



Appeal Decision

Hearing held on 29 January 2025

Site visit made on 30 January 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th of February 2025

Appeal Ref: APP/D3505/W/24/3354585

Land off Brent Eleigh Road, Monks Eleigh IP7 7JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr G Newley against the decision of Babergh District Council.
 - The application Ref is DC/24/02630.
 - The development proposed is erection of three self build dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was in outline, with the appearance, landscaping, layout and scale of the proposed dwellings reserved for future consideration. A layout plan was provided, which is described as indicative, and I have treated it as such.
3. An amended visibility splay drawing was tabled by the Council at the hearing (in Hearing Document 1), having previously been shared with the appellant. Both parties confirmed that it is a fair representation of the available visibility at the access, and I have taken it into account. I have also had regard to the Babergh and Mid Suffolk District Councils Housing Supplementary Planning Document (Housing SPD), which was adopted in November 2024 while the appeal was under consideration. Section 2.9 of the Housing SPD relates to proposals for custom and self-build housing (CSB) and was referenced by the Council at the hearing. The appellant confirmed that he was aware of the contents and had the opportunity to comment. I have taken that section of the Housing SPD into account and am satisfied that this would not result in any unfairness to any party.
4. Along with their responses to the Pre-Hearing Note, and the final Statement of Common Ground, both main parties provided the same table detailing entries on the Self-Build Register in Babergh District on an annual basis since 2015/16, and planning permissions granted during the same period. These figures had been tabled at an earlier hearing on a different case (the Lawshall appeal¹) and are agreed between the parties, including a minor arithmetical correction identified at the Lawshall hearing. The figures supersede those included in the appellant's statement of case and I have therefore referred to this updated evidence when considering the appeal.

¹ Appeal Ref: APP/D3505/W/24/3354153, Land to the East of Melford Road, Lawshall, Suffolk

5. After the hearing had closed, a decision was issued on the Lawshall appeal. Since that was also for self-build housing and drew on the same demand and supply evidence, it has some relevance to the matters before me. I have therefore taken it into account, along with comments from the main parties on it.
6. A revised National Planning Policy Framework (the Framework) was published in December 2024 and is applicable to this appeal. The Council's statement of case took into account the revised Framework and the appellant has also had the opportunity to comment on it.

Main Issues

7. The main issues are:
 - whether the proposed development would provide a suitable location for housing, having regard to the Council's spatial strategy and the Framework,
 - the effect of the development on the character and appearance of the Monks Eleigh Conservation Area and the setting of nearby listed buildings,
 - the effect on protected species,
 - the effect on highway safety, and
 - whether there are other considerations that indicate a decision should be made other than in accordance with the development plan, with particular reference to the proposed provision of self-build housing and any other benefits of the proposal.

Reasons

Location

8. The appeal site is located outside but adjoining the settlement boundary of Monks Eleigh. It is a parcel of rough grassland, with some small, dilapidated buildings and enclosures in one corner. Although there is reference in the evidence to use of the land for grazing or keeping of animals, there is no planning history relating to the buildings and enclosures or confirming any non-agricultural use of the land. There are parcels of woodland to either side of the site and trees along the banks of the River Brett, to the rear. However, there are dwellings opposite and further along Brent Eleigh Road, which are within the settlement boundary.
9. The Babergh and Mid Suffolk Joint Local Plan – Part 1, adopted November 2023 (JLP), includes Policy SP03 which allows in principle for development outside settlement boundaries, but only in certain specific circumstances. Although these include new housing where it is in accordance with policies listed in Table 5 of the JLP, those policies do not include Policy LP08 which relates to CSB housing. Nor would the proposal satisfy any of the other policies listed in Table 5, or the other criteria in section 2 of Policy SP03. It is common ground between the parties that the proposed development would conflict with Policy SP03 and I agree.
10. Even if it had been established that the site was previously developed land, as defined in the Framework, the proposal would still conflict with the spatial strategy as articulated in Policy SP03.

11. While Policy LP08 expresses support for proposals for CSB housing, such support is contingent on the proposal according with all other relevant policies in the Plan. Consequently, the proposal would also conflict with Policy LP08.
12. To promote sustainable development, the Framework states at paragraph 83 that housing in rural areas should be located where it would enhance or maintain the vitality of rural communities. On the basis that Policy SP03 provides flexibility for new housing to be provided in and around rural communities in a range of circumstances, it accords with that approach.
13. Although Monks Eleigh is among the smaller settlements in the District, it provides a small range of local services and facilities, including a public house, community shop with post office, village hall with recreation ground, and church. Future occupiers of the proposed dwellings could easily make use of those services, which are readily accessible on foot. They may also frequent other local facilities, such as the public houses in neighbouring villages. Therefore, the proposal may make some positive economic and social contribution to the vitality of the rural community. However, in proportion to the scale of the village as a whole, any such contribution would be inherently modest.
14. In order to reach a wider range of services, occupiers of the dwellings would need to travel to larger settlements such as Lavenham, Hadleigh and Sudbury. There is a bus service, which could feasibly be used for shopping or leisure trips, and bus transport to school also appears to be available. However, the scheduled bus service is infrequent and could not realistically be relied upon for commuting or similar daily journeys. Therefore, in practice, future occupiers of the dwellings are very likely to rely on travel by car to reach a full range of services for everyday living. Notwithstanding the recognition in the Framework that opportunities to maximise sustainable transport will vary between urban and rural areas, that weighs against the suitability of the location for additional housing.
15. I therefore conclude that the proposed development would not provide a suitable location for housing, having regard to the Council's spatial strategy and the Framework. It would conflict with Policies SP03 and LP08 of the JLP, as summarised above, and would not, overall, be a suitable location for housing when considered against the policies in the Framework taken as a whole.

Heritage

16. The appeal site is within the Monks Eleigh Conservation Area (CA), which encompasses most of the village, as well as a significant expanse of open land to either side of the River Brett. The significance of the CA includes its relationship with the river, with former watermills at either end of the village being among the indicators of historic economic activity, alongside agriculture and the wool trade. At the heart of the village is a cluster of listed buildings around the triangular green, with the settlement continuing in a more linear form in both directions along Brent Eleigh Road. The CA also includes a smaller, parallel settlement at Swingleton Green, on the opposite side of the river.
17. Along the southern side of Brent Eleigh Road, there is little development in depth, so there is a direct relationship between the buildings along the road and the river valley behind them. However, the buildings are close together and views of the river are largely only glimpsed. In contrast, the Grade II listed building at Old Mill &

The Old Mill House, near the appeal site, has a more direct relationship with the river and adjacent water meadows, which helps to reveal its historic function.

18. Being between two areas of woodland, the appeal site is one of relatively few places at this end of the village where there is an open view towards the river corridor. Trees along the riverbank can be seen at the rear. The site is also part of the wider expanse of undeveloped meadows and woodland along the river corridor which enables the historic form of the two parallel settlements and their functional relationship with the watercourse to be understood and appreciated.
19. Although views across the site are not among the 'important vistas' mapped in the Conservation Area Appraisal (CAA) ², and the site itself is not explicitly mentioned, the importance of the relationship between the village, the river and the adjacent countryside is highlighted in the appraisal. Furthermore, the introduction to the CAA makes clear that the omission of any particular feature or space does not imply that it is of no interest in conservation terms. At the hearing, the Council explained that the inclusion of the undeveloped riverside environment within the CA reflects the specific contribution which it makes to the CA's significance, despite the limited views of the river itself.
20. A design approach appropriate to the CA is envisaged and could be secured through approval of a design code to guide prospective self-builders. The appearance, layout and scale of the dwellings would be for later consideration and the Council would have control over matters such as materials and detailing at that point. However, while a well-designed development might mitigate the effect on the CA, the proposed development would inevitably erode the open character of the site. The introduction of three dwellings, together with their residential curtilages and features such as boundary treatment and landscaping would significantly increase the sense of enclosure on the southern side of the road and would obstruct the existing open view towards the river. Even if the designs were otherwise sympathetic to the characteristics of buildings in the village, this would be harmful to the significance of the CA.
21. Although the indicative plans suggest a linear layout, reminiscent of the existing frontage on the southern side of the road, the development would be separated from that frontage by the intervening woodland. It would therefore have a somewhat detached character, despite the dwellings opposite. By fragmenting the substantially continuous expanse of undeveloped land on the south side of the road, the development would undermine the distinction between the built-up frontage and its countryside setting.
22. The setting of the listed building at Old Mill & The Old Mill House includes the adjacent riverside landscape, which contributes to its significance by revealing its historic function. However, the appeal site is some distance from the listed building, which would still have a clearly understood relationship with the more directly adjacent river and water meadows. Therefore, there would not be any direct harm to its setting, over and above the erosion of the open landscape in this part of the CA.
23. Otherwise, most of the listed buildings in the core of the village are clustered around the green or further along Brent Eleigh Road, with these existing built-up frontages providing their immediate setting. Spring Cottage is closer to the edge of

² Monks Eleigh Conservation Area Appraisal, adopted 2012

the settlement, but it adjoins modern dwellings on both sides of the road, one of which stands between the listed building and the appeal site. Taking account of the intervening distance, which also includes the parcel of woodland, the proposed development would not directly impinge on the settings of Spring Cottage or other listed buildings in the historic core.

24. Nevertheless, for the reasons given above, I conclude that the proposed development would have a harmful effect on the character and appearance of the Monks Eleigh Conservation Area and consequently on its significance. It would therefore conflict with relevant requirements in Policies SP09 and LP19 of the JLP which require, amongst other things, that development should support and contribute to the conservation and enhancement of the historic environment and that designated heritage assets must be preserved, enhanced or conserved in accordance with relevant statutory tests³ and their significance.
25. Taking account of the scale of the proposed development in relation to the Conservation Area as a whole, the harm to heritage assets would be less than substantial. In those circumstances, both Policy LP19 of the JLP and paragraph 215 of the Framework require that such harm should be weighed against the public benefits of the proposal. That is a matter to which I return below.

Protected Species

26. An updated Preliminary Ecological Appraisal⁴ (PEA) was provided with the appeal, including photographs and text omitted from the version submitted with the planning application. This was available to the Council, its Ecological Consultant and interested parties as part of the appeal process and both parties confirmed at the hearing that the updated version should be referred to.
27. Amongst other things, the updated PEA notes that the appeal site's diversity of grassland structure and neighbouring scrub and woodland provide high value habitat to reptile species, with slow worm and grass snake being specifically identified. Furthermore, the PEA confirms that slow worms were found beneath discarded materials on the site.
28. While mitigation measures are proposed, involving relocation of any reptiles within land controlled by the appellant, no further reptile survey is recommended in the PEA and none has been undertaken. The PEA comments that further surveys are only recommended if there is significant likelihood that protected species may be present and impacted by the proposals, based on the suitability of habitat and any direct evidence. However, protected species have been confirmed as present and the site is described in the PEA as providing suitable habitat for reptiles. Therefore, notwithstanding the professional credentials of the ecologist who prepared the PEA, the evidence before me does not convincingly explain why no further survey was recommended in response to these circumstances.
29. While the Council's Ecological Consultant acknowledges that mitigation is proposed, they also express some doubt about the adequacy of those measures, in the absence of a reptile survey. In essence, since the extent of the reptile population on the site is unknown, it is not clearly demonstrated that adequate, suitable land within the appellant's control would be available for relocation of

³ As defined in the Planning (Listed Buildings and Conservation Areas) Act 1990

⁴ Framlingham Environmental Preliminary Ecology Appraisal dated 4 June 2024 (Appellant's Statement of Case Appendix 5)

reptiles, or whether additional measures might be required. While the appellant expresses confidence that sufficient alternative habitat would be available, there is a lack of objective evidence to support that view. Consequently, it is uncertain whether adequate mitigation could be secured through conditions and no legal mechanism is proposed which would be capable of securing any required relocation beyond the land controlled by the appellant.

30. Circular 06/2005 makes clear that it is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Based on the evidence before me, I am not satisfied that adequate measures could be secured to mitigate any adverse effect on reptiles. On that basis, I conclude that there would be an adverse effect on protected species. As such, the proposal would conflict with relevant requirements in Policies LP16 and SP09 of the JLP, which include that development should support and contribute to the natural environment and that development which would have an adverse effect on protected species will not be permitted unless suitable measures have been taken to minimise disturbance, maintain the population identified on site and provide adequate alternative habitats to sustain at least the current levels of population.

Highway Safety

31. The appeal site has an existing access to Brent Eleigh Road (A1141), which is the main road connecting Monks Eleigh with the larger settlements of Lavenham and Hadleigh. A 30mph speed limit is in force where the road enters the village outside Monks Cottage, part way along the site boundary, but speed is unrestricted west of that point. There is vegetation along the highway verge and appeal site boundary, including on both sides of the access, which significantly obstructs visibility at present. Although the alignment of the road towards the village centre is relatively straight, in the other direction a bend in the road further restricts visibility.
32. Although I have noted evidence from the Parish Council and others of excess speed along this section of the A1141, there is no dispute between the main parties that the 2.4m x 59m visibility splay sought by the Highways Authority is appropriate to the road conditions. I have considered the appeal on that basis. The visibility splay drawing submitted with the application included an annotation which was misinterpreted as a visibility splay dimension in the Highways Authority's comments. It was also drawn to the far side, rather than the nearside of the carriageway. However, the amended visibility splay drawing tabled at the hearing addresses and clarifies both points.
33. These amended details confirm that, in order to achieve the required visibility splays, some removal of roadside vegetation would be required. To the west of the access, this could be implemented within the site boundaries and highway verge. The existing scrub may be of some biodiversity value and it contributes to the rural character of the approach into the village. However, it is fairly patchy and a detailed approach to providing the visibility splays, while retaining/reinstating an appropriate extent and form of hedgerow planting in front of the dwellings, could be confirmed through the layout and landscaping details.
34. To the east, the required visibility splay would extend beyond the site, taking in a narrow strip in front of the adjacent woodland. The Ordnance Survey basemap implies that this is probably highway land, with the area in question lying between

the edge of the surfaced carriageway and a parallel land parcel boundary. However, this has not been clarified with the Highways Authority.

35. When visiting the site, following the hearing, I noted that trees and scrub along the edge of the woodland extended right up to the edge of the carriageway. There was no visible verge or footpath and the vegetation would need to be cut back. Therefore, taking account of the uncertainty about the extent of the highway, I cannot be entirely confident that the eastern visibility splay is achievable.
36. In recognition of this uncertainty, it was suggested at the hearing that a Grampian condition could be used to secure delivery of the visibility splays, so that the Highways Authority could be involved in resolving this point. There would remain some uncertainty about whether the visibility splay could be secured. If so, that could prejudice implementation of the development. However, drawing on the advice in Planning Practice Guidance, it could not reasonably be said that there is 'no prospect at all' of the visibility splay being secured and, in those circumstances, a Grampian condition could be a suitable approach.
37. With regard to additional points raised by the Highways Authority in relation to pedestrian safety, there is an existing footpath along the north side of Brent Eleigh Road, directly opposite the site. The road is not particularly wide and there is an existing dropped kerb to a property opposite. Pedestrians leaving the site would benefit from the increased visibility provided by the vehicular visibility splays. Therefore, there is no clear need for a formal crossing within the highway to facilitate use of the pavement. There are other places where pedestrians have to cross from one side of the road to the other, as the pavement is not continuous, so that is already part of the established pattern of movement within the village.
38. For the above reasons, I conclude that, subject to the imposition of a Grampian condition to secure provision of the visibility splays prior to commencement of any other development, the proposed development would not be harmful to highway safety. As such, it would accord with relevant requirements in Policy LP29 of the JLP, which include that all developments will be required to demonstrate safe and suitable access for all.

Other Considerations: Custom and Self-Build Housing

39. Planning Practice Guidance recognises that CSB housing helps to diversify the housing market and increase customer choice. The Framework accordingly includes a range of measures designed to boost the supply of such housing. Furthermore, under the Self-Build and Custom Housebuilding Act 2015⁵ (the 2015 Act), the Council has a statutory duty to monitor and respond to demand for CSB, as expressed on its Self-Build Register (SBR).
40. Based on the table provided with the Statement of Common Ground, there have been 396 entries on the SBR since the first base period in 2015/16. They include entries which are duplicated on the SBR for other authorities, notably Mid Suffolk DC, as the register is held jointly. Nevertheless, that is the relevant figure for monitoring demand for purposes of the 2015 Act. In the same period, 147 relevant CSB permissions have been granted. Although the evidence shows that the Council met its statutory duty in the earlier base periods, there is an overall shortfall of 249 permissioned CSB plots as at the date of the hearing.

⁵ As amended by the Housing and Planning Act 2016 and Levelling Up and Regeneration Act 2023

41. Since the statutory duty requires that sufficient planning permissions are granted within three years of the end of each base period, there is arguably not yet any shortfall in relation to the 99 entries added to the SBR less than three years ago. Nevertheless, the need to address that demand will continue to accrue.
42. The Council's approach to monitoring relevant permissions relies on granting of an exception from the Community Infrastructure Levy, which is a two-stage process and is only confirmed on completion of development. It was therefore put to me that there will be a number of permissions in the pipeline which will contribute towards meeting the statutory duty and will, once completed, reduce the currently apparent scale of the shortfall. Furthermore, the Council's internal analysis indicates that the period between permission and completion can be significant, with an average of just under 3 years having been calculated.
43. Policy LP08 is supportive of CSB proposals and there was no similar support in the predecessor Local Plan. However, the policy does not allow for CSB unless all other policies in the plan have been satisfied and therefore there is limited evidence that it will boost the supply of CSB to a significant extent. An exemption from the statutory requirement to provide biodiversity net gain (BNG) may encourage an increased number of applications for CSB schemes. However, there is no data at this point to quantify that and it would not in any case address the evidence of under-supply in permissions granted before the statutory BNG requirement came into effect. The recent introduction of a local connection test by the Council may well reduce the number of new entries on the SBR going forward. However, it likewise does not apply retrospectively, so would not reduce the current shortfall.
44. Taking all the above factors into consideration, while there is a realistic likelihood that the supply position will improve over time, the scale of such improvement is unknown. Furthermore, given the current scale of the shortfall, there is significant uncertainty that the Council's statutory duty will be met for all the base periods which have already elapsed. The contribution which the development could make to addressing the shortfall therefore weighs in favour of the proposal.
45. A series of conditions is proposed to secure delivery of CSB housing. Taking account of those proposed at the hearing, these would secure submission and approval of a design code at an early stage, followed by a phased approach to the submission of reserved matters, to ensure that each serviced plot would be capable of independent development. A condition is also proposed, with wording agreed between the parties, to require that the development is designed, constructed and first occupied by or for the same party or parties, as a CSB dwelling as defined in the 2015 Act.
46. However, even if evidence were provided during the reserved matters application process as to the party/parties driving the design and construction process, circumstances can change and the final requirement regarding occupation by that party/parties would be highly challenging to enforce. Consequently, it has not been clearly demonstrated that a condition requiring such occupation would meet the tests in paragraph 57 of the Framework. Furthermore, in the event that the dwelling(s) were first occupied in breach of the condition, they may be deemed not to comply with the definition in the 2015 Act, which would negate the benefit of the proposal for delivery of CSB housing.

47. In both of the Mid Suffolk appeal decisions⁶ brought to my attention, Unilateral Undertakings had been provided to secure the delivery of CSB plots. This is also the approach sought in the Housing SPD and would allow for legal obligations on the appellant, beyond the scope of the above conditions, so as to secure delivery and occupation of dwellings meeting the definition in the 2015 Act. In the absence of a similar legal mechanism in this case, there is a greater level of uncertainty about whether the benefits of CSB housing would, ultimately, be delivered.
48. The Lawshall appeal decision does not detail the mechanism for delivery of CSB housing in that case, so no clear parallel can be drawn in that regard. While there are some similarities between the two cases, notably in relation to consistency with the Council's spatial strategy, the proposals are in different villages and there are differences in the other main issues. Therefore, while I have had regard to the approach taken in this very recent decision, the factors weighed up in the planning balance below draw on the specific circumstances at the appeal site and the evidence which is before me.

Other Benefits

49. There is no dispute that the Council can demonstrate a housing land supply which exceeds the five year requirement. Nevertheless, the delivery of three dwellings would be beneficial, helping to boost the supply of housing. While the Council alluded to a healthy supply of small housing sites generally, paragraph 73 of the Framework is specifically supportive of small sites coming forward for CSB housing and the proposal responds to that support. There would also be some economic benefit from the construction process.
50. Although the proposal would not be subject to statutory requirements for BNG, Policy LP16 of the JLP includes a requirement for at least 10% net gain on all new development and the appellant confirmed at the hearing that a biodiversity enhancement strategy could be secured by condition to meet this requirement.
51. While I have noted concerns raised by interested parties about the risk of flooding, the upper part of the site where the dwellings are proposed is in Flood Zone 1 and suitable arrangements for drainage could be secured through conditions. The site could in principle accommodate three dwellings meeting relevant standards for parking and private amenity space and these and other technical requirements could be addressed through the reserved matters or conditions. However, these are neutral factors weighing neither for nor against the proposal.

Planning Balance and Conclusion

52. Although the harm to the CA would be less than substantial, I have nevertheless attached considerable importance and weight to the desirability of avoiding such harm, in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In addition, the conflict with the Council's spatial strategy and the absence of adequate evidence that harm to protected species would be avoided or mitigated weigh significantly against the proposed development.
53. Even if it had been clearly demonstrated that the proposed conditions for securing delivery of CSB would be effective and meet the tests in the Framework, only a

⁶ Appeal Refs: APP/W3520/W/23/3316136 & APP/W3520/W/24/3346126

small numerical contribution would be made towards addressing the shortfall. Furthermore, for the reasons given above, there is some uncertainty about whether that benefit would ultimately be delivered. While any additional housing is beneficial in the context of the Framework, the Council can demonstrate a healthy housing land supply overall and there is no evidence of a general shortage of housing coming forward on small sites. A biodiversity net gain may be secured, but at a level which would address, but not exceed, the requirements of the JLP and any economic benefits would be inherently modest.

54. Even if considered collectively, these public benefits carry no more than moderate weight, taking account of the modest scale of the proposal and the uncertainty about delivery of CSB housing. That would not outweigh either the harm to the designated heritage asset, which in itself carries considerable weight, or the harmful aspects of the proposal in combination.
55. In conclusion, the proposed development would conflict with the development plan as a whole and the other material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, for the reasons given, the appeal should be dismissed.

Jane Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phil Cobbold BA PGDip MRTPI – Phil Cobbold Planning Ltd

Mr G Newley, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Vincent Pearce BA (Hons) (T&CP) MRTPI – Principal Planning Officer

Alex Breadman – Planning Officer

Tegan Chenery BA (Hons) MSt – Senior Heritage Officer

Robert Feakes – Housing Enabling Officer

HEARING DOCUMENTS

- 1: Visibility Splay Clarification, prepared by Babergh District Council
- 2: Extract from Joint Local Plan Part 1 Policies Map
- 3: Babergh and Mid Suffolk District Councils Housing Supplementary Planning Document, adopted November 2024
- 4: Schedule of additional conditions drafted by parties during Hearing