



Appeal Decision

Site visit made on 3 December 2024

by Philip Mileham BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2025

Appeal Ref: APP/U2615/W/24/3342240

Land to the south of Somerton Road and east of White Street, Martham, Great Yarmouth, Norfolk, NR29 4QF

- 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 Bennett Homes Limited against Great Yarmouth Borough Council.
 - The application Ref is 06/23/0218/F.
 - The development proposed is the conversion of existing barn to 2 dwellings and erection of 44 dwellings and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal has been made as a result of the Council failing to issue a decision within the prescribed period. As a result, no decision notice has been issued, and instead the Council has provided a putative list of reasons for refusal had it determined the original application. I have had regard to these in setting out my main issues below.
3. The appellant shown in the heading above was not specifically named on the original planning application. However, it has been confirmed that the applicant on the original application was listed in error and was an agent acting on behalf of the appellant. Subsequent concerns have been raised regarding whether the original applicant was therefore the sole owner of the land and buildings to which the proposal related. The appellant has supplied evidence that, notwithstanding the error on the application form, the correct notification on landowner has subsequently been carried out. I am satisfied that the notification carried out has brought the proposal to the attention of the landowner. I am therefore satisfied that the landowners would not be prejudiced due to the notification being carried out in this manner.
4. Since the appeal was lodged, a Planning Obligation made under Section 106 of the Town and Country Planning Act has been submitted which includes provisions relating to adjustments to the tenure split of the proposed affordable dwellings, contributions to mitigate the effects of recreational pressure on Natural 2000 sites, sustainable drainage, open space, library contributions and monitoring fees. I deal with this elsewhere in my decision.
5. On 12 December 2024, the Government published a revised National Planning Policy Framework (the Framework) to which the parties have had the

opportunity to comment upon. As a result, I have had regard to the latest iteration of the Framework in reaching my decision.

Main Issues

6. Having regard to the Council's putative list of reasons it would have refused the appeal on and the taking into account the submitted legal obligation, and the Council's addendum report, I consider the main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on trees; and
 - Whether there is sufficient information to ensure the proposal would not harm protected species.

Reasons

Background

7. Planning permission was granted on 21 April 2022 on the appeal site for the conversion of barn to 2 dwellings and erection of 44 dwellings by an application made to the Council under S73 of the Town and Country Planning Act (reference 06/21/0917/F) ('the 2022 permission'). The 2022 permission indicated at Condition 1 that development must be begun by 23 April 2022. The Council raised concerns that there is no evidence of formal commencement. However, a statutory declaration submitted as evidence with this appeal shows that demolition of a building on site took place on 22 April 2022, within the time limit specified in the 2022 permission and that formal commencement of the permission had taken place. There is no evidence of any pre-commencement conditions that required discharging, and as a result, I agree with the appellant's evidence that the 2022 permission has been implemented and thereby serves as a fallback.
8. The Council cited conflict with Policy CS2 of the Great Yarmouth Core Strategy (2015) (the GYCS) and Policies A1 and UCS3 of the Great Yarmouth Local Plan Part 2 (the GYLPP2) (2021) alongside the reasons it would have refused the scheme. However, Policy CS2 relates to the distribution of development across the Borough which is not a matter in dispute. Furthermore, Policy A1 relates to the protection of amenity in respect of existing or future occupiers which does not appear in the list of putative reasons the Council would have refused the proposed development. Policy UCS3 has the effect of amending the housing target for the plan period set out in the Core Strategy. However, the principle of development is not in dispute between the parties as the site is predominantly within the development limits of Martham. Therefore, for the reasons above I have not these policies further.

Character and appearance

9. The appeal site comprises a largely flat area of agricultural land along with two barns and a number of outbuildings located towards the western part of the site. The area surrounding the site is characterised by residential development along White Street and Somerton Road and includes a mix of detached and semi-detached, single and two storey dwellings of a range of architectural styles. As a result, the character of the area is not defined by any single style or layout.

10. The proposal would include a range of dwelling types across the site of a variety of design styles. Furthermore, the retention and conversion of an existing brick barn into two semi-detached properties would provide an additional variation in the type of dwellings. The differing styles of dwelling are spread across the site and I therefore find that there would be an acceptable range of typologies and styles across the development. Accordingly, I find that the proposal would integrate with the mixed character of the surrounding area.
11. Concerns have been raised regarding the design and layout of the proposal. The proposed dwellings in the private drive in front of the proposed barn conversion would result in a sense of enclosure to the barn. However, this increase in enclosure would be limited and there would still be reasonable separation between the dwellings in this part of the site. As a result, it would still provide an acceptable streetscape in this part of the site.
12. The site layout shows the proposed affordable dwellings located to the west of the site. The affordable dwellings have been realigned compared to the 2022 permission with detached and semi-detached properties sited around a turning head. As a result, the uniformity of the previously approved design which included a longer row of terraced properties with parking clustered in front of the dwellings would be broken up. The appeal proposal would therefore respond positively to the wider street scene and the grain of neighbouring development.
13. The proposed parking spaces for the affordable dwellings would result in a relatively linear row of parking in front of plots 35-39. The layout plan shows some indicative landscaping in this area which would provide a visual break between the parking spaces. Further indicative landscaping would also be included throughout the site as well as along the eastern site boundary. Due to the indicative nature of the proposed landscaping, subject to the imposition of a suitable to secure their details, the landscaping would provide some additional visual interest. In this regard, the proposal would represent an enhancement over the 2022 permission.
14. The proposed development would be around 20 dwellings per hectare which would be below the policy requirement. However, the overall grain and pattern of the appeal proposal would assimilate well with the surrounding residential development. As the proposal would create a new edge to the settlement, due to the openness of the landscape beyond the site, in this instance the lower density of development would provide a more graduated transition the adjoining countryside. Policy H3 of the GYLPP2 requires development to be of at least 30 dwellings per hectare (net). Overall, I find a lower density would not be harmful in this specific instance albeit the proposal would still fail to accord with density requirements of Policy H3.
15. The proposed open space on site would be located to the east of the site. Due to the orientation of the nearest proposed dwellings, it would not have full surveillance of the open space albeit there would be some views from oblique angles. However, the open space is sited in a similar position as the 2022 permission and due to the orientation of plots 11 and 12, the oblique views represent a modest improvement in surveillance of the open space over the fallback which had more restricted visibility of the open space.

16. The appeal proposal is predominantly located within the development limits of Martham except for a small portion of the proposed open space which would lay beyond the limits. Policy GSP1 of the GYLPP2 seeks to restrict development on land outside of development limits subject to exceptions. Whilst the open space would extend slightly beyond the development limits, no built development is proposed in this part of the site. As a result, the open character of the edge of Martham would be maintained. Considering the proposal in the round, I find that the very limited extension of the open space outside the development limits would not result in conflict with Policy GSP1.
17. The Council has raised concerns that the open space is not accessible or inviting and would predominantly function as the Sustainable Drainage System (SuDs) for the site. Whilst the plans do not show the open space including any play equipment, there is no evidence before me to suggest that this area could not be used for informal recreational open space for future residents. Policy H4 of the GYLPP2 requires that approximately 6% of the open space requirement per dwelling should be suitably equipped for children's play. The submitted legal obligation includes a requirement for approximately 212 sqm of play space plus financial contributions towards enhancements to off-site open space. Overall, I find that the proposed open space would be able to be used for recreation and taking into account the contribution in the legal obligation for off-site enhancements, it would contribute to green infrastructure in the Borough. It would therefore accord with requirements of Policy CS15 of the GYCS and Policy H4 of the GYLPP2.
18. The open space would be set on the eastern side of the relocated Byway Open to All Traffic (BOAT), and access is shown via a proposed pedestrian and cycle access from the internal access road to the BOAT. Whilst the open space is not within the centre of the site, it would still be easily accessible by future residents as it would be located within a short distance of the proposed dwellings. However, the submitted plans do not appear to show a direct access from the BOAT to the open space which was present in the 2022 permission. However, this is a matter that could otherwise be addressed through the imposition of a planning condition. Therefore, subject to such a condition the open space would be sufficiently accessible to future residents.
19. In light of the above, I conclude that the proposal would not result in harm to the character and appearance of the area. It would therefore accord with Policies CS1, CS9 and CS15 of the GYCS and Policies GSP1, H4 and A2 of the GYLPP2 which seek to ensure, amongst other things, that development complements the character of individual settlements, encourages high-quality, distinctive places and support development within defined development limits, and ensure that all new development contribute to the provision of recreational green space.
20. It would also accord with paragraph 135 of the Framework which seeks to, amongst other things, ensure that development function well and add to the overall quality of the area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Trees

21. The appeal proposal would result in the removal of a number of trees to the southern and western part of the site. Since the 2022 permission was granted, a Tree Preservation Order (No.1 2024) has been served on the site with trees

T7 and T8 covered by the Order. An area Tree Preservation Order (1972) (TPO) also covers the site although the arboricultural assessment indicates many trees on site post-date the area TPO.

22. The submitted arboricultural assessment indicates that of the individual trees and groups proposed to be removed, the majority are Category C trees of low quality, some of which have been identified as dead or diseased. The tree removal plan shows that T13, T14 and T27 to be removed would be in Category B of moderate quality. However, the assessment indicates that a number of individual trees protected by the 1972 area TPO (T10, T11, T12 and T26) would be removed to accommodate the proposed layout.
23. The majority of the trees to be removed would be where the proposed access road would be sited or within the boundaries of proposed dwellings or the site entrance. Notwithstanding the recent TPO on site, the trees proposed for removal in the appeal proposal would also be removed due to the siting of dwellings and the access road in the 2022 permission. Although the appeal proposal would not result in any further harm to trees over the 2022 permission, the proposal has not demonstrated how it has taken opportunities to enhance these the trees, which collectively, make a positive contribution to the overall character of the area. Therefore, there would remain a conflict with Policy E4 of GYLPP2.
24. Concerns have been raised that the trees to the western boundary of the site in the vicinity of plots 27-35 would experience pressure for future reduction or maintenance. The trees would result in some overshadowing of the rear of plots 27-35 during the latter parts of the day. However, there would remain an acceptable separation distance between the trees and the rear of these properties.
25. Plot 35 would be closest to the trees along the western boundary although the trees would be broadly perpendicular to the dwelling. The elevations for plot 35 show it would have no windows in the side elevation. As such, any potential overshadowing would have a limited effect on the available sunlight into habitable rooms of plot 35 via the front or rear windows. Therefore, I do not consider there is clear evidence that the trees would be under pressure for further works.
26. In light of the above, I conclude that the proposal would have an adverse effect on trees. It would therefore fail to accord with Policy E4 of the GYLPP2 which states that development will be supported where it retains trees which contribute significant value to the character of the locality and take opportunities to enhance those features commensurate with the nature of the development.

Protected Species

27. The appeal utilises the Preliminary Ecological Appraisal (PEA) from 2023 which included a walk-over survey dated 11 January 2023. The PEA did not require a further survey for badgers, albeit recommended a final check prior to the commencement of any development. However, the PEA recommended further bat surveys to including emergence surveys due to the timing of the walkover survey which was carried out during winter.

28. Whilst the appellant considers there is sufficient up-to-date information on which to determine whether protected species could be affected by the proposal, there is no evidence before me that the further surveys recommended in the PEA have not been carried out. Furthermore, there is no evidence of further amphibian surveys or inclusion by the appellant in the District Level Licence Scheme (DLL) for Great Crested Newts. As a result, I cannot be certain that any effects on protected species can be satisfactorily mitigated.
29. The appellant has indicated that these matters could be addressed by conditions prior to the commencement of development. However, such a condition would not be effective as it would not be possible to determine whether further mitigation measures are necessary or how these could be secured.
30. In light of the above, there is insufficient information to ensure the proposal would not harm protected species. It would therefore fail to accord with Policy CS11 of the GYCS which seeks to ensure, amongst other things, that all new developments take measures to avoid adverse impacts on biodiversity and priority habitats and species.
31. The proposal would also fail to accord with paragraph 192(b) of the Framework which seeks to promote the protection and recovery of priority species.

Other Matters

32. Concerns were raised that the proposal had not provided evidence that the proposed dwellings could be constructed to standard M4(2) of the Building Regulations as required by Policy A2 of the GYLPP2. However, this matter would be capable of being addressed through the imposition of a suitable planning condition.
33. Concerns were raised that the proposal did not provide an appropriate tenure split for the affordable housing units. However, the submitted legal obligation would provide a 90%/10% split as required by Policy CS3 of the GYCS. The proposal would provide 20% of the dwellings as affordable housing that would be secured by the submitted legal obligation which would accord with Policy UCS4 of the GYLPP2. Policy CS14 of the GYCS seeks to secure contributions to amongst other things, infrastructure. The range of obligations that would be secured by the submitted legal agreement address the requirements of Policy GSP8. As a result, I am satisfied that the approach would accord with Policies CS3, CS4 and CS14 of the GYCS and Policies UCS4 and GSP8 of the GYLPP2.
34. Concerns have been raised regarding the effect of the proposal on highway safety. However, the access points are unchanged from the fallback permission. However, the Local Highway Authority has recommended that these would be capable of being addressed via conditions and therefore the proposal would accord with Policy CS16 of the GYCS. However, as I am dismissing the appeal for other reasons, it is not necessary to consider it in further detail.
35. The Council has indicated that the proposal has not provided sufficient evidence to ensure the scheme would not be at risk of surface water flooding. The appellant has submitted a Surface Water Drainage Statement in April

2024 which indicates that there is sufficient space within the site for the required storage of surface water volumes associated with the proposed development. Furthermore, the submitted legal obligation would secure the provision of Sustainable Drainage Systems (SuDs). It would therefore accord with Policy CS13 of the GYCS which seeks to ensure new development utilises Sustainable Drainage Systems.

36. Concerns have been raised regarding the adequacy of the submitted flood risk evidence to accompany the proposal. The flood risk assessment was prepared for the fallback permission and there is no evidence it has been updated. Although the proposal shares similarities with the fallback, the location and types of dwelling differ between the 2022 permission and appeal proposal. However, the surface water flood depths show that that in the developed scenario, there would be very limited parts of some dwellings which could experience surface water flooding. However, due to the depths involved this could be addressed through the imposition of conditions to the control finished floor levels of the dwellings. The Council has indicated the proposal would conflict with Policy E1 of the GYLPP2 which deals with the sequential approach to flood risk. However, there is no evidence before me that the proposal has not passed the sequential test and would therefore accord with Policy E1.
37. The submitted legal obligation would include contribution towards the Norfolk Green Infrastructure and Recreational Avoidance Mitigation Strategy (GIRAMS) for effects on the Natural 2000 Sites. It would therefore accord with Policies CS11 and CS14 of the GYCS and Policies GSP5 and GSP6 of the GYLPP2 which seek to ensure, amongst other things, that all new development takes measures to avoid or reduce impact on existing biodiversity assets and that development makes appropriate financial contributions to monitoring the likely significant effects on designated National Site Network sites.
38. The Council consider proposals Habitats Regulations Assessment has failed to adequately screen out the potential effects on nutrient loads on protected sites arising from surface water flows. However, as I am dismissing the appeal for other reasons, it is not necessary for me to address this matter in further detail.
39. Concerns were raised by the Environment Agency that the proposal could pose risk to the environment in respect of groundwater. However, the potential risk of contamination is a matter that could be mitigated through the imposition of conditions to secure investigation and remediation. Therefore, there would be no conflict with Policy E6 of the GYLPP2 in this regard.
40. The Council identified that the proposal would conflict with Policy I3 of the GYLPP2 which deals with foul drainage. However, the application form indicates the proposal would connect foul sewage to the mains sewer. There is no evidence before me that there would be insufficient capacity to accommodate foul sewage from the proposal. As a result, it would accord with Policy I3 of the GYLPP2.
41. Further concerns were raised by interested parties on a range of matters, including boundary issues, ownership of drainage ditches, internal highway specifications, the presence of invasive plants on site and the effects of demolition on health and the pollution of the local environment. However, as I am dismissing the appeal it is not necessary for me to address these matters.

42. The proposal would result in economic benefits as a result of jobs created through construction and in the accompanying supply chain. Environmental benefits would arise through the creation of additional green infrastructure. There would also be social benefits through future occupiers utilising local services and facilities, and the proposal would also make a contribution to meeting housing needs in the area.

Conclusion

43. Overall, I find that the proposal would not result in harm to the character of the area. However, the proposal would result in the loss of protected trees, and in the absence of further ecological surveys in relation to bats or amphibians, I am unable to be certain that the proposal would not result in harm to protected species.
44. Although the proposal would not result in harm to the character and appearance of the area, there would be a clear conflict with policies relating to trees and protected species. As a result, the proposal would fail to accord with the Development Plan when read as a whole.
45. The proposal would result in economic and social benefits including the benefit of providing 46 additional dwellings including policy compliant number of affordable homes which is of substantial weight. Whilst the proposal would result in some environmental benefits through the provision of open space, this would be expected for all development of this scale proposed in the Borough and is therefore of limited weight.
46. Notwithstanding the loss of protected trees, the appeal proposal would not be more harmful than the 2022 permission in respect of the effect on trees due to the similarity of the proposal's access and the siting of proposed development. However, due to the appeal proposal's insufficiency of evidence in relation to protected species, I cannot be certain that it would not result in harm above the 2022 permission which weighs significantly against the proposal.
47. Paragraph 61 of the Framework seeks to support the Government's objective of significantly boosting the supply of new homes. However, the proposal would not accord with objectives of paragraph 192 which seeks to protect priority species. Overall, the proposal's benefits along with the other considerations advanced, would not be sufficient to outweigh the harm identified in respect of trees or protected species and the conflict with the Development Plan and the Framework.
48. Therefore, in light of the above the appeal is dismissed.

Philip Mileham

INSPECTOR