



Appeal Decision

Site visit made on 19 October 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th November 2023

Appeal Ref: APP/W3520/W/23/3319374

Land off Cherry Tree Close, Yaxley, Suffolk IP23 8DH

- 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 Valedane Ltd against the decision of Mid Suffolk District Council.
- The application Ref DC/22/04818, dated 23 September 2022, was refused by notice dated 28 November 2022.
- The development proposed is erection of two detached bungalows.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made in outline with all matters reserved. Notwithstanding, access would be taken from Cherry Tree Close.
3. 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 views of both parties on this and have taken the comments received into account in reaching this decision.
4. Compliance with conditions on other permissions or the potential for enforcement action are outwith the scope of this appeal, which I have determined on its planning merits.

Main Issues

5. The main issues are:
 - whether the proposed development would result in an unacceptable loss of open space including with regard to the effect on health and wellbeing of existing and future occupiers;
 - the effect of the proposed development on the character and appearance of the area; and
 - the living conditions of future occupiers with regard to overlooking.

Reasons

Open Space

6. The approved plans on previous permissions¹ clearly show the appeal site as an amenity area or open space. Mid Suffolk Local Plan (September 1998) (LP)

¹ Including 1314/00 approved 13 February 2001; DC/22/00400 approved 22 March 2022

Policy RT3 seeks to safeguard recreational open space including amenity areas and the value of a site for local informal recreation will be a material consideration in redevelopment proposals. The National Planning Policy Framework (the Framework) defines open space as "All open space of public value, including not just land, ... which offer important opportunities for sport and recreation and can act as a visual amenity". At my site visit, the site had the appearance of an open space of a kind typically provided within housing developments, albeit with fencing around the site.

7. The appellant has highlighted that the land is in their ownership, has not been designated as open space, that there is no mechanism to require its retention as open space, to require it to be made available to the public or for it to be transferred to the Council. While I have no reason to dispute any of these points, none prevent the site from meeting the definition of open space set out in the Framework. Nor does the development plan specify that open space must be designated as such, or preclude sites for any of the above reasons from being considered as open space.
8. As such, LP Policy RT3 would apply to the proposed development. This seeks to prevent development on amenity areas and confirms that the value of a site for local informal recreation should be taken into account in the consideration of a redevelopment proposal. Paragraph 99 of the Framework goes further insofar as it relates to the proposed development, confirming that existing open space should not be built on unless the space has been shown to be surplus to requirements, or equivalent or better replacement provision can be provided.
9. It has been identified there are other open spaces in the vicinity of the site. However, there is no assessment before me demonstrating the open space is surplus to requirements. Nor has any alternative provision been identified.
10. Representations from surrounding residents set out that the site has provided opportunities for informal recreation and social interaction. I have no reason to dispute these comments and this adds to the value of the open space as it contributes to the health and wellbeing of residents. The appellant has provided evidence of some use of the site for parking by residents. This statement has been largely unchallenged, however inconsiderate use of an open space by some people would not justify its loss or redevelopment, nor is it evidence that the site has no value for informal recreation opportunities.
11. There is no substantive evidence before me which demonstrates that the Council were satisfied at any point in the past that adequate open space provision was available elsewhere in the locality. Nor does a lack of boundary around the site indicate it would be inherently unsafe as a combination of reasonable supervision by parents and drivers exercising due care and attention would reduce the potential for accidents. There is no substantive evidence that use of the site would give rise to levels of noise and disturbance beyond that which could be reasonably expected in a residential area. It may be that the appellant could erect a 2m fence on the appeal site and prevent access to it. However, this would not stop the site being an open space or change the policy of the development plan with respect to such spaces.
12. The proposed development would therefore result in an unacceptable loss of open space which would be detrimental to the health and wellbeing of existing and future occupiers. This would be contrary to LP Policy RT3 which seeks to safeguard recreational open space and prevent it being developed for non-

recreational purposes and paragraphs 99 and 130 of the Framework which seek to protect open space and promote health and wellbeing.

13. LP Policy RT4 seeks the provision of open space within residential development of 10 or more dwellings and as such is not directly relevant to this main issue.

Character and Appearance

14. Core Strategy Development Plan Document (September 2008) (CS) Policy CS5, insofar as it relates to this appeal, requires development to maintain and enhance the environment and retain the local distinctiveness of the area. LP Policy GP1, insofar as it relates to this appeal, encourages the creation of open spaces in built development and that this should maintain or enhance the character of the site. These are consistent with paragraph 126 of the Framework which confirms that the creation of high quality, beautiful places is fundamental to what planning should achieve. As the proposal does not engage with any heritage assets, the finding in a previous appeal decision² that CS Policy CS5 was out of date would not alter this conclusion.
15. The appeal site occupies a central location within Cherry Tree Close. At the time of my site visit, it was well maintained, with saplings planted. There was a conspicuous substation, however this only took up a small area of the overall site. The open space provides an attractive green space which adds a sense of spaciousness to the street and provides relief from the surrounding built form. Its loss would not enhance the environment.
16. Appearance, layout and scale would be considered at the reserved matters stage. However, it is not necessary to have those details to be able to appreciate that the principle of developing the site would fundamentally change its character and that this would be harmful given the contribution the site makes to the quality of the environment as an open space.
17. The proposed development would therefore have an unacceptable effect on the character and appearance of the area. It would be contrary to CS Policy CS5 and LP Policy GP1, which taken together and as they relate to this appeal, require development to be of a high quality design that respects local distinctiveness and enhances the character and appearance of the district.

Living Conditions

18. Two properties directly adjoin the appeal site. Of these, one has a narrow window at first floor level and the other does not have any first floor windows. The other properties which face towards the appeal site do so from the opposite side of the road. Although layout would be considered at the reserved matters stage, there is no reason in principle that the site could not be developed in a manner which provided an appropriate level of privacy for future occupants of the proposed development.
19. Insofar as can be assessed at the outline stage, the proposed development would provide acceptable living conditions for future occupiers with regard to overlooking. It would therefore be in accordance with paragraph 130 of the Framework which, as it relates to this main issue, requires development to provide a high standard of amenity for future users.

² APP/W3520/W/18/3194926 allowed 28 September 2018

20. LP Policy H16 seeks to protect existing residential amenity and as such is not directly relevant to this main issue.

Other Matters

21. The Council has identified two policies from the eLP as relevant to this appeal. Policy LP24 requires development to respond to and safeguard existing character/context and broadly continues the approach set out in the current development plan. 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. Although the Council has identified eLP Policy LP17 as relevant, I find this to be of minimal relevance as the site is enclosed by the existing built form so the effect on landscape character would be negligible.
22. There would be an undoubted benefit from the provision of two additional dwellings. Single storey dwellings would provide the opportunity to meet the needs of those looking to downsize, albeit there is no mechanism before me to ensure this. There would also be the economic benefits of development during both the construction and occupation stages of the development. I nonetheless attach limited weight to these benefits, given the small scale of the proposed development.

Conclusion

23. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to indicate the decision should be taken otherwise. The appeal should therefore be dismissed.

J Downs

INSPECTOR