



Appeal Decision

Site visit made on 25 June 2024

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 1st August 2024

Appeal Ref: APP/D3505/W/23/3330072

10 The Gurdons, The Street, Assington, Suffolk CO10 5LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (as amended) for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs M Dowde and Mrs N Ong against the decision of Babergh District Council.
 - The application Ref is DC/23/00226.
 - The application sought planning permission for the erection of 4 dwellings and 2 detached garages, alterations to existing vehicular access and construction of hard standing parking and turning areas without complying with condition 13 attached to planning permission Ref DC/19/01570, dated 24 June 2019.
 - The condition in dispute is No 13 which states that: *"All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October – March inclusive) following the commencement of the development or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use or first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 5 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species."*
 - The reason given for the condition is: *"To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area."*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 dwellings and 2 detached garages, alterations to existing vehicular access and construction of hard standing parking and turning areas in accordance with the application Ref DC/23/00226, dated 17 January 2023 without compliance with condition 13 set out in planning permission Ref DC/19/01570, granted on 24 June 2019 by Babergh District Council, but otherwise subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. In the interests of consistency, I have taken the appeal site address above from the planning application form rather than the appeal form, as it more closely reflects the address stated on the original planning permission. I have added the name of the road provided on the appeal form, to identify the location of the site more clearly.

3. The Babergh and Mid Suffolk Joint Local Plan- Part 1 (LP1) was adopted in November 2023, after the Council's decision on the planning application subject to this appeal. The Council's appeal statement identifies that policies referred to in its decision notice have been superseded and Policies LP17 and LP24 of LP1 are now relevant to the appeal. The appellant has had the opportunity to comment on the new policies. Accordingly, I shall consider the LP1 Policies in my decision.
4. Since the Council determined the application, the Government published an updated version of the National Planning Policy Framework (the Framework). However, as the Framework's policy content insofar as it relates to the main issues has not been significantly changed, albeit that the numbering of paragraphs has changed, there is no requirement for me to seek further submissions on this latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly. I will refer to the revised paragraph numbers in my decision.

Background and Main Issue

5. Planning permission was granted by the Council under reference DC/19/01570 on 24 June 2019 for the erection of 4 dwellings and 2 detached garages, alterations to existing vehicular access and construction of hard standing parking and turning areas. Two detached dwellings, a pair of semi-detached dwellings and two detached garages had been completed at the time of my site visit.
6. Condition 13 attached to that permission required the approved landscaping details to be carried out in full during the first planting and seeding season following the commencement of the development unless an alternative arrangement was approved in writing by the Council.
7. The approved landscaping details included the provision of a mixed native hedgerow along the front boundary of the site. It appears that a mixed native hedgerow was planted in line with the requirements of the approved details initially. However, the appellants assert that it failed to thrive. As a result, the dead and dying hedgerow was removed and replaced with a new hedgerow formed of Photinia Red Robin Laurel, a non-native species. The new hedging was present at the time of my site visit and appeared established.
8. Condition 13 requires that any proposed hedges identified within the approved landscaping details which die, are removed, seriously damaged or seriously diseased, within a period of 5 years of being planted, shall be replaced in the next planting season with others of similar size and species. There is no dispute that it has been less than 5 years since the original mixed native hedgerow was planted. Therefore, the planting of the Photinia Red Robin Laurel is not in compliance with Condition 13, as it is not of similar size or species to the original hedgerow planted.
9. Whilst the appellants seek to remove or vary Condition 13, in order to retain the Photinia Red Robin Laurel hedgerow, the Council object to the replacement hedgerow as planted, due to the effect of the non-native species on the character and appearance of the site and the surrounding area. Therefore, the main issue in this case is whether Condition 13 is necessary and reasonable, with regard to the effects of the replacement hedgerow on the character and appearance of the site and the surrounding area.

Reasons

10. The appeal site is located at the edge but within the built up area of the village of Assington. On approach to the settlement along the road from the southwest, I accept that the area is distinctly rural in character with mixed native hedgerows along both sides of the road. However, on reaching the bend in the road the presence of the built up area of the settlement becomes more apparent. A prominent well maintained conifer hedge runs alongside a restricted byway adjacent to the junction with Barracks Road and a thatched cottage with picket fencing and low level planting become clearly visible.
11. As you move through the village, there are a range of front boundary treatments including a variety of different hedging including single and mixed species, low level soft planting, brick walls including some with decorative features, stone and brick walls, post and wire fencing, picket fencing, post and rail fencing, railings, close boarded fencing and some properties retain an open frontage onto the road.
12. Directly opposite the appeal site is a property where what appears to be a relatively young hedge of the same species of hedging at the appeal site is present along the front boundary. In front of a more modern property on St Edmunds Close further north, within the village, is also a similar type of planting.
13. The variety of front boundary treatments within the village reflect the residential character of the built up area of the settlement and contribute positively to the character and appearance of the area.
14. The replacement hedging is located behind a post and rail fence which visually contains it within the garden area of the respective properties, lessening its prominence to some degree. Whilst I accept that the appeal site is at the edge of the village, with countryside and native hedgerows beyond to the southwest, it appears visually as part of the village and is seen alongside other existing built form directly adjacent to the north and opposite to the east.
15. Whilst I acknowledge that the Photinia Red Robin Laurel is not native, it adds to the variety of boundary treatments that are already found within the village and in my view does not appear out of place within its setting within the built up area of the settlement. Accordingly, I do not find that the replacement hedgerow has diminished the quality of the residential scheme.
16. I therefore find that the replacement hedge is not harmful to the character and appearance of the site or surrounding area. It therefore complies with Policies LP17 and LP24 of LP1 which seek, amongst other things, that developments reinforce local distinctiveness and the identity of individual settlements and respond to the existing character and context.
17. The replacement hedge would also comply with paragraphs 131, 135, 140 and 180 of the Framework which seek, amongst other things, that high quality places are created, that developments should contribute to and enhance the natural and local environment, are visually attractive as a result of appropriate and effective landscaping, are sympathetic to local character and that approved development is not materially diminished between permission and completion.

Other Matters

18. The Council state that the native hedgerow planting approved as part of the original scheme was required to meet the local planning authority's biodiversity duty. However, there is no policy requirement referred to in the reason for refusal relating to this. In addition, the Council's statement refers only to a possibility that the hedgerow would be a priority habitat but does not provide any significant clarification on this matter.
19. I note that the evidence prepared by an experienced ecologist demonstrates that the nationally scarce plant *Calamintha nepeta* on the banks of the roadside, which was identified through the original Preliminary Ecological Appraisal, has been retained as part of the landscaping works.
20. Cootes Cottage, which is located opposite part of the appeal site, is a Grade II Listed Building. Its significance lies in its historic and architectural merit with it dating from the 17th or 18th centuries and being of traditional timber frame and plaster construction with a thatched roof. The presence of the road as an intervening feature provides separation to the appeal site and the set back of the hedgerow within the garden area, behind the post and rail fence also limits any impact. 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 the heritage asset.

Conditions

21. I have considered the conditions attached to the original permission against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents.
22. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
23. I have not imposed the time for commencement condition given the development appears completed. A condition to define the plans with which the scheme should accord is attached in the interests of certainty. I have referred to the revised site plan which identifies the replacement hedge.
24. A condition is required to ensure that the scheme is carried out in accordance with the Preliminary Ecological Appraisal, in the continued interests of biodiversity. I have removed the second part of the initial condition which referred to what may be needed during the construction phase, given the development appears complete.
25. I have not received any information as to whether conditions 4 and 5 on the original planning permission relating to the submission of a biodiversity enhancement strategy and a wildlife sensitive lighting scheme have been complied with. I have therefore re-imposed more concise versions of these conditions requiring schemes to be submitted within 3 months, in the interests of biodiversity.

26. As above, I have not been advised as to whether a bin storage scheme has been approved in line with the original planning permission requirement. I have therefore imposed a condition requiring a bin storage scheme to be submitted within three months in the interests of the character and appearance of the area.
27. Conditions requiring the visibility splays, vehicle access and manoeuvring and parking areas as specified to be retained are required in the interests of highway safety. I have not reimposed a condition relating to the vehicular access surface as it appeared during my site visit that the initial section from the edge of the carriageway had been properly surfaced in a bound material for at least 5 metres.
28. I have not reimposed a condition requiring materials to be submitted given the stage that the development is at and given the materials used appear to respond to the surrounding context appropriately.
29. I have imposed a more concise landscaping condition in the interests of the character and appearance of the area, given that five years has not yet passed since the development was completed.

Conclusion

30. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed subject to conditions.

G Dring

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following drawings and documents:
 - Defined Line Plan 2538-01B
 - Site Location Plan 2538-01B
 - Plans – Proposed 2538-04A
 - Plans – Proposed 2538-05A
 - Plans – Proposed 2538-06
 - Proposed Site Plan 2538/02 Revision G
 - Ecological Survey/Report Ecology Map
 - Ecological Survey/Report Preliminary Ecological Appraisal
 - Landscaping Plan Hard Landscaping Specification
 - Schedule of Soft Landscaping Specification 2538/SL01 Rev A
 - Environmental Report Enviroscreen Certificate
- 2) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Richard Kilshaw Ecological Services, October 2017).
- 3) Within three months of this decision, a Biodiversity Enhancement Strategy for Protected species including a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details and retained thereafter.
- 4) Within three months of this decision, a lighting design scheme for biodiversity and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be installed in accordance with the approved details and retained thereafter. No other external lighting shall be installed without prior consent from the Local Planning Authority.
- 5) Within three months of this decision, details of bin storage and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The bin storage shall be provided in accordance with the approved details and retained thereafter.
- 6) The visibility splays shall be retained in accordance with Drawing no. 2538-02 Revision G with an X dimension of 2.4 and a Y dimension of y=60m (to the south) y=53m (to the north).

Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within areas of the visibility splays.

- 7) The vehicle manoeuvring and parking areas as shown on Drawing no. 2538/02 Revision G shall be retained and used for no other purpose.
- 8) The vehicular access shall be retained in the form specified and with a width of 4.5m.
- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development. Any trees, hedges or plants (both proposed and existing) which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.