



Appeal Decision

Site visit made on 17 January 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2024

Appeal Ref: APP/V2635/W/22/3313723

Laurel House, 4 High Street, Methwold, Norfolk IP26 4NT

- 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 Ashwood Bond Developments against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/01013/O, dated 10 June 2022, was refused by notice dated 25 August 2022.
 - The development proposed is erection of 7 no detached CSB houses with garages and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The Council and the appellant have been given opportunity to comment on the revised Framework. I have had regard to the revised Framework in my decision.
3. The King's Lynn and West Norfolk Local Plan Review 2016-2036 is emerging but it does not form part of the statutory development plan for the purposes of Section 38 of the Planning and Compulsory Purchase Act 2004. As necessary, I refer to the emerging plan elsewhere in my decision.
4. Outline planning permission is sought but with access included for consideration at this stage. The details of the access are shown on plan 210394-02 A. Matters of appearance, landscaping, layout and scale are reserved for future consideration. I have had regard to the sketch layout provided but on an indicative basis only, including those elements of the road layout which are not shown on plan 210394-02 A.
5. Following the Council's decision, a unilateral undertaking (UU) has been submitted. The principal purposes of the UU are: i) to secure the provision of an affordable dwelling and a further financial contribution towards off-site provision; ii) secure that the proposed dwellings would be custom build homes; and iii) secure a financial contribution towards mitigation measures in relation to the potential for the development to result in recreational activity on nearby Habitats Sites. I comment on these matters later in my decision.
6. All species of bat are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Given this protection, I have a duty to consider whether bats would be affected by a proposal and whether mitigation measures would be effective. The submitted Preliminary Ecological Appraisal

(PEA) identified that a building on the appeal site's boundary was moderately suitable as a bat roost. During the appeal, the Council and the appellant have been given opportunity to comment on the implications of this.

Main Issues

7. Given the above context, the main issues are:

- whether the proposal would accord with the development plan's strategy in regard to the location of development;
- the effects of the proposal upon the supply of housing including custom build dwellings and affordable housing;
- the effects of the proposal on the character and appearance of the area including Methwold Conservation Area; and
- the effects of the proposal upon bats.

Reasons

Location

8. Methwold is a village located within a rural area. The village contains a range of services and facilities. Although it is located close-by to the village centre and is accessed from one of the main roads running through it, most of the appeal site is located outside of the village's development boundary as established by the Site Allocations and Development Management Policies Plan 2016 (DMP).
9. The majority of the appeal site is grassland and forms part of a larger paddock. A timber shelter is located within it and on its western boundary, there is a breeze block building. An existing access track runs between buildings from the main road to the paddock's entrance point. To the south of the paddock and beyond a hedgerow, are agricultural fields. Trees and hedgerows are to the site's northern, western and eastern edges. These provide a strong sense of enclosure to the site and partly screen the paddock from the adjacent fields and built-up parts of the village. As a parcel of largely enclosed undeveloped grassland, I find that those parts of the appeal site on which the proposed houses would be located form a part of the countryside beside the village rather than part and parcel of the village.
10. Moreover, policy DM2 of the DMP establishes that areas outside of settlement development boundaries shall be treated as countryside unless the land is specifically allocated. The policy sets out that in the countryside new development will be restricted and limited to certain exceptional forms of development suitable in rural areas. Consistent with this, policy CS02 of the King's Lynn and West Norfolk Borough Council Core Strategy 2011 (CS) states that development of a scale appropriate to the village will be permitted within the development limits of key rural service centres.
11. Amongst other matters, policy CS01 of the CS, establishes that a settlement hierarchy will be utilised to govern the appropriate location of development including in respect to rural areas. Policy CS06 of the CS specifically relates to rural areas and seeks to promote sustainable patterns of development and focus most new development within the key rural service centres of the settlement hierarchy. In some contrast with policies DM2 and CS02, policies

CS01 and CS06 state that the provision of new homes will include provision being made adjacent to key rural service centres.

12. The proposed access would incorporate a shared private drive and no dedicated footpath. However, the walk from the site to the main road along this private drive would be short. With only 7 dwellings proposed the vehicular movements associated with the development would be quite low. Therefore, the walk along the private drive would not be a hostile pedestrian environment. Furthermore, there are other residential streets within the village without dedicated footpaths and such an arrangement is characteristic of the area. The access arrangements would not, therefore, discourage travel other than by private vehicle.
13. Policy CS02 of the CS states that key rural service centres help to sustain the wider rural community and provide a range of services which meet basic day-to-day needs. Whilst it may be the case that the local area has been the subject of recent development and growth, I have no substantive evidence before me which indicates to me that the local services would be unable to cater for the development proposed.
14. The Council did grant planning permission for 8 houses in the countryside at Pentney with further planning permissions granted at Upwell, Ingoldisthorpe and Walton Highway which may have been assessed against the same development plan policies which establish the Council's spatial strategy. However, the full details of each of the cited cases are not before me whilst the position in relation to the housing supply is very likely to have changed from the time of the determination of some of those cases too. In such circumstances, it is inappropriate to draw direct comparisons with these other cases and consequently, they are of limited weight in my findings on this main issue.
15. Despite my findings on the site's access to the village and local services, most of the appeal site is located outside of the village's development boundary. The site's character and relationship with the village on the ground confirms this. In providing for new homes beyond a development boundary and not comprising one of the exceptional forms of development permitted in the countryside, the proposal would conflict with policies DM2 of the DMP and CS02 of the CS. As the appeal site is adjacent to the village and given their particular wording, the principle of siting the proposed houses in this location would comply with policies CS01 and CS06. The Council's first reason for refusal also refers to policy DM1 of the DMP, however, this policy is reflective of the Framework's presumption in favour of sustainable development and its wording is not very relevant to this main issue.
16. Having regard to all of the above, I find that the development plan's strategy in regard to the location of development overall is to focus growth within settlements and restrict development in the countryside beyond development boundaries. For the reasons given, the proposal would not be compliant with this strategy.

Housing

17. Together, the Self Build and Custom Housebuilding Act 2015 (Custom Housebuilding Act) and the Housing and Planning Act 2016 impose two duties upon local planning authorities in respect of custom housebuilding. The first

requires local planning authorities to establish and publicise a local register of custom housebuilders who wish to acquire suitable land to build their own home. The second is a duty to grant planning permission and provides that authorities must give suitable development permission in respect of enough serviced plots of land to meet the demand for custom housebuilding in the authority's area arising in each base period.

18. The legislation does not specify how authorities must record suitable permission but the Planning Practice Guidance (PPG) provides examples of what methods they may wish to consider to determine whether an application or development is for custom housebuilding. It also indicates that at the end of each base period authorities have 3 years to give permission for an equivalent number of plots of land.
19. In October 2023, the Levelling-up and Regeneration Act 2023 (LURA) came into force. The LURA includes revisions to the second duty in order to ensure that only land permissioned explicitly for custom housebuilding will qualify towards a relevant authority's statutory duty to meet the demand for such housebuilding in its area. However, this amendment to the duty has not commenced yet and will only do so once further regulations have been set.
20. The Council refer to the delivery of custom build homes at sites at Upwell, Ingoldisthorpe, Walton Highway and Pentney. The total number of homes permitted at these sites is unclear but it is suggested to be in excess of 38 units. I have a brief description of the developments but no substantive evidence on their delivery. More evidence is supplied in relation to the site at Ingoldisthorpe, this dates back some time - to 2019 and furthermore, still provides no confirmation of its delivery. The Council's evidence of the past delivery of custom build units is not very compelling.
21. My attention has been drawn to the Limagrain UK Ltd appeal decision¹. The full detail of the evidence which informed that decision is not before me. However, the Council have conceded that the Inspector rejected its approach to monitoring custom housebuilding and supply.
22. The Council's approach to identifying the required number of custom build permissions granted has relied heavily on the submission of Community Infrastructure Levy (CIL) Form 7 Part 1 submissions. The use of the CIL exemption is one of the methods suggested within the PPG to enable the Council to determine if a permission could count towards meeting its duty. However, I have been provided with no compelling evidence that those identified permissions have or would go on to become custom build homes.
23. A number of the sites counted by the Council relate to reserved matters approvals. However, these do not constitute 'development permission' as defined by the Custom Housebuilding Act.
24. Such factors undermine the reliability of the Council's evidence in regard to identified custom build permissions. In the light of the Limagrain UK Ltd decision, the Council has submitted that it is reviewing and amending its approach to counting custom build permissions. The Council has also submitted that its interim analysis since identifies that any shortfall in custom build

¹ Appeal Decision Reference APP/V2635/W/23/3320506

- permissions is less significant than was identified in the aforementioned appeal decision.
25. However, even if I were to accept this, overall, it has firstly not been shown to me that sufficient permissions for enough land to meet the demand for custom housebuilding is occurring. Secondly, I find that the Council's evidence that custom housebuilding is being adequately delivered within the Borough is not substantive.
26. A specific custom housebuilding policy is now proposed as a part of the emerging plan. This may in time assist in securing custom housebuilding. However, the policy is not currently adopted and is to be the subject of further consultation. It therefore has little bearing upon my decision.
27. The submitted UU requires that dwellings proposed on the appeal site shall be custom build homes. It requires that a single dwelling would be an affordable dwelling. The UU further requires that a financial contribution toward the delivery of affordable housing is paid.
28. In so doing, the UU would ensure that this development contributes towards the need to provide for custom housebuilding permissions. The on and off-site contribution towards affordable housing which the UU would secure would comply with policy CS09 of the CS which seeks affordable housing in rural areas. The provision made for affordable housing would also be proportionate given the quantum of the development. In these regards, the obligations within the UU would be necessary, directly related to the development and fairly and reasonably related to the development proposed in scale and kind. The UU therefore meets the three tests for planning obligations set out at paragraph 57 of the Framework and Regulation 122 of the CIL Regulations.
29. Consequently, the proposal would contribute towards the planning permissions for custom housebuilding in the Borough. It would also make a small but nevertheless valuable contribution towards the provision of affordable housing. With this secured by way of the UU, I give these matters significant weight in the determination of this appeal.
30. Although I have no substantive evidence before me to contradict the Council's assertion that it has well in excess of 5 years' worth of housing land supply, as a consequence of the latest Housing Delivery Test results, the Council are required to prepare an action plan. This indicates a recent trend of under-delivery. The proposal would assist in the supply of housing in more general terms and go some way to address this.
31. Therefore, the proposal would assist in the supply of housing. This would include affordable dwellings but of particular merit, would be its delivery of custom build dwellings.

Character and appearance

32. A section of the route which would provide access to the residential development proposed is within Methwold Conservation Area (CA). Most of the appeal site, including those parts of it where the houses are indicated to be positioned, is outside of the CA.
33. Within the CA, there are landmark buildings such as the Church of St George and the Old Vicarage. Local and traditional building materials such as chalk

blocks, flint and buff bricks are prevalent. The village has a rural character owing to the presence of barns, farm buildings and areas of countryside within its bounds. The significance and special interest of the CA as a whole is largely derived from its rural character and the historical importance of the village as a centre within a rural area - partly signified by its landmark buildings. The village's links to agriculture means that the countryside to its surrounds contributes positively to its setting. I find that this is particularly the case to its east and west where the countryside to the surrounds of the CA meets verdant open spaces within it and where views of the Church of St George are appreciable.

34. Within the CA, development would be limited to some hard surfacing works and a widened access. These works would be modest in nature and have a neutral effect upon the character and appearance of the CA.
35. Although the appeal site forms a part of the countryside, its strong sense of enclosure and its well screened nature means that the paddock is quite secluded. When within the built-up parts of the village, I do not find that it has a strong presence or that its largely undeveloped grassland character and appearance is very apparent. For these reasons, despite it being a parcel of countryside, it does not make a meaningful contribution to the rural setting of the CA.
36. The appeal site's enclosure and degree of screening would also assist in moderating the visual effects of the dwellings proposed and ensure that the proposal would not harmfully impose itself upon the historic core of the village. The precise appearance, layout and scale of the development would be determined and controlled at the reserved matters stage.
37. Methwold does exhibit a largely linear settlement pattern. However, when travelling within the CA there are locations where buildings are seen to the rear of others. Upon completion, that the proposed dwellings would be situated to the rear of the village hall complex would not, therefore, be out of character. The main road from which the development would be accessed is on an east-west alignment and is lined by buildings. The indicative layout which shows dwellings either side of a road on the same alignment would be in keeping with this.
38. For the above reasons, the proposal within the setting of the CA would not result in harmful effects upon the significance of the CA as a whole.
39. The countryside has intrinsic character. As a result of the proposal an area of the countryside would be lost to development. However, because I have identified that this particular parcel of land is quite secluded the harm derived from this is limited.
40. Overall, I find that the effects of the proposal on the character and appearance of the area would be acceptable with the character and appearance of the CA preserved. In these regards, the proposal complies with policies DM15 of the DMP and policies CS01, CS06, CS08 and CS12 of the CS, which seek to protect and enhance the historic environment, the character of settlements and the landscape and achieve high quality design. The proposal would also comply with content within the Framework including that which seeks to conserve heritage assets in a manner appropriate to their significance.

Bats

41. On the appeal site's western boundary there is a building. It is situated amongst a hedgerow which runs along this side of the appeal site.
42. The PEA accompanying the planning application identified that the building was moderately suitable as a bat roost. Consequently, the PEA recommended that a preliminary roost assessment be undertaken. The PEA further identified that the hedgerow the building is amongst has moderate potential to provide foraging habitat for bats.
43. The preliminary roost assessment has not been undertaken. In the absence of this survey work, further recommendations in relation to any necessary mitigation measures in relation to bats have not been devised in detail as a part of the submitted PEA.
44. Amongst other matters, Circular 06/2005 states that 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 the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The Circular also states that developers should not be required to undertake surveys unless there is a reasonable likelihood of the species being present and affected by the development.
45. Given the findings of the PEA, it is clear to me that there is a reasonable likelihood of bats being present. In the absence of the roost assessment, the presence or otherwise of the protected species has not been established.
46. I accept that the building is not within the bounds of the appeal site itself and given this, there may well be no need to demolish it. Demolition would have the most significant effects upon any bats which may be present and their activities. I have been provided with correspondence which the appellant has had with ecologists which place emphasis upon the building not being within the appeal site nor, in turn, the need to demolish it.
47. However, the building is nevertheless very close to the proposed development as is the hedgerow which could be providing foraging habitat. The construction phase of the development could involve particular activities which could be disturbing to the species.
48. Given that bats are a protected species under The Conservation of Habitats and Species Regulations 2017, I consider a precautionary approach should be taken. The likelihood that bats could be within the building and foraging along the hedgerow indicates to me that the presence of the protected species should have been established. Without this having been undertaken, there is a significant degree of uncertainty surrounding the protected species. The reliance which the evidence before me places on the demolition of the building not needing to take place does not provide me with confidence that the development would not be likely to adversely affect the protected species.
49. Therefore, it has not been demonstrated to me that the proposal would not result in harm to bats. The proposal would conflict with policy CS12 of the CS which states that development should avoid, mitigate or compensate for any adverse impacts on biodiversity. It would also be contrary to advice within the Framework and Circular 06/2005 which seek to minimise impacts upon

biodiversity and to establish the extent to which protected species may be affected before planning permission is granted.

Other Matters

50. The appeal site lies within the zone of influence of various Habitats Sites. In combination with other development projects, the proposal would be likely to have significant effects on Habitats Sites by contributing to the level of recreational activities within them, activities which could adversely affect the integrity of the sites.
51. So as to avoid such adverse effects, the appellant proposes that a financial contribution would be made towards forms of mitigation set out within the Norfolk Green Infrastructure and Recreational impact Avoidance and Mitigation Strategy. This contribution is proposed via the submitted UU.
52. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the affected Habitats Sites including through the undertaking of an Appropriate Assessment. As I am dismissing the appeal, this undertaking is not necessary. However, even if I were satisfied that no adverse effects would take place, it would at most be a neutral factor in this appeal.
53. The access would be widened and I have no reason to conclude that visibility would be deficient. The access route, which serves some other properties, would also be the subject of some improvement works. The provision of 7 dwellings would result in no significant effects upon the local highway network.
54. Representations made in respect of the planning application and the appeal raise a number of points and concerns with the proposal on grounds unrelated to my main issues. However, given I am dismissing the appeal for other reasons, it is not necessary for me to address these matters.

Planning Balance

55. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
56. In my first main issue, I have identified that the proposal would conflict with the development plan's strategy in regard to the location of development. Despite this, I have found that the effects of the proposal on the character and appearance of the area would be acceptable and the character and appearance of the CA would be preserved.
57. Further conflict with development plan policy would arise because I am not satisfied that the proposal would not result in harm to bats. Given the protection afforded to the species, this is a matter to which I attribute significant importance and weight.
58. The proposal would assist in the supply of housing. This would be at a time when there is a recent trend of under-delivery within the Borough. It would make a small contribution to affordable housing provision. More importantly, upon completion, the proposal would deliver custom build dwellings on a small site as advocated by the Framework. I attribute significant weight to this.

59. Overall, although the proposed development would accord with various development plan policies, its conflict with the development plan's strategy in regard to the location of development and its effects upon bats means that the proposal would conflict with the development plan taken as a whole.
60. Even though the development plan does not include a policy dedicated to custom housebuilding, there are several development plan policies which are relevant to the proposal against which the residential development can be assessed. I find that the applicable policies within the development plan are consistent with the Framework. I have no compelling evidence before me which indicates that the Council cannot demonstrate 5 years' worth of housing land supply and given the stage at which the emerging plan is at, it is 4 years' worth of supply which is applicable having regard to paragraph 77 of the Framework. The Housing Delivery Test results do not indicate that the delivery of housing has been below 75% of the housing requirement over the previous three years. Given these factors, I find that paragraph 11(d) of the Framework does not apply.
61. Despite the benefit of the housing proposed, particularly the delivery of custom build dwellings, this would not be sufficient to outweigh the harm that would be caused by reason of the proposal's conflict with the development plan as a whole.

Conclusion

62. For the above reasons, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR