

Appeal Decision

Site visit made on 20 July 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/X3540/W/22/3294336

Land Adjacent 29, Mill Road, Newbourne, Woodbridge IP12 4NR

- 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 S Proctor against the decision of East Suffolk Council.
 - The application Ref DC/21/3575/OUT, dated 23 July 2021, was refused by notice dated 25 February 2022.
 - The development proposed is erection of 2 detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have treated the submitted plans as being illustrative only as the appeal seeks outline planning permission with access to be considered. Appearance, landscaping, layout and scale are reserved for future consideration.
3. The Council has brought subsequent appeal decisions to my attention which have confirmed that the proposed development should also be considered against the relevant policies for the siting of dwellings in the countryside as Newbourne does not have a settlement boundary. I have sought further comments from the parties on this matter and have taken those comments and policies into account in reaching my decision.
4. 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 the designated sites. It is therefore necessary for me to consider this matter as a main issue.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the development on the integrity of habitats sites.

Reasons

Character and Appearance

6. A substantial proportion of Newbourne is occupied by the former Land Settlement Association Holdings (LSAH). This was an experimental scheme in

the interwar period which sought to provide employment on the land for workers from depressed industrial areas. This has given rise to a distinctive land use pattern of large plots, some of which still contain commercial scale greenhouses. The ongoing influence of horticulture on the area was readily discernible at my site visit from the visibility of the greenhouses and the sale of fresh produce from individual plots. In recognition of this distinctive history, Suffolk Coastal Local Plan adopted September 2020 (LP) Policy SCLP11.9 provides the policy context specific to development within the former LSAH.

7. Notwithstanding this specific policy, there is not a settlement boundary for Newbourne therefore the site is in the countryside. LP Policy SCLP5.3 sets out the circumstances in which housing development in the countryside would be acceptable. This confirms that limited development within existing clusters is appropriate subject to criteria set out in LP Policy SCLP5.4. LP Policy SCLP5.7 sets criteria for infill development, along with LP Policy11.9.
8. There are three dwellings to one side of the appeal site. Outline planning permission has been granted for the land immediately to the other side, beyond which lies a further residential property. Residential development continues beyond along both Mill Road and Jackson Road. There is also development on the opposite side of Mill Road. The proposal therefore would not extend the built-up area into the countryside. I am therefore satisfied the site lies within a cluster and represents infilling for the purposes of LP Policy SCLP5.4.
9. The appeal site is an example of the extended plots typical of the LSAH. The current use of the site is described as former nursery. However, this was not readily apparent from my observations at my site visit, given the expansive areas of hardstanding and the appearance of the structures on the site. These structures restrict views through the site to the open land to the rear. The position of the site on the junction reduces its prominence. The site does not make a strong contribution to the historic horticultural character that adds to the quality of Newbourne. I can see no reason in character or appearance terms to maintain a gap between development on Mill Road and Jackson Road or for the two sides of Jackson Road to mirror each other when there is not a regular pattern of development.
10. The three dwellings adjacent to the site along Mill Road sit in proximity to each other. This gives this small length of Mill Road a more developed character than the spacious plots that more generally typify its character and appearance. The introduction of two additional dwellings would therefore not appear as incongruous or serve to undermine the character of Mill Road.
11. I have established above that the proposed development would constitute infilling. Appearance, layout and siting would be considered at the reserved matters stage, however the indicative plans demonstrate the site could be developed in such a way as to not be considered backland development. The proposed plots would be substantial and offer sufficient space to provide appropriate parking and private garden space for future occupiers without having an adverse effect on the living conditions of neighbouring occupiers. In principle there is no reason a scheme could not be designed which would integrate with the existing character and appearance of the area.

12. I have been referred to other appeal decisions but not provided with any details of those decisions. However, I have assessed this proposal against the relevant policies of the development plan and on its own planning merits.
13. I am therefore satisfied that the proposed development would have an acceptable effect on the character and appearance of the area. It would therefore be in accordance with LP Policies SCLP5.3, SCLP 5.4 and SCLP11.9 which set out the circumstances in which housing development can take place in the countryside and infill locations, with particular regard to the special circumstances of Newbourne.

Habitats Sites

14. The appeal site falls within the zone of influence for the Alde-Ore Estuary Special Protection Area (SPA) and Ramsar site, Benacre to Easton Bavents SPA, the Deben Estuary SPA and Ramsar site, Minsmere to Walberswick Heaths & Marshes Special Area of Conservation (SAC), Minsmere – Walberswick SPA, the Orfordness-Shingle Street SAC, the Sandlings SPA, and the Stour and Orwell Estuaries SPA and Ramsar site.
15. 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 two dwellings, in combination with other approved and proposed residential development, there would be a likely significant effect on the integrity of the SPAs and SACs as a result of the increased population and associated activity.
16. In these circumstances, the Habitats Regulations require me to undertake an Appropriate Assessment of the implications of the proposed development for the SPAs and SACs 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 that the site contributes to achieving the aims of the Wild Birds Directive. The Orfordness-Shingle Street SAC is designated for annual vegetation of drift lines and perennial vegetation of stony banks and coastal lagoons, while the Minsmere to Walberswick Heaths & Marshes SAC is designated for European dry heaths as well as annual and perennial vegetation as per the Orfordness-Shingle Street SAC. The conservation objectives of both SACs include ensuring that the integrity of the site is maintained or restored as appropriate and ensuring that the site contributes to achieving the favourable conservation status of its qualifying features and species.
17. 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. 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.

18. 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.

Other Matters

19. There would be a benefit from the delivery of additional homes, and the associated economic benefits at both the construction and occupation stages. The site would not be isolated for the purposes of paragraph 80 of the Framework. Additional dwellings would support the vitality of the existing rural community at Newbourne and possibly surrounding settlements, and the services within it. There is a bus service to the village. While this is very limited, I am mindful of the advice at paragraph 105 of the Framework that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Future occupiers would not be wholly dependent on the private car to meet day to day needs.
20. Both parties have directed me to other decisions of the Council and at appeal. However I do not have full details of any of these. In any event, this appeal must be determined on its own merits.

Conclusion

21. I have concluded the proposal would have an acceptable effect on the character and appearance of the area. 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