



Appeal Decision

Site visit made on 19 November 2024

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2024

Appeal Ref: APP/X3540/W/24/3342255

Land at Adastral Close, Felixstowe, Suffolk IP11 2TP

- 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 Orwell Housing Association Ltd against the decision of East Suffolk Council.
 - The application Ref is DC/23/2928/FUL.
 - The development proposed is 4 x 3 bed dwellings, the provision of off-street parking, private gardens and the relocation and upgrading of play equipment.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In the interests of clarity, I have taken the description of development above from the planning application form, removing wording that does not form an act of development.

Main Issues

3. The main issues are:
 - whether the appeal site is in a suitable location for the proposed development having regard to flood risk;
 - whether the proposal would provide satisfactory living conditions for future occupiers with regard to noise and with reference to the operation of the nearby Port of Felixstowe; and
 - the effect of the proposal on open space in the local area.

Reasons

Flood risk

4. There is no dispute between the parties that the appeal site is located in Flood Zone 2. Policy SCLP9.5 of the Suffolk Coastal Local Plan Adopted 23 September 2020 (LP) states that proposals for new development will not be permitted in areas at high risk of flooding, i.e. Flood Zones 2 and 3, unless the applicant has satisfied the safety requirements in the Flood Risk National Planning Policy Guidance (PPG) (and any successor). It identifies that these requirements include the sequential test, where needed the exception test and a site specific flood risk assessment.

5. Paragraph 168 of the National Planning Policy Framework (the Framework) explains the aim of the sequential test (ST) is to steer new development to areas with the lowest risk of flooding from any source. It states that development should not be permitted on a site, if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding. Paragraph 023 of the PPG states that avoiding flood risk through the ST is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features.
6. The exception test (ET) requires two additional elements to be satisfied (as set out in paragraph 169 of the Framework before allowing development to be permitted in situations where suitable sites at lower risk of flooding are not available following application of the ST.
7. The appellant asserts that as an affordable housing provider, they have more limited access to other available sites due to financial constraints. It is confirmed that the appellant is responsible for an adjacent development of 13 affordable homes approved in October 2015 and therefore the provision of additional affordable homes on the appeal site would be beneficial in terms of management and maintenance. The appellant states that due to the appeal site already being under their ownership in combination with the reasons above, no other reasonably available sites in Felixstowe or the wider district have been considered in this case.
8. I understand that there may be constraints for affordable housing providers in acquiring land and that adding to existing provision in the same area would be beneficial operationally for the appellant. Nevertheless, paragraph 028 of the PPG advises that lower-risk sites do not need to be owned by the applicant to be considered reasonably available. I have not been directed to any paragraph in the Framework or the PPG that suggests the provision of affordable housing is an exceptional case which means that the search area for carrying out an ST should be reduced to only cover the site proposed.
9. The Framework does not set specific parameters for the search area to be used in conducting a ST, but the PPG advises that the area to apply the ST across will be defined by local circumstances relating to the catchment area for the type of development proposed. Housing is a form of development found across the whole district and therefore I do not find that the search area needs to be restricted in the manner asserted by the appellant.
10. It is asserted that there have been no flooding incidents in the area since 1953. I also note that the ground floor levels of the proposed dwellings would be raised above existing ground levels, and that sleeping accommodation would be located at or above 5.35 metres above AOD. The appellant also states that they would be content accepting a planning condition requiring a flood evacuation plan to be provided.
11. However, the history of flooding in the area and the provision of mitigation measures does not remove the current need to pass the ST. Moreover, although the proposed mitigation measures would be considerations in the ET, the PPG is clear that the ET should only be applied following the ST being met.
12. Consequently, based on the evidence before me I am unable to conclude that the ST has been passed in relation to development in areas at risk of flooding

and it cannot be ruled out that the development could be located elsewhere in an area at lower risk of flooding. The ET is therefore not carried out.

13. I acknowledge the appellant's assertions that the Environment Agency (EA) has not commented on the application. Nevertheless, it is the responsibility of the Council, and now me, not the EA, to assess the ST, and ET where necessary.
14. I have been referred to four other developments within the vicinity of the appeal site that have been granted planning permission for residential development by the Council in the past. The examples provided appear to have been determined before the adoption of the current LP and were therefore considered under a different policy context. In any case, the fact that other dwellings have been granted permission adjacent and in the surrounding area does not mean that this proposal is not required to demonstrate that it passes the ST.
15. I therefore find that the appeal site would not be a suitable location for the proposed development having regard to flood risk. The proposal would be contrary to Policy SCLP9.5 of the LP, the aims of which are set out above. The proposal would also be at odds with the Framework in this regard, for the same reason.

Living conditions

16. The appeal site is located in close proximity to the Port of Felixstowe (the Port). Within the Port are a variety of noise-generating activities, including but not limited to the loading/unloading of ships and the movement of goods, vehicles and containers. I visited the appeal site twice, once during late afternoon and then again early the following morning. During my site visits, I noted the cranes serving the Port were clearly visible from the appeal site, above the adjacent houses, and that the associated noise was clearly discernible. Whilst only a snapshot in time, there was a continuous low level rumbling noise throughout my site visits with regular 'impact' noises which sounded like a clattering noise.
17. Paragraph 191 of the Framework states that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment. It goes on to state that in doing so, they should mitigate and avoid noise giving rise to significant adverse impacts on health and the quality of life.
18. The Framework states that where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed. The PPG sets out how the potential conflict, or 'agent of change' principle can be addressed. It states that the 'agent of change' will need to clearly identify the effects of existing businesses that may cause a nuisance and the likelihood that they could have a significant adverse effect on new residents and that they will also need to define clearly the mitigation being proposed to address any potential significant adverse effects that are identified.

19. No noise assessment has been provided which considers the noise impacts on the future occupiers of the proposed development. I cannot properly consider any associated noise impact arising from the Port, nor whether any measures could be employed as part of the development to mitigate sufficiently against such impact. Consequently, I cannot be certain that the noise levels likely to be experienced by the future occupiers of the proposed dwellings would provide satisfactory living conditions.
20. The Council's response from its Environmental Health Officer (EHO) clearly concludes that the appeal site is not in a suitable location for further residential dwellings. This is stated due to the absence of any noise assessment including the surveying of the existing background sound environment and that there are likely to be significant adverse impacts from noise on future occupants.
21. The EHO goes on to suggest planning conditions in the event the local planning authority are minded to grant planning consent. One condition identified relates to internal and external noise levels, requiring the proposal to achieve guideline values as per BS8233:2014 and the WHO Guidelines for Community Noise (1999). This condition is reiterated in the suggested conditions provided with the Council's Statement of Case and the appellant has stated that they are content with such a condition being imposed.
22. I have considered whether this matter can be appropriately dealt with by condition, were I to allow the appeal. However, the outcome of any such noise assessment is unknown, as is the extent of any mitigation that it may recommend. I cannot therefore be certain that such a condition would be reasonable or enforceable and as such, it would not meet the tests set out in paragraph 56 of the Framework, and the PPG.
23. I accept that other residential properties are located adjacent to the appeal site, the occupiers of which would experience similar background noise to the future occupiers of the appeal site. However, I have no information on any mitigation measures incorporated into these other schemes or the policy requirements at the time the Council determined these other planning applications.
24. The appellant asserts that there are no recorded complaints of noise disturbance from occupiers of the existing properties on Adastral Close. However, a lack of ongoing or previous complaints from occupiers nearby is not a reason to conclude that no complaints would arise in the future.
25. I acknowledge that the appellant is frustrated due to the issue of noise not being raised in the pre-application advice response they received from the Council. Whilst I sympathise with the appellant in this regard, this does not override my concerns set out above.
26. Consequently, I cannot be sure that satisfactory living conditions can be secured for future occupiers of the proposal with regard to noise and with reference to the nearby Port. The proposal is therefore contrary to Policy SCLP11.2 of the LP. This policy seeks, amongst other things, that developments will provide adequate living conditions for future occupiers.

Open space

27. The appeal site is an existing open space comprised of grass, soft landscaping and play equipment. The submitted drawings show the siting of the proposed dwellings towards the eastern edge of the appeal site within the grassed area, where a zip wire is currently located. The area where the significant majority of the existing play equipment is sited is proposed to be retained. The appellant states that the zip wire would be relocated to the southern part of the site and that new playground equipment would be installed along with repairs to the existing fencing.
28. There are no prescribed amounts of open space required for new residential developments set out under Policy SCLP8.2 of the LP. However the policy states that proposals that result in the loss of open spaces will only be permitted in exceptional circumstances where the proposal is ancillary to the open nature of the area and will enhance local character, increase local amenity and be of greater community or wildlife benefit; an open space assessment demonstrates the site is surplus to requirements including its ability to be used for alternative open spaces; or the loss resulting from the proposed development will be replaced by equivalent or better provision in terms of quantity, quality and in a suitable location.
29. The proposal would not result in a scheme that is ancillary to the open nature of the area, nor has a substantive open space assessment been submitted that demonstrates the site is surplus to requirements. Whilst some additional play equipment is proposed in the existing play area adjacent to the siting of the proposed dwellings, no other land is proposed elsewhere to compensate for the loss of open space. The proposal would therefore not meet any of the criteria, where the loss of open space would be supported.
30. The appellant suggests that the area where the dwellings would be located is not well maintained for community use and therefore the loss of it would be negligible. However, whilst it is an area of more open grassland, compared with the more formal play space, it is fully accessible to those living on Adastral Close and can be used for recreational purposes or for more informal play. Whilst I accept that only a relatively small part of the wider open space would be lost through this proposal, it could result in pressure for the incremental reduction in open space which cumulatively would be more impactful.
31. It is identified that the remainder of the appeal site would be retained as a play area and that there are other open spaces within Adastral Close that could be used by existing and future occupants of the Close. A satellite image has been provided which identifies other open spaces nearby including parks, a local nature reserve, the beach and the promenade that are within walking distance of the appeal site. Nevertheless, there is no substantive evidence before me which sets out the current supply of open space in the local area, and whether there is a specific surplus of the type of open space that would be lost.
32. In the absence of any substantive evidence, the proposal would result in the loss of part of an open space which would be harmful to the overall provision of open space in the area. The proposal would be contrary to Policy SCLP8.2 of the LP, the aims of which are set out above.

Other Matters

33. The proposal would provide three bedroom affordable homes that are in demand according to the Council's Local Housing Need Figures. The Framework seeks to boost the supply of homes and states that the needs of groups with specific housing requirements, including those who require affordable housing, should be addressed. As such the provision of affordable housing weighs in favour of the proposal and represents a public benefit. There would also be economic benefits associated with its construction. Additionally future occupiers would likely help support the vitality of the local community facilities and services. However, although the benefits carry considerable weight, they would not be sufficient to outweigh the harm I have identified above.
34. The appellant asserts that the proposal would not have a detrimental impact on designated heritage assets, landscapes, highway safety or the amenities of occupiers of neighbouring properties and that the dwellings have been designed to respect the character and appearance of the surrounding development. Even if I were to agree, a lack of harm in these respects would not weigh in favour of the proposal.
35. I note that no objections from interested parties or statutory consultees were received and that the Town Council and an interested party recommended that the application be approved. However, for the reasons set out above, I have found that based on the evidence before me, the proposal would conflict with the relevant policies of the LP.
36. The appellant has identified that conditions suggested by technical consultees and those necessary to mitigate the impacts of the proposal would be acceptable. However, I have found that the issues set out above could not be resolved through the use of planning conditions.
37. The appeal site is located within the Zone of Influence of multiple European sites including the Deben Estuary Special Protection Area (SPA) and Ramsar Site, Stour and Orwell Estuaries SPA and Ramsar Site and Orfordness-Shingle Street Special Area of Conservation. These sites are designated as being of international importance for their nature conservation interest. The justification text for Policy SCLP10.1 of the LP identifies that developments that come forward within the plan period can have an impact on European sites, primarily in relation to an increase in disturbance to wildlife linked to people walking dogs along with increased recreational use of estuaries from water based activities. However, given I am dismissing the appeal on the main issues identified, I am not required to consider this matter further.

Conclusion

38. For the above reasons, the proposed development would conflict with the development plan as a whole and there are no material considerations of sufficient weight which indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

G Dring

INSPECTOR