



Appeal Decision

Site visit made on 30 October 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/D3505/W/24/3341172

Woodside, Barracks Road, Assington, Suffolk CO10 5LP

- 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 Adrian Gasser against the decision of Babergh District Council.
- The application Ref is DC/23/05625.
- The development proposed is 2 No. bungalows offering garage parking, additional parking and gardens to a plot of undeveloped land.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered from that on the planning application form. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the description given on the original application.
3. The appellant's submissions include some revised plans which were not before the Council when it made its decision¹. These plans show amended visibility splays proposed to serve the site access which have been informed by a speed survey. The Council has reviewed the submitted plans and has provided its comments upon them. With the amendments modifying the proposed visibility splays only, the development proposal itself has not altered as a result of the revised plans. Overall, I am satisfied that the changes to the plans do not fundamentally alter the proposed development. Given this, and that the Council has commented upon the submissions, I am satisfied that it is procedurally fair to accept the amended plans as part of the appeal process. Therefore, in my decision, I have had regard to the amended plans.
4. Furthermore, in the light of the revised plans, the Council has confirmed that its objection on the grounds of the access being served by inadequate visibility splays, as articulated in the third reason for refusal, falls away. Given the circumstances which have arisen since the Council made its decision, I no longer need to consider in detail the third reason for refusal.

Main Issues

5. The main issues are:

¹ Proposed Garage Plan P005 B and Proposed Site Access Visibility Assessment 2417/01 Rev A

- Whether the site provides a suitable location for the proposed development having particular regard to the development plan's spatial strategy;
- The effects of the proposed development upon the character and appearance of the area;
- The effects of the proposed development upon great crested newts and whether the submitted Preliminary Ecological Assessment is sufficiently reliable; and
- Whether adequate biodiversity gains would be achieved.

Reasons

Location

6. The appeal site is a parcel of land which is mainly covered by grass and other low-level plantings. Particularly to its edges, there are also trees and hedges and means of enclosure. The site is wide, and it lies adjacent to Barracks Road. On the opposite side of the road there is a wooded embankment. Beyond the site's boundary to the west there is another parcel of grassland beside which is a bungalow known as Cotton Wood and a breaker's yard business. On the opposite eastern side, the site borders the garden of a property known as Woodside. The appeal site is located quite close to the main built-up parts of the village of Assington but, nevertheless, it is well beyond its settlement boundary.
7. Policy SP03 of the Babergh and Mid Suffolk Joint Local Plan Part 1 (JLP) sets out the approach towards the location of new development in the district. The policy directs that most development should be located within settlements, and it places restrictions on development outside their boundaries.
8. Outside the settlement boundaries, Policy SP03 outlines that development will normally only be permitted where it would meet at least 1 of 4 criteria. The use of the word "normally" does mean that there may be occasions whereby development not meeting any of the criteria could still comply with the policy, but these will only be in exceptional circumstances.
9. In essence, the aforementioned criteria allows for allocated site development and developments which accord with a made neighbourhood plan. Development which accords with one of a prescribed list of other policies within the JLP, or development constituting an isolated home in accordance with the National Planning Policy Framework (the Framework), make up the remaining criteria.
10. The site is not allocated for development. Consequently, the proposal does not comply with that particular criterion. One of the prescribed policies is LP01 of the JLP which allows for infill housing outside settlement boundaries in certain circumstances. Due to the appeal site being wide and, given on both sides of it, there are the aforementioned areas of grassland and garden beside Cotton Wood and Woodside, the site does not comprise of a small undeveloped plot in an otherwise built-up highway frontage. Instead, I find that the appeal site forms a large stretch of undeveloped land and, furthermore, there are some further gaps between it and the buildings to the east and west. Therefore, it does not meet the definition of "infill" provided within the JLP and so the

proposal does not comply with JLP Policy LP01. The proposal would not constitute any of the other forms of development the other prescribed policies relate to. There are too many buildings within the appeal site's surroundings for the proposal to constitute isolated housing in the countryside.

11. The one remaining criterion referenced above links to neighbourhood plan policy. Policy ASSN1 of the Assington Neighbourhood Plan (NP) sets out a spatial strategy for the Assington area. Again, it sets out that the focus of development will be within the village's settlement boundary and that development outside of this must accord with relevant district level policies. Given the proposal does not comply with any of SP03's prescribed policies, which govern various housing types on land outside of settlement boundaries, it follows that the proposal does not constitute a housing development compliant with NP Policy ASSN1.
12. Policy ASSN2 of the NP specifically relates to housing development. It states that, outside the settlement boundary, new permanent dwellings must be for essential rural workers. The bungalows are not proposed for such purposes.
13. Consequently, none of the 4 criteria within Policy SP03, which outline when development outside settlement boundaries will normally be permitted, are therefore met, and the proposal conflicts with this policy. For the reasons given, I have also identified that the proposal conflicts with JLP Policy LP01 and policies ASSN1 and ASSN2 of the NP. Harm arises from the proposed development being at odds with the development plan's spatial strategy and, consequently, I find the site to be an unsuitable location for the proposed development.

Character and appearance

14. A mix of residential properties and commercial premises are located on both sides of Barracks Road to the east of Assington village. As a result, this part of Barracks Road does have a quite mixed character. However, these properties and premises are mostly to the appeal site's west. In combination, the appeal site's openness, the trees to its edges and the wooded embankment opposite, means that there is a verdant character to the site and the land on the opposite side of Barracks Road. Therefore, I find that the appeal site is located at a point along Barracks Road where the character transitions to one which is less developed and more rural. The leafiness of the particular part of Barracks Road the appeal site forms a part of contributes positively to the character and appearance of the area.
15. Upon completion of the proposed development much of the site would become built-upon. Together, the 2 bungalows and the garage and storage block proposed between them would form a considerable stretch of built development beside this part of Barracks Road. Furthermore, there are mature trees to both sides of the proposed access which are positioned close to the carriageway. It is very likely that some of these would require removal in order to provide the access visibility splays necessary in the interests of highway safety. Therefore, the proposal would result in the appeal site becoming markedly more built-up and, very likely, mature trees would be lost. This combination of effects would harmfully erode the verdant and rural character exhibited by this particular part of Barracks Road. Due to the topography of the area, and the screening afforded by the trees, these effects would be localised but they would, nevertheless, be harmful.

16. For the above reasons, the proposed development would result in unacceptably harmful effects upon the character and appearance of the area. Therefore, the proposal conflicts with policies LP17 and LP24 of the JLP and Policy ASSN7 of the NP. In summary, and amongst other matters, these policies require development to respond and safeguard the existing character of the area, reinforce the local distinctiveness and identity of individual settlements, be harmonious with the landscape setting and retain important landscape features.

Ecological assessment and great crested newts

17. Amongst other matters, Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Otherwise all relevant material considerations may not have been addressed in making the decision. The Circular also states that developers should not be required to undertake surveys unless there is a reasonable likelihood of the species being present and affected by the proposed development.
18. Natural England's standing advice for great crested newts² (GCNs) provides guidance on when GCN surveys should be undertaken. In summary, the standing advice sets out that surveys should be undertaken when the distribution and historical records suggest the species may be present, when there's the presence of a suitable water body within sufficient proximity, or when there's the presence of suitable terrestrial habitats within sufficient proximity of suitable aquatic habitats.
19. Dating from 2016, I accept that the historical record of GCNs in the area may now be quite old. However, one of the records related to the next-door property Woodside. Woodside has a garden pond close to the common boundary with the appeal site. Although it is a small pond, I have no compelling evidence before me that it is not a suitable water body for GCNs. Habitats such as grassland, woodland and scrub, which are within the site and to its edges, are the types of terrestrial habitat which can be suitable for the protected species. Altogether, the records of the GCNs, the aquatic and terrestrial habitats on and near to the appeal site all indicates to me that the presence of GCNs is credible and, in turn, that they could be affected by the proposed development. As a result, I find that further survey work to establish the presence or otherwise of GCNs should have been undertaken.
20. Given that GCNs are a protected species under The Conservation of Habitats and Species Regulations 2017, I consider a precautionary approach should be taken. I am also mindful of the statutory duty placed upon me by section 40(1) of The Natural Environment and Rural Communities Act 2006 to have regard to the purpose of conserving and enhancing biodiversity.
21. Without further survey work having been undertaken, there is a significant degree of uncertainty surrounding the protected species. In such circumstances, reliance upon the imposition of conditions to ensure the likes of precautionary methods of working, further surveying and site walkovers does not provide me with confidence at this stage that GCNs are not present or that the proposed development would not be likely to adversely affect them.

² Great crested newts: advice for making planning decisions

22. Over time, the reliability of ecological surveys diminishes. The age at which a survey can still be considered reliable varies dependent upon the circumstances, but relevant CIEEM advice³ sets out that once a report is over 3 years old it is unlikely to still be acceptable. Where a report is between 1 ½ and 3 years old the CIEEM advice recommends that a further site visit be undertaken and it may be necessary to update the desk study information, the surveys themselves and review its validity overall.
23. The submitted Preliminary Ecological Assessment (PEA) was compiled in July 2022. At the time the Council made its decision it was approximately 1 ½ years old, and it is now approaching 2 ½ years old. Since the PEA was compiled, I have no substantive evidence that a further visit has been undertaken. This conflicts with the CIEEM advice referenced above, and I have no compelling evidence before me which demonstrates to me that there are particular circumstances applicable to this case which negates the need to update the field survey.
24. Furthermore, my conclusion that there is a reasonable likelihood of a protected species being present and being affected by the proposal serves to place a greater emphasis on the need for the PEA and site's ecological analysis to be robust and up to date. Given all that is before me, I cannot conclude that this is the case.
25. Consequently, I find there to be uncertainty surrounding the GCNs, but that there is a reasonable likelihood that they are present in the area and that the proposed development would adversely affect them. Furthermore, I have identified that the PEA is not sufficiently reliable. As a result, the proposal conflicts with Policy LP16 of the JLP which, amongst other matters, sets out that a biodiversity mitigation hierarchy should be followed in order to avoid biodiversity harm, adequately mitigate or compensate any harm and that adverse impacts upon protected species are unacceptable unless exception criteria are met. The proposal also conflicts with the policy within the Framework which sets out that if significant harm to biodiversity cannot be avoided, adequately mitigated or, as a last resort, compensated for, then the development should be refused.

Biodiversity gains

26. JLP Policy LP16 states, amongst its content, that developments must conserve, restore and contribute to the enhancement of biodiversity and that developments must identify and pursue opportunities for securing measurable net gains to the equivalent of a 10% biodiversity increase. Policy ASSN11 of the NP states that otherwise acceptable development proposals will be supported where they provide a net gain in biodiversity.
27. On site, the appellant acknowledges that a biodiversity net loss would result from the development proposed. It is proposed that this loss would be offset through the provision of biodiversity enhancements to be implemented upon adjacent land.
28. However, no calculated pre-development biodiversity values of either the appeal site or the adjacent land is before me. This is important as, in their absence, it is not possible to gain an accurate understanding of what

³ CIEEM Advice Note on the Lifespan of Ecological Reports & Surveys April 2019

ecological value the land holds and, therefore, the likelihood of a meaningful enhancement on a part of it being delivered. Furthermore, no detailed information on the nature of the enhancements proposed nor a detailed breakdown of the calculated post-development biodiversity value of the adjacent land are before me either. These information and detail deficiencies mean that I have little confidence that the biodiversity gains submitted to me will be borne out. Furthermore, given these deficiencies, particularly the lack of information on the calculated pre-development biodiversity value of all of the land involved, if I were minded to allow the appeal, I am not satisfied that a condition could be relied upon to deliver the biodiversity gain.

29. Therefore, the proposal would not provide adequate biodiversity gains. Consequently, the proposal conflicts with JLP Policy LP16 and NP Policy ASSN11 which I have summarised above.

Other Matters

30. The proposed development would make a contribution to housing supply, and it would provide a choice of homes in the area including bungalows. As a development of only 2 homes, it is likely that the site would deliver houses quite quickly too. However, in providing only a couple of dwellings, this contribution would be a limited one. It is submitted to me that the proposed dwellings would be energy efficient, and I have no reason to conclude that they would not be. Benefits would be derived from the provision of the housing proposed, however, they would be modest and they are insufficient to outweigh the harms I have identified in the main issues.
31. The appellant submits that the proposed bungalows could be developed to meet Class M of the building regulations. However, it is not clear to me which category of accessible dwelling the appellant refers. As such, it is a matter to which I afford limited weight.
32. The appeal site may be located within an area with a low probability of flooding and may also not have any particular land designation or designated sensitivity. Furthermore, it may be, in respect of a range of other planning considerations, that the development would not result in harmful effects. This may include the effects of the proposed dwellings upon the living conditions of neighbouring occupiers and highway safety. However, the absence of harm in relation to such matters is a neutral factor in my determination and it does not weigh in favour of the proposal.

Conclusion

33. The proposed development conflicts with the development plan taken as a whole. There are no material considerations of sufficient weight to indicate a decision other than one in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR