



Appeal Decision

Site visit made on 7 November 2023

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2024.

Appeal Ref: APP/D3505/W/23/3319931

Former Fleetwood Caravan Site, Hall Street, Long Melford CO10 9JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Wesley McCarthy on behalf Nicholas King Homes against Babergh District Council.
- The application Ref DC/22/04638 dated 16 September 2022, was refused by notice dated 16 December 2022.
- The application sought planning permission for the erection of 44 dwellings (including 13 sheltered units) with associated parking, access, landscape, open space, drainage and infrastructure without complying with conditions attached to planning permission Ref B/15/01043/FUL, dated 23 March 2016.
- The conditions in dispute are Nos 2 and 25 which state:
Condition 2 – The development hereby permitted shall be carried out in accordance with the following approved documents or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this consent; or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non material amendment following an application in that regard.

Defined Red Line Plan:

The defined Red Line Plan for this application is Drawing 6207-1107 P2 received 6th August 2015 only. This drawing is the red line plan that shall be referred to as the defined application site. Any other drawings approved or refused that may show any alternative red line plan separately or as part of any other submitted document have not been accepted on the basis of defining the application site.

Approved Plans and Documents:

Drawings received 6th August 2015: 6201-1108 P2 (Demolition Plan); 6207/SK047 P1, 6207/SK048 P1, 6207/SK049 P1 and 6207-1302 P1 (Sketch Elevations); 6207/1706 P1, 6207/1707 P1, 6207/1708 P1 and 6207/1709 P1 (Perspective Views); IP15_054_06_SK001 Rev A, SK002 Rev A, SK003 Rev A and SK004 (Drainage & Excavation Plans); F321/001 Rev3, F321/005, F321/010 Rev1 (Transport Assessment Drawings - Access Road Detail/S278 Works); DFC1220TSP and DFC1220TPP Rev E (Tree Survey and Protection Plans).

Drawings received 6th November 2015: 6207/1403 (Additional Elevations) and NC15.161-P202 Rev A (External Boundaries).

Drawings received 18th December 2015: NC.15.161-P201 RevP3 (Landscape Masterplan); 6207-1101-P3, 6207-1102-P2, 6207-1103-P2, 6207-1104-P2, 6207-1105-P2 (Floor Plans); 6207/1111-P2 (Parking Plan); 6207-1116A (Maintenance Plan) and 6207-1115-P2 (Materials Schedule).

Condition 25 - Within four months of first occupation of the final dwelling, the hard landscape works shall all have been completed and laid out as specified on drawing number NC15161-P201 P3 received 18th December 2015, or on any other subsequently approved drawing submitted to and approved in writing with the Local Planning Authority.

- The reasons given for the conditions are:
Condition 2 – For the avoidance of doubt and in the interests of proper planning of the development.
Condition 25 - To ensure that there is a well laid out landscaping scheme in the interests of visual amenity and the character and appearance of the area, and to safeguard the character and appearance of the Long Melford Conservation Area.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 44 dwellings (including 13 sheltered units) with associated parking, access, landscape, open space, drainage and infrastructure at Former Fleetwood Caravan Site, Hall Street, Long Melford CO10 9JP in accordance with the application Ref DC/22/04638 dated 16 September 2022, without compliance with Conditions 2 (Approved plans and documents) and 25 (Hard landscape works) (for the retention of tarmac surfacing to emergency access in place of concrete blocks) previously imposed on planning permission Ref B/15/01043/FUL, dated 23 March 2016, and subject to the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal is against refusal of a s73A application relating to the original consent, the appeal site includes all of the development at Orchard Brook. However, in my Decision when I refer to 'the appeal site' it is in reference solely to the area of tarmac under discussion and, where I need to refer to the wider scheme and site, I refer to it as 'Orchard Brook' or similar. This is for ease of reference.
3. The original planning permission was granted subject to control of hard landscaping by a landscaping masterplan as listed under condition 2, and by condition 25 to ensure that the works were carried out as specified. There have been various non-material amendments and discharges of other conditions as part of building out the development, which appeared to be complete and occupied. However, none of these are relevant to the works which are the subject of this appeal. The appeal proposal, relating to the emergency access, has been built using tarmac as the surfacing and the appellant is seeking to retain the 'as built' material.
4. The Council adopted the Babergh and Mid Suffolk Joint Local Plan – Part 1 on 20 November 2023 (JLP), after its refusal of planning permission. The JLP replaces the Mid Suffolk Core Strategy Development Plan Document 2008 (CS) and the saved policies of the Mid Suffolk Local Plan 1998. In these circumstances, I am required to determine the appeal against the current development plan for the area at the time of my Decision. The appellant and Council were invited to make comments on the relevant JLP policies, and I have taken these comments into account in reaching my decision.
5. The appeal scheme includes a formal, signed Deed of Variation made under section 106A of the Act, dated 26 March 2024. I find that it meets the tests set out in paragraph 57 of the National Planning Policy Framework (the Framework) and the Community Infrastructure Levy Regulations 2010 and I have had regard to this as a material consideration.
6. Since the determination of this application, the Government published a revised Framework on 20 December 2023. Those parts of the Framework most

relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issue

7. The main issue is the effect of varying the surfacing treatment of the emergency access on the character and appearance of the area, with particular regard to the impact on the significance of non-designated heritage assets and whether or not it would preserve or enhance the Long Melford Conservation Area (CA).

Reasons

Character and appearance

8. The appeal site comprises a single width emergency access to serve the wider residential scheme, Orchard Brook. I observed the emergency access to be surfaced in tarmac with two bollards set back from its junction with Cock and Bell Lane. This access is positioned in between two dwellings located on Cock and Bell Lane and extends from an area of vehicle parking which is hard surfaced.
9. Cock and Bell Lane, including the appeal site, are in the Long Melford CA. I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In the exercise of this duty special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). The CA derives its significance from a collection of historic buildings and architectural styles. The vehicular access to the wider site is via Hall Street, which is the main street running through the centre of Long Melford. This is an attractive, vibrant street of mixed character. The appeal site is positioned in between two residential properties which front Cock and Bell Lane. Dwellings which front the lane are predominantly two-storey terraced or detached dwellings, however, there is no prevalent character to the properties. Owing to the appeal sites limited width and discrete position within the streetscene I find that the appeal site has a neutral contribution to the character and appearance of the CA.
10. I am mindful of the National Design Guide, which seeks well-designed new development to respond positively to the features of the site itself, the surrounding context beyond the site boundary, and be shaped by an understanding of its context.
11. Orchard Brook includes a variety of road surface materials, including tumbled concrete blocks and resin bound gravel to create a high-quality residential development. I observed tarmac for the surfacing of some access roads in the CA, including Cock and Bell Lane itself, which is in a poor state of repair.
12. Whilst pedestrian movement is permissible along the route, the appeal site relates to an emergency access, whereby vehicular access is restricted by way of bollards. The appeal site links a residential area to another residential area, rather than a transition between uses.

13. The appeal site is flanked on both sides by dwellings, Carillon and No.1A Cock and Bell Lane. Carillon is a modern, detached bungalow that has a large driveway surfaced in resin bound gravel. No.1A is an end terraced dwelling constructed of red brick, with its flank wall painted white. The terraced dwellings on the opposite side of the appeal site are constructed of buff bricks and Sunnyside is finished in flint. Accordingly, there is an eclectic mix of materials within the immediate vicinity of the appeal site. Furthermore, surfacing materials to the front of dwellings along Cock and Bell Lane vary, including tarmac, paving, loose gravel and resin surfaces.
14. I accept that tarmac does not have the same texture as cobbles and has a utilitarian appearance. However, due to the vast array of materials close to the appeal site, and that tarmac is the existing material for the road surface where the appeal site abuts, I do not find tarmac to be inappropriate in this context.
15. The Council refers to the cottages opposite the appeal site, the flint cottage and walls along Cock and Bell Lane as non-designated heritage assets. Whilst I acknowledge that these are attractive, they are interspersed with an array of surface materials, including tarmac. I therefore do not concur that the use of tarmac has a detrimental effect upon the significance of these non-designated heritage assets.
16. Owing to its narrow width and limited length, flanked by walls and residential dwellings, the appeal site is not highly visible within the streetscene along Cock and Bell Lane. Nor is it highly visible within the Orchard Brook development due to its location beyond dwellings and their associated parking area. Accordingly, I do not concur that the proposal erodes the character of the site, nor degrades the architectural and historical interest of this part of the CA. I am therefore satisfied that this amendment preserves the significance of the CA.
17. For the reasons stated above, I conclude that the variation to the surfacing treatment of the emergency access would not harm the character and appearance of the area, with particular regard to the significance of non-designated heritage assets, and that it would preserve the significance of the Long Melford CA. Accordingly, I find no conflict with Policy LP19 of the JLP which amongst others, supports development proposals that contribute to local distinctiveness, respecting the built form and scale of the heritage asset, through the use of appropriate design and materials. Nor do I find conflict with Policy LP24 of the JLP which, amongst others, requires proposals to respond and safeguard existing character including historic assets and be compatible with its location and appropriate in terms of design, materials, texture and colour in relation to the surrounding area. Similarly, there is no conflict with the Framework which seeks to ensure developments are sympathetic to local character.

Other Matters

18. Hanwell House, a grade II listed house, is located on Hall Street at the junction with Cock and Bell Lane. Extending from this property's garden along the lane to Sunnyside is a good example of an 18th century red brick serpentine wall, that is also grade II listed. These listed buildings/structures derive their significance from their architectural quality and historic association. The appeal site is positioned over 30m away from the listed wall. Furthermore, this wall is positioned directly adjacent to a tarmac road surface. The appeal site does not

have a functional relationship with either the listed house or wall. Due to the presence of existing built development visually there are only limited views of the appeal site from the listed wall and house. For these reasons, and as I have found no harm to character and appearance, having regard to my duty under S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I am satisfied that the proposal would preserve the setting, and thereby the significance, of these heritage assets. However, this is a neutral factor rather than one that weighs positively in favour of the proposal.

19. My attention has been drawn to the recently dismissed appeal decision¹ relating to a proposed change in surface materials for the main access to serve the residential development. As observed at my site visit, and based on the evidence before me, the vehicular and pedestrian access to Orchard Brook is taken from Hall Street, flanked by two listed buildings and within a commercial setting. Accordingly, the context of the dismissed appeal differs significantly which limits the equivalence of the case to the current proposal. In any event, I have determined the appeal on its own merits.
20. The effect of a successful S73 application is the creation of a new planning permission. The applicant will then have a choice of which planning permission to implement. The original permission was subject to a signed S106 Planning Obligation (S106). Whilst the Council has advised that the financial contributions to Off-Site Affordable Housing Contribution, Pre-School Education Contribution, Education Contribution and Libraries Contribution secured by the original S106 have each been collected this would not be binding on the new permission. Furthermore, the obligation included on-going maintenance and responsibility clauses.
21. Accordingly, in circumstances where the original permission was subject to a planning obligation, a new obligation must be submitted to cover the original permission, or the original obligation must be varied to make it also apply to the new permission. A signed Deed of Variation has been submitted to bind the original obligation to the appeal scheme before me. Accordingly, I am satisfied that the proposed development would make adequate provision for securing developer obligations necessary to make the development acceptable.
22. Accordingly, the proposal would comply with Policies SP01, SP02, LP06 and LP07 of the JLP and Policies LM9 and LM15 of the Long Melford Neighbourhood Plan (NP) that collectively seek to deliver a mix of tenure size and type of housing and secure affordable housing. It would comply with Policies SP08, LP30, LP31 and LP32 of the JLP and Policy LM15 of the NP with regards to pre-school education, education and libraries contribution. Collectively these policies require development proposals to make provision for appropriate contributions towards community infrastructure to mitigate the additional impacts the development will place on infrastructure. I also find no conflict with Policies LP31 and LP31 of the JLP and Policies LM15, LN20 and LM21 of the NP which require development proposals, comprising 10 or more residential units or a site area of 0.5 hectares or more, to provide appropriate outdoor play equipment and multi-use green space to be retained for the life of the development.

¹ APP/D3505/W/21/3277344

Conditions

23. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
24. As development has commenced it is therefore not necessary to re-attach a time limit condition. From the evidence before me details of Conditions 3, 4(i) (ii), (iv), 5, 6, 10, 11, 12, 14, 15, 16 and 17 regarding contamination and remediation strategy, the surface water strategy and play equipment have been discharged.
25. I have imposed conditions, amended for compliance with the approved details, as suggested the Council. In the interests of visual amenity compliance with the approved fenestration design and boundary treatments is necessary to ensure the character and appearance of the area is safeguarded. Conditions regarding access, parking and manoeuvring are necessary in the interests of highway safety. A condition regarding infiltration of surface water is reasonable and necessary to prevent pollution of controlled waters as the water environment is particularly vulnerable and there is an increased potential for pollution from infiltration of inappropriately located and/or designed sustainable urban drainage systems (SuDS). A condition regarding trees is necessary to enable existing landscaping to be protected and retained in the interests of visual amenity and biodiversity. Conditions regarding occupation of the sheltered housing are necessary in order to ensure the provision of housing which meets the needs of older people. A condition for obscure glazing to the first-floor side window of Plot 1 is necessary to avoid loss of privacy to neighbouring properties on Hall Street.

Conclusion

26. For the reasons given above, I conclude that the proposal accords with the development plan and the Framework. The appeal is therefore allowed.

R Gee

INSPECTOR

Schedule of Conditions

(For ease of reference the original condition No is shown in brackets)

1. (No. 4) Fenestration design details, brickwork and boundary treatments (including gates) as approved by letter dated 19th August 2016 shall be retained as such, unless otherwise agreed with the local planning authority.
2. (No. 19) Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order, with or without modification), the visibility splays as shown on Drawing No. F321/001 Rev3 (received 6th August 2015 shall be retained and maintained in their specified form and no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of these visibility splays.
3. (No. 21) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 2015 Schedule 2, Part 1 (or any Order revoking and re-enacting that Order, with or without modification), the areas shown on Drawing No 6207/1111 P2 received 18th December 2015 and provided for the purposes of manoeuvring and parking of vehicles (including any garage/s) for each dwelling, shall be retained and maintained as such, for the purpose of manoeuvring and parking of vehicles for that dwelling, remaining free of obstruction (except for the purpose of manoeuvring and parking of vehicles), unless otherwise submitted to and approved in writing by the Local Planning Authority.
4. (No.23) The vehicular access onto the highway as shown on Drawing No. F321/001 Rev3 received 6th August 2015 shall be retained in its approved form.
5. (No.24) The area shown on Drawing No 6207/1111 P2 (received 18th December 2015) to provide "relocated parking from Hall Street" shall be retained for the specified use by local businesses within the area and remain free of obstruction (except for the purpose of manoeuvring and parking of vehicles), unless otherwise submitted to and approved in writing by the Local Planning Authority.
6. (No.28) Access from the development onto Cock and Bell Lane shall only be made available for use by pedestrians and cyclists. With the exception of vehicular use by the emergency services, day-to-day vehicular use of this access shall be prevented by the provision of bollards (or other suitably restrictive physical measures).
7. (No. 30) Notwithstanding the provisions of Schedule 2, Part 1, Class F the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) (with or without modification), no development affecting the infiltration of surface water drainage into the ground shall occur other than that approved under a planning application granted by the Local Planning Authority. Permission will only be granted where it can be demonstrated that there is a resultant acceptable risk to controlled waters.
8. (No. 32) All trees shown to be retained on drawing number DFC1220TSP (received 6th August 2015) shall be retained for ten years from the

commencement of development and none of the trees shown to be retained on the site shall be lopped, topped, felled, have their roots severed or be uprooted without the prior written approval of the Local Planning Authority. Any trees felled, uprooted, dying or being seriously damaged as a result of actions taken without such prior written approval shall be replaced in the next planting season (October – March inclusive) in the same siting with others of similar size and species.

9. (No.34) The 13 sheltered dwellings shall only be provided as specified on drawing number 6207-1102 P2 (received 18th December 2015) and these dwellings shall only be occupied in accordance with the specifications of paragraphs 2.9 and 2.10 of the submitted Housing Needs Statement, unless otherwise submitted to and approved in writing with the Local Planning Authority.
- 10.(No. 35) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (or any order revoking and re-enacting that Order) (with or without modification), the hereby sheltered dwellings shall only be occupied by persons over the age of 55; such dwellings to only be used as sheltered accommodation in perpetuity and not to be used for any other purpose within Class C3 of the Schedule to the Town and Country Planning [Use Classes] Order 1987.
- 11.(No. 36) The first floor window in the side elevation of plot 1, as shown in the East Elevation on drawing number 6207/1403 (received 6th November 2015), shall be fitted and remain fitted with obscure glass of a minimum level 4 obscurity or above and shall be non-opening, (unless the parts of the window which can be opened are more than 1.7m above the floor level of the room in which the window is to be installed), unless otherwise agreed in writing by the local planning authority.

*****End of Schedule*****