

Appeal Decision

Site visit made on 1 November 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/U2615/W/23/3321298

Site off Plane Road, Gorleston, Great Yarmouth, Norfolk, NR31 8EG

- 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 Keegon Reed against the decision of Great Yarmouth Borough Council.
 - The application Ref 06/23/0120/F, dated 13 February 2023, was refused by notice dated 28 April 2023.
 - The development proposed is sub division of land and construction of detached 2 bedroom house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been materially amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.
3. The Council's sixth reason for refusal refers to conflict with a previous appeal decision¹ on the site. That Inspector found the proposal before him would result in harm to the character and appearance of the area and would not fulfil any of the criteria which allow for the redevelopment of open space. As these issues are addressed in my main issues below, I have not considered this reason for refusal separately.
4. The existing fence on the site is not specified as forming part of the development the subject of this appeal. I have assessed the site as I viewed it. Any issues related to its lawfulness are a matter for the Council.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the provision of open space; and

¹ APP/U2615/W/21/3279327 dismissed 21 February 2022

- whether the proposed dwelling would provide acceptable living conditions for future occupiers with respect to the internal space of the proposed dwelling.

Reasons

Character and Appearance

6. The appeal site is a small area of open space on the junction of Plane Road and Beccles Road, occupying an elevated position as do the adjacent properties. The site is partially enclosed by a combination of tall, close boarded fencing and lower vertical slat fencing. The unenclosed portion of the site lies closest to Beccles Road. The surrounding area is predominantly residential in character, with a variety of house types and materials. There are grass verges along Plane Road with some tree planting. As a result of the areas of incidental open space, including the appeal site, the area has an attractive, spacious character and appearance.
7. The lack of built form in proximity to the junction makes a positive contribution to the spacious character of the area. This arises from the generally undeveloped nature of the appeal site and the set back of the dwellings opposite. The proposed dwelling would extend the built form closer to the junction which would visually enclose it to one side. This would be given added prominence due to the elevated position of the site. Although a small area of open space would be retained adjacent to Beccles Road, it would not provide the same spaciousness that the site does at present.
8. I do not have full details of the appearance of the proposed bicycle store. However this would further reduce the open nature of the site and would not be fully mitigated by the proposed tree planting.
9. The proposed development would represent an efficient use of land. However, I note the advice in paragraph 128 of the Framework that the efficient use of land should have regard to the importance of securing well designed places. The site, in its current open form, makes a positive contribution to the character and appearance of the area. The proposed development would undermine this.
10. The side elevation of the proposed dwelling would be similar to the side elevation that is currently visible. It is also proposed to retain a limited area of open space. Development along Beccles Road is staggered however this is not readily apparent in the context of the appeal site as the curve in Beccles Road limits its visibility in longer views. The accoutrements that accompany normal domestic life would not be uncharacteristic of the area. However, these considerations would not overcome the harm that would arise from the proposed development.
11. The proposed development would therefore have an adverse effect on the character and appearance of the area. It would be contrary to Great Yarmouth Local Plan: Core Strategy 2013-2030 (2015) (CS) Policy CS9 and Great Yarmouth Local Plan Part 2 (December 2021) (LP) Policy A2 which, taken together and insofar as they relate to this appeal, require development to respond to the surrounding area's distinctive natural and built characteristics, conserve townscape quality, and reflect and have regard to local context. It would also be contrary to the advice in the Framework at paragraph 135 and

139 that development should add to the overall quality of the area and that development that is not well designed should be refused.

Open Space

12. The appellant has highlighted the definition of open space contained within the Town and Country Planning Act 1990 (as amended) (the Act). This is not the same as the definition of open space within the Framework, with which the use of open space in the LP is consistent. All references to open space in the Act are contained within Part IX which pertains to the acquisition and appropriation of land for planning purposes, etc. As this appeal does not concern acquisition or appropriation of land, I have considered open space in accordance with the definition contained within the LP and Framework.
13. LP Policy E3 is clear that open spaces which provide local amenity benefits to the local community will be protected. The supporting text confirms that this extends to private spaces and that such spaces can support the aesthetic quality of the public realm. This is consistent with the glossary to the Framework which confirms that open spaces can act as a visual amenity. The parties are in agreement that the site can be considered as informal amenity green space. The provisions of LP Policy E3 therefore apply to the proposed development, even though the surrounding paths to it are in the appellant's ownership.
14. There is no requirement for the site to be identified within the development plan or its evidence base, for there to be any formal agreement, or for a site to be publicly accessible for it to be considered as an open space. Nor is it necessary for the land to be in public ownership or to be of a form that would comply with current expectations. Although part of the site has been fenced off, this does not prevent it from having a visual amenity value. The site therefore continues to function as an open space for the purposes of LP Policy E3.
15. LP Policy E3 sets out criteria in which the loss of open space will be permitted. The appellant has identified a number of other open spaces which were not included within the Council's Open Space Needs Assessment (OSNA) and appears to seek to demonstrate that there is not a shortfall of informal amenity green space. However, and despite the appellant's reservations about the open space needs assessment, this is not sufficiently robust for me to be satisfied that there is not a deficit of informal amenity green space in the ward. It is not clear if the additional demand generated by the new housing at the Claydon High School site has been taken into account in calculating the surplus from that site. There is no geographical analysis of the existing sites to demonstrate that the accessibility standards have been met, or qualitative analysis to confirm that the sites within the ward meet the relevant standards. It has therefore not been demonstrated that any of the criteria within the policy have been met.
16. The appellant also contends that the explanation of informal amenity open space in the Open Space Needs Assessment 2022 (OSNA) appears to be at odds with the stated intention of LP Policy E3. However, given that the policy applies to all open spaces, I consider there is no conflict between the wording of the supporting text to LP Policy E3 and the commentary in the OSNA.

17. The appellant has directed me to another application² and a separate case elsewhere³ where the loss of open space has been allowed. However, I do not have full details of these cases, including if the LP had been adopted at the time they were determined. These therefore do not provide a compelling reason for me to depart from the provisions of the development plan.
18. LP Policy H4 and the associated Supplementary Planning Document relate to the provision of open space in new development. It does not apply retrospectively to existing open spaces. It was not in dispute that it would be necessary for the proposed development to make provision for open space as sought by LP Policy H4 and that given the small scale of the development this should be in the form of a commuted sum to deliver the open space off-site.
19. This would need to be secured by the means of a planning obligation. There is no such obligation before me. The Procedural Guide: Planning appeals – England is clear that any such obligations, for the purposes of this appeal, should be submitted no later than 7 weeks from the start date.
20. It has been suggested that this contribution could be secured by a condition. However, the Planning Practice Guidance is clear that positively worded conditions requiring payment of money should not be used⁴ and that “a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases⁵”. It identifies that such a condition is only likely to be in exceptional circumstances such as particularly complex schemes where delivery would otherwise be at serious risk. No such exceptional circumstances have been identified in this case.
21. The proposed development would therefore have an adverse effect on the provision of open space. It would result in the loss of an open space which provides a local amenity and this loss has not been justified or replaced as required by LP Policy E3. It also fails to make adequate provision to meet the needs of the proposed development with respect to the increased demand for open space which would arise. It would therefore also be contrary to LP Policy H4 which expects development to make provision for publicly accessible recreational open space.

Living Conditions

22. The proposed dwelling would be below the minimum identified in the Nationally Defined Space Standard (NDSS) irrespective of the size of the dwelling as no built in storage is shown on the plans before me and I cannot be certain any would be of sufficient size to comply with the NDSS. However, its use is not required by any policies of the development plan, including LP Policy A2 which is relatively recently adopted and specifically addresses housing design principles. Footnote 52 of the Framework is clear that the use of these optional standards should be required through policies in the development plan and must be to address an identified need for such properties or where it can be justified. There is no such evidence before me.

² 06/19/0048/F

³ 2019/0898

⁴ Use of planning conditions Paragraph: 005 Reference ID: 21a-005-20190723 Revision date: 23 07 2019

⁵ Use of planning conditions Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019

23. The evidence before me sets out that the failure to comply with the NDSS would result in oppressive living conditions for future occupiers of the property. The Council considers this would be compounded by the lack of outdoor amenity space. The internal living accommodation would be open plan at the ground floor, with three external openings. It has not been demonstrated that the bedrooms would fail to comply with the NDSS. I have not been directed to any policies in the development plan which establish a minimum requirement for garden space. The proposed garden space would be similar to that available to the neighbouring properties. Notwithstanding, I note that the appellant has identified that this issue could be overcome through amendments to the proposed dwelling in a future application.
24. I therefore conclude that that the proposed development would provide adequate living conditions for future occupiers with respect to the internal space of the dwelling. It therefore would be in accordance with LP Policy CS09 and LPP2 Policies A1 and A2 which, insofar as they relate to this appeal, require development to create functional environments.

Other Matters

25. The Proposed Development is located within the Zone of Influence for the Winterton-Horsey Dunes Special Area of Conservation (SAC), North Denes Special Protection Area (SPA), Breydon Water SPA and Ramsar Site, Broadland SPA/Ramsar and The Broads SAC, which are all subject to pressures from recreational disturbance. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would likely have significant environmental effects on the integrity of the Habitats Sites. However, given my findings above, it has not been necessary for me to pursue this issue further. A finding that the proposal would not have an adverse effect on integrity, with or without any mitigation, would be at best a neutral matter. As such, it is also not necessary for me to consider the acceptability of the undertaking pursuant to Section 111 of the Local Government Act 1972 submitted with this appeal.
26. There would be a benefit from the provision of an additional dwelling and the associated economic benefits of development during the occupation and construction stages. There is no substantive evidence before me to suggest the proposal would meet the definition of affordable housing. This therefore would not constitute a benefit.
27. The site would be located within the built-up area of Gorleston and would have good access to public transport and the employment opportunities, services and facilities within the settlement. Parking provision would be provided a short distance from the site, however this is not uncommon of development in the area. Bicycle storage is shown. No concerns have been raised with regard to the design of the proposed dwelling, which incorporates windows to provide some activity to Beccles Road. I have no reason to disagree. The overall density of housing would be acceptable. Details of materials could be secured by condition. However, these matters amount to a policy compliant scheme and would therefore be neutral factors in the determination of the appeal.
28. The definition of previously developed land in the Framework excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. In any event, even if I were to find the site constituted previously developed land, this

would not outweigh the harms that I have identified. Liability issues for the land owner are a private interest whereas the planning process controls the use and development of land in the public interest.

29. I do not have full details of the previously dismissed appeal before me. In any event, it is incumbent upon me to consider this appeal on its individual planning merits.

Conclusion

30. I have found the appeal proposal would have an adverse effect on the character and appearance of the area, and on the provision of open space. While I have not found harm with respect to the living conditions of future occupiers, this would not outweigh the harms I have identified.
31. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR