

Appeal Decision

Site visit made on 21 November 2023

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/D3505/D/23/3330096

Rose Cottage, Church Lane, Wenham Magna, Suffolk CO7 6PL

- 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 Coe against the decision of Babergh District Council.
 - The application Ref DC/23/02002, dated 25 April 2023, was refused by notice dated 17 August 2023.
 - The development proposed is continued use of land as garden amenity land and installation of 15No. Panel ground mounted Solar PV System.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant indicates that the original description of development has changed. Therefore, the above description reflects the amended description shown on the appeal form.
3. The Babergh and Mid Suffolk Joint Local Plan, Part 1 (the JLP) was adopted in November 2023, after the Council's decision in this case. The new plan supersedes policies referred to in the decision notice from the Babergh Local Plan (2006) and the Babergh Core Strategy (2014). Accordingly, I have had regard only to relevant policies from the adopted development plan.
4. The appellant's submissions include a plan showing a revised layout of the solar panels, with 14 rather than 15 panels. The Council confirms that it did not have regard to this plan in reaching its decision and it will not have been seen by interested parties. For this reason, I have not had regard to it in determining the appeal.

Main Issues

5. The description of development refers to the continued use of the site of the proposed solar panels as garden amenity land. I note that the Council accepts and does not contest this matter, due to a previous permission that allowed use of the land as a garden. Consequently, the main issues in this case are:
 - whether there is sufficient information to assess any effects of the proposal on protected species.
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- the effect of the proposal on Wenham Magna Public Footpath 21.
- the effect on the settings of two listed buildings, St John's Church and The Old Rectory.
- the effect on the character and appearance of the surrounding area; and
- whether there is sufficient information to assess any effects of the proposal, in terms of glint or glare, on the living conditions of nearby residents and the safety of highway users.

Reasons

6. Rose Cottage is a detached bungalow within a rural setting. The appeal property has a frontage close to Church Lane, with the site of the proposed panels on the opposite side of the road within an open field. There is open countryside beyond the field to the south-east with residential dwellings to the north. The closest buildings to the appeal property in the largely open setting are two listed buildings, St John's Church and a residential property, The Old Rectory.

Protected Species

7. There are several ponds within the surrounding area that, due to their proximity to the appeal site, should be assessed for the presence of Great Crested Newts (GCN), a protected species. The closest of these is connected to the site by suitable terrestrial habitat and the fenced garden area includes scrub and log piles, which may provide suitable habitat for GCN. The Council indicates that the site lies within an Amber Risk Zone for the GCN District Level Licensing.
8. I have had regard to the appellant's Preliminary Ecological Assessment, which finds that it is unlikely that there would be significant populations of amphibians in the local area, especially GCN; and, therefore, GCN are not considered a receptor for the development. It appears, however, that this report was not available to the Council and other parties before the application was determined. I note the appellant's frustration in this regard in terms of timing of the decision. Nonetheless, it is the case that other parties have not had the opportunity to consider and comment on the report.
9. The Council and other parties could be provided with the opportunity to comment as part of the appeal process but given the findings on the other main issues that follow, the outcome of this particular issue is not determinative for the appeal. For this reason, I have not considered this issue further.

Public Footpath 21

10. Access to Wenham Magna Public Footpath 21 from Church Lane is by a gap in the wall where the path runs between the boundary of The Old Rectory and the fence surrounding the site of the proposed panels into the open field beyond. The submitted plans do not show the line of the footpath and the red line delineating the site appears to be directly adjacent to The Old Rectory's boundary.
11. The plans also show a staggered layout of the three rows of solar panels with the row to the south close to the boundary of The Old Rectory. Consequently,

it is not clear whether or not the proposal would impinge on the footpath and, therefore, whether it would be harmful in this regard. While the appellant states that the intention is to site the panels within the fenced area, the decision must be made on the basis of the submitted details, which for the reasons given, are not sufficiently clear on this matter.

12. Accordingly, I must conclude on the basis of the available information that it has not adequately been demonstrated that the proposal would not be harmful to Wenham Magna Public Footpath 21. As such, the proposal is contrary to the National Planning Policy Framework (the Framework), which requires the protection and enhancement of public rights of way and access¹.

Settings of Listed Buildings

13. St John's Church, which has Grade II* listed status, is located immediately to the west of Rose Cottage. The Old Rectory, a Grade II listed building, lies to the south of the church and adjacent to the site of the proposed panels. It is a substantive original house with some more recent additions. Due to their largely original character and appearance and functional and physical association, the two buildings are significant and prominent within the rural village setting.
14. The Framework defines the setting of a heritage asset as the surroundings in which that asset is experienced. The setting of the two listed buildings is predominantly open countryside, with limited development to the east and north. As part of an open field close to both buildings, the site of the proposed panels forms part of their immediate setting in each case. Currently the site is fenced-off and somewhat overgrown, but otherwise reflects the open, undeveloped character of the wider surrounding area.
15. The installation of three rows of solar panels in this location would introduce a feature of modern, industrial appearance into this setting. They would be particularly prominent in views from the footpath across the field to the south, from which views the effect of the panels would contrast unfavourably with the currently unspoilt views of the listed buildings, thereby harmfully detracting from their setting. The provision of fencing or a hedge to surround and screen the panels would not, in my view, be sufficient to overcome these effects as some views of the panels in relation to the listed buildings would still be available.
16. For these reasons, the proposal would fail to preserve the settings of St John's Church and The Old Rectory. The Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation². Based on the above findings, I consider the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight.
17. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal³. I acknowledge that the proposed panels would provide an environmentally sustainable form of energy

¹ Paragraph 100.

² Paragraph 199.

³ Paragraph 202.

for the host dwelling and that it is not possible for structural reasons to locate the panels on the building's roof. However, for the reasons given, this is not sufficient basis to outweigh the harm that would occur to the settings of two listed buildings.

18. Therefore, I conclude that the proposal would not preserve the settings of St John's Church and The Old Rectory. Consequently, the proposal is contrary to Policy LP19 of the JLP, concerning the effects of development on heritage assets. In reaching this conclusion I am particularly mindful of the statutory requirement for decision makers to have special regard to the desirability of preserving the setting of a listed building⁴.

Character and Appearance

19. Solar panels for domestic use are typically roof-mounted, but as already noted this is not possible in this case. However, the location of the panels separated from the host dwelling by the road in the otherwise open field would make them particularly incongruous. The area beyond Church Lane is characterised by open countryside with little built development. While the panels would not occupy a significant area of land, they would nonetheless be a prominent and uncharacteristic addition, particularly seen approaching from the south.
20. For these reasons, I conclude that the proposal would have a materially harmful effect on the character and appearance of the area. Therefore, the proposal is contrary to Policy LP24 of the JLP, which requires development to respond to and safeguard the existing character/context. It is also contrary to the Framework, which promotes good design.

Living Conditions and Highway Safety

21. The circumstances here are similar to those with regard to the first main issue, concerning protected species. The appellant provided a glint and glare assessment for the proposal after the Council's decision. While I note the findings of this, the Council and other parties have not had the opportunity to consider and comment on the report and, were I to take the report into account, such an opportunity should be made available. However, given the above findings which mean the appeal should not succeed, the outcome of this particular issue is not determinative for the appeal. For this reason, I have not considered this issue further.

Conclusion

22. I acknowledge the benefits of the proposed solar panels in terms of energy use and environmental sustainability. However, these must be balanced against the harm and conflict with the development plan found above. In the particular circumstances of this case, the benefits are not sufficient to outweigh the harm in this location. Therefore, for the reasons given above it is concluded that the appeal should be dismissed.

J Bell-Williamson
INSPECTOR

⁴ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.