



Appeal Decision

Site visit made on 17 December 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st January 2025

Appeal Ref: APP/X3540/W/24/3343685

50 Wash Lane, Kessingland, Lowestoft, Suffolk NR33 7QY

- 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 B Tipple and Ms E Bidnall against the decision of East Suffolk Council.
 - The application Ref is DC/24/0356/FUL.
 - The development proposed is construction of dwelling and materials.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 12 December 2024, a revised version of the National Planning Policy Framework (the Framework) was published. In making my decision, I have had regard to the revised Framework and any comments in respect to it submitted by the appeal parties.
3. A screening direction was issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulations 14(1) and 7(5) of the EIA Regulations, the Secretary of State directed that the development is not EIA development.

Main Issues

4. The main issues are:
 - The effects of the proposed development upon the character and appearance of the area;
 - The effects of the proposed development upon the living conditions of the occupiers of 44, 46, 48 and 50 Wash Lane with particular regard to the proposal's access arrangements; and
 - The effects of the proposed development upon the integrity of Habitats Sites.

Reasons

Character and appearance

5. The appeal site comprises of garden land and the access route to it from Wash Lane. The garden land is located to the rear of 48 and 50 Wash Lane (Nos 48 and 50) which are a pair of bungalows which are themselves positioned to the rear of another pair of bungalows (Nos 44 and 46).

6. Wash Lane is a quite lengthy road, and most of the residential properties that line it front onto the road. Branching off from Wash Lane are a number of residential estate roads and cul-de-sacs. These roads vary in length, and some are quite straight whilst others are more meandering. As a result of this, the arrangement of properties in the area is quite varied rather than uniform and, when travelling within the surroundings of the appeal site, no strong sense of an established linear pattern of built development is obtained. Rather, during my visit, I found it to be part and parcel of the character of the area that views of houses and bungalows in the backdrop of others in the foreground were commonplace.
7. The proposed dwelling would be single storey and modestly scaled. In combination with its proposed siting behind other properties, the proposed development would not, therefore, be a prominent addition to the area. Instead, for the most part, views of the dwelling from the likes of nearby roads and pavements would be quite well screened. In such views, the proposed dwelling would be seen as one residential property in the background of others which is already an experience which is prevalent in the area.
8. The areas of garden and the parking spaces proposed to serve it, together with the gardens which already serve neighbouring properties, would ensure adequate separation from nearby houses and bungalows. Coupled with the proposed dwelling's low-slung appearance these factors would ensure that no over-development of the site would result nor to the impression that the site had been crammed with the development proposed. As a quite simply designed bungalow with a pitched roof the proposed dwelling would also be similar in character and appearance to other properties in the area.
9. For these reasons, the proposed backland development would successfully and sympathetically assimilate into its surroundings, and the effects of the proposed development upon the character and appearance of the area would be acceptable. Consequently, the proposed development complies with Policies WLP8.29 and WLP8.33 of the Waveney Local Plan 2019 (LP) and Policy H2 of the Kessingland Neighbourhood Plan 2016-2030 (NP). Altogether, and amongst other matters, these policies require development proposals to be of high quality, to demonstrate an understanding of, and respond in a complementary manner to, local character and context. These policies further require that housing development on garden, backland or infill sites reflect the surrounding area's character and density and to not result in a cramped form of development.

Living conditions

10. Access to the proposed development would be shared with Nos 48 and 50. At the front of Nos 48 and 50 there are various driveways and some garaging but, nevertheless, as two quite modestly sized bungalows, I have no reason to conclude that the pair of properties would be the subject of significant vehicular movements. The proposed dwelling would have two bedrooms and two parking spaces. Given this, movements arising from the proposal would, again, not be likely to be significant. Nos 44 and 46 each have separate driveways accessed directly from Wash Lane. As a result, I do not expect that they would contribute to the vehicular movements on the shared private drive serving the site.
11. Therefore, upon completion of the proposed development, a total of three modest properties would share the proposed private drive access route. As a result, even

though the width of the private drive would require drivers travelling along it at the same time to give way to one another, this would be likely to be an infrequent occurrence. Consequently, any noise experienced by the occupiers of neighbouring properties, including when within their garden spaces, arising from drivers' vehicles idling and manoeuvring as they navigate past each other would, in turn, be infrequent.

12. Furthermore, whilst the side elevation of No 50 is adjacent to the private drive it contains no windows. The side elevation of No 46 and the property on the opposite side of the private drive access route do contain windows, but these windows benefit from a set-back, some intervening means of enclosures and, in some cases, obscured glazing. Nos 44 and 48 are not directly next to the private drive access route, separated from it by Nos 46 and 50. These factors would further assist in mitigating the effects of passing vehicles upon neighbouring occupiers when within their properties.
13. Prior to the completion of the proposed development there would be vehicle movements associated with the construction phase of the development including from larger vehicle types that this phase would entail. Some noise and disturbance would be likely to arise from this, but these effects would occur for a temporary period only. Furthermore, I have no substantive reasons to conclude that a construction management plan could not be devised which would include measures which would effectively manage and mitigate the effects of the construction phase. Had I been minded to allow the appeal, a condition could have been imposed to ensure the compliance with such a construction management plan.
14. Therefore, I find that the effects of the proposed development upon the living conditions of the occupiers of 44, 46, 48 and 50 Wash Lane with particular regard to the proposal's access arrangements would be acceptable. The proposal is compliant with Policy WLP8.29 of the LP and H2 of the NP as a result. These policies require development proposals to protect the amenity of the wider environment and neighbouring uses, and to ensure parking and access arrangements are satisfactory.

Habitats Sites

15. The coast, heaths and estuaries of Suffolk are internationally recognised wildlife assets and include Habitats Sites which are afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). This includes the Benacre to Easton Bavents Special Protection Area (SPA).
16. The qualifying features of the SPA are its Great bittern, Eurasian marsh harrier and Little tern breeding bird populations. The SPA's conservation objectives are to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate and that the site contributes to achieving the aims of the Wild Birds Directive. This is to be achieved through the maintenance and restoration of the population and distribution of its qualifying features and their habitats.
17. The appeal site is within the SPA's zone of influence. Recreational activities undertaken by residents and visitors in the area can harm breeding birds for instance by increasing their stress and causing displacement and avoidance of habitat suitable to them. The proposed development would deliver a single additional dwelling and would contribute to the recreational activities and

consequential effects. This contribution would be limited by itself, however, in combination with other development in the area, it is likely to have significant effects on the SPA by contributing to the overall level of recreational activity which takes place. These activities would impede upon the favourable conservation status of the qualifying features of the SPA being achieved and adversely affect the integrity of the site.

18. As such, the Habitats Regulations require that an Appropriate Assessment (AA) is carried out. Under this, I must establish the implications of the development proposed on the SPA having regard to any measures which could be put in place to avoid or mitigate impacts. The AA is used to determine whether an adverse effect on integrity can be ruled out beyond all reasonable scientific doubt. In order to avoid an adverse effect on the integrity of a Habitat Site such as the SPA, the favourable conservation status of the site's qualifying features must either be maintained or not further degraded or impeded from achieving a favourable conservation status.
19. I have no substantive evidence before me of any particular recreational disturbance mitigation or avoidance measures which the proposed development would deliver or contribute towards. An option would be a financial contribution towards a package of established disturbance mitigation or avoidance measures already devised in the area. However, no mechanism is before me to secure any financial contribution towards such established measures such as via a Section 106 legal agreement. Furthermore, no alternative means of mitigation or avoidance measures are before me either.
20. Therefore, and in the absence of any form of adequate mitigation, I have no sound basis on which to conclude that the proposal's contribution towards recreational activities would not result in adverse effects upon the integrity of a Habitat Site: The Benacre to Easton Bavents Special Protection Area. Consequently, I find that the proposal conflicts with Policy WLP8.34 of the LP which sets out that development will be supported where it can be demonstrated that it maintains, restores or enhances the existing green infrastructure network and positively contributes towards biodiversity. The policy further sets out that, as applicable, development should be supported by information to inform a habitat regulations assessment and commits to the formation of a strategy to mitigate the effects of recreational activities upon Habitats Sites.

Other Matters

21. I have no reliable evidence before me in relation to the Council's up-to-date housing land supply position. The proposal would make a contribution to supply, and it would increase the choice of housing in the area. The dwelling would be delivered within an accessible location and as a small development, it is likely that it could be delivered quickly too. As the proposed dwelling would be constructed within a garden located within the built-up surroundings of a settlement, it would not be delivered on previously developed land. The Framework's advice that substantial weight should be attributed to using brownfield land for homes does not, therefore, specifically apply in this case. Nevertheless, the proposal would make a modest yet valuable contribution to housing supply in the area. I return to this issue in my planning balance.

22. It is submitted to me that the proposed dwelling would provide the access arrangements and accommodation suitable for the disabled. If this was the case, I am mindful of the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 (the Act), which sets out the need to eliminate unlawful discrimination, harassment, victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The Act sets out the relevant protected characteristics which includes disability and indeed age. The delivery of a bungalow with accessible access arrangements suitable for disabled or elderly home-seekers would be a benefit of the proposal.
23. Elements of the design of the proposal may be appropriate and well considered. This would include the dwelling's energy efficiency credentials. It may also be, in respect of a range of other planning considerations, that the development would not result in harmful effects. This would include the effects of the proposal upon the levels of privacy existing neighbouring occupiers experience, upon highway safety and flood risk in the area, whilst, given the site is not within it, no effects upon the Green Belt would result. However, good design is a key aspect of sustainable development, it is fundamental to the planning process and is an expectation. As such, that the proposal would be acceptably designed in some regards and would not result in certain particular harms is a neutral factor in my decision and does not weigh in its favour.
24. The appellants refer to other housing developments in the area and submit to me they represent comparable developments which lend support to the appeal proposal. However, the full details of each of the cited developments is not before me nor are the circumstances which led to their approval. Importantly, I have no substantive evidence in relation to the effects of the referenced developments upon Habitats Sites and the need or otherwise for any mitigation measures. As a result, it is not clear to me that the effects of the proposal are very comparable with the cited developments in relation to the crucial matter of Habitats Sites. Therefore, the presence of the referenced developments in the area does not weigh in favour of the appeal proposal to any meaningful extent.

Planning Balance

25. Although in my first and second main issues I have identified that the proposal would not result in harmful effects upon the character and appearance of the area, or upon particular living conditions of neighbouring occupiers, I have, in my third main issue, been unable to conclude that it would not result in adverse effects upon the integrity of a Habitat Site. I have identified conflict with a development plan policy as a result. Importantly, because of my conclusions in respect of Habitats Sites, and having regard to paragraph 195 of the Framework, even if the Council has less than 5 years' worth supply of deliverable housing sites, the presumption in favour of sustainable development set out within paragraph 11 of the Framework does not apply in this case.
26. That I cannot rule out adverse effects upon the integrity of a Habitat Site weighs very heavily against the proposal as, in such circumstances, planning permission should only be granted when no alternative solutions exist and when the carrying out of the proposal is for imperative reasons of overriding public interest.

27. The contribution to housing supply in the area would be a benefit but, irrespective of the Council's supply position, as only a single dwelling would be delivered the contribution would only be limited and a matter to which I attribute only a moderate amount of weight in the circumstances. That the proposal would deliver an accessible dwelling suitable for the disabled or elderly would be a further benefit.
28. Even so, the collective weight of the proposal's benefits is not such that it amounts to imperative reasons of overriding public interest. In addition, although in dismissing the appeal, an accessible dwelling would not be delivered, this would be proportionate given the importance of preserving the integrity of Habitat Sites. Therefore, it does not follow from the PSED that the appeal should succeed either.

Conclusion

29. Although in my first and second main issues I have not identified harmful effects or development plan policy conflict, in my third main issue, I have been unable to conclude that the proposal would not cause harm to the integrity of a Habitat Site. As a result, the proposal conflicts with Policy WLP8.34 of the LP and the gravity of my objection in relation to the Habitat Site is such that I find the proposal conflicts with the development plan 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