
Appeal Decision

Site visit made on 28 August 2024

By David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th September 2024

Appeal Ref: APP/X3540/W/24/3343087

**Land to the South of Rosemary Lane, Kelsale Cum Carlton, Saxmundham
Suffolk IP17 2QD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Timothy Helsdon against the decision of East Suffolk Council.
 - The application Ref DC/23/4415/OUT, dated 13 November 2023, was refused by notice dated 28 February 2024.
 - The development proposed is erection of 3Nr. New build dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application sought outline planning permission with all detailed matters reserved for separate, later consideration. As part of the submitted plans, a proposed site plan and a separate plan showing visibility onto Rosemary Lane have been provided. Given layout, access, landscaping and scale would all be reserved matters, I have treated the submitted proposed site plan as an 'indicative' guide as to how the site could be developed.

Main Issues

3. The main issues in this appeal are as follows:
 - (i) whether the proposal would be suitably located having regard to the development plan; and
 - (ii) the effect of the proposal on the character and appearance of the surrounding area.

Reasons

Suitable Location

4. The development plan at the appeal location comprises the Suffolk Coast Local Plan (SCLP) which was adopted in September 2020. The Plan is less than five years old and so there is no legal requirement to review it yet. There is nothing before me that the Local Planning Authority (LPA) cannot demonstrate the required supply of deliverable housing land. Consequently, there is very little before me other than to determine that the SCLP should be regarded as up to date. This is important, because the starting point and primary consideration for determining planning applications is the development plan.

5. The SCLP is a document that will have taken considerable effort to prepare and adopt. It is intended to provide beneficial certainty to the local community, developers and others. It was a development plan adjudged to be consistent with the National Planning Policy Framework (NPPF) including the spatial distribution of housing growth and the policy approach regarding rural housing, the countryside, and the use of settlement boundaries as a policy tool. Whilst there have been various iterations of the NPPF since 2020, the national planning policy approach to rural housing, and for the countryside, has remained generally consistent.
6. The SCLP at Policy SCLP3.3 applies settlement boundaries to define the built-up area of settlements and establish that land outside of these boundaries is to be regarded as countryside. Policy SCLP3.3 states that new residential development will not be permitted in the countryside except where specific policies in the Local Plan indicate otherwise. Accordingly, Policy SCLP3.3 does not impose a blanket ban on new residential development outside of settlement boundaries and says such proposals will be carefully managed in accordance with national planning policy guidance and the strategy for the countryside. This approach is entirely consistent with the need to set a sustainable pattern of housing growth including through a combination of settlement boundaries and housing allocations. Importantly, the SCLP specifically sets a settlement boundary and positively allocates land for housing at Kelsale-cum-Carlton commensurate with its role as a small village in the spatial hierarchy.
7. The appeal site is adjacent to but outside of the settlement boundary for Kelsale-cum-Carlton. In terms of prevailing character, the appeal site and its immediate context is countryside. It is logical that the settlement boundary for Kelsale-cum-Carlton has not included the appeal site as an infill or rounding-off site. Policy SCLP5.3 sets out the development plan policy for housing development in the countryside, clarifying that outside of settlement boundaries, new residential development will be limited to a number of criteria. The appeal proposal would not meet any of the criteria at (a) and (c) to (f) of the policy.
8. Criterion (b) in Policy SCLP5.3 allows for new housing within existing clusters by reference to Policy SCLP5.4. This subsequent policy allows for a limited number of new dwellings within clusters in the countryside. A cluster is defined in the policy as a line or group of existing dwellings adjacent to an existing highway. To assist implementation of Policy SCLP5.4, the LPAs 'Housing in Clusters and Small Scale Residential Development Supplementary Planning Document (SPD) 2022' is an important material consideration.
9. It is evident from reading the SPD that Policy SCLP5.4 applies to small, dispersed communities and clusters of housing outside of defined settlements, locations, which unlike Kelsale-cum-Carlton, do not have a settlement boundary. Locationally, the appeal site is not within the ambit of Policy SCLP5.4. Furthermore, the SPD helps to explain what would comprise a cluster. Whilst there would be a limited relationship to housing development to the south and east of the appeal site, the fundamental issue remains that the appeal site is not a satellite or detached location in the countryside which the cluster policy applies to. Moreover, the proposal would not reflect character and appearance of this part of the village due to its backland position with access from Rosemary Lane, resulting in a poor relationship to the existing

built-up frontage on Carlton Road. The appeal site would not accord with Policy SCLP5.4 and by extension Policy SCLP5.3(b).

10. Policy SCLP5.3 as criterion (g) would allow for other residential development consistent with policy on residential development in the countryside contained in the NPPF. Looking at the other criteria in Policy SCLP5.3, many of which speak to types of rural housing consistent with NPPF at paragraphs 82 to 84, it is a somewhat broad criterion. The appellant submits that the NPPF allows for further housing in rural areas provided it would be sustainably located. The SCLP seeks to secure a sustainable pattern of development in its relevant part of the predominantly rural East Suffolk. NPPF paragraph 83 says housing should be located where it will enhance or maintain the vitality of rural communities, but it goes on to identify that it is the role of planning policies to identify opportunities for villages to grow and thrive.
11. In this context the SCLP recognises that Kelsale-cum-Carlton, as a small village, has some sustainability credentials. Land has been allocated for an appreciable amount of housing in the village and this is being implemented at the Artillery Meadow scheme on the B1121 Main Road. The appellant submits that now this scheme is coming to a conclusion, further windfall housing outside the settlement boundary should now be positively considered. I see no basis for this in either national or local planning policy, given the firm advocacy for a plan-led system. Construction is still ongoing at the Artillery Meadow site, such that further housing delivery can be anticipated in Kelsale-cum-Carlton in 2024/25. It should be a matter for the LPA through a timely review of the SCLP, in consultation with the Parish Council, local communities and developers to determine whether new allocations or settlement boundary amendments would be a sustainable approach for the village going forward, rather than piecemeal intrusions into the countryside. Overall, there is no pressing need to release more land for housing in a small village such as Kelsale-cum-Carlton.
12. Various appeal decisions¹ have been submitted by the appellant where housing has been allowed outside the settlement boundaries in other settlements in Suffolk. I have very limited information about the context of these appeals (in Babergh and Mid Suffolk Districts) and their direct applicability to the current circumstances in East Suffolk. Nor can I be certain that the development plan policies cited in these decisions have not been superseded given their age. As such, I give very little weight to these appeal decisions as material considerations. Whilst I accept the appellant's general point that the NPPF seeks to significantly boost the supply of housing and does not expressly refer to settlement boundaries or to impose limits on new housing in rural villages, it nonetheless remains that the SCLP was relatively recently determined to be consistent with the NPPF. As such these appeal decisions do not lead me to a conclusion in this appeal to reduce the full weight that should be given to the up-to-date development plan strategy and policy framework for Kelsale and the countryside and the substantial harm that would arise from the conflict with relevant policies which are most important for determining this appeal.
13. I therefore conclude that the appeal proposal would not be suitably located for residential development. For the reasons set out above, by virtue of its countryside location, it would be contrary to Policies SCLP3.3 and SCLP5.3 of the SCLP. The proposal would not accord with the provisions of Policy SCLP5.4.

¹ APP/D3505/W/19/3240526 and APP/W3520/W/18/3194926

There is no specific policy in the NPPF that pulls against what Policies SCLP3.3 and SCLP5.3 are seeking to achieve. Nor are these policies rendered out of date due to housing delivery such that NPPF paragraph 11d) would be engaged on this basis.

Character and Appearance

14. The appeal site comprises part of a wider parcel of scrubby, overgrown land to the north and east, which has previously been used for grazing. This area forms a significant verdant pocket which fringes the north-west of Kelsale-cum-Carlton and is integrally part of the wider countryside, which takes on a more arable character beyond and towards the A12. Development is very loosely scattered along Rosemary Lane to the north and north-west of the appeal site, with extensive gaps between properties. There is limited intervisibility at the appeal site to development to the north and to the west on Rosemary Lane due to intervening distances and vegetation. The proposed dwellings would not be experienced as part of an established pattern of housing development on Rosemary Lane, which is generally a quiet back lane, with the prevailing character of a rural byway.
15. The appeal proposal would create a new driveway access from Rosemary Lane to serve the residential development. Whilst utilising what is currently an informal field entrance on a sharp bend, the formalisation and upgrade to create a linear driveway at depth to residential properties would conspicuously introduce an urbanising feature on this very rural part of the lane. It would also enable clear views of the proposed dwellings which would appear within Rosemary Lane as a disconnected projection of housing into the wider verdant pocket described above. Due to the limited visibility of existing housing to the south along Carlton Road and intervening vegetation, the appeal proposal would appear as an oddly isolated enclave of new housing within the rural Rosemary Lane.
16. To the south and west of the appeal are the large rear gardens of properties on Carlton Road and a horse paddock. This provides a notable degree of separation from the houses on Carlton Road and the appeal site. Additionally, existing vegetation would separate the proposed dwellings from the nearest property at No.8 which fronts onto the small green area on Carlton Road. Whilst the appeal proposal would not be generally visible from within Carlton Road, including from within the small village green area, this reinforces the harm that the houses would be poorly related to the existing linear pattern of development along Carlton Road.
17. At present a short footpath connects from Carlton Road to Rosemary Lane at the appeal location. The path passes along the rear gardens of houses on Carlton Road before emerging along the paddock side of the boundary vegetation and then linking into Rosemary Lane. It is not clear from the submitted plans whether this path would be retained on its current alignment, but the appeal statement identifies that the path would be positioned alongside the proposed driveway and would be widened and paved. The appellant refers to this being a benefit to path users. I recognise access, landscaping and layout would remain reserved matters for a future determination but as a matter of principle, residential development on the appeal site would significantly erode the experience of the footpath as a tranquil rural footpath. The sense of directly connecting into the countryside as soon as the path

leaves the corner of the small village green area would be lost and the result would likely be a path with a prevailing suburban character. I give the asserted social benefit of an improved path negligible weight.

18. I accept the appeal location is not a valued landscape. Nor does it contain the particular or special qualities of the host landscape character as set out by the appellant. The appeal proposal would nonetheless result in a loss of verdant countryside which does positively add to the character of the rural edge of this part of Kelsale, in a moderate way, as readily experienced in both Rosemary Lane and the public footpath along the site. The proposed development would be poorly related to the pattern of the existing built-up area and would harmfully appear as a stark protrusion into the countryside.
19. I therefore conclude that the appeal proposal would have a harmful effect on the character and appearance of the surrounding area. The proposal would be contrary to SCLP Policy SCLP10.4 in that the proposal would fail to protect and enhance the visual relationship and environment around the settlement and would not be well integrated into the landscape. It would also be contrary to SCLP Policy SCLP11.1 in that it would poorly respond to local context in that it would not fit in well with the existing neighbourhood layout and it would not complement local character. As a matter of principle, the location of the appeal proposal would not enhance the local environment, including recognising the intrinsic character and beauty of the countryside as per NPPF paragraph 180. Furthermore, the protrusion into the countryside and the suburbanisation of the rural footpath would not be sympathetic to local character or maintain a strong sense of place, at odds with NPPF paragraph 135.

Other Matters

Ecology

20. Both main parties refer that the planning application was accompanied by a Preliminary Ecological Assessment (PEA). I have very little before me to support the appellant's submissions that ecological matters pertaining to the proximity of ponds that could possibly host Great Crested Newts and the potential of the appeal site to host reptiles could be satisfactorily addressed by way of conditions, including additional survey work. SCLP Policy SCLP10.1 states that where there is reason to suspect the presence of protected species applications should be supported by an ecological survey and assessment of appropriate scope to then inform the mitigation hierarchy.
21. I need to take a precautionary approach, given the summarised evidence from the PEA before me indicates a reasonable likelihood of protected species being present. As such, I do not have sufficient evidence before me that would satisfy the requirements of Policy SCLP10.1 to defer survey work after establishing the principle of development to be acceptable. Circular 06/2005 on Biodiversity and Geological Conservation remains extant and advises that ecological survey work should be carried out prior to the grant of planning permission and only left to coverage under planning conditions in exceptional circumstances. I do not consider the appeal proposal to be a candidate for exceptional circumstances, given there is no pressing need to release additional land for housing contrary to the spatial strategy policies.
22. Whilst matters such as layout and landscaping would be reserved for a later determination, such conditions on further survey work and possible mitigation

would need to be demonstrably precise and enforceable. I note the LPA has submitted suggested conditions in this regard, but I do not have sufficient evidence before me to be satisfied that these conditions would meet the necessary tests. From the limited evidence before me, the LPAs ecologist asserts that the evidence in the PEA would give rise to potentially three mitigation options and the correct means of final mitigation remains undetermined. This adds to my concerns about the use of a generically worded condition, as suggested.

23. The LPA identify that the appeal site is within 13 kilometres of Protected Habitats at the Sandlings, the Alde-Ore Estuary and Minsmere - Walberswick. The LPA identify that as part of meeting the requirements of the Habitat Regulations Assessment (HRA) a financial contribution to mitigate the impacts of recreational disturbance would be required. Whilst, I have very few details on what the financial contribution would be or how and where it would be spent, I accept that a negatively worded condition could be imposed requiring a binding mechanism. However, because I am dismissing this appeal for other reasons, there is no need for me to undertake a Habitats Regulations Assessment (including appropriate assessment) as part of this appeal.
24. Ultimately, the uncertainty about potential local ecological harm and the lack of clarity at this outline stage on the extent to which it is required be mitigated adds to my concerns about the appeal proposal. There would be conflict with SCLP Policy SCLP10.1 as set out above. I ascribe this additional environmental harm only limited weight based on the scant evidence before me.

Case Law

25. The appellant has referenced two court judgments as part of their appeal material. A copy of the Court of Appeal in the Maldon District Council case [2019] EWCA Civ 1272 has been submitted which appears to bear no relevance to the case cited in the original planning statement. In any event, there is no dispute that the site is not isolated for the purposes of NPPF paragraph 84. Second, is the High Court in the case of Wood [2014] EWHC 683 is cited in the appellant's appeal statement in support of the proposition that limited infilling is not just restricted to sites that fall within the settlement boundaries identified in Local Plans. There will be specific circumstances behind each case such that I am not entirely clear whether the findings in the Wood case generate a degree of acceptability for infilling outside of settlement boundaries that expressly the supports the appeal proposal. As set out above Policy SCLP5.4 (adopted 6 years after the Wood case) expressly addresses the issue of infilling outside of settlement boundaries in a Suffolk Coastal context. Accordingly, whilst I have had regard to the case law referred to, it has not led me to reach alternative conclusions on the two main issues in this appeal, which reflect the primacy of the up-to-date development plan for decision making.

Balance and Conclusion

26. The appeal proposal would be contrary to the adopted and up-to-date development plan, when taken as a whole. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (As amended) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal proposal would result in substantial harm due to its locational conflict with an up-to-date development

plan and the certainty that this plan is intended to deliver. It would also result in moderate environmental harm to the character and appearance of the surrounding area. I also consider there would be further limited environmental harm arising from the lack of certainty on securing mitigation measures for protected species.

27. On the other hand, the appeal proposal would have limited social and economic benefits arising from the construction of three new dwellings in a moderately sustainable location. I have also acknowledged that paving the footpath would have a very small social benefit in terms of potential enhanced accessibility for all users. However, these are not material considerations sufficient to outweigh the clear and significant conflict with the development plan.
28. I have had regard to all other matters raised, but there is nothing that leads me to conclude other than that the appeal should be dismissed for the reasons given.

David Spencer

Inspector.