



Appeal Decision

Site visit made on 20 May 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2024

Appeal Ref: APP/W3520/W/23/3325598

Land at Church Road, Stowupland IP14 4BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Porch of A Porch & Sons (Builders) Ltd against the decision of Mid Suffolk District Council.
 - The application reference is DC/22/02091.
 - The development proposed is the erection of 14 dwellings (including 5 affordable homes and 4 self-builds).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mid Suffolk District Council against Mr D Porch of A Porch & Sons (Builders) Ltd. This is the subject of a separate decision.

Preliminary Matters

3. The Babergh and Mid-Suffolk Joint Local Plan (JLP) was adopted by the Council in November 2023. The Council's appeal statement identifies the most important policies of the JLP. Policies in the Core Strategy 2008 are superseded as a result, and I shall make no further reference to them. Accordingly, I shall consider the JLP Policies in my decision. The Council has confirmed the relevant policies in the JLP, and the appellant has had the opportunity to comment on them. I am therefore satisfied that no party has been unfairly prejudiced as a result.
4. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. This does not materially change the planning policy context in respect of the main issues, and I have determined the appeal accordingly. For the avoidance of doubt, I shall refer to section and paragraph numbers in the updated Framework where necessary.

Procedural Matters

5. The application is made in outline with all matters reserved except for access. Matters relating to appearance, landscaping, layout and scale are reserved to be determined at a later stage. An indicative site layout has been submitted. The appellant's documentation confirms that the plan is indicative and for information only. I have determined the appeal on the basis.
6. An amended red line boundary plan has been submitted with the appeal which more accurately plots the access into the appeal site reflecting that which is

currently under construction in the adjacent development and from which the appeal site would be accessed. I am normally required to deal with an appeal on the basis of the same plans that informed the Council's decision. Nonetheless, I have considered whether it would be appropriate to take the amended drawing into account in this case in line with the Wheatcroft principles¹. Although this plan has not been subject to public consultation, the development is not so changed that to consider it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Furthermore, the Council has had the opportunity to comment on it during the course of the appeal and has not done so. I have therefore based my decision on this amended plan.

7. During the appeal a planning obligation by way of Unilateral Undertaking made under section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. This provides a mechanism for the delivery of affordable housing on the appeal site. I shall return to this matter later in the decision.

Main Issues

8. The main issues are:

- Whether the appeal site is a suitable location for the proposed development having regard to local and national policies;
- The effect of the proposed development on the character and appearance of the site and the surrounding area;
- The provision of affordable housing;
- The effect of the development on biodiversity;
- The effect of the development on highway safety; and
- Whether the scheme would prejudice the delivery of mitigation and improvement previously secured by a legal agreement.

Reasons

Locational suitability

9. The appeal site comprises an open field to the rear of a development site southeast of Church Road where residential development is currently under construction.
10. JLP Policy SP03 sets out the Council's approach to the sustainable location of new development. It directs new development to land within settlement boundaries, except where it is in accordance with a made Neighbourhood Plan, or in accordance with one of the policies of the Plan listed in Table 5, or it complies with paragraph 84 of the Framework which refers to the limited circumstances in which isolated dwellings would be considered appropriate. Policies in the JLP and the NP are intended to ensure housing is located in areas which are accessible and sustainable. Moreover, I have not been presented with any compelling evidence why the scheme before me should be treated as an exception to JLP Policy SP03.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

11. A settlement boundary is defined by both the NP in Policy SNP7 and the JLP. Although the development site immediately to the northwest of the appeal site is within the settlement boundary, the appeal site lies beyond the actual or the perceived settlement edge. As a result, the proposed development would be an incursion into the open countryside rather than infill development which the JLP defines as 'the filling of a small undeveloped plot in an otherwise built-up highway frontage'. The presumption in favour of development in the form of residential development in this policy therefore does not apply.
12. NP Policy SNP1 does not place a cap on the quantum of residential development in the village and I accept that Stowupland is a focus for development in the district. However, Policy SNP1 sets out, amongst other things, that the protection of the natural environment and the distinctive village character will be given significant weight in the assessment of proposals for development. Moreover, the location of the appeal site outside one of the 'Green Gaps' identified in the SNP is not reason in itself to allow development.
13. Whilst the proposal would support local services, I have not been made aware that the proposal is essential for their viability. Stowupland is not a smaller settlement which relies on support from development elsewhere. Nor is the proposal located in a smaller settlement which provides support to a settlement elsewhere. Furthermore, the appeal site is not in an isolated location in the countryside. Consequently, I find little support for the proposal from paragraphs 83 and 84 of the Framework.
14. The proposal would therefore represent development in the open countryside for which to be acceptable, one of the exceptions set out in JLP Table 5 would need to apply. I have not been presented with any compelling evidence that that would be the case.
15. Consequently, for the reasons set out above, the location of the development would not be acceptable with reference to the development plan and national planning policy. It would be contrary to NP Policies SNP1 and SNP7 and JLP Policy SP03 which seek to ensure that the housing needs of the district are met whilst recognising the intrinsic character of the countryside.

Character and appearance

16. The appeal site would result in the introduction of built development in the open countryside beyond the line of rear garden boundaries of properties fronting Church Road. Development would be visible from the adjacent public footpath (FP19) which runs along the northeastern boundary of the site. To a lesser extent it would also be visible from Creeping Lane further to the northeast. Views of the village from both these vantage points are of particular importance in protecting its rural setting and maintaining the distinctive local character and qualities of the village of Stowupland and its wider parish. As such these key views are identified in the SNP².
17. In the absence of any substantive evidence to the contrary, the proposal would appear as an incursion into the countryside. The scheme would result in the urbanisation of a parcel of land which would breach the well-defined village boundary. This would be particularly apparent when viewed from FP19.

² Policy SNP8 and Map 9

18. The appeal proposal is made in outline and whilst an indicative layout plan has been submitted, matters of layout, appearance and landscaping are reserved matters for consideration at a later date. They are therefore subject to change. The Council's detailed concerns regarding the layout all relate to matters of detail which would more properly be assessed at the reserved matters stage. However, for the reasons I have set out above, residential development in this location is not acceptable. Nevertheless, I am not persuaded that such matters and detail would avoid the harmful urbanisation and built incursion that I have noted above.
19. In relation to this main issue, I therefore conclude that the proposal would result in harm to the character and appearance of the area. It would be at odds with JLP Policies SP09 and LP15 and SNP Policies SNP8, and SNP14 which collectively seek to ensure that development conserves, enhances and manages the natural and local environment and does not have a significant detrimental impact on the rural setting of the village. There would also be conflict with paragraphs 135 c) and 180 a) of the Framework which requires development to be sympathetic to local character including their landscape setting including those which are valued as an identified quality in the development plan.
20. There would, however, be no conflict with JLP policies LP24, LP27 and LP28 which are concerned with the quality of development, which would be more appropriately considered at a later stage. The absence of conflict at this stage is however, a neutral matter and weighs neither in favour of nor against a proposal of this nature.

Affordable housing

21. JLP Policy SP02 and NP Policy SNP7 require development of more than 10 units to provide 35% of affordable housing which, in this case would equate to 5 units. This is not a disputed matter. The appellant has submitted a section 106 Unilateral Undertaking (S106 UU) to provide the affordable housing requirement.
22. The submitted S106 UU sets out the undertakings by the appellant to provide affordable housing if planning permission was granted for the development. I consider that the measures in the S106 UU are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the NPPF.
23. However, I have some concerns about the document itself, its execution and thus whether the Council could rely on it to secure the contributions. For example, it is not signed by the appellant and there is no accompanying documentation to show that the signatory has the power to sign such a deed on the appellant's behalf. Also, the details of the Land registry title deeds and plans referred to in Schedule 1 are not included.
24. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties. Nonetheless, as it stands, and for the reason given in the previous paragraph, I am not satisfied that the submitted S106 UU would make adequate provision for affordable housing to meet the needs arising from the development in accordance with JLP Policy SP02 and NP Policy SNP7.

25. Whilst the flaws with the s106 UU mean that as presented the proposal would not secure adequate provision for affordable housing, I consider that this matter could have been resolved by a revised S106 UU. I, therefore, acknowledge the significant benefit of the provision of affordable housing in my decision.

Biodiversity

26. The appellant's Preliminary Ecological Appraisal (PEA) identifies that the appeal site is within 250m of ponds which are likely to be habitat for great crested newts and notes that reptiles and amphibians may be present within the grassland margins of the site. The PEA recommends that further survey work is required. Hence a mitigation licence may also be needed in respect of great crested newts, following further surveying.
27. Trees and hedgerows are located on the boundaries of the appeal site which could provide a suitable habitat for protected species including bats and the hedgerows are likely to be classified as priority habitats. A suitably worded condition could be included to ensure that these are protected during the construction phase of the proposed development and remain in perpetuity, where appropriate.
28. However, Circular 06/2005³ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before permission is granted. On that basis, it would be inappropriate to condition the undertaking of further surveys relating to bats or great crested newts. The use of conditions to require mitigation or compensation measures would also be inappropriate in the absence of further surveying because there can be no certainty that such measures would satisfactorily address any harm that might occur to the protected species. Furthermore, Natural England have not indicated that licences would be issued, and there is nothing before me to suggest that the legal tests⁴ for issuing licences would likely be satisfied. Therefore, it has not been demonstrated that the proposal would not cause unacceptable harm to protected species.
29. Additionally, JLP Policy LP16 states that development will only be supported where it delivers a net gain in biodiversity of at least 10 percent. Whilst legal requirements relating to the provision of 10 percent biodiversity net gain do not apply to this proposal as the application was made before 2 April 2024⁵, this does not mean that the policy should be discounted. However, substantive evidence such as calculations of values prior to and post development have not been provided to secure delivery of net gains. Given the lack of certainty, it would not be appropriate to require the provision of biodiversity net gain by condition.
30. Therefore, I conclude that the proposal conflicts with JLP Policies SP09 and LP16 and SNP Policy SNP10 which seek to conserve or enhance the natural environment and is inconsistent with the duty to conserve and enhance

³ ODPM Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System

⁴ Article 16(1)(c) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

⁵ Schedule 7A of the Town and Country Planning Act 1990 and Regulation 3 of The Biodiversity Gain Requirements (Exemptions) Regulations 2024

biodiversity as set out by Section 40 of the Natural Environment and Rural Communities Act 2006.

Highway safety

31. The Council's concerns relating to highway safety are confined to matters relating to the internal road layout within the appeal site. They are therefore subject to change as these matters would more properly be assessed at the reserved matters stage.
32. Although access is a matter for consideration as part of the outline scheme it is clear that access to the site would be via the 'spine road' through the adjacent development site. I have not been made aware of any objection to the use of this access into the site or that it would not be appropriate for the volume of traffic which would be expected from the development proposed. Matters of detail surrounding the layout of junctions and the housing layout would be more appropriately determined at a later stage.
33. Therefore, insofar as the scheme before me is concerned there would be no harm to highway safety and no conflict with JLP Policy LP29 which requires developments to provide safe and suitable access for all would arise. There would also be no conflict with paragraphs 115 and 116 of the Framework in that respect.

Loss of S106 Mitigation

34. Planning permission⁶ for the adjacent site was granted subject to a planning obligation (S106 agreement) to provide affordable housing, open space and car parking on land abutting the appeal site.
35. From what I have seen and read a layout plan accompanying the S106 agreement shows a car park to the front of the site which would provide off-street car parking for a church and primary school opposite, open space in the centre of the site and an extension to a cemetery with associated car parking to the rear of the site. The delivery of the car parking for the church and school and the provision of open space within the centre of the approved scheme would not be prejudiced by the proposal before me.
36. The indicative layout of the proposal before me shows a cemetery expansion area in an approximately the location of that shown in the signed S106. From the information before me, other than a layout plan defined in paragraph 1 of the S106⁷ the exact area of the cemetery extension is not defined within the extant planning obligation for the previous development. Therefore, given that the appeal scheme is in outline with matters of layout, appearance and landscaping reserved for consideration at a later date, I see no reason why the requirements of the S106 as set out above could not have been achieved had I been minded to allow the appeal.
37. Consequently, I conclude that the scheme would not prejudice the delivery of mitigation and improvement previously secured by a legal agreement. There would be no conflict with the SNP or policies within the JLP. Furthermore, I find no conflict with paragraphs 55, 57 or 58 of the Framework.

⁶ LPA reference: 1884/16

⁷ Substituted in a Deed of Variation dated 17 August 2023 to plan reference 4342-03R

Other Matters

38. I acknowledge that the NP was adopted in 2019, is intended to plan for growth over a 20-year period and the three allocated development sites in the plan have already come forward. However, the plan recognises that other forms of development within the defined settlement boundary may be appropriate. I also note that concerns relating to flooding could have been dealt with by way of condition had I allowed the appeal. These matters do not outweigh the harm that I have found on the main issues, nor do they lead me to an alternative conclusion.

Planning Balance and Conclusion

39. The appellant asserts that at the time the Council issued its decision, paragraph 11 of the Framework was engaged. The Council have confirmed that since the adoption of the JLP it can demonstrate a housing land supply of 10.88 years, and the appellant has not disputed this. I am duty bound to determine the appeal in the context of the current development plan, and whilst there is no cap on housing delivery, it should not be at the expense of ensuring all development is appropriate, including its location, and integrating the development suitably into its surrounding environment.

40. The proposal would provide economic benefits during the construction phase and after with future occupants supporting local services and facilities. Nevertheless, any benefits would be relatively limited due to the scale of the proposal. The proposal also includes five affordable homes and four self-build units. However, in the absence of an appropriate mechanism to secure these provisions, particularly the self-build element of the proposal, there would be no restriction preventing the scheme from evolving into a different type of development, such as open market housing. I therefore attribute limited weight in favour of these benefits of the development. Even if it had been possible to secure such a benefit, they would not carry enough weight as material planning considerations to alter or outweigh the harm identified in term of my conclusions on the main issues.

41. Therefore, for the reasons given above, I conclude that the proposed development conflicts with the development plan when read as a whole and having taken all other matters into consideration the appeal should be dismissed.

KL Robbie

INSPECTOR