



Appeal Decision

Site visit made on 3 October 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2023

Appeal Ref: APP/D3505/W/23/3314742

Old Rectory, Rectory Lane, Kettlebaston, Suffolk IP7 7QD

- 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 and Mrs Lawrence against the decision of Babergh District Council.
 - The application Ref DC/22/04846, dated 28 September 2022, was refused by notice dated 1 December 2022.
 - The development proposed is erection of 1no. new energy efficient sustainable dwelling house (in lieu of the dwelling approved under DC/20.04750).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19th September 2023, the Council received notification that the emerging Babergh and Mid Suffolk Joint Local Plan (eLP) had been found sound, subject to main modifications. I have sought the view of both parties on this, and have taken the comments received into account in reaching this decision.

Main Issues

3. The main issues are:
 - whether the site is a suitable location for the proposed development with regard to the development strategy for the area; and
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Suitable location

4. Babergh Local Plan 2011-2031 Core Strategy & Policies (2014) (CS) Policy CS2 sets out the settlement pattern for the district and provides that in the countryside, development will only be permitted in exceptional circumstances subject to a proven justifiable need.
5. There is nothing to say that a housing needs survey would be necessary to demonstrate a proven justifiable need. However, there is no substantive evidence before me seeking to demonstrate any need exists in this case. Evidence gathered for a neighbourhood plan for a different area would not justify development outside it. Even if I were to accept the need for dwellings

to be more energy efficient to be a proven justifiable reason to allow a dwelling in the countryside, it would not constitute an exceptional circumstance.

6. There are public rights of way in proximity to the site which lead to surrounding settlements. However, there is no evidence before me as to whether those settlements have any services or facilities that would meet any day-to-day needs of future occupiers of the proposed dwelling. Furthermore, it is unlikely that these would offer a realistic option for many trips, given the right of way in proximity to the site was unmade and unlit. There would likely be an almost complete reliance on the private car to meet the day to day needs of future occupiers of the proposed dwelling.
7. The proposed development would provide economic benefits through employment during the construction period and consumer spending during the occupation period. However, this would be limited given the proposal is only for one dwelling. Notwithstanding the countryside location of the site, there is no substantive evidence before me that there would not be an appropriate level of services, facilities and infrastructure within the wider area to meet the needs of future occupiers. Nor is there any substantive evidence that the proposed development would have an adverse effect on local services and facilities, or the aim in the National Planning Policy Framework (the Framework) to create healthy, inclusive and safe places.
8. The site is not a suitable location for the proposed development with regard to the development strategy for the area. It would therefore be contrary to CS Policy CS2 which seeks to direct development to identified settlements and CS Policy CS15 insofar as it seeks to minimise the need to travel by car. It would also conflict with paragraphs 78, 79 and 104 of the Framework which together seek to locate development where it will support the vitality of rural communities and maximise opportunities for modes of travel other than the private car. I attach significant weight to this conflict.

Character and Appearance

9. The appeal site is set on the slope of a valley. Further down the slope is a public right of way. Moving up the slope is an open area of land, with the boundary indicated by planting.
10. With a footprint of 145sqm, the proposed dwelling would have a considerable footprint. However, it would be single storey, with a modest roof height and an unassuming design. It would be set in a commensurate plot. The proposed materials would be characteristic of those found in the wider area and, with their black colour treatment, would result in a dwelling that would not be uncharacteristic of the area.
11. Despite the surrounding landscaping, the site is otherwise set in an expansive landscape where the closest dwelling is substantial in scale. The Council has not set out the landscape qualities of the surrounding area that would be harmed by the proposed dwelling, nor substantiated why the scale of the proposed dwelling would be incongruous.
12. The proposed development would be set into the hillside. While the Council has asserted this would be visually intrusive and would appear prominent in its countryside setting, it has not set out the locations from where this intrusion would occur. It has also acknowledged the proposed dwelling would be largely

screened by existing vegetation. The proposed dwelling would be perceptible by users of the public right of way, however this would be for a short duration, and in proximity to the existing dwelling. Appropriate landscaping could mitigate any effects further.

13. The proposed development would therefore have an acceptable effect on the character and appearance of the area. It would therefore be in accordance with Babergh Local Plan Alteration No.2 (2006) Policy CN01 and CS Policy CS15 which, taken together and insofar as they relate to this main issue, require development to pay particular attention to the environment surrounding the site, respect the landscape and make a positive contribution to local character. It would be in accordance with paragraphs 126, 127, 130 and 174 of the Framework which promote good design and recognition of the intrinsic character of the countryside. However, this would amount to a lack of harm and would therefore be neutral.

Other Matters

14. There is an extant planning permission¹ on the site for a dwelling which does not expire until August 2024. I have no reason to think the appellant would not implement this or that the scheme is otherwise undeliverable. However, this permission does not represent a fallback to the scheme before me as, were I to allow this appeal, both schemes could be implemented.
15. There is no mechanism before me to prevent this from occurring. While the appellant considers this control could be achieved via a condition, I do not agree. Such a condition would not be relevant to the development to be permitted if it affected the extant permission, nor reasonable in all other respects if it prevented either the appeal proposal or the extant permission from being implemented. It therefore would fail to meet the tests set out in paragraph 56 of the Framework. 'In lieu of the dwelling approved' is not an act of development and as such the description of development would not provide sufficient control to prevent both permissions from being implemented. The proposed development cannot therefore be considered in place of the extant permission.
16. The proposed development would not constitute a replacement dwelling. The policies in the development plan which seek to control replacement dwellings are therefore not germane, nor is comparison with the extant permission or previous prior approval scheme in terms of the scale of the proposal. The lack of objection from statutory consultees amounts to a lack of harm and would be neutral.
17. The public support for the proposed development clearly shows the regard in which the appellants are held by surrounding residents and I am mindful of the advice in the Framework which places value on creating communities. However, as the dwelling would be permanent, would remain after the appellant's personal circumstances ceased to be relevant and it would not be reasonable to limit the permission to the appellants only, I attach limited weight to this. Ecological compensation, mitigation and enhancement could be secured by condition with respect to the measures identified in the supporting evidence and proposed landscaping. Higher standards of energy efficiency could be secured by condition which would be a benefit, regardless of my

¹ DC/20/04750

findings in relation to this above. These would also be benefits of the scheme to which I attach limited weight.

18. ELP Policy SP03(2) continues the strategy to seek to direct development to within settlement boundaries. It provides, insofar as is relevant to this appeal, exceptions which would allow development outside of settlement boundaries. The proposed development does not appear to meet any of the exceptions. Paragraph 48 of the Framework advises that weight may be given to relevant policies in emerging plans subject to certain criteria. As the eLP has been found sound, although not adopted, I attach moderate weight to the proposal's conflict with it.
19. My findings are specific to this development in this location. It would not set a precedent for future decisions as the exact circumstances of this site would not be replicated elsewhere. Similarly, while both parties have referred to other decisions, I do not have full details of those and it is unlikely that the circumstances would be so similar as to outweigh the harms I have identified above.

Planning Balance

20. The proposed development conflicts with the development plan when read as a whole. While I consider CS Policy CS15 to be consistent with the Framework insofar as it relates to this appeal, it is not in dispute that CS Policy CS2 is not wholly consistent with the Framework. Consequently, I am taken to the circumstances of paragraph 11d ii).
21. Paragraph 78 of the Framework confirms that planning decisions should be responsive to local needs while paragraph 79 requires housing in rural areas to be located where it will enhance or maintain the vitality of rural communities. As set out above, there is no evidence of local need for the proposed development. The site is not well related to any surrounding settlement. Future occupiers would be highly dependent on the private car to meet day to day needs. I ascribe significant weight to these harms.
22. The Framework seeks to significantly boost the supply of housing. The appeal proposal would contribute to this, and there would be associated economic benefits that would arise during both construction and occupation. There would be ecological benefits and there is community support for the proposed development. I attach limited weight to these given the proposal is for a single dwelling and the Council can demonstrate a five year supply of deliverable housing land.
23. I have not found harm to the surrounding landscape and that the design of the proposed dwelling would be acceptable. However, these would amount to a lack of harm and would therefore be neutral in the determination of the appeal.
24. With this, and the above in mind, it is sufficiently clear that the adverse effects of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits. The proposal would therefore not benefit from the presumption in favour of sustainable development.

Conclusion

25. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations before of sufficient weight, including the approach of the Framework, which would indicate that the decision should be taken otherwise. Therefore, the appeal should be dismissed.

J Downs

INSPECTOR