



Appeal Decision

Hearing held on 21 & 22 May 2024

Site visit made on 22 May 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2024

Appeal Ref: APP/F2605/W/24/3336631

Land south of Litcham Road, Mileham

Ordnance Survey Grid Reference: 591100:319094

- 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 Bee Developments Norwich Limited against the decision of Breckland Council.
 - The application Ref is 3PL/2023/0946/F.
 - The development proposed is erection of 6no. dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Although both main parties made applications for costs, both applications were subsequently withdrawn. I have therefore given them no further consideration.

Preliminary Matters

3. Consultation on the Council's emerging Local Plan¹ was due to commence in early June. Preparation of the emerging Local Plan remains at an early stage, so its policies carry very limited weight. However, I have taken account of the current Local Plan timetable, where that is relevant to the issues raised.
4. The Breckland Design Guide (BDG) was adopted as a Supplementary Planning Document in April 2024. Its evidence base includes the Breckland Landscape and Settlement Character Assessment (LSCA), published in April 2022, which was itself subject to a consultation process. The LSCA supersedes the previous Breckland District Landscape Character Assessment (LCA), dated 2007. The main parties have had the opportunity to comment on the relevance of both documents to the appeal proposal and I have taken their contents into account.

Main Issues

5. A Unilateral Undertaking (UU) has been provided and was completed prior to close of the Hearing. The Council has confirmed that this would satisfactorily address the third reason for refusal. Therefore, the main issues are whether the proposed development is a suitable location for housing, having regard to the Council's spatial strategy and the National Planning Policy Framework (the Framework), and the effect on the character and appearance of the area.

¹ Consultation under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012

Reasons

Suitability of Location

6. The appeal site is a parcel of undeveloped land fronting Litcham Road, which is the main route through the long, linear village of Mileham. There is housing to one side and on the opposite side of the road. On the other two sides, the site adjoins open agricultural land with limited boundary demarcation.
7. The Council's spatial strategy is based on a settlement hierarchy defined in Policy GEN 03 of the Breckland Local Plan (BLP). Settlements are categorised according to the availability of services and facilities. Most new development is directed towards towns and villages in the upper tiers of the hierarchy. Mileham is not one of these and has no defined settlement boundary.
8. This approach to the distribution of development accords with relevant aspects of the Framework, including the section on rural housing, which advocates locating housing where it will enhance or maintain the vitality of rural communities. While the Appellant has raised other concerns about deliverability and the status of housing policies in the BLP, the overall consistency of the spatial strategy with the Framework is not in dispute.
9. Outside settlement boundaries, Policy GEN 05 of the BLP allows for limited development, including housing compliant with Policy HOU 05. This Policy in turn lists four qualifying criteria, all of which should be met. The first is that development should comprise of sensitive infilling and rounding off of a cluster of dwellings with access to an existing highway.
10. Infilling is defined in the BLP as building on a vacant plot in an otherwise built-up street frontage, generally with built development to either side. Although the appeal site is at one end of an established built-up frontage on the south side of Litcham Road, that frontage currently ends at the boundary with the appeal site. The site is part of an extensive gap along one side of the road, which also includes the rest of the field and a paddock beyond Beeston Road. There are a few buildings beyond that point, but the length of the undeveloped frontage significantly exceeds any reasonable definition of a vacant plot. Therefore, the proposal would not be infill as defined in the BLP.
11. Rounding off for purposes of Policy HOU 05 is defined as completion of an incomplete group of buildings on land which is already partially developed and in such a way which will either complete the local road pattern or define and complete the boundaries of the group. The appeal site is not partially developed. While the proposal would mirror the pattern of nearby plots, the limits of this existing development are well-defined, and it does not appear as an incomplete group of buildings. The site also fails to meet other qualifying criteria in the BLP, since only part of its perimeter is built up and there are no strong, durable boundary features where it adjoins open land.
12. The proposed dwellings would be well connected with the existing housing and the few local services, which include a village shop, village hall and limited bus service. It would also benefit from additional services in Litcham. The proposal would be of a relatively modest scale in proportion to the village as a whole. Nevertheless, for the reasons given above, the proposal would not amount to infill or rounding off, so it would not comply with the first criterion in Policy HOU 05. Since Policy HOU 05 supports additional development only where all

four criteria are satisfied, the proposal conflicts with the Council's spatial strategy as defined in the BLP.

13. For the reasons given above, I conclude that the proposed development would not be a suitable location for housing, having regard to the Council's spatial strategy and the Framework. It conflicts with Policies GEN 05 and HOU 05 of the BLP, as outlined above, and with the overall spatial strategy, which is in turn consistent with the Framework's approach to housing in rural areas.

Character and Appearance

14. In the 2022 LSCA, Mileham is described as an Interrupted Rural Row Village, the characteristics of which include substantial gaps within an otherwise linear streetscape. The description in the LSCA clearly applies to gaps within the village limits, rather than the larger tracts of countryside which separate distinct settlements. Such gaps are at the scale of building plots or larger and include agricultural fields. They are identified as having value by providing an open, green aspect for residents and those travelling through the village and contributing to the wider village setting. The erosion of green gaps through development is identified as a negative influence on the form of Interrupted Rural Row Villages and their relationship with the surrounding landscape.
15. Section 3.2 of the BDG requires that development proposals look beyond the site boundary to consider landscape features. Where development is proposed in Interrupted Rural Row Villages, some form of gap should be retained to preserve the character of the settlement. Policy HOU 05 in the BLP also requires that development does not harm or undermine a visually important gap that contributes to the character and distinctiveness of the rural scene.
16. As described above, the appeal site is within a significant undeveloped area on one side of Litcham Road. This is one of the larger gaps punctuating the linear village layout and opens up views into the surrounding rural landscape. There is a pleasant open outlook, contrasting with the more enclosed street scene to either side, and this is readily apparent both to residents of the dwellings opposite and those passing through the village. Despite its relationship with the existing housing, both the site and the more expansive open fields around it have the appearance and character of open countryside.
17. The gap is only on one side of the road, and the proposed development would not fully enclose it. There would still be open land between the proposed dwellings and the junction with Beeston Road. Therefore, the village would still exhibit characteristics of an Interrupted Rural Row Village, but to a reduced extent. The sense of space around the site would be significantly eroded and the more enclosed street scene would not benefit from such a strong sense of connection with the surrounding rural landscape.
18. Outline planning permission was granted in 2019 for a similar development on the appeal site, but this has subsequently lapsed. At that time, the Council's Officer Report concluded that continuation of the existing row of dwellings would not negatively impact the character and appearance of the area. However, that conclusion was reached in the context of an earlier development plan and the landscape evidence base in the 2007 LCA. This earlier LCA included some consideration of settlement form, but it did not articulate the characteristics of Interrupted Rural Row Villages to a similar extent.

19. There is no dispute between the parties that the site is not within a 'valued landscape' for purposes of the Framework and based on the evidence before me I have no reason to disagree. Nevertheless, based on the updated evidence in the 2022 LSCA, the erosion of the gap along Litcham Road is a matter which carries greater weight than it did in 2019, despite Policy HOU 05 having been at an advanced stage at that time.
20. The level of harm would be moderated by the retention of a more limited gap between the proposed development and Beeston Road, together with the linear layout which would relate well to the adjacent housing. The design and proportions of the dwellings would also be reasonably consistent with the existing housing. Nevertheless, based on the circumstances of this particular case, I conclude that there would be some harm to the character and appearance of the area.
21. In particular, the proposal would conflict with criterion 4 in Policy HOU 05, which requires that development does not harm or undermine a visually important gap that contributes to the character and distinctiveness of the rural scene. It would also conflict with relevant requirements in Policies GEN 02, COM 01 and ENV 05 of the BLP and relevant paragraphs in the Framework, which together require that development responds to local character, including the layout of buildings and open spaces and landscape character.

Other Matters

Partial Review Local Plan

22. On adoption in 2019, the BLP included a commitment to undertake an immediate partial review regarding four matters, including housing. Policy INF 03 required submission of the Partial Review Local Plan for examination by November 2022 and stated that the relevant policies would be deemed to be out of date if that did not occur.
23. Although the Council submitted a Partial Review for examination in November 2022, it did not review the relevant policies in full. Instead, the Council sought to amend the provisions of Policy INF 03 in favour of production of a new, full Local Plan. Having examined the evidence on matters including housing supply and delivery, the Inspector's Report concluded that the Partial Review in this form was sound, and it was adopted in 2023.
24. In its amended form, Policy INF 03 continues to commit the Council to an immediate full review of the BLP, specifying that this is planned to be submitted for examination by December 2024. However, the current expectation is that its submission for examination will be in April/May 2025. While this timetable does not meet expectations at the time of the Partial Review examination, it is clear from the Inspector's Report that she was aware that the December 2024 submission date would be challenging. She nevertheless concluded that it was not necessary to include either a strict timetable for submission of the full local plan review or any wording deeming housing policies to be out of date if the timetable was not met.
25. The anticipated slippage of a few months is relatively modest and it is clear that the Council is actively continuing to progress the full review of the Local Plan. Since the adopted version of Policy INF 03 does not include a strict deadline or deeming provision, there is no current conflict with the terms of the

policy in its adopted form. Therefore, based on the evidence before me at this point, I find that the policies most relevant to this appeal are not out of date by virtue of the current timetable for submitting the Local Plan Review.

Housing Land Supply

26. The Council's latest published Five-Year Housing Land Supply Statement (HLSS) is based on evidence as at 31 March 2023, and covers the period to the end of March 2028. An annual update is underway, but had not been published at the time of the Hearing. The Appellant considers the evidence in the HLSS to be inadequate as it does not include full details of stakeholder engagement underpinning the assessment of deliverability. However, the Council provided additional evidence regarding disputed sites in response to the Appellant's Statement of Case and through the Hearing process, and the Appellant has had the opportunity to consider and respond to that evidence.
27. The Council undertakes an annual review of housing land supply as required in the Framework. There is no obligation to confirm the position through an Annual Position Statement. Between updates, any assessment of housing land supply is inevitably a snapshot, representing the situation as it stands at a particular point in time. Sufficient evidence has been presented to enable me to consider the housing land supply issues in this case.
28. The Council claims a housing land supply of approximately 6.6 years, based on the annual housing requirement in the BLP. This takes account of deductions which were agreed between the parties prior to the Hearing.
29. Having argued that the relevant policies in the BLP are out of date, the Appellant proposed that the assessment of housing land supply should be based on Local Housing Need. However, I have concluded that the relevant policies are not out of date by virtue of the emerging Local Plan timetable, and the BLP is less than five years old based on its original adoption date in 2019. Therefore, paragraph 77 of the Framework confirms that the BLP housing requirement should be used at the time of determining this appeal. The applicable housing requirement once the BLP is more than five years old will be a matter for any decision maker at that time.
30. At the time of the Hearing, the Appellant alleged a shortfall of approximately 116 dwellings, based on the BLP annual requirement. It was also alleged more generally that there is a lack of robust evidence to support the Council's housing land supply and that the Council does not have a clear understanding of available land. Deliverability of several sites in the HLSS was disputed, for reasons including measures introduced in 2022 to safeguard nutrient neutrality in part of the District, the effect of a Stone Curlew Buffer elsewhere, and required infrastructure upgrades to support large-scale housing sites. The projected level of windfall development was also disputed.
31. The Appellant's figures include a deduction of 270 dwellings in relation to Dereham Housing Allocation 3. However, the HLSS projected delivery of only 135 dwellings on that site within the five year period. In both cases a 25% discount was also applied. No clear justification has been offered for the figure of 270 dwellings, so the Appellant's supply figures should be adjusted to compensate for this discrepancy.

32. Paragraph 72 of the Framework allows for the inclusion of a windfall allowance, subject to there being compelling evidence that this will provide a reliable source of supply. Appendix 4 of the HLSS details annual levels of windfall development dating back to 2011/12. The annual totals consistently exceed the projected windfall allowance of 100 dwellings per annum by a considerable margin. The windfall allowance has appropriately been applied only in the later years of the supply period, to avoid double-counting.
33. According to the HLSS, the original Inspector's Report on the BLP described the windfall allowance of 50 dwellings at that time as conservative and indicated that a greater amount would have been justified. There is no evidence that delivery on windfall sites has tailed off in the meantime. Since most of the larger settlements are not affected by nutrient neutrality considerations, there is no persuasive evidence that this factor will threaten the continued delivery of at least 100 homes per annum. Nor is there any substantive evidence that windfall development is unduly dependent on the exercise of permitted development rights or that delivery from that source is likely to diminish significantly over the next five years.
34. Although the Council has not provided any evidence of a current Strategic Housing Land Availability Assessment to support the windfall allowance, the evidence based on past trends is persuasive. Based on the evidence before me, the windfall allowance in the HLSS is sufficiently justified and remains both reasonable and realistic.
35. Taken together, the adjusted figure for the Dereham Allocation and inclusion of the windfall allowance would outweigh the shortfall alleged by the Appellant, to a degree that is neither marginal nor uncertain. Therefore, based on the evidence before me, I find that a five year housing land supply is in place.
36. Having reached that conclusion, it is not necessary for purposes of this appeal to conclude on the precise housing land supply figure. Therefore, while I have had regard to the Appellant's wider evidence, including the effect of constraints such as nutrient neutrality and infrastructure delivery, it is not necessary for me to consider the specific disputed sites in any further detail.
37. There is also no evidence of a shortfall of housing delivery, based on the Council's 2022 Housing Delivery Test result. Therefore, having concluded that a five year housing land supply is in place and the Council's policies for the delivery of housing are not out of date by virtue of the provisions of Policy INF 03, the provisions of paragraph 11d in the Framework are not applicable.

Self-Build and Custom Build Housing

38. The application was for market housing, but the option of two plots being made available for self-build had been raised prior to the Council's decision. At the Hearing, it was clarified that this option remains available, with the intention that the development would contribute to the supply of land for those wishing to commission or build their own homes.
39. The application includes full details of the proposed design and layout and there is no indication that this has been informed by the requirements of any specific future occupier. However, the Appellant proposes that customisation options could be offered, allowing for variation of materials, fit-out and internal layout.

Amendments to the external appearance could also be an option, although this is likely to require a further application for variation of any approved plans.

40. Planning Practice Guidance expands on the Framework's definition of self and custom build building and specifies that relevant authorities should be satisfied that the initial owner of the home will have primary input into its final design and layout. Given the lack of occupier input into the design process to date, and the detailed nature of the application, there is no clear evidence that would be the case. The proposed customisation options would be largely internal and/or relatively superficial and would not amount to primary input into the design process.
41. On that basis, I am not satisfied that the proposal would provide self-build or custom build housing as defined in the Framework. Therefore, it would not contribute to the supply of land for that purpose. As such, there is no need for me to consider further the evidence of local supply and demand for self-build and custom build housing or the mechanism for securing its delivery.

Other Considerations

42. The proposal would make a modest contribution to the supply of housing. The application is in detail and the Appellant indicates that the homes could be delivered quickly. There would be some consequent economic benefit.
43. Access can be provided, and measures are proposed to avoid increasing the risk of surface water flooding. The Council considers these aspects of the proposal to be acceptable subject to suitable conditions and based on the evidence before me I have no reason to disagree. No harm has been alleged to the living conditions of nearby occupiers. However, these are all neutral factors which weigh neither for nor against the proposed development.
44. The Council does not allege any harm to heritage assets, including the Scheduled Monument at Mileham Castle, subject to appropriate conditions. Based on the evidence before me, I have no reason to reach a different view. However, this is also a neutral consideration.
45. While the proposal would deliver some benefits, these would be of modest extent and do not outweigh the harm I have identified or the associated conflict with the development plan as a whole.
46. As I am dismissing the appeal for other reasons, it is not necessary to address the effect of the proposed development on Habitats Sites in any further detail.

Conclusion

47. For the reasons given above the appeal should be dismissed.

Jane Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jason Parker, Director & Head of Planning at Parker Planning Services

Magnus Magnusson, Senior Planner at Parker Planning Services

James Bunn, Director at Bee Developments Norwich Limited

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Collins, Head of Development Management

Will Hornbuckle, Development Management Planner

Andy D'arcy, Principal Planning Policy Officer

Rachel Gibbs, Senior Planning Policy Officer

Richard Laws, Principal Planner

Chris Fitzgerald, Technical Support Officer

HEARING DOCUMENTS

1. LPA Addendum: 2019/0849/D re Land at Parklands Avenue Mattishall
2. Unilateral Undertaking dated 21 May 2024.