
Appeal Decision

Site visit made on 13 April 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/X3540/W/22/3291156

Land at 306 Main Road, Kesgrave IP5 2PS

- 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 P Thomas against the decision of East Suffolk Council.
 - The application Ref DC/21/3794/FUL, dated 6 August 2021, was refused by notice dated 1 October 2021.
 - The development proposed is Redevelopment to provide 3 dwellings with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council has confirmed the appellant has paid directly to them a sum of money towards measures to mitigate any adverse impacts of the development on habitats sites. This satisfies its requirements and as such it no longer wishes to uphold the second reason for refusal. Nevertheless, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of these designated sites and if so, whether this can be adequately mitigated. It is therefore necessary for me to consider this matter as a main issue.
3. The appellant has submitted a biodiversity net gain assessment which did not form part of the application. The Council has provided comments on the submitted information. I consider there would be no prejudice to any party from taking this into account when reaching my decision.

Main Issues

4. The main issues are:
 - whether the site is a suitable location for development having regard to the settlement hierarchy and development strategy for the authority, and if it is not, whether there are any material considerations that would justify reaching a different conclusion; and
 - the effect of the development on the integrity of habitats sites.

Reasons

Suitable Location

5. Suffolk Coastal Local Plan adopted September 2020 (LP) Policy SCLP3.2 establishes the settlement hierarchy for the authority. It identifies Kesgrave as part of the East of Ipswich Major Centre, which are settlements which are separate from Ipswich, but suburban in character. LP Policy SCLP3.3 defines settlement boundaries. There is no dispute that the site lies outside, but adjacent to, the settlement boundary for Kesgrave. The site is therefore in the countryside and policy confirms new residential development will not be permitted except where allowed by specific policies in the development plan.
6. LP Policy SCLP5.3 sets out the circumstances where housing development would be acceptable in the countryside. Market housing is not such a circumstance. This policy does allow for limited development within existing clusters and LP Policy SCLP5.4 sets the detailed policy framework for this. It defines existing clusters as, relevant to this appeal, having at least 5 dwellings. There are fewer than 5 dwellings forming a cluster on this side of Main Road, therefore the proposal would not meet this exception. The Council has not identified any harm other than conflict with these policies were the proposed development to be approved.
7. However, the National Planning Policy Framework (the Framework) confirms at paragraph 60 that Government policy is to significantly boost the supply of housing, and there is an acknowledgement at paragraph 69 of the benefits of small sites which can deliver housing in shorter timeframes.
8. The definition of previously developed land contained in the Framework excludes land that was last occupied by forestry buildings. I have not been made aware of any planning definition of forestry and have no reason to disagree with the appellant's use of the dictionary definition. I consider it logical that there would need to be some form of functional relationship between a building used for forestry purposes and the forest. A yard associated with a tree surgeon, who would carry out work on trees in other locations not functionally linked to that yard, does not seem to me to fall within that exclusion. I therefore consider the site would constitute previously developed land. Paragraphs 119 and 120 of the Framework are clear in their support for the reuse of previously developed land.
9. The proposal would, in and of itself, be well designed and would integrate visually into the surrounding area with suitable landscaping. It therefore would not harm the character and appearance of the area.
10. The appeal site is not isolated for the purposes of paragraph 80 of the Framework and benefits from its proximity to the services and facilities available within Kesgrave, including public transport that provides links to Ipswich. I observed at my site visit that the pavement on Main Street was overgrown, however there clearly was a footpath in proximity to the site. The Council consider this issue could be addressed by condition and I have no reason to disagree. There would therefore be options other than the private car to meet day to day needs.

11. The appeal has been supported by a preliminary ecological appraisal and a biodiversity net gain assessment. These set out mitigations and enhancements that could improve the biodiversity value of the site. There would also be economic benefits arising during the construction and occupation stages of the development.
12. A previous appeal decision on the site has been brought to my attention¹. However, it was for a greater scale of development which both the Council and the Inspector found would harm the character and appearance of the area. This has not been raised as an issue in this appeal. The previous decision therefore does not provide a compelling reason that the proposal before me would result in harm. Furthermore, it was determined under the auspices of a previous development plan.
13. No substantive harm would arise from the proposed development. While the benefits of the appeal proposal would be limited due to its small scale and the ability of the Council to demonstrate a five year housing land supply, it would nonetheless represent an efficient use of previously developed land that would not cause harm to the character and appearance of the area and be well located with respect to access to services and facilities. There would also be biodiversity and economic benefits. Taken collectively, the benefits of the scheme would outweigh the conflict with the development plan.
14. I therefore conclude that the site is a suitable location for development. While it is contrary to the settlement hierarchy and development strategy for the authority as set out in LP Policies SCLP3.2, SCLP3.3 and SCLP5.3, the material considerations justify reaching a different conclusion.
15. The reason for refusal refers to LP Policies SCLP5.5, SCLP5.6 AND SCLP5.11 which are not of direct relevance to the proposal before me.

Habitats Sites

16. The appeal site falls within the zone of influence for the Alde-Ore Estuary Special Protection Area (SPA) and Ramsar site, the Deben Estuary SPA and Ramsar site, the Orfordness-Shingle Street Special Area of Conservation (SAC), the Sandlings SPA, and the Stour and Orwell Estuaries SPA and Ramsar site.
17. All of the sites are vulnerable to pressures from recreational disturbance. Due to its proximity to the habitats sites, there is a reasonable likelihood future occupiers of the proposed development would access the habitats sites for recreation. Although such effects would likely be limited from three dwellings, in combination with other approved and proposed residential development, there would be a likely significant effect on the integrity of the SPAs and SAC as a result of the increased population and associated activity.
18. In these circumstances, the Habitats Regulations require me to undertake an Appropriate Assessment of the implications of the proposed development for the SPAs and SAC in view of their conservation objectives before deciding to grant permission. The conservation objectives of the SPAs include ensuring the integrity of each site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The conservation objectives of the SAC also seek to maintain or restore integrity

¹ APP/J3530/W/16/3161203 dismissed 9 February 2017

and to ensure that the site contributes to achieving the favourable conservation status of its qualifying features and species.

19. Adverse effects on the integrity of the habitats sites would arise from increased recreational disturbance, resulting in disturbance to wintering and passage waterbirds, disturbance to breeding birds, trampling, nutrient enrichment through dog fouling habitat damage, prey removal and spread of non-native species. Strategic mitigation measures to address these effects are set out in the Suffolk Coast Habitats Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). This sets out a tariff based contribution towards the delivery of a mitigation strategy to address these effects and is clear that such contributions should be secured using an appropriate mechanism. Natural England, in its role as the Statutory Nature Conservation Body, considers that the potential adverse effects would be mitigated through a suitably secured contribution to the RAMS. I am therefore satisfied that the measures set out in the RAMS would adequately mitigate the potential adverse effects of the development on the integrity of the SPAs and the SAC.
20. Since the decision was taken, the appellant has made a direct payment consistent with the RAMS. While the Council is satisfied with this approach, there is no accompanying mechanism before me to ensure that the financial contribution is used towards the measures set out in the RAMS. Without that certainty, I cannot conclude that the proposed development would not have an adverse effect on the integrity of the habitats sites. There is no evidence before me to allow me to demonstrate that there are not alternative solutions to deliver new housing that would have a lesser effect on the features of the sites in question, that there are imperative reasons of overriding public interest to permit what is proposed or that there would be compensatory measures that would offset the harm. Consequently, the proposed development would be contrary to SCLP Policy 10.1, the Habitats Regulations and, insofar as it relates to habitats sites, Section 15 of the Framework which taken together require all impacts on habitats sites to be mitigated for.

Planning Balance and Conclusion

21. The proposed development would conflict with the policies of the LP that seek to guide the location of development, however this harm is outweighed by the benefits of the scheme.
22. Notwithstanding, I have concluded that the proposal would be likely to have a significant adverse effect on the integrity of the SPAs and SAC. Whilst I am satisfied that the mitigation measures contained in the RAMS would adequately address the effects of the proposed development on the habitats sites, there is no controlling mechanism before me to ensure that is how the contribution is used. This provides a clear reason for refusing the proposed development. Therefore, and taking into account all other matters raised, the appeal should be dismissed.

J Downs

INSPECTOR