the thrust of the Framework insofar as it advises that patterns of growth should be managed in support of objectives including identifying and pursuing opportunities to promote walking, cycling and public transport use; and that significant development should be focussed on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.
21. However, these policies along with Saved Policy H7 of the LP provide an unduly restrictive level of protection for the countryside which is in my view inconsistent with the more nuanced approach of recognising the intrinsic character and beauty of the countryside outlined by the Framework. Indeed, I note that the supporting text to saved Policy H7 and the Core Strategy refer specifically to the protection of the countryside for its own sake. Overall, I consider that Policies CS 1 and CS 2 and Saved Policy H7 are not consistent with the Framework and are out of date. In this regard, my conclusions are consistent with Inspectors in previous appeal decisions that I have been referred to at Woolpit¹ and Finningham².
22. That policies may be out of date does not mean that conflict with them cannot be afforded weight, but in light of the above, the weight that I give to the conflict with Policies CS 1 and CS 2 and Saved Policy H7 on account of the location of the development within the countryside is limited. Furthermore, Saved Policy H7 refers to control over proposals for new housing outside of settlement boundaries in the interests of protecting the existing character and appearance of the countryside. There is no compelling evidence before me pointing to any specific harm that would be caused to the character and appearance of the countryside around the appeal site contrary to the aims of

¹ Appeal ref APP/W3520/W/18/3194926

² Appeal ref APP/W3520/W/21/3279217

Saved Policy H7. Nor has the Council advanced an argument that the proposal would cause meaningful harm to the intrinsic character or beauty of the countryside so as to weigh notably against the development.

23. The proposal would be contrary to the overall spatial strategy indicated by Policies CS 1 and CS2. Be that as it may, the proposal would not in itself be a significant development which the Framework outlines should be focussed on locations which are or can be made sustainable. I have not been provided with firm evidence to demonstrate windfall development of a level that has or would as a result of this proposal compromise or undermine the overall spatial strategy. In addition, I have found that while there would be some dependency by occupiers of the development on private vehicles, there would also be potential for public transport use providing a choice of transport modes. The site is also close to other dwellings, and the Council accepts that it is not entirely isolated. While I afford weight to the conflict with Policies CS1 and CS2 in respect of the overall strategy and direction of growth, I consider on the strength of the evidence before me that the ensuing harm would be modest, particularly in the context of the predominantly rural district.
24. The Council has also referred to Policies FC1 and FC1.1 of the Core Strategy Focused Review 2012 ('the CSFR'). While I consider these to be generally up to date, they are broad policies reflecting the Framework approach to sustainable development and how it is to be achieved.
25. Having regard to the circumstances of this appeal, I find that several of the most important policies for determining the application are out-of-date as they apply to the proposal before me. On that basis, the presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is engaged. There are no policies in the Framework that protect areas or assets of particular importance which would provide a clear reason for refusing the development, and the presumption therefore provides that planning 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.
26. Set against the adverse effects of the proposal, it would deliver 2 dwellings. The Council indicates that it has a 10.88 year supply of housing, and an interested party has referred to other permissions granted in Debenham. However, the five year supply referred to in the Framework is not a ceiling on development, and the dwellings would still contribute to the Government's objective of significantly boosting the supply of housing as set out within the Framework. The contribution would be small and the weight that I give to it is moderated by the apparent supply of housing locally, but it is still an important benefit of the proposal. In addition, the development would make a contribution towards affordable housing. The contribution would again be small, but this is an important public benefit of the proposal and I give it significant weight.
27. Occupiers of the site would be likely to offer support for local services in the rural area that could help to sustain their viability. The small scale of the development means that the effect would be likely to be very modest. Nevertheless, it would accord with the Framework which outlines that housing should be located where it will enhance or maintain the vitality of rural communities, offsetting at least some of the adverse environmental effects of

additional vehicle use, and I give it moderate weight. I also give moderate weight to economic benefits during construction including job creation albeit that these benefits would be temporary and of limited scale.

28. The appellant has referred to the reasons for seeking the dwellings to meet caring responsibilities, but the development would be likely to remain long after the current personal circumstances cease to be material, and the Planning Practice Guidance advises that in general, planning is concerned with land use in the public interest. In this context and on the basis of the limited information before me, I have not afforded significant weight to these personal circumstances as a factor in favour of the proposal. The appellant also refers to an intention to incorporate technologies to minimise the carbon footprint of the dwellings and reduce energy demands, but the absence of firm details means I can give little weight to this as a benefit of the proposal.
29. In the context of paragraph 11(d) of the Framework, I find that the modest adverse impacts of the proposal would not significantly and demonstrably outweigh the cumulative benefits, when assessed against the policies in the Framework taken as a whole. Even if I were to conclude that the presumption in paragraph 11 of the Framework were not engaged, I find that the cumulative benefits of the proposal would, on balance, be sufficient to outweigh the modest harm that I consider would be caused by the location of the development contrary to the spatial strategy and the resulting conflict with the development plan in view of consistency with the Framework. On an overall assessment, I therefore consider that the proposal would accord generally with Policies FC 1 and FC 1.1 of the CSFR and the Framework insofar as they broadly seek sustainable development, and I find that there are material considerations which indicate that permission should in this case be granted notwithstanding the conflict with policies of the development plan.
30. In reaching this view, I have had regard to an appeal decision in Elmswell³ referred to by the Council as an example of the weighting attached to its policies. In common with that decision, I have afforded weight to conflict with policies of the development plan reflecting Framework policy which indicates significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. However, the Elmswell decision concerned a proposal for 8 dwellings which would have greater numbers of associated journeys than the development before me, and it is not clear that there would have been any access to bus services as in the current appeal. Moreover, the decision identified harm to the setting of a listed building and to the character and appearance of the area through a significant urbanising effect resulting in conflict with policies CS 5 of the CS and Policies HB1 and GP1 of the LP which have not been argued as part of the Council's case here. The circumstances are not therefore directly comparable to the current appeal which I have considered on its own merits according to the information before me.

Conditions

31. I have considered suggested conditions against the tests at paragraph 56 of the Framework. Where necessary, I have made minor amendments for clarity, brevity, consistency or to ensure compliance with the relevant tests.

³ Appeal ref APP/W3520/W/22/3305372

32. I have attached conditions relating to the submission of reserved matters and the time limits associated with this (1, 2), and a condition specifying the relevant plans (3) for the avoidance of doubt and in the interests of certainty, although I see no reason that phasing plans would be necessary having regard to the small scale of the development and I have therefore omitted suggested reference to them.
33. Conditions relating to the provision of access (4, 5, 6) are necessary to ensure adequate access and in the interests of highway safety. A condition to require a Construction Management Plan (7) is necessary in the interests of highway safety and the living conditions of nearby occupiers.
34. Provision for surface water drainage (8) is necessary in the interests of flood risk and highway safety, although I have imposed a single condition in this regard rather than the two suggested by the Council for reasons of succinctness. Conditions regarding biodiversity enhancement (9), lighting design (10) and to require works in accordance with the recommendations of the Ecological Report submitted with the application (11) are necessary in the interests of biodiversity.
35. Further conditions were suggested relating to the storage and presentation of refuse and recycling, areas of parking and covered cycle storage. However, these relate to the layout and landscaping of the development, and so can be addressed in the consideration of future reserved matters applications for these aspects or through the imposition of conditions on a reserved matters approval. These conditions are therefore unnecessary, and I have not imposed them.

Conclusion

36. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, scale layout and landscaping of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than the expiration of three years beginning with the date of this permission, and the development must be begun not later than the expiration of two years from the final approval of the reserved matters, or, in the case of approval on different dates, of the approval of the last such matter to be approved.
- 3) Unless otherwise modified under the conditions of this permission, the development hereby permitted shall be carried out in accordance with the following approved plans: 824-01 Rev B, 27501/003 Rev 0, 27501/004 Rev 0 and 61284/PP/001 Rev B.

- 4) The development hereby permitted shall not be occupied until access has been provided in accordance with Plan No 61284/PP/001 Rev B with an entrance width of 4.5 metres and the access shall be retained as such thereafter.
- 5) The development hereby permitted shall not be occupied until the access to the highway has been surfaced with a bound material for a minimum distance of 5 metres measured from the nearside edge of the metalled carriageway in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
- 6) The access shall not be first used until visibility splays have been provided in accordance with Plan No 61284/PP/001 Rev B with an X dimension of 2.4 metres and a Y dimension of 120 metres [tangential to the nearside edge of the carriageway]. The visibility splays shall be retained as such thereafter and notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no obstruction to visibility shall be erected, constructed, planted or permitted to grow over 0.6 metres high within the areas of the visibility splays.
- 7) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the development shall thereafter be carried out in accordance with the approved Plan.
- 8) Concurrent with the first reserved matters application(s) a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be in accordance with the Flood Risk Assessment (Richard Jackson Engineering Consultants, September 2021, Ref 61284 Rev A) ('FRA') and shall include:
 - a) Dimensioned plans and drawings of the surface water drainage scheme.
 - b) Further infiltration testing on the site in accordance with BRE 365 and the use of infiltration as the means of drainage if the infiltration rates and groundwater levels show it to be possible.
 - c) If the use of infiltration is not possible then modelling shall be submitted to demonstrate that the surface water runoff will be restricted to Q_{bar} or 2l/s/ha for all events up to the critical 1 in 100-year rainfall events including climate change as specified in the FRA;
 - d) Modelling of the surface water drainage scheme to show that the attenuation/infiltration features will contain the 1 in 100-year rainfall event including climate change;
 - e) Modelling of the surface water conveyance network in the 1 in 30-year rainfall event to show no above ground flooding, and modelling of the volumes of any above ground flooding from the pipe network in a 1 in 100 year rainfall event including climate change, along with topographic plans showing where the water will flow and be stored to ensure no flooding of buildings or offsite flows;
 - f) Topographical plans depicting all exceedance flow paths and demonstration that the flows would not flood buildings or flow offsite, and if they are to be directed to the surface water drainage system then the potential additional rates and volumes of surface water must be included within the modelling of the surface water system.

- g) Details of the maintenance and management of the surface water drainage scheme.

The scheme shall be implemented in accordance with the approved details before the development is first occupied and shall be retained as such and managed and maintained in accordance with the approved details thereafter.

- 9) No development above slab level shall take place until a Biodiversity Enhancement Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall follow the recommendations made within the Ecological Report (Norfolk Wildlife Services, June 2021, 2021.080), and shall include:
 - 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;
 - d) persons responsible for implementing the enhancement measures;
 - e) details of initial aftercare and long-term maintenance.

The development shall be implemented in accordance with the approved details and shall be retained and maintained as such thereafter.

- 10) The development hereby permitted shall not be occupied until a lighting design scheme for biodiversity has been submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. External lighting shall only be installed in accordance with the specifications and locations set out in the approved scheme, and shall be maintained as such thereafter.
- 11) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Report (Norfolk Wildlife Services, June 2021, 2021.080).