



Appeal Decision

Site visit made on 27 February 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2024

Appeal Ref: APP/D3505/W/23/3327147

Land adjacent to White House, Old London Road, Copdock IP8 3JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ponder Construction against the decision of Babergh District Council.
 - The application Ref is DC/22/06242.
 - The development proposed is creation of 9 no. bungalows plus associated garages and parking, with alterations to the existing access.
-

Decision

1. The appeal is allowed and planning permission is granted for creation of 9 no. bungalows plus associated garages and parking, with alterations to the existing access at land adjacent to White House, Old London Road, Copdock IP8 3JH in accordance with the terms of the application, Ref DC/22/06242, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application, but I have removed words that do not describe the development in the interests of clarity.
3. The Council's first reason for refusal refers to Policies CS2 and CS15 of the Babergh Core Strategy 2014 (CS). A new Babergh and Mid Suffolk Joint Local Plan Part 1 (JLP1) was adopted in November 2023, after the Council's decision on the planning application subject of this appeal. The Council's appeal statement post-dates adoption of JLP1: it states the CS Policies previously referred to are no longer relevant and identifies the JLP1 Policies it considers relevant to the appeal. The appellant has had the opportunity to comment on the JLP1 Policies referred to by the Council. Accordingly, these are the Policies I shall consider in my decision.
4. I understand the emerging Copdock and Washbrook Neighbourhood Plan is at an early stage of preparation. In accordance with paragraph 48 of the Framework, I give this emerging plan minimal weight.
5. The National Planning Policy Framework (the Framework) was updated in December 2023, during the course of this appeal. I invited the parties to

consider whether the revised Framework had relevance to this appeal and have taken account of the comments received in my decision.

Main Issues

6. The main issues are:

- whether the proposal would be in a suitable location with respect to the settlement pattern; and
- the effect of the proposal on the integrity of protected European sites.

Reasons

Settlement pattern

7. The appeal site is located outside of defined settlement boundaries so is in a countryside location for planning policy purposes.
8. The introduction to JLP1 Policy SP03 states that a review of settlement boundaries will be undertaken as part of a subsequent Part 2 Plan, but that for at least the short-medium term the existing boundaries, applied through Policy SP03, will be likely to enable the District's development needs to be met whilst also recognising the intrinsic character of the countryside. Given this statement reflects the consideration of the need for a review of settlement boundaries in the JLP1 Examination Inspectors' Report, including in relation to the Framework, I consider Policy SP03 up to date for the purposes of this appeal and I accord it full weight.
9. Under section 2 of Policy SP03, development will normally only be permitted outside of settlement boundaries where one of four alternative criteria are met. There is no suggestion that any of these criteria applies in this case.
10. Given the proximity of existing dwellings and rural settlements, the proposed development would not result in an isolated home in the countryside for the purposes of paragraph 84 of the Framework.
11. As part of its consideration of the location of the site in relation to settlement boundaries, the Council raises a concern with access to services and sustainable transport links. The site is relatively close to Capel St Mary, which has a range of local services and facilities. Although there is no dedicated footpath to Capel St Mary, it is within reasonable cycling distance and is directly served by a bus that stops very near to the appeal site. The bus service also provides access to Ipswich, with its much wider offer of services, facilities and onward public transport connections. In addition, there are some local facilities within reasonable walking distance in Copdock, along a dedicated footpath that is clearly separated from the busy road.
12. Therefore, whilst I recognise future residents of the proposed development would be likely to use the private car for some journeys, especially if they are elderly, I am satisfied on the evidence before me – including my observations on site – that the location offers adequate access to services and a genuine choice of transport modes.
13. My finding is consistent with the Council's own statement that the site is well connected to surrounding settlements and that residents would not be solely reliant on the private motor vehicle, when it granted planning permission for

nine dwellings on the site in February 2019¹. There is little evidence to persuade me the circumstances affecting the site's connectivity have materially changed since that decision.

14. The Council has drawn my attention to an appeal decision² for a nearby site. I only have partial extracts of the decision before me. Nevertheless, notwithstanding the commentary on access to Capel St Mary and Copdock, the Inspector concluded the proposal could demonstrate some functional relationship to an existing settlement. It was the proposal's failure to demonstrate justifiable need for the development, as required by CS policies then in force but since superseded, that led the Inspector to find a conflict with the development plan. Consequently, the circumstances in that appeal are not sufficiently closely related to those before me to lead me to a different conclusion on this main issue.
15. For the above reasons, I conclude the conflict with Policy SP03 of JLP1 means the proposal would not be in a suitable location with respect to the settlement pattern. However, the development would have adequate access to services and a genuine choice of transport modes. In this respect, the development would accord with the Framework, despite its countryside location.

Integrity of protected European sites

16. The appeal site lies within the Zone of Influence of the Stour and Orwell Estuaries Special Protection Area (the SPA), which is also a Ramsar Site. SPAs are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
17. The SPA comprises extensive mudflats, low cliffs, saltmarsh, small areas of vegetated shingle, areas of low-lying grazing marsh and several freshwater pools. In summer, it supports important numbers of breeding avocet, and in winter it holds major concentrations of waterbirds, especially geese, ducks and waders. Regularly occurring migratory species include dark-bellied brent goose, redshank, knot and dunlin.
18. The SPA provides an important recreational and economic resource. On the evidence before me, the proposal, particularly when combined with other development in the area, would be likely to have a significant effect on these protected European sites. Consequently, under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.

Appropriate Assessment

19. The conservation objectives of the SPA aim to ensure the integrity of the sites is maintained or restored. This includes maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats; and the population and distribution of each of the qualifying features within the sites. There is a threat to their integrity from public access and disturbance, including from recreational activities such as walking, dog walking and water sports.

¹ Planning permission ref DC/18/05359

² Reference APP/D3505/W/19/3241314

20. It is likely the occupants of the proposed dwellings could visit the SPA, resulting in increased recreational activity that could disturb the protected habitats and birds within the site. Therefore, the development, alone and in combination with other development, would be likely to have significant adverse effects on the integrity and conservation objectives of the SPA.
21. The parties have agreed a financial sum in accordance with the Suffolk Coast European Sites Recreational Disturbance Avoidance and Mitigation Strategy (Suffolk Coast RAMS). The sum would be put towards a programme of strategic mitigation measures. Natural England has been consulted as part of this appropriate assessment and has confirmed that the Suffolk Coast RAMS measures are sufficient to avoid an adverse impact on the integrity of the SPA.
22. Although not contained within a legal agreement, I am satisfied on the evidence before me that the agreed sum has been received by the Council for the purposes of contributing to the strategic mitigation measures described above. I therefore find there would be no adverse effect from the proposed development on the integrity of the SPA as a designated European site. Consequently, the proposal would be consistent with the Framework, which requires adequate mitigation if significant harm to sites protected under the Habitats Regulations cannot be avoided.

Conclusion

23. For the reasons set out above, I conclude the proposed development would not have an adverse effect on the integrity of protected European sites.

Other Matters

24. The appeal site is within the setting of 'Woodsend and No 1 Woodsend' on London Road, which is a Grade II listed house divided into two dating from circa 1500 and later extended and restored in the 1980s. The significance of the listed building is derived primarily from its architectural features, including exposed timber frame, windows, casements and gables, crown post roof, arched doorways and large open brick fireplace. The setting of the building includes its location facing Old London Road. Although altered by road widening and more recent development, this setting contributes to the significance of the heritage asset because it is part of the context for the historic dwelling's location. The proposed development would not adversely affect this relationship, so the setting of the listed building would be preserved and there would be no harm to its significance as a heritage asset.
25. The Council's appeal statement identifies a conflict with JLP1 Policy LP24 on the basis that the proposal is not deemed to protect the character of the area and is of an inappropriate design. However, there is no pertinent evidence to substantiate these concerns. Moreover, this statement is contradicted by the finding in the Council's original decision report that the design of the proposal was acceptable. Further, the Council acknowledges in that report that the scheme's design has not changed significantly from that previously found acceptable and approved under application DC/18/05359. On the evidence before me, I see no reason to disagree with the Council's original assessment of design and the proposal's effect on the character and appearance of the area. I also see nothing in Policy LP24 that leads me to a different conclusion, and I find no conflict with this Policy. I also find no conflict with the Framework's objective of good design.

26. The Council also raises a concern in relation to Policy LP23 of JLP1, which relates to sustainable construction and design. The Council's statement in this regard is unsupported by evidence or explanation and accordingly I give it minimal weight.
27. The proposed energy efficiency measures would not weigh in favour of the development because they are required by other regulatory regimes.
28. The development would contribute nine units to the supply of housing, which would accord with the Framework where it seeks to significantly boost the supply of homes including through development of small and medium sized sites that can be built out relatively quickly. The proposal would also result in an economic benefit from construction and future occupiers' use of local services and facilities, which would help to maintain the vitality of rural communities in accordance with paragraph 83 of the Framework.

Conditions

29. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
30. The condition regarding surface water drainage is necessary to prevent hazards caused by flowing water or ice on the highway. It is a pre-commencement condition because these potential hazards could arise during construction so need to be prevented before construction works commence.
31. The conditions relating to vehicular access to the site and visibility splays are necessary for highway safety. They are pre-commencement conditions because potential risks to highway safety from construction vehicles entering and leaving the site require mitigation in advance of work starting.
32. Conditions to secure a Construction Management Plan (CMP) and restrict construction hours are necessary to protect the living conditions of neighbouring occupiers and for highway safety. Methods for disposal of construction waste, including the prohibition of burning, are adequately addressed in the CMP so a separate condition on this matter is not necessary.
33. The condition securing biodiversity mitigation measures, biodiversity enhancements and a lighting strategy is necessary for the conservation and enhancement of biodiversity, including protected species and habitats.
34. Conditions are necessary to ensure adequate provision for the safe manoeuvring and parking of vehicles, and secure cycle storage to promote active travel. The condition regarding refuse/recycling storage is necessary to achieve good refuse management.
35. Justification for a pre-commencement condition requiring approval of an acoustic assessment and details of potential mechanical ventilation in habitable rooms is not specific and precise enough to meet the tests of necessity and reasonableness.

Planning Balance and Conclusion

36. I have found the proposal conflicts with JLP1 Policy SP03. However, there would be access to services and a genuine choice of transport modes, despite the site's countryside location. The benefits of the proposal set out in other matters also weigh in favour of the development.
37. The Council states it can demonstrate a five-year supply of deliverable housing sites. As set out above, Policy SP03 is up to date for the purposes of this decision. Consequently, paragraph 11d) of the Framework is not engaged.
38. The Council states that the earlier permission for the appeal site (DC/18/05359) relied on a principle of development established through a preceding outline consent³, at which time the Council could not demonstrate a five-year housing land supply. Nevertheless, in its decision on DC/18/05359 the Council concluded that the limited harm from the location of the proposal outside a settlement was outweighed by its positive benefits, including the provision of new housing. This was notwithstanding that the Council could by that point demonstrate a five-year supply of housing.
39. There is no compelling evidence to persuade me that the benefits identified by the Council in its February 2019 decision would be materially different in this appeal, notwithstanding that permission Ref DC/18/05359 has lapsed.
40. Taking all this together, I conclude that other material considerations, including the Framework, indicate that a decision should be taken otherwise than in accordance with the development plan. Therefore, the appeal should be allowed.

C Carpenter

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3819-05A Location Plan; 3819-03A Topographical Survey; 3819-06J Proposed Site Plan; 3819-07 Scheme Design on Topographical Survey; 3819-13 Proposed Plans and Elevations – Plot 1; 3819-14 Proposed Plans & Elevations – Plot 2; 3819-15B Proposed Plans & Elevations – Plot 3; 3819-21B Proposed Plans & Elevations – Plot 4; 3819-16 Proposed Plans & Elevations – Plot 5; 3819-17 Proposed Plans & Elevations – Plot 6; 3819-18A Proposed Plans & Elevations – Plot 7; 3819-20A Proposed Plans & Elevations – Plot 8; 3819-19 Proposed Plans & Elevations – Plot 9; 3819-11 Proposed Plans & Elevations – Shed; 3819-12 Proposed Plans & Elevations – Garages.

³ Permission reference DC/17/06175

- 3) No development shall take place until details showing the means to prevent the discharge of surface water from the development hereby permitted onto the highway including any system to dispose of the water have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full before the access to the development is first used and shall be retained thereafter.
- 4) No other part of the development hereby permitted shall commence until the new vehicular access has been laid out and completed in accordance with Drawing No. 3819-07 with a minimum entrance width of 5.5 metres for a shared surface access. The gradient of the vehicular access shall be no steeper than 1 in 20 for the first 5 metres measured from the nearside edge of the highway. The vehicular access shall be surfaced with a bound material for a minimum distance of 5 metres measured from the nearside edge of the metalled carriageway, in accordance with details that shall have previously been submitted to and approved in writing by the local planning authority. The vehicular access shall thereafter be retained in its approved form.
- 5) Vehicular visibility splays shall be provided as shown on Drawing No. 3819-07 with an X dimension of 2.4 metres and a Y dimension of 35 metres and 90 metres to the nearside edge of the carriageway. The visibility splays shall be provided before the access to the development is first used and shall be retained thereafter. Notwithstanding the provisions of Part 2 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction to visibility shall be erected, constructed, planted or permitted to grow over 0.6 metres high within the areas of the visibility splays.
- 6) Construction of the development hereby permitted shall be carried out in accordance with the Construction Management Plan - Revision 1, by Ponder Construction Ltd, dated 27 September 2022.
- 7) Notwithstanding condition No. 6, demolition or construction works shall take place only between 07:30 and 18:00 on Mondays to Fridays, 08:00 and 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 8) The biodiversity mitigation measures, biodiversity enhancements and lighting strategy recommended in the report titled Biodiversity Mitigation Enhancement and Lighting Strategy – Revision 1, by MHE Consulting, dated 3 April 2019, shall be carried out in full during the construction and/or operational phases of the development hereby approved, as specified in the report. The measures, enhancements and lighting associated with the operational phase shall be completed prior to first occupation of the development and shall be retained and maintained thereafter.
- 9) The development hereby permitted shall not be occupied until the areas within the site shown on Drawing No. 3819-07 and the document titled Energy and Sustainability Strategy Land Adjacent to White House, Copdock IP8 3JH - Revision A, by JS Lewis Ltd, dated November 2022 for the manoeuvring and parking of vehicles, including electric vehicle charging infrastructure, have been provided. These areas shall thereafter

be kept available at all times for the manoeuvring and parking of vehicles and for no other purpose.

- 10) The development hereby permitted shall not be occupied until secure cycle storage has been provided in accordance with Drawing No. 3819-07. The secure cycle storage shall be retained and maintained thereafter for the parking of cycles and for no other purpose.
- 11) The development hereby permitted shall not be occupied until areas for the storage and presentation for collection/emptying of refuse and recycling bins have been provided in accordance with Drawing No. 3819-07. The refuse/recycling area shall be retained thereafter and used for no other purpose.

End of schedule