



Appeal Decision

Site visit made on 19 November 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2024

Appeal Ref: APP/F3545/W/24/3345512

Rose Bank, Burton End, Haverhill, Suffolk CB9 9AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Mark Simpkin against West Suffolk Council.
 - The application Ref is DC/23/1157/FUL.
 - The development proposed is described as the erection of 3 no. 1 bed bungalows with parking, visitor parking, landscaping, bin store, boundary treatments, a new section of public footpath & relocation of 1no. street light.
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Decision

1. The appeal is dismissed.

Applications for costs

2. The application for costs made by the appellant against the Council is the subject of a separate decision.

Preliminary Matters

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. The Council failed to give notice of its decision within the prescribed period. However, in their Statement of Case they have stated that they would have refused the proposal had they determined it, highlighting their putative reasons for refusal.
5. As part of the appeal the appellant has submitted an amended drawing (number 1311-03 rev A) showing a revised site layout and an alternative arrangement at the rear to address the concerns of the Council and Highways Authority (HA). I have given due consideration to guidance in the 'Procedural Guide: Planning Appeals - England' (PG) (2023), and the 'Wheatcroft Principles' referred to in the guidance¹, which addressed the matter of amended plans being submitted with an appeal, along with other case law² in deciding whether to accept the revised plan.

¹ Bernard Wheatcroft Ltd v SSE and Another (1982) 43 P. & C.R. 233

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

6. The PG advises that if an applicant thinks that amending their application proposals will overcome the Council's reasons for refusal, they should normally make a fresh planning application³. If an appeal is made, the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council, and on which interested parties' views were sought.
7. Interested parties would not be aware of the amended scheme and, for that reason, I consider that they would be prejudiced if I determined this appeal on the basis of the amended plans. Accordingly, I have based my determination of this case on the details and plans before the Council when the planning application was determined.

Main Issues

8. The main issues therefore are the effects of the proposal on the:
 - Living conditions for future residents with regard to privacy, noise, anti-social behaviour; and provision of waste, recycling and cycle facilities; and
 - Character and appearance of the area.

Reasons

Living conditions of future occupiers

Privacy

9. The appeal site is located between a three-storey flatted development (Moss Bank) at the rear and a children's playground at the front of the site. Given the narrow nature of the site the provision of three 1 x bed detached bungalows provide a relatively tight arrangement, albeit commensurate with the existing pattern of development, referred to in the character and appearance section below. Nevertheless, the restricted rear garden space would be in close proximity to the flatted development at Moss Bank which contains several windows and openings at a higher level overlooking the rear of the appeal site at close quarters.
10. I have no definitive information in respect to whether the windows at Moss Bank serve habitable rooms. As such, I have adopted a precautionary approach. Given the existing layout, it is unlikely the rear rooms would receive additional light or outlook from a separate room or window, thus as they do not appear dual aspect, these rear windows would provide their only meaningful outlook. Consequently, there would be unobscured views into the rear garden area and the rear windows of the bungalows which serve the bedroom and the living/dining area. Whilst a degree of mutual overlooking is to be expected in a suburban setting, the extremely close relationship would create unacceptable overlooking from these windows to the appeal site and vice versa.
11. I appreciate that there are existing trees and vegetation along the boundary between the properties, which could be retained and enhanced through a condition to provide a degree of screening. However, from my site visit it was apparent that the upper floor windows were highly visible despite the presence of the existing vegetation. Furthermore, I do not consider that the proposed

³ Annex M of the Procedural Guide Appeals

garden areas are sufficiently sized to accommodate suitable additional screening, without negatively impacting on outlook and the light for future occupants.

Noise

12. In regard to the children's playground at the front of the proposal, whilst I acknowledge the proposal could provide a degree of surveillance over the area, it nevertheless would create a sensitive relationship between future occupiers and users of the playground.
13. Paragraph 191 of the Framework is clear, that proposals should amongst other aspects, avoid noise giving rise to significant adverse impacts on health and quality of life. Paragraph 193 also makes it clear that decisions should integrate effectively with existing community facilities, and where the operation of a community facility could have a significant adverse effect on new development, the applicant (or 'agent of change') should provide suitable mitigation before the development is completed.
14. The Planning Practice Guidance (PPG) sets out further detailed guidance⁴, including the 'agent of change' principle. This includes taking into account current activities, but also those facilities which are permitted to be carried out, even if they are not occurring at the time of the application being made. The 'agent of change' will also need to define clearly the mitigation being proposed to address any potential significant adverse effects that are identified. Adopting this approach may not prevent all complaints from the potential new residents about noise or other effects, but can help to achieve a satisfactory living environment, and help to mitigate the risk of a noise nuisance being found.
15. From the details before me, the Council has not received any noise complaints⁵ in respect to the use of the play equipment from local residents. However, there is little substantive information in respect of a noise survey indicating background noise levels currently existing at the site. There is also limited detail on whether the proposed measures that could potentially suppress noise and disturbance to acceptable levels, given the proximity of the proposal to the playground.
16. Without these details, or evidence to the contrary, it is unclear whether the provision of the residential units in this location could lead to potential conflict between future occupiers and users of the playground, and noise complaints which may necessitate enforcement action. Any noise nuisance reported could thus lead to pressure for restrictions to be placed on the users of the playground, such that unreasonable burdens might be placed on these users' contrary to the guidance of the PPG.
17. The appellant highlights that a condition could be attached requiring a 2-metre acoustic fence to be provided fronting the playground. Whilst this has the potential to reduce or mitigate impacts from noise, without background noise levels there is uncertainty whether this sound attenuation measure would be sufficient to control any noise nuisance. Furthermore, this also raises issues in respect to appearance and outlook on future occupiers. Consequently, this

⁴ Paragraph: 009 Reference ID: 30-009-20190722

⁵ Appendix 8 – Appellants Statement of Case

cannot be controlled by a condition, and I must adopt a precautionary approach.

Anti-social behaviour

18. I have no substantive evidence about the likelihood of any anti-social behaviour occurring at the site, albeit the Council has confirmed that no anti-social behaviour orders (ASBOs) have emanated from the playground area. Nevertheless, this matter is a neutral factor neither weighing in favour nor against the proposal.

Waste, recycling and cycle facilities

19. The plans before me show the scheme would provide a waste storage area which would be serviced and accessed via York Road adjoining the proposed off-street car parking area. This location would require future occupiers of Plot 1, to drag waste and recycling bins in excess of the Council's 30 metres recommended drag distance, along a sloped surface. It is also unclear from the submitted information whether there is enough space to provide adequate waste storage capacity, alongside the provision for the required cycle and car parking requirements of the Council at the site.
20. Given the tight nature of the site itself, it is unlikely that an alternative arrangement for access to the bins and an increased provision of cycle and waste storage, could be accommodated on site without a further reduction in the level of available amenity space. This would lead to further impacts on the living conditions of future occupiers with particular regard to privacy, outlook and appearance. As such this cannot be left to a condition.
21. The appellant has submitted a planning obligation in the form of a unilateral undertaking (UU), in order to address issues identified by the HA in respect to the relocation of a streetlight and a yellow gritting box to enable access to the proposed waste store. However, the HA indicate that the submitted UU has not been drafted correctly and would be flawed. Even if I was to accept that the planning obligation was appropriate, its requirements are not considered to secure an additional benefit of the scheme and as such would be a neutral factor in the planning balance.
22. For the collective reasons outlined above, I conclude that the proposed development would not provide acceptable living conditions for future occupiers of the dwelling in respect of privacy, noise and the provision for waste/recycling/cycle storage. It would therefore conflict with policies DM2 and DM46 of the Forest Heath and St Edmundsbury Local Plan: Joint Development Management Policies Document (JDMPD), adopted February 2015 and the Framework which together expect planning decisions to ensure healthy living conditions and create better places to live, amongst other things.

Character and appearance

23. The appeal site occupies a back land position located within the rear garden area of the donor property (Rose Bank). The site is sloped, with York Road to the north of the site set at a higher level than the rear of Rose Bank. The surrounding area is mainly residential with a mixed architectural vernacular in terms of scale, design, layout and appearance. As stated above, the appeal site

is adjoined by a three-storey flatted development (Moss Bank) at the rear and a children's playground at the front, further highlighting the variety of the built environment. The proposal consists of three 1 x bed detached bungalows.

24. 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. The site is relatively narrow providing a linear arrangement for the three bungalows, in a tight pattern. Given this arrangement it reduces the amount of amenity space around the proposed bungalows. However, this is not uncommon within the locality, with a number of properties exhibiting modest garden spaces which add to the constrained pattern of development.
25. The proposed scheme would take advantage of the narrow constraints of the site and would provide a development which is respectful to its surrounds. I am unaware of any minimum gap requirement between plots as set out in local policy. However, from the plans before me, whilst there are modest gaps between properties, the proposal would not appear as either cramped or as an overdevelopment of the site providing an appropriate density within the residential area.
26. Given the sloped nature of the site, the scheme has been designed to address this, by providing a stepped nature to the proposed dwellings and ridge heights, reducing the bulk and scale at the roof level. As such, when taking into account the mixed pallet of properties in the vicinity, the proposed units would not appear out of keeping or indeed 'top heavy', (as described by the Council) in this context. The overall design and resulting form of the dwellings, would not appear out of keeping within the wider area. Had the scheme otherwise been found acceptable, a condition could have been attached to secure the use of suitable materials, to ensure the appearance of the proposal would be respectful and could contribute positively to the character of the locality.
27. I therefore conclude that the proposed development would represent good design based on an analysis of existing buildings, landscape and topography providing a scheme that would not harm local distinctiveness. Consequently, in respect to this matter, I find no conflict with the relevant sections of policies DM2 and DM22 of the JDMPD. Furthermore, the proposal would also accord with the aims and objectives of the Framework, which amongst other things, seek to secure high quality design, whilst taking into account the local character and reflecting the local surroundings and materials.

Other Matters

28. I acknowledge that the proposal would result in modest social and economic benefits, and would deliver three new units on the site relatively quickly, in accordance with the aims and objectives of the Framework. Furthermore, it would promote the more efficient use of an underutilised plot of land in a relatively accessible location. To these benefits I apportion moderate weight given the limited scale and nature of the proposed development.

Conclusion

29. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR