



Appeal Decision

Site visit made on 23 September 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2024

Appeal Ref: APP/D3505/W/24/3336897

Land adjacent to Nayland Primary School, Bear Street, Nayland, Colchester CO6 4HY

- 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 the Trustees of the Tendring Hall Estate against the decision of Babergh District Council.
 - The application Ref is DC/22/05339.
 - The development proposed is the erection of a single-storey detached dwelling with carport and garage.
-

Decision

1. The appeal is allowed, and planning permission is granted for the erection of a single-storey detached dwelling with carport and garage at Land adjacent to Nayland Primary School, Bear Street, Nayland, Colchester CO6 4HY in accordance with the terms of the application, Ref DC/22/05339, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since making its decision, the Council has adopted the Babergh and Mid Suffolk Joint Local Plan – Part 1 (JLP1). This has superseded the Mid Suffolk Local Plan 1998, Core Strategy 2008 and Core Strategy Focussed Review 2012. It is incumbent upon me to base my assessment on the most up to date development plan and this is what I have done. The appellant has had the opportunity to comment on this new plan.
3. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
4. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework as published in December 2023, and any reference to paragraph numbers are to this version.

5. The fourth reason for refusal relates to the absence of a completed planning obligation to address potential effects on European designated nature conservation sites. The Council confirm that the appellant has made the required Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy ('RAMS') payment of £121.89¹.
6. The RAMS seeks financial contributions from applicable development schemes towards a package of mitigation measures intended to alleviate recreational pressures on protected sites. Natural England is supportive of this strategy and has been consulted on this proposal. The Council has confirmed that the RAMS contribution is acceptable and has indicated that it no longer objects to this matter. Therefore, I have confined my assessment of this appeal scheme to the remaining reasons for refusal.

Main Issues

7. The main issues are the effect of the proposal on the character and appearance of the area including the setting of non-designated heritage assets (NDHAs) and loss of green open space.

Reasons

Character and appearance

8. The appeal site forms an area of private open space located on the northern side of a publicly accessible drive leading north from Bear Street in Nayland. Whilst located within the settlement of Nayland the surrounding area is relatively open, with fields to the north, a cemetery to the east and school playing fields and an open playground located to the south of the site. However, there are clusters of built development in close proximity providing a village like quality which include Nayland Primary School, Nayland House Care Home and St. James' Vicarage amongst others.
9. The site itself is relatively undeveloped and has an established vegetated boundary limiting views to glimpses only, from the surrounding public vantage points. There is a narrow footpath running alongside the site that leads to a dilapidated Scout Hut adjoining the site to the north. The proposal seeks to provide a 3-bedroom single storey dwellinghouse in a contemporary design with a flat sedum roof and associated garage.
10. The National Planning Practice Guidance (PPG) advises that NDHAs are identified by plan-making bodies via a number of processes, which can include being designated as part of the decision-making process on planning applications or identified on a local list². The PPG highlights that it can be helpful if Local Planning Authorities keep a local list of non-designated heritage assets, incorporating any such assets which are identified by neighbourhood planning bodies. The Council have published the Nayland with Wissington Local List (2004). This identifies three NDHAs within the local vicinity of the appeal site including The Scout Hut, Lych Gate and Cemetery and The Old Vicarage.

¹ Ref: RAM574723406

² Paragraph: 040 Reference ID: 18a-040-20190723

11. Paragraph 209 of the Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining that application. In weighing applications that directly or indirectly affect an NDHA, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage assets. The Framework defines the significance as the value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.
12. From the evidence before me, the Scout Hut was built around 1920 and consists of a mainly timber construction. However, it appears that the use as a Scout Hut has since ceased, and the current building remains vacant. Its significance is derived from its historical interest as a meeting place for the Scouting movement for over 50 years, albeit that the use has now ceased.
13. Furthermore, given its back land location, behind the appeal site and amongst the largely vegetated area, this provides a secluded and somewhat remote setting, which is generally appreciated at close quarters only. Whilst the proposal would be located adjoining the Scout Hut, its relatively low profile, given its single storey nature and flat sedum roof, would have negligible impacts on the setting and the significance of this NDHA.
14. The cemetery itself is relatively open with various gravestones and monuments one might expect within this setting. The boundary treatment consists of walls with distinct flint panels which provide a strong visual presence as one approaches the site from the publicly accessible driveway. Lych Gate provides access to the cemetery, and consists of red brick walls and flint infill, with stone cappings to piers, and has the inscription "*I am the Resurrection and the Life*".
15. Again, its significance is derived from historical interest. The decorative walls provide a strong sense of enclosure, emphasising the tranquil, quiet and contemplative nature of its function and thus providing a dignified and secluded setting. Given the local topography the cemetery would be located in a higher position than that of the appeal site. The elevated position of the NDHA, the existing vegetation, and the single storey nature of the proposal, would provide a suitable and respectful relationship between these structures, such that there would be a negligible effect on the setting and significance of the NDHA.
16. The Old Vicarage was built around 1887 in a late Victorian style with red brick and timber sash windows. There are also more recent additions to the property which is now used as a care home for the elderly. Given the position of this property, at the end of the publicly accessible drive, it is located sufficiently far from the appeal site, such that neither its significance nor setting are likely to be affected by the proposal.
17. Overall, the appeal site provides an area of undeveloped land, which whilst verdant and open, does not contribute to the significance of any of these NDHAs. Therefore, the additional impact of the appeal proposal would not lead to any material loss of significance to these NDHAs.

18. Paragraph 135 c) of the Framework indicates that new development should be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
19. It is acknowledged that the contemporary design would provide a notable alteration in terms of the more traditional village feel, to the surrounding vernacular. However, I see no reason why the proposed design approach would be inappropriate in this location, particularly given its use of high quality materials, which could be secured by condition, discreet location and positioning within the site. Given the mixture of designs and materials in the locality it would provide further visual interest within the existing traditional built forms.
20. The scale and mass of the proposed development would not appear visually intrusive or overly prominent within its context. The scheme provides a well-considered design response to the site, albeit with alternative fenestration features, flat roof and material treatments. Furthermore, just because a design is different from the prevailing character, does not necessarily make it harmful. In my view, the resulting development would take advantage of the constraints of the site and would provide a development which is respectful to its surrounds whilst also providing interest in the vicinity. The overall design and resulting form of the dwelling, would not appear out of keeping within the wider area, and would merely serve to add an additional element of variety to it.
21. As stated, the appeal site is currently an undeveloped area of open land. From the evidence before me, the appeal site whilst verdant and open does not form a designated public open space. However, the Council considers the open nature of the site as contributing positively to the surrounding area. I acknowledge that the appeal site is a green and pleasant undeveloped space. It contains grass and well-established bushes, shrubs and trees along the boundaries, with the branches of mature trees stretching over its edges.
22. Be that as it may, the degree of separation between the appeal site and the surrounding area provides a disconnected appearance. Its contribution to the immediate area is principally that it is part of an undeveloped space within the vicinity of the cemetery, school fields and open playground. Its limited size, its enclosure, and surrounding development have diminished its spatial contribution to little more than a passing, or neutral value, and principally because it remains undeveloped.
23. The proposal has been positioned centrally with a relatively modest footprint in order to retain amenity space for future occupiers. Furthermore, the central position of the proposal would enable a significant degree of the existing boundary vegetation to be retained which assists in softening views of the scheme, alongside the provision of the sedum roof. Given the extent of verdant area to be provided and retained, the loss in visual quality of this open space would be minimal.
24. I therefore conclude that, the proposal would not be out of keeping with the character and appearance of the landscape or the surrounding area and would not cause harm to the significance of the NDHAs. There is therefore no conflict with the relevant policies of the JLP1 which collectively seek good

design, which conserves or enhances landscape character, integrates positively with the character of the area and reinforces local distinctiveness and responds to the wider townscape/landscapes and safeguarding the historic assets. The proposal would also be consistent with the Framework which seeks high standards of design that would conserve and enhance the historic environment, amongst other things.

Other Matters

25. I have taken into account all of the other matters and concerns raised in the submissions by interested parties including the Nayland with Wissington Parish Council. These matters include but are not limited to, access, parking and pedestrian safety, noise and light pollution, impact on ecology, the living conditions of neighbours, waste management, impact on Area of Outstanding Natural Beauty (AONB), impact on the neighbouring conservation area, and the potential impact on services and facilities.
26. In regard to access/parking and pedestrian safety the scheme provides a suitable level of off-street parking. The proposal has been assessed by the Suffolk County Council as the Local Highway Authority, and no objection has been raised subject to the provision of suitable conditions. I appreciate that the access is tight and narrow and accessed by multiple users. However, there is little substantive evidence to suggest that the effects of the development would make the existing access or parking levels materially worse or that the development would have a materially harmful effect on traffic or highway safety to warrant withholding permission.
27. Furthermore, planning conditions would be able to ensure that the formation of the access, visibility splays and car parking manoeuvres from the appeal site does not prejudice the safety of those using the foot path or the existing access. Similarly, a condition requiring a Construction Management Statement including details of servicing and delivery arrangements would be prudent.
28. The Council has concluded that the proposal would not harm the landscape and scenic beauty of the Dedham Vale AONB. Given the size of the proposal, the extent of its ground, and its position within the village, I have no reason to disagree. Also, I have no reason to disagree that the Nayland conservation area and listed buildings in the village would not be affected by the proposal, given the distance and screening, which would preserve their setting and significance.
29. The appeal site is within a village settlement and in the vicinity of other residential properties where noise and light are commonplace, and the proposal would result in a small net increase of a single dwelling. Accordingly, I do not find that the proposal would result in an unacceptable increase in noise or light pollution to the surrounding area.
30. In respect to issues raised on the living conditions of surrounding properties, again I have no reason to disagree with the Council, that the proposal would not cause harm to the living conditions of existing residents in respect of matters such as outlook, privacy, noise and light.

31. The Council consider the concerns relating to waste management, ecology matters, construction disruption and impact on greenery can be mitigated through the use of conditions. I agree and have therefore included appropriate conditions. Consequently, these other matters do not lead me to a different overall conclusion that the appeal should be allowed.

Conditions

32. The Council has provided a list of conditions that it suggests should be applied in the eventuality that the appeal is allowed. I have assessed those with reference to the advice in the Framework and PPG and have amended the wording of some without altering their fundamental aims.
33. I have imposed the standard time condition and a condition to ensure the development is in accordance with the approved plans in the interests of certainty.
34. In the interests of highway safety and neighbouring amenity given the narrow nature of the access to the site, I have imposed a requirement for a Construction Management Statement. I have also imposed a condition relating to contaminated land which is necessary to mitigate the risks of contamination to construction workers, future users of the land, and offsite receptors including neighbouring occupiers and water and ecological systems. These are necessary to submit prior to the approved development commencing.
35. As there could be features of archaeological interest on the site, it is necessary to secure the submission and implementation of a watching brief for archaeological work. Which again are necessary to submit prior to the approved development commencing.
36. I have also imposed conditions in respect to the material specifications and finished floor levels in order to ensure an acceptable visual effect and in the interests of preserving the NDHAs. A condition regarding hard and soft landscaping is also necessary to secure the satisfactory appearance of the development in the interests of the surrounding character.
37. I have imposed conditions to ensure that there are suitable visibility splays, access routes, access gradients, appropriate vehicle, bicycle parking and bin storage provision, and a suitable car parking layout is maintained in the interests of highway and pedestrian safety and the living conditions of future residents. I have also added that electric charging points are delivered to enable the use of electric vehicles to achieve sustainability objectives.
38. Conditions relating to ecology, biodiversity and external lighting are necessary under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species). The external lighting condition is also necessary to conserve dark skies in the Dedham Vale AONB.
39. Finally, I have attached a condition restricting permitted development rights to ensure an acceptable visual effect and in the interests of preserving the NDHAs.

Conclusion

40. For the reasons given above, having regard to the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: PW1078_PL01 Rev.D; PW1078 PL02 and PW1078-PL03
- 3) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii) delivery, demolition and construction working hours
 - viii) no burning of demolition or construction waste and materials

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, no development shall take place until:
 - i) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority;
 - ii) the site has been remediated in accordance with the approved measures and timescale; and

- iii) a verification report has been submitted to and approved in writing by the Local Planning Authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- iv) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority; and
 - v) a verification report for all the remediation works has been submitted to and approved in writing by the Local Planning Authority.
- 5) No development shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.
- The scheme of investigation shall include an assessment of significance and research questions; and:
- i) The programme and methodology of site investigation and recording
 - ii) The programme for post investigation assessment
 - iii) Provision to be made for analysis of the site investigation and recording
 - iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - v) Provision to be made for archive deposition of the analysis and records of the site investigation
 - vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
 - vii) The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.
- 6) The dwelling hereby approved shall not be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under condition 5 above and the provision made for analysis, publication and dissemination of results and archive deposition.
- 7) No development shall take place until details and samples of all external facing materials including the sedum roof have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved sample details.
- 8) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved

in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.

- 9) No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of all existing trees and hedges on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 10) No development shall take place until a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Strategy shall include the following:
 - i) Purpose and conservation objectives for the proposed enhancement measures;
 - ii) detailed designs to achieve stated objectives;
 - iii) locations, orientations and heights of proposed enhancement measures by appropriate maps and plans (where relevant);
 - iv) persons responsible for implementing the enhancement measures;
 - v) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

- 11) No development shall take place until an invasive non-native species protocol shall be submitted to and approved by the Local Planning Authority. This shall include details of the containment, control and removal of the Variegated Yellow Archangel present on site. The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter for the lifespan of the development.
- 12) All mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Liz Lord Ecology Ltd, May 2022) as submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination.
- 13) The dwelling hereby approved shall not be occupied until visibility splays shown on plan no. PW1078-PL03 shall be free of any obstruction exceeding 0.6m in height and shall be retained as such thereafter for the lifespan of the development.
- 14) The dwelling hereby approved shall not be occupied until the new vehicular access has been laid out and completed in all respects in accordance with drawing PW1078_PL01 Rev.D; with an entrance width of 2 metres. Thereafter, it shall be retained in its approved form for the lifespan of the development.
- 15) The dwelling hereby approved shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing no PW1078_PL01 Rev.D. Thereafter those spaces shall be retained for the parking of vehicles only.

- 16) The dwelling hereby approved shall not be occupied until details of electric vehicle charging infrastructure has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for the lifespan of the development.
- 17) The dwelling hereby approved shall not be occupied until details of the areas to be provided for the secure, covered and lit cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for the lifespan of the development.
- 18) The dwelling hereby approved shall not be occupied until details of the areas to be provided for the storage and presentation of refuse and recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for the lifespan of the development.
- 19) The gradient of the access driveway shall not be steeper than 1 in 12 measured from the nearside of the edge of the highway.
- 20) No external lighting shall be installed in connection with the development hereby permitted until such details have been submitted to and approved in writing by the Local Planning Authority. The details should demonstrate that the scheme will not disturb bat activity. All external lighting shall be installed in strict accordance with the approved details and maintained and retained thereafter. No further external lighting shall be installed.
- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, AA, B and E of Part 1 of Schedule 2 to the Order shall be undertaken.

END OF SCHEDULE