
Appeal Decision

Site visit made on 25 July 2023

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2023

Appeal Ref: APP/K2610/W/23/3314187

Land adjacent 39 Church Road, Upton Easting 639109 Northing 311819

- 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 James Millard against the decision of Broadland District Council.
 - The application Ref 20211760, dated 24 September 2021, was refused by notice dated 15 November 2022.
 - The development proposed is residential development of 4no. dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the proposal has altered from the application form to the decision notice. The decision notice refers to 'Construction of four self/custom build dwellings with garages (outline with details of access only; all other matters reserved)'.
3. This revised description has been agreed between the parties and accurately describes the proposals. I have therefore considered the appeal on that basis.

Main Issues

4. The main issues are the effect of the proposal on the character and appearance of the area, whether the site is suitable for the proposed development having regard to accessibility to services and facilities and whether sufficient information is available to enable a determination to be made in relation to any impact on biodiversity.

Planning Policy Context

5. Policy GC2 of the Development Management DPD (2015) (DMDPD) is not wholly consistent with the Framework¹ in terms of its approach to rural housing, which is less restrictive. However, in considering the supporting text it is still a policy which seeks to locate development sustainably, in line with the requirements of the Framework. The policy should still therefore be afforded moderate weight.

¹ National Planning Policy Framework 2023.

Reasons

Character and appearance

6. The wider landscape is agricultural in its character and appearance with the area being dominated by large arable fields. These characteristics are clearly referenced within the Landscape Character Assessment².
7. However, the appearance of the appeal site is distinctly different to the wider surrounding landscape. This is because it is set directly between a large dwelling and its grounds to the north and further dwellings and their extensive rear gardens to the south.
8. I accept that the existing properties do have large gardens and the dwellings associated with this development may have less provision. However, ultimately, the site does not share those open and rural characteristics which positively define the character and appearance of the wider area.
9. Future dwellings on the site would be read within the context of those existing adjacent dwellings and would ultimately not be likely to form an unusual or stand out feature within this very particular setting. It is therefore likely to be the case that 4 dwellings in this location would have no adverse impact on the character and appearance of the area.
10. With regard to this matter there would therefore be no conflict with Policy 1 of the JCS (Joint Core Strategy) (2014) which amongst other things seeks to protect the environmental assets of the area. There would also be no conflict with Policy 2 of the JCS nor policies GC4 and EN2 of the DMDPD which amongst other things require proposals to respect local distinctiveness including with regard to landscape character.

Accessibility to services and facilities

11. The appeal site is set adjacent to a cluster of existing dwellings. There is at least a pub and a shop within Upton, which is set to the north. However, access on foot would not be simple as one would have to share the carriageway with vehicles on the gently winding and unlit Church Road.
12. The main body of services and facilities are available in the larger settlement of Acle, to the south east. However, again, the possibilities of walking to Acle via the road network appears limited due to the largely unlit nature of the road, along with having to share the carriageway with vehicles.
13. Although cycling to access local services and facilities would be more feasible, the same conditions which would be likely to dissuade pedestrians may well also put off future residents from making the journey via this mode.
14. The evidence does indicate that there is a bus stop which could be accessed by walking along Church Road or by using the grass verges. However, there is nothing to indicate that the bus services run with any regularity, to the extent that it would represent a viable and usable alternative to less sustainable modes of transport.
15. Overall, given the matters above, and whilst accepting the rural nature of the area, it is likely that residents at the appeal site would find it far more

² Broadland District Council Landscape Character Assessment Supplementary Planning Document September 2023.

convenient to access day to day services and facilities via less sustainable modes of transport.

16. There would therefore be conflict with Policy 1 of the JCS with regard to this particular matter which amongst other things requires development to minimise the need to travel. There would also be conflict with Policy 6 of the JCS which seeks the concentration of development close to essential services and facilities to encourage walking and cycling as the primary means of travel with public transport for wider access.
17. There would also be conflict with Policy GC2 of the DMDPD which advises that new development will be accommodated within the settlement limits. The supporting text indicates that this seeks to focus residential developments within settlements which are well-linked and well-related to existing development, services, facilities and employment opportunities.

Biodiversity

18. It is indicated that the proposals would involve extensive development when compared to the current nature of the site including the dwellings, garages, and accesses.
19. A Preliminary Ecological Appraisal³ has been included within the evidence. The site was identified as forming a suitable habitat for reptiles, whilst an apple tree was noted with moderate bat roost potential. The assessment recommends further surveys in relation to both these matters, however there is nothing within the evidence to suggest that the requisite surveys have been undertaken.
20. The presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. 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 any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
21. I therefore conclude on this matter that in the absence of the surveys, there cannot be any certainty as to whether the site is being used by reptiles and to what extent. Further, there is no clarity as to whether the apple tree that could be removed acts as a bat roost and to what purpose and extent.
22. Consequently, it is not possible to ensure that any required mitigation measures would specifically address any potential harm. It would not therefore be reasonable to condition further surveys in this instance. It could be feasible to look to retain the apple tree within the final site layout, however in any event, this would not resolve outstanding matters relating to the potential presence of reptiles.
23. The proposal would therefore conflict with Policy 1 of the JCS which amongst other things seeks to protect the environmental assets of the area. There would be conflict with policies EN1 and EN3 of the DMDPD which amongst other things require that proposals protect and enhance the biodiversity of the

³ Preliminary Ecological Appraisal Report – Wild Frontier Ecology – Land East of Church Road, Upton – October 2022.

district and that adequate mitigation is incorporated and maximise opportunities for the creation of a well-managed network of wildlife habitats.

Other Considerations

24. A signed and dated unilateral undertaking has been submitted to provide for the development to be undertaken as self-build. It also allows for a payment towards the Recreational Impact Avoidance and Mitigation Strategy (GIRAMS).
25. The evidence indicates that the submitted undertaking is necessary to make the development acceptable in planning terms to enable the proposal to accord with the development plan. It is directly related to the development and fairly and reasonably related in scale and kind to the development. The planning obligation therefore meets the tests within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and at Paragraph 56 of the Framework.
26. The provision of self-build plots would, without doubt, contribute to a varied choice of housing options. I afford this matter moderate weight. The GIRAMS contribution would be a neutral matter.
27. Although it is not clear from the evidence before me, the lack of a five year housing land supply identified within the evidence (5YHLS) could be in part attributable to issues surrounding nutrient neutrality. The site before me here is not within an area affected by that issue. I also note the suggested condition to shorten the time limit for reserved matters and hence attempt to ensure a speedy delivery of the scheme. Moderate weight can be afforded with regard to locational deliverability with regard to this particular matter.
28. My attention has been drawn to a planning permission for 4no. self-build dwellings at land north of Damgate Lane, Acle (LPA Ref. 20212094). I was able to visit that site after the appeal site. However, that location is not comparable to that subject of this appeal. Whilst the footway provision is not complete, and whilst noting Appeal Ref. APP/K2610/W/18/3196121, footways are often available on Damgate Lane before joining with the main body of Acle, with which the site is much more closely associated than that before me. The nature of the road at Damgate Lane feels markedly different in purpose and function. I therefore afford this matter limited weight.
29. My attention has been drawn to Policy 7.5 of the emerging Greater Norwich Local Plan. However, there is nothing within the evidence which suggests that I should be affording this Policy significant weight. I note that the Policy requires that a proposal should amongst other things result in no adverse impact on the natural environment and with regard to my findings on the second main issue this scheme would appear to partially conflict with that Policy. I afford this matter limited weight.
30. There would be social and economic benefits associated with the proposal. The units would contribute to the overall supply of housing and would provide some support to the local economy both during and after construction in the manner that such schemes normally always do. However, the scheme is limited in scale and these factors are afforded limited weight.

Planning Balance

31. There would be conflict with the Framework which amongst other things states that new development should be planned for in ways that can help to reduce greenhouse gas emissions, while planning decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles. Planning decisions should also minimise impacts on biodiversity.
32. Therefore, the conflict between the proposal and policies 1 and 6 of the JCS along with policies EN1 and EN3 of the DMDPD should be given significant weight. As the proposal would conflict with these policies, there would be conflict with the development plan as a whole.
33. In the circumstances where a 5YHLS is absent, footnote 8 of the Framework establishes that the policies which are most important for determining the application are out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. I accept that there would be economic and social benefits associated with the provision of the scheme and acknowledge the deficiency in supply of deliverable housing sites. However, the contribution would be modest in relation to a scheme which would not provide a large number of units and I have identified adverse impacts associated with the proposal. When considered together, I afford these adverse impacts significant weight.
35. Consequently, even were the shortfall in 5YHLS substantial in its extent, the adverse impacts would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

36. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which indicate the proposal should be determined otherwise than in accordance with it. Therefore, for the reasons given, the appeal should be dismissed.

T Burnham

INSPECTOR