



Appeal Decision

Site visit made on 1 May 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2024

Appeal Ref: APP/X3540/W/23/3323026

South-east corner of Laureate Fields, land west of the Ferry Road

Residential Centre, Ferry Road, Felixstowe

- 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 Generator Optima (Laureate Fields II) Ltd against the decision of East Suffolk Council.
 - The application Ref is DC/22/2295/FUL.
 - The development proposed is the creation of a pair of three bedroom houses.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, and since the Council made its decision, a revised version of the National Planning Policy Framework (the Framework) was published. I have had regard to the revised Framework insofar as it is relevant to this appeal.
3. The Council's fourth reason for refusal articulated its concern that, in the absence of mitigation, the proposal would result in recreational activity which, in combination with other development in the area, would adversely affect the integrity of nearby Habitats Sites. Since the Council's decision, the appellant has made a payment to them under Section 111 of the Local Government Act 1972 as a contribution towards the delivery of mitigation measures in relation to those recreational activities and effects. Following receipt of this payment, the Council has stated that its objections to the development in these respects have been resolved. I comment on these matters later in my decision.
4. The appellant's submissions include an updated drainage layout which was not before the Council when it made its decision. Whilst the updated plan presents an evolved drainage scheme, the principles of catering for surface water via a piped system with connections to geocellular crate soakaways remains. I am satisfied that the changes submitted do not substantially or fundamentally alter the proposed development. The updated drainage layout accompanied the appellant's statement and, since that time, the Council have had the opportunity to comment upon it. Through the Council's notification processes during the appeal, third parties have also been given the opportunity to submit comments. I am satisfied that it is procedurally fair to accept the amended plan. Therefore, I have had regard to it in my decision.

Main Issues

5. The main issues are:

- The effects of the proposal upon the living conditions of the occupiers of 25 Brinkley Way (No 25) and 10 Estuary Drive (No 10) with particular regard to privacy and outlook;
- Whether the proposal would affect open space and, if so, the effects that would be wrought by this; and
- The adequacy of the surface water drainage system proposed and the effects of the proposal upon flood risk.

Reasons

Living conditions

6. The dwellings are proposed on a rectangular parcel of mainly grass covered land situated within the corner of a new build housing estate. To its south and east the site abuts older and well-established residential estates. No 25 is a bungalow to the east which is positioned very closely beside the site boundary. No 25's side elevation, including its conservatory, and back garden flank the site. No 10 is a two storey property to the south. Its relationship to the site is similar to No 25: a side elevation, conservatory and garden run closely alongside it.
7. Given that each of their back gardens abut other gardens, No 25's closest neighbouring property is a bungalow, and No 10 is detached and well-spaced apart from neighbouring properties, the backs of both No 10 and No 25 will feel private.
8. The proximity of Nos 10 and 25 to the site means that the proposed dwellings would be positioned near to these existing properties. The Council submits that the side elevation of the plot B dwelling would only be 9 metres (9m) from the side of No 10. I have no reason to conclude that this dimension is inaccurate. The separation distance from the rear elevations of the plot A and B dwellings to the side of No 25 would not be much further.
9. The plot B first floor bedroom 1 window would be opposite the side elevation of No 10 and its conservatory. Although two fence lines run alongside this conservatory, and the garden behind it, the bedroom 1 window would be positioned high enough on the plot B dwelling side elevation that it would, nevertheless, afford for views into the conservatory. Even if the conservatory roof is obscured, views through its side elevation windows would be available. Although the views would be a little more angled, the window would also afford for views across the back garden of No 10. At such proximity, the views from the plot B bedroom 1 window would result in an unacceptable infringement upon the privacy of the occupiers of No 10.
10. The proximity and height of the fencing running along the northern plot boundary of No 10 already has a strong enclosing effect upon the conservatory and the back garden. Most of No 10's back garden would be adjacent to the proposed plot B garden rather than the dwelling itself. As such, I find that the plot B dwelling would not form an overbearing feature when viewed from No 10 nor unacceptably harm the outlook of its occupants.

11. A combination of fencing and planting screens much of No 25's conservatory from the site. This would ensure adequate levels of privacy for No 25's occupants when within that room. However, views from the plot A first floor bedroom 1 window would be available over boundary planting, and through gaps within it, towards No 25's back garden. This would unacceptably reduce how private No 25's garden is.
12. If the existing fence remained as the common boundary, views over the top of it and into No 25's rooms would be available from the proposed bedroom. This would unacceptably affect the occupants' privacy. To address this, the plans show a higher fence to be positioned beside No 25. This would prevent the views into No 25's rooms but, in so doing, it would create an unduly dominant feature, and it would unacceptably lessen outlook from these rooms.
13. I acknowledge that the rear elevations of the proposed dwellings would be on the same alignment as the neighbouring new builds to the north and no closer to Brinkley Way. However, for the most part, the rear elevations of the neighbouring new builds overlook the road, driveways and the less private front gardens on Brinkley Way. The houses at plots 133 to 137 may also back onto 12 Estuary Drive, but the separation distances involved are greater than would be the case between No 10 and the plot B dwelling.
14. Consequently, existing property relationships are not very comparable with that which would result from the proposal. In any case, I must consider the effects of the appeal proposal on its own merits.
15. Therefore, I find that the proposal would unacceptably infringe upon the privacy and outlook of the occupiers of No 25 and the privacy of the occupiers of No 10. Although the effects of the development upon neighbouring occupiers in terms of the likes of light levels received and the pollution levels they would be subject to may be acceptable, the harmful effects I have described upon those residing within Nos 10 and 25 would, regardless, ensue. As a result, the proposal conflicts with policy SCLP11.2 of the Suffolk Coastal Local Plan (LP) which sets out that development should not cause an unacceptable loss of amenity for existing or future occupiers.

Open space

16. Although the appellant refers to the text in support of policy SCLP8.2 of the LP, the definition of "open space" is provided within the LP glossary. This sets out that open space can comprise of a range of different sites and areas, and it includes amongst them amenity green space. A definition for "amenity green space" is also provided which is described as a green area that enhances the setting of buildings and softens the urban fabric. Although public access may be a feature of many open spaces, given the aforementioned definitions and reading the LP as a whole, I find the absence of such access would not preclude a parcel of land from being open space.
17. As a part of a larger residential development, the parcel of land upon which the dwellings are proposed has been the subject of several design iterations. Irrespective of whether this land is required for any drainage purpose, the extent to which it was ever intended to be publicly accessible and used for any form of recreation, or the footpath shown across it was ever deliverable, it would, in all its various renditions, have appeared as a largely soft landscaped parcel of land.

18. As such, the land parcel would provide welcomed visual relief amongst the estate's houses and soften the character and appearance of the area. It would serve to complement other open space within the development and enhance the public realm. Consequently, it would in any of its approved guises, constitute an amenity green space and an open space having regard to the LP's definitions. Even in the present circumstances of its future use having been the subject of uncertainty and, in turn, it having been left unfinished, it is largely grass covered and is already serving an open space purpose.
19. Upon completion of the development, a parcel of open space which positively contributes to the quality of the public realm within the housing estate would be lost. Its purpose in these respects is not surplus to requirements. Its replacement with the dwellings proposed would make this part of the housing estate more built-up to the detriment of the character and appearance of the area. The proposal is not ancillary to the open space nature of the site nor is there any proposal before me to replace the open space with equivalent or better provision. For these reasons, the proposal conflicts with policy SCLP8.2 of the LP which establishes a presumption against the loss of open spaces unless certain exceptional circumstances apply, none of which do apply in this case.

Drainage and flood risk

20. Over the passage of time the drainage system of the new build housing estate the appeal site forms a part of has evolved. The highway soakaway and infiltration basin once proposed within the site are no longer necessary. However, new housing is proposed in its place and, in respect of flood risk, this should be designed so that it would be safe, resilient and would not increase flood risk elsewhere.
21. The plans upon which the Council made its decision showed that in an exceedance event surface water would be directed away from the proposed dwellings and onto neighbouring gardens. However, given the presence of fencing on these routes it is likely that these flows would, to some extent at least, be impeded. In turn, this would present a surface water flood risk to the proposed dwellings or to other properties through flow diversion. The updated drainage layout seeks to address this by increasing the surface water storage and soakaway capabilities of the system and, effectively, negating the need for exceedance event routes offsite.
22. The Council submit that the geocellular crate soakaway devices are proposed within 5m of the proposed dwellings. I have been provided with no evidence to counter the Council's submissions or prove that its submissions in this respect are erroneous.
23. Water discharged to the ground has the potential to undermine the stability of a building if it occurs too close to it. I have been presented with no substantive evidence why citing the proposed soakaway devices within 5m of the proposed dwellings would not present a stability risk on this site. Neither have I been presented with any substantive evidence that particular construction techniques are proposed to be deployed which would reduce or remove such risk.
24. Therefore, it has not been shown to me that the soakaway devices proposed, located in the positions identified, are appropriate. In such circumstances, I

cannot conclude that the surface water drainage system would be adequate to serve the dwellings proposed. In the absence of an adequately designed surface water drainage system, I am not satisfied that the proposal has been designed to mitigate surface water flood risk.

25. Consequently, the proposal conflicts with policy SCLP9.5 of the LP. Amongst other matters this policy sets out that, in respect of flood risk, developments should be safe, resilient and should not increase flood risk elsewhere. I also find that the proposal would conflict with those policies of the Framework which seek to ensure that development is flood resistant, appropriately manages residual flood risk and would not result in an increase in flood risk elsewhere.

Other Matters

26. The development would make a contribution to housing supply and provide a choice of new homes in the area. As a small site, it is likely that the houses would be delivered quite quickly too. However, in providing only two dwellings, the contribution to supply would be modest. Although the boost to supply would be a benefit of the proposal, it is insufficient to outweigh the harm I have identified in the main issues.
27. It may be, in respect of a range of other planning considerations, that the development would not result in harmful effects. This may include the principle of housing being acceptable, the proposed dwellings exhibiting an appropriate aesthetic and the provision of acceptable living conditions for the future occupiers of the proposed dwellings. It may also be the case that the site has acceptable accessibility credentials. Even so, an absence of harm in respect of these matters is a neutral factor in my decision and, again, they do not outweigh the harm that I have identified.
28. In conjunction with other developments in the area, the proposal has the potential to result in increased recreational activities which could adversely affect the integrity of nearby Habitats Sites. 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 these sites. Given I am dismissing the appeal, there is no requirement for me to undertake this assessment. Even if I were to conclude that no such adverse effects would be caused by the development it would, at most, be a neutral factor in this appeal.

Conclusion

29. The proposal conflicts with the development plan and the material considerations do not indicate that a decision should be made other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR