



Appeal Decision

Site visit made on 21 May 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2024

Appeal Ref: APP/U2615/W/23/3335914

Land off Ormesby Lane, Filby, Great Yarmouth NR29 3HX

- 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 Mr B Hunt against the decision of Great Yarmouth Borough Council.
 - The application Ref is 06/22/0567/CU.
 - The development proposed is change of use of land from agriculture to residential.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I observed at my site visit that the land subject to the appeal has been enclosed by fencing and is being kept as short mown grass. Therefore, it appears that the change of use has already taken place and I have determined this appeal on the basis that it is a retrospective proposal. The description of development does not however include any specific reference to fencing being erected, although it appears to be operational development that the appellant requires in conjunction with the change of use. I shall return to this consideration later in my decision.

Main Issues

3. The main issues are:
 - (i) The effect of the development on the character and appearance of the area
 - (ii) The loss of agricultural land

Reasons

Character and appearance

4. The land subject to the appeal has been incorporated into the rear garden areas of two recently built dwellings. In both instances it has been fully enclosed by high close boarded fencing and laid to grass which is mown. Development in the immediate vicinity varies in age, with Philmar Lodge being an older property to the south and newer properties being found to the north-east in the area between the appeal site and Green Lane.
5. The three new dwellings closest to Green Lane have uniformly defined rear boundaries along which close boarded fencing is positioned. The rear garden

areas of these properties are consistent in depth with those of the dwellings which are found to the north-east side of Green Lane. Whilst the appellant has provided overlaid aerial and Ordnance Survey plans which they consider demonstrate that those dwellings in fact have gardens of a similar depth to those of the appeal properties as extended, the overlays appear to be based on land registry land ownership data. It was clear at my site visit that the extra land referred to has not been enclosed by fencing nor is it being kept or used as residential garden land, even if it is owned by those properties.

6. The fourth furthest property from Green Lane is immediately adjacent to the appeal site. It has post and rail fencing defining a line equivalent to the extent of the rear gardens of the three new dwellings to the north-east. A close boarded fence then extends in depth to a distance equivalent to that of the appeal properties, but there is no further fencing to define any kind of rear boundary. At the time of my visit the land beyond the post and rail fencing was semi-overgrown to the extent that it would not be readily usable as residential garden land, although there was some domestic paraphernalia present. There is nothing before me to show whether the use of the extra land and the fencing along one side of it is authorised, however it might be expected that it would be being used as garden land if that had been permitted.
7. It is also unclear from the information available as to where the garden area of Philmar Lodge extends to. From visual observation, the land adjacent to Philmar Lodge is, to a depth equivalent to the gardens of the appeal properties as extended, kept as mown grass with maintained vegetation and it is defined at its rearmost point by a mature hedge. On the basis of what I saw and in the absence of anything to suggest otherwise, I proceed on the basis that the garden area of Philmar Lodge extends to a distance equivalent to that which is under consideration with respect to this appeal. The land to the west and north of the appeal site is predominantly undeveloped, open countryside, at a point where there is a clear transition between the built form of the settlement and its rural surroundings.
8. The appeal development has extended the gardens to a distance consistent with that of Philmar Lodge. However, the development also extends to a depth that is significantly beyond that of the rear garden areas of the four dwellings to the north-east between the site and Green Lane, and also significantly beyond the gardens of the dwellings on the other side of Green Lane. It is the position of the rear boundaries of those properties and in particular their uniformity which define the prevailing character and appearance of the area when the appeal site is viewed from the land to the west and the north, including from along Green Lane. Notwithstanding that some screening is provided by existing vegetation, the substantial encroachment beyond the established line of those gardens has resulted in significant harm to the character and appearance of the area.
9. I have given consideration to whether the harmful impact could be overcome through the use of planning conditions. Specifically, I note that the Council has made reference to a potential requirement to use post and rail fencing to define the gardens along with landscaping, and the removal of permitted development rights to erect outbuildings on the land. Whilst these would serve to reduce the impact in some respects, the permitted use of the land would still be as residential garden. This would set it apart visually from the land to the north-

east which is not being used in the same way, and the harm to the character and appearance of the area would still remain.

10. For these reasons, I conclude that the development has caused significant harm to the character and appearance of the area. Consequently, the proposal fails to accord with Policy CS9 of the Core Strategy 2015 (CS) and with Policy E5 of the Filby Neighbourhood Plan 2022 (NP) where they seek to protect character and appearance. Policy CS12 of the CS relates to utilising natural resources and therefore does not appear to be relevant to this main issue.

Loss of agricultural land

11. Policy E5 of the NP seeks to prevent the loss of Grade 1 agricultural land that is currently in farming use, unless the community benefits of such development significantly and demonstrably outweigh the harm of losing the land in the long term. With reference to a previous appeal¹ for a larger housing development on adjacent land, there is evidence in the way of an Agricultural Land Classification Assessment that the land immediately next to the site is Grade 2 land. But, in any event, it has not been shown that prior to the appeal use taking place that the appeal site was in farming use. Therefore, I am not persuaded that Policy E5 of the NP is applicable to the appeal development in either respect.
12. There has nonetheless been the loss of an area of land which has potential for agricultural use and which falls within the category of being the best and most versatile agricultural land. However, the area is relatively small in size and as I have observed does not appear to have previously been in agricultural use, at least in recent times. Therefore, I find that there has been no harm resulting from its loss, and no conflict with the aims of Policies CS6 and CS12 of the CS where they aim to minimise the loss of the best and most versatile agricultural land.

Other Matters

13. The appellant refers to Policy H9 of the Local Plan Part 2 2021, however that policy refers to residential extensions whereas the appeal development is a change of use of land. In my view therefore, the policy is not relevant to the considerations that arise in this case, nor does it offer support for it. That the provision of additional garden land may make the properties more attractive to potential purchasers does not justify the permitting of a harmful development, even in an uncertain housing market.

Conclusion

14. Whilst I have found that no harm has arisen from the loss of the agricultural land, this is a neutral consideration in the planning balance. I have found that significant harm to the character and appearance of the area has resulted, and this means that the development fails to accord with the development plan taken as a whole. Accordingly, the appeal should be dismissed.

Graham Wraight

INSPECTOR

¹ APP/U2615/W/20/3264145