



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/23/3321586

Site off Plane Road, Gorleston, Great Yarmouth NR31 8AH

- 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 06/23/0119/F, dated 13 February 2023, was refused by notice dated 27 April 2023.
 - The development proposed is sub-division of land and construction of detached two 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 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

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

Reasons

Character and Appearance

5. The appeal site is part of an area of open space adjacent to Plane Road, occupying an elevated position as do the adjacent dwellings. A detached dwelling lies to the side of the appeal site fronting Plane Road, while a terrace of dwellings faces onto the open space. The surrounding area is 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.

6. The proposed dwelling would be sited in proximity to the edge of the footpath. It would project forward of the neighbouring semi-detached properties. Its position relates to the layout of the site, however this would place it at a different angle to the adjacent dwellings. It would not be well related to the terrace of dwellings due to the limited space between the front elevation of the properties on the terrace and the rear and side elevations of the proposed dwelling. It would appear as an incongruous addition to the street scene, and poorly related to the existing form of development in the area. It would not be appropriate for a condition to be imposed requiring a different siting of the dwelling as this would materially alter scheme before me.
7. The appearance, materials and detailing of dwellings in the area varies. However, only the basic form of the proposed dwelling has any correlation to the adjacent dwellings. The materials, detailing and fenestration would be entirely different. This would further reinforce the perception of the proposed dwelling as being poorly related to the surrounding development.
8. The open space makes a positive contribution to the character and appearance of the area by providing relief from the built form. This is given further importance given the compact plots on which the terrace of dwellings are set, and their relationship set back from the highway. The open space as a whole is important in providing an open setting around those dwellings and adding to the legibility of the area.
9. The proposed parking area would result in the loss of a small area of grass. This is separated by the footpath from the bulk of the open space and is only visible from a limited number of public spaces. It does not make the same positive contribution to the character and appearance of the area, and its loss would not result in material harm.
10. The proposed development would therefore have an adverse effect on the character and appearance of the area. It would therefore 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

11. 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.

12. 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.
13. 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.
14. 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. The appellant has set out they intend to make land adjacent to the site publicly accessible, however there is no substantive evidence to demonstrate if this would meet the requirements of LP Policy E3. It has therefore not been demonstrated that any of the criteria within the policy have been met.
15. 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. The findings in the Renew Land Development Ltd case¹ would not alter my assessment based on the policies of the development plan and the facts of this particular case.
16. 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.

¹ Renew Land Developments Limited v Welsh Ministers [2020] EWCA Civ 143

² 06/19/0048/F

³ 2019/0898

17. 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.
18. 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.
19. 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.
20. 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.

Other Matters

21. 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.
22. There would be a benefit from the provision of an additional dwelling and the associated economic benefits 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.

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 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, along with bicycle and bin storage and the effect on the surrounding highway network would be acceptable. There would not be an adverse effect on surrounding trees subject to tree protection measures which could be secured by condition and no ecological features of importance have been identified. However, these matters amount to a policy compliant scheme and would therefore be neutral factors in the determination of the appeal.

Conclusion

24. 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