



Appeal Decision

Site visit made on 15 October 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2024

Appeal Ref: APP/D3505/W/24/3338589

Cherry Orchard Farm, Stoke Road, Layham, Suffolk IP7 5RB

- 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 Mr D Emmett against the decision of Babergh District Council.
 - The application Ref is DC/23/04971.
 - The development proposed is enlargement of approved dwelling, ground floor rear infill extension and front gable. Proposed application to be read in conjunction with approved Class Q application (Ref: DC/21/06064).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the above banner heading is taken from the planning application form. However, the decision notice and appeal form both describe the development as '*Erection of 1No detached dwelling including double garage (following demolition of agricultural building with residential approval under application Class Q DC/21/06064 (amended scheme to that approved under DC/22/06374)*'. I consider this to be a more accurate description of the appeal proposal and have therefore determined the appeal on the basis of this description.
3. On 30 July 2024 the Government published a consultation on proposed reforms to 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 of very significant weight, the weight I give to the changes in the draft Framework is limited given that no final document has been published and it is subject to potential change in the future.
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 published in December 2023.

Main Issues

5. The main issues are:
 - whether the appeal site would be a suitable location for the proposed development, having regard to local policy;
 - the effect of the proposed development on the character and appearance of the surrounding area; and

- the effect of the proposed development on the living conditions of the occupiers of Bridge Barn with regard to privacy and outlook.

Reasons

Location

6. The appeal relates to a parcel of land situated on the western side of Stoke Road and directly to the south of a cluster of three residential dwellings. From the submitted evidence it is clear that a barrel roof brick barn previously existing on the appeal site. However, at the time of my site visit this barn had been demolished.
7. The proposal seeks permission to erect a dwelling on the site of the former barn building. Policy SP03 of the Babergh and Mid Suffolk Joint Local Plan – Part 1 (2023) (JLP) sets out how growth within the district is expected to come forward and confirms that the existing settlement boundaries are carried forward without change at the present time. The subtext to this policy explains that whilst the settlement boundaries will be reviewed as part of the Part 2 Plan, for the short-medium term the existing settlement boundaries will likely enable the district's development needs to be met.
8. Whilst I have not been provided with the settlement boundary maps, the Council state that the site is located outside, and a significant distance from, the settlement boundary for Layham village. This matter has not been contested by the appellant and thus I have considered this appeal on the basis that the appeal site is outside of any settlement boundary.
9. Policy SP03 of the JLP states that outside the settlement boundaries, development will normally only be permitted where; a) the site is allocated for development; or b) it is in accordance with a made Neighbourhood Plan; or c) it is in accordance with one of the policies listed in Table 5; or d) it complies with paragraph 80 (now paragraph 84) of the Framework.
10. No evidence has been provided that the appeal site is allocated for development as required by criterion (a) and I have not been made aware of any relevant Neighbourhood Plan which covers the appeal site (b).
11. Criterion (c) of Policy SP03 refers to a list of policies that if one or more are complied with, development outside the settlement boundary can be permitted, provided the development accords with other relevant policies of the Plan. Of these listed policies the Council has drawn my attention to JLP Policies LP01 and LP04 which respectively relate to infill housing development; and replacement dwellings and conversions.
12. The appellant has not put a case forward that the appeal scheme would comply with either Policy LP01 or LP04, or any of the other policies listed within criterion (c). Nevertheless, in relation to the policies referenced by the Council, I find that the appeal proposal would not meet the definition of infill development as outlined in Policy LP01, as the appeal site does not relate to a small plot, and given that the only neighbouring properties on this side of the highway are to the north, the appeal site is not in an otherwise built-up highway frontage. With regard to Policy LP04, the appeal proposal does not represent a replacement dwelling or a conversion scheme.

13. As such, I have no evidence before me that the appeal scheme would comply with any of the policies listed within criterion (c) of Policy SP03.
14. In respect of criterion (d), the appellant has not put forward a case that the proposed development would comply with paragraph 84 of the Framework and on the evidence before me I find that the proposal would not meet any of the circumstances listed for permitting isolated homes in the countryside within paragraph 84.
15. I therefore find that the appeal proposal would not meet any of the requirements of criteria (a) – (d) within JLP Policy SP03.
16. In addition, Policy SP03 of the JLP also sets out the overarching approach to the location of new development across the district. The supporting text to this policy identifies that development needs to be accommodated in settlements where the need to travel can be reduced, through good access to facilities and services.
17. The appeal site is located within a rural location and I have been provided with limited information in respect of the nearest services and facilities, such as shops, schools, health facilities, public transport links, employment opportunities etc... I observed on site that there appeared to be no such facilities within the immediate vicinity of the appeal site, and the highway of Stoke Road, adjacent to the site, does not include footways or street lighting, making both walking and cycling unlikely options to access any such services and facilities.
18. As such, and on the information before me, I find that future residents of the appeal site would be reliant upon the use of a private car to access services and facilities, and the appeal site does not therefore represent a sustainable location for the proposed development.
19. Both parties have however drawn my attention to a prior approval¹ that was granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for change of use of a building on the appeal site to a residential dwelling. The appellant contends that this Class Q prior approval represents a fallback position and is therefore a material consideration.
20. I acknowledge that case law² establishes that "*In principle ... any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration ... is material in any given case will depend on the circumstances*". Furthermore, case law³ also establishes that the weight, if any, which should be given to a particular consideration is a matter for the decision maker's discretion.
21. The appellant has made reference to the Mansell case⁴ where at paragraph 27 of that judgment the Court of Appeal confirms that there should be a "real prospect" of a fallback development being implemented and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances.
22. In this particular case however, as per the submissions of the Council, as well as my own observations on site, the building that was subject of the prior approval

¹ Council Ref: DC/21/06064

² Stringer v Minister of Housing and Local Government [1970]1 W.L.R. 1281

³ Tesco Stores Ltd v Secretary of State for the Environment & Ors [1995] UKHL 22 (11 May 1995)

⁴ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

under Class Q has been demolished. Consequently, I find that there is no viable prospect of the prior approval under Class Q for the change of use of this demolished building to a residential dwelling now being implemented, and therefore this fallback position does not exist.

23. The appellant has not provided any response to the written submissions of the Council in respect of this building being demolished, its implications for their case as submitted, or the appeal in general.
24. In view of the fact that the building has been demolished, I therefore afford no weight to the purported fallback position of the prior approval for change of use to a residential dwelling under Class Q of the GPDO.
25. A somewhat fleeting reference has also been made to an approval for full planning permission⁵ for the "*Erection of 1No detached dwelling including double garage (following demolition of agricultural building with residential approval under application (Class Q) DC/21/06064*" at the appeal site. However, very limited information and evidence has been submitted in respect of this permission by way of plans, or details of how it compares to the appeal scheme before me.
26. Furthermore, the Council's case questions the lawful status of this permission as an alternative fallback scheme. The Council state that it has no record of the discharge of the details relating to a pre-commencement condition for the submission of a Demolition and Construction Management Strategy prior to work commencing on site. Again, the appellant has not provided any response to the written submissions of the Council in respect of this matter and its implications for their case and the appeal in general.
27. As such, and without any evidence or submissions from the appellant to the contrary, there is a significant level of ambiguity in respect of this planning approval and its legitimacy as a viable fallback position in relation to the appeal scheme. Accordingly, and on the information before me, I attribute very limited weight to this planning permission as a fallback position.
28. Consequently, I give very limited weight to these fallback positions as material considerations which weigh in favour of the appeal scheme.
29. In view of all the above, I conclude that the appeal site would not be a suitable location for the proposed development and the proposal would therefore fail to accord with Policy SP03 of the JLP, where it seeks to control development within the district by, identifying sustainable locations for new development.
30. I note the Council's reason for refusal also refers to JLP Policies LP01 and LP04, however for the reasons given earlier the appeal proposal does not represent infill development, nor a replacement dwelling or a conversion scheme, and therefore Policies LP01 and LP04 have less relevance in respect of this appeal.

Character and appearance

31. The appeal site is green and rural in nature, located directly to the south of a small cluster of residential dwellings and buildings of which a number likely formed part of a farm complex. On the opposite side of Stoke Road is a short, yet interspersed, row of residential properties, predominantly built close to the highway. Collectively this small group of dwellings and buildings on both sides of

⁵ Council Ref: DC/22/06374

Stoke Road, close to its junction with Rands Road, creates a very small hamlet consisting of properties of varying age, style and character.

32. The appeal site is however located on the edge of this group of buildings and to the south and west it is adjoined by green fields, and an orchard. Consequently, the appeal site relates closely to the open countryside and currently contributes to the verdant, rural character of the area and wider landscape.
33. The proposed dwelling has been designed to represent the appearance of a traditional Suffolk black weatherboarded barn. However, as a result of its significant footprint and scale the proposed dwelling would appear as a dominant feature on the landscape, particularly in comparison to the barn building that previously existed on this site. In coming to this view, I acknowledge the existing black weatherboarded building on the adjacent site to the north, however this existing neighbouring building is considerably smaller, and more traditional in design, appearance and shape, than the proposed dwelling would be.
34. Furthermore, the substantial levels of glazing that would be installed within the proposed building would result in a modern appearance and such extensive levels of glazing would not commonly be observed within a traditional barn conversion, which this scheme appears to be seeking to reflect in respect of its design and appearance. Moreover, the almost fully glazed projecting gable feature in the front elevation facing towards Stoke Road, which seeks to reflect a traditional midstrey feature, along with the dormers, the single storey element to the rear and projecting attached double garage to the side, all have the appearance of modern features that would again not be commonly found on a traditional barn conversion.
35. Overall, I find that the design and appearance of the proposed dwelling would not successfully represent the traditional appearance of a converted Suffolk black weatherboarded barn with a midstrey. Instead, the scale, size, design and appearance of the proposed dwelling would represent an incongruous building that would visually and spatially dominate, and be out of keeping with, its immediate surroundings, including the neighbouring farmhouse to the north which this site, and the previous barn prior to its demolition, would have likely once served.
36. Although I acknowledge the proposed dwelling would be seen in the context of the adjacent existing cluster of buildings to the north, this in itself would not sufficiently mitigate the visual harm I have identified arising from the proposed dwelling's size, scale and overall appearance.
37. The existing vegetation situated on the site frontage with Stoke Road would provide some screening, however the proposed dwelling, even with its set back within the site, would still be discernible and dominant when viewed from this highway.
38. Additionally, the extensive levels of glazing within the proposed dwelling would likely give rise to excessive levels of light spillage at night, and this would harmfully impact upon the rural quality of the area where light pollution is likely to be low given the small number of properties within the vicinity and the lack of any lighting on the public highway.
39. I note that the submission includes an image of a single elevation within the previously approved barn conversion under Class Q, which included a two-storey glazed element. However, this is one elevation and I have not been provided with

the other elevations of that prior approval scheme to draw any direct comparisons in respect of the overall levels of glazing. Moreover, and as detailed earlier, the barn that was to be converted has been demolished and therefore the prior approval consent can no longer be implemented.

40. I have also not been provided with any plans, details or images of the dwelling consented under Council Ref: DC/22/06374 to draw any comparisons with the scheme before me in respect of footprint, scale, height, design, appearance and levels of glazing.
41. In view of the above, I conclude that the appeal proposal would cause significant harm to the character and appearance of the surrounding area and wider landscape. The proposal is therefore contrary to JLP Policies LP17 and LP24 where these policies together seek to ensure, among other things, that in order to conserve and enhance landscape character development must integrate with the existing landscape character, reinforce local distinctiveness and be sensitive to landscape and visual amenity impacts, including its impact on dark skies; and that development must be of high-quality design which responds to and safeguards the existing character and landscape by being compatible with its location and appropriate in terms of scale, mass, form, siting and design in relation to the surrounding area.
42. The proposal is also contrary to paragraphs 135 and 139 of the Framework where they seek to ensure that developments add to the overall quality of the area; are sympathetic to local character, including landscape setting; and that development which is not well designed should be refused.

Living conditions

43. The Council raise concerns that the proposed dwelling, specifically the first-floor bedroom window in the north facing side elevation, would impact upon the privacy of the occupants of the neighbouring dwelling at Bridge Barn, through overlooking and overbearing impact.
44. The proposed two-storey side elevation containing this first-floor window would be sited a reasonable distance from the boundary shared with the cluster of properties directly to the north. Furthermore, I observed on site that the outdoor areas of the properties to the north that are closest to this shared boundary, and the proposed dwelling, are used for vehicular access and the parking of vehicles. As such, I do not find that proposal would result in an unacceptable level of overlooking towards, or have an overbearing impact upon, the outdoor amenity areas of the properties to the north, including Bridge Barn.
45. In respect of overbearing impact upon, and overlooking towards, the neighbouring dwellinghouses, the properties to the north do have windows facing south towards the appeal site. Again however, I observed that these windows are set a significant distance from the shared boundary and thus an acceptable separation distance would be provided between these windows and the first-floor bedroom window in the north facing side elevation of the proposed dwelling.
46. I therefore conclude that the proposed development would not have a harmful affect upon the living conditions of the occupiers of the properties to the north, including Bridge Barn, by way of overbearing impact, overlooking and loss of

privacy. The proposal therefore complies with JLP Policy LP24 where it seeks to ensure that development proposals protect the amenity of occupiers of surrounding uses from overlooking and overbearing impact.

Other Matters

47. The proposed development is identified within the appeal documentation as being located within the Zone of Influence of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar, which is covered by the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS).
48. Had I been minded to allow the appeal I would have carried out an appropriate assessment (AA) of the effect of the proposal on the integrity of the SPA and Ramsar. However, as the proposed development is unacceptable for other reasons, an AA is unnecessary as undertaking one would not change the outcome of the appeal.
49. I note the Council's reason for refusal includes JLP Policy LP23, which relates to Sustainable Construction and Design. The Council's submissions do not draw my attention to any specific section of Policy LP23 to which the appeal proposal would conflict. However, I note the Officer Report makes reference to paragraph 157 of the Framework encouraging the re-use of existing resources, including the conversion of existing buildings.
50. Nevertheless, I have very limited evidence before me in respect of the sustainability of the construction approach for either the previous conversion scheme permitted under Class Q, or the proposed new build development. As such, I am unable to make any comparisons between the two, or come to any definitive conclusions as to whether the previously approved conversion scheme represented a more sustainable construction and design when compared to the appeal scheme before me.
51. As mentioned, the Council's submissions do not draw my attention to any specific part of Policy LP23 to which the proposed new-build dwelling would conflict with in respect of its construction and design, and consequently I find no conflict with JLP Policy LP23, which seeks to ensure all new development is of a sustainable construction and design.

Planning Balance

52. The proposal would bring about benefits by supporting the Government's objective of significantly boosting the supply of housing and positively contribute towards the vitality of the rural community. There would also be economic benefits arising from the construction of the development and ongoing economic benefits from future occupiers spend in the area. However, the extent of these above benefits would be limited by the scale of the development for 1no. dwelling.
53. I note that the appeal scheme would allow for an energy efficient dwelling to be provided. However, no energy statement has been provided to demonstrate the energy efficiency level that the proposed dwelling would achieve and this therefore limits the weight I can attribute to this matter in favour of the appeal proposal at this stage.
54. The proposal would provide an opportunity to increase the overall biodiversity of the site, through the introduction of ecological enhancements and new landscape

planting. Whilst these features would be beneficial additions to the appeal site, I have limited evidence before me in respect of the overall level of biodiversity enhancement that would arise from the appeal proposal in comparison to the existing site. I therefore attribute this matter limited weight in favour of the appeal scheme.

55. The appellant has stated that there is an absence of any recognisable detriment to matters such as heritage assets, land contamination, biodiversity, highway safety, residential amenity or flood risk. However, the absence of harm in relation to these issues is a neutral matter that neither weighs for or against the proposed development.
56. In view of the above, whilst I have found that there would be benefits arising from the appeal scheme, these benefits do not outweigh the clear conflict with the development plan in terms of its policy relating to the appropriate location of housing development within the district, and the harm to the character and appearance of the area.

Conclusion

57. I have found that the proposed development would not result in a harmful impact upon the living conditions of neighbouring occupiers. However, for the reasons given earlier, I have concluded that the appeal site does not represent a sustainable location for residential development and the proposal would cause significant harm to the character and appearance of the surrounding area and wider landscape.
58. The proposed development would therefore conflict with the development plan as a whole and the material considerations, including the alleged fallback and the provisions of the Framework, do not indicate that the appeal should be decided other than in accordance with the development plan. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

R Major

INSPECTOR