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## Appeal Decision

Site visit made on 3 March 2025

**by D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)**

an Inspector appointed by the Secretary of State

**Decision date: 13<sup>th</sup> March 2025**

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**Appeal Ref: APP/D3505/W/24/3352604**

**Land South of High Road, Leavenheath, Colchester, CO6 4NZ**

- 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 Boxford (Suffolk) Holdings Ltd against the decision of Babergh District Council.
  - The application Ref is DC/23/04452.
  - The development proposed is an outline planning application for the erection of 40 No. residential dwellings with associated open space and landscaping buffers and with all matters reserved for subsequent approval apart from access.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The planning appeal is submitted in outline form with all matters reserved except for access. I have determined the appeal on this basis.
3. A signed and executed legal agreement pursuant to section 106 (S106) of the Town and Country Planning Act 1990 (as amended) is submitted to the appeal. It is dated 12 December 2024. I shall return to this later in my decision.

### Main Issues

4. The main issues for the appeal are:
  - whether or not the appeal site is a location suitable for development;
  - the effects upon local drainage and flood risk;
  - the effects of the development upon local social infrastructure;
  - whether or not the proposal would secure biodiversity net gain;
  - whether or not the proposal provides a suitable mix of housing; and
  - whether or not there would be an adverse effect on integrity upon the Stour and Orwell Estuaries Special Protection Area (SPA).

### Reasons

#### *Location*

5. Policy SP03 of the Babergh and Mid Suffolk Joint Local Plan Part 1 (the JLP) 2023 states that new housing development will come forward through extant planning

permissions, allocations in made Neighbourhood Plans, and windfall development in accordance with the relevant policies of the Plan or Neighbourhood Plans.

6. The Leavenheath Neighbourhood Plan 2022-2037 (the LNP) is recently made and does not make any specific housing allocations. However, Policy LEAV5 of the LNP states that housing development will be supported within or immediately adjacent to the settlement boundaries for the three areas identified in Figure 22, subject to a number of stipulations. Figure 22 within the LNP outlines the three settlements within Leavenheath of Harrow Street, High Road and Honey Tye. The appeal site is immediately adjacent to the settlement boundary of High Road and therefore the proposed development would be supported by the LNP provided it meets the relevant criteria.
7. Policy LEAV5 of the LNP is supported by policy LEAV6, which states that development should respect and retain the generally open and undeveloped nature of the parish, in particular, the distinct separation of Harrow Street, High Road and Honey Tye.
8. The Council find conflict with LEAV5 and LEAV6 insofar as that the appeal site would not have natural boundaries, and the proposal would undermine the distinct physical and visual separation of High Road and Honey Tye. The Council also raise concerns regarding the suitability of the appeal site from an accessibility perspective.
9. Regarding accessibility, the location itself would have direct pedestrian and cycle access to only a limited number of shops, services and facilities in Leavenheath. Future residents would therefore need to travel to neighbouring settlements for day-to-day services. Whilst this may give rise to additional private vehicles movements, there is a readily viable alternative available in the form of bus services connecting to other rural communities and to the principal settlements of Sudbury and Colchester via the A134. On this point, I do not agree with the Council that the appeal site is in an inaccessible location.
10. However, on my visit I observed that the appeal site falls outside of the settlement boundary for Leavenheath, though contiguous with it. The appeal site sits between the southeastern edge of the village and the A134 corridor, opposite houses on High Road and to the rear of dwellings on Edies Lane and Orchard View. I noted that Honey Tye constitutes a small number of dwellings in a largely linear arrangement along the A134, separated from the appeal site by a single agricultural field. When looking north and northwest from the edge of Honey Tye, there are few visual cues of the larger settlement of Leavenheath within the landscape. I also noted from the public footpaths in the locality that the appeal site is open to public views, read and understood as part of a larger landholding.
11. The appeal development would, in my view, occupy a significant proportion of the remaining gap between High Road and Honey Tye, eroding the physical and visual separation of these areas and resulting in coalescence. This would be harmful to the character of the area because the sense of rurality enjoyed by Honey Tye would be reduced. I acknowledge landscaping may come forward to provide a visual buffer, but the proposed development would nonetheless be of detriment to the spatial characteristics of the locality. I do not consider that there would be sufficient distance between the appeal development and Honey Tye for

the built-up areas to remain distinct, or for the rurality of the locality to remain apparent. Therefore, the proposal would be contrary to policies of the LNP.

12. The eastern boundary of the appeal site is arbitrarily drawn, with no recognisable natural boundary in that position. In order to separate the appeal development from the remaining apple tree plantation to the east, the boundary would need to be heavily landscaped. Furthermore, the southern boundary is entirely visually open at present and would require significant landscaping to screen or to provide privacy to the development. Together, these measures would represent the artificial imposition of self-containment and would not appear natural, leaving the remaining part of the apple plantation as an odd pocket of land. Again, this would be contrary to policy LEAV5.
13. My attention is drawn to a recently determined appeal<sup>1</sup> on land to the northeast of the appeal site, sitting behind the housing on the High Road. In all respects, that appeal scheme was found compliant with the development plan.
14. I recognise the appeal decision for 3352565 represents a material consideration and has a bearing on my findings. I note that I have, independently of that appeal, found the appeal site to be in an accessible location. Where my findings differ is in respect of the level of harm to the visual and spatial characteristics of the area. I justify this because the current appeal would fill a large part of the gap between Leavenheath and Honey Tye, leaving only a single field between the settlement areas. This is a different geographical circumstance to 3352565 and the reduction of spatial separation between settlement areas would, in my view, be harmful to the locality and contrary to the LNP.
15. The proposal on 3352565 was found acceptable because the residential area would be setback from the A134. This consideration also applies to the current appeal, but I must also give consideration to the potential cumulative impacts here as well. The attritional loss of the generally open and undeveloped nature of the parish on this eastern boundary would be harmful to the spatial character identified in the LNP. The appeal proposal spreads development eastward towards the A134 and erodes the undeveloped nature of the parish. The setback would not overcome the loss of spatial separation characteristics. In addition, I do not consider there to be the same natural boundary considerations between the respective appeal developments due to circumstances explained above regarding the openness of the southern boundary at present.
16. In light of this, I consider that the appeal before me is materially different to 3352565 and causes a greater degree of harm found in that case. Whilst the appellant has pointed to the history of the appeal site as being considered as being a location for a logical extension to the settlement, there are no allocations in the JLP or the LNP to give weight to such arguments.
17. Whilst the appeal site would be in an accessible location, this does not justify the incursion into the countryside that disrupts the spatial and visual pattern of High Road and Honey Tye. On this basis, I find the appeal site would not be a suitable location for the proposed development. The proposal would be contrary to policies LEAV5 and LEAV6 of the LNP, which seek the retention of the generally open and undeveloped nature of the parish.

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<sup>1</sup> APP/D3505/W/24/3352565

### *Drainage and flood risk*

18. I am told that Leavenheath suffers from surface water drainage issues and, upon the evidence before me, the appeal site has a relationship with an area that has a surface water flooding history. LNP policy LEAV4 states that future development must not cause or contribute to new flooding or drainage issues, exacerbate existing issues, or cause water pollution, and should mitigate its own flooding and drainage impacts.
19. The proposals rely on temporary storage of surface water in an onsite basin before discharging into a surface water sewer operated by Anglian Water. From the evidence before me, Anglian Water's last official comments stated that the surface water strategy was unacceptable because there was not capacity within the public sewerage network, and this would cause an unacceptable risk of flooding. Anglian Water requested further engagement with the appellant to determine what network reinforcement works were required to upgrade the surface water sewage system.
20. The appellant has offered an alternative drainage solution, being the construction of a private pumping station, laying of a rising main and discharging via a watercourse on land within the appellant's control to nearby lakes. However, this has not been agreed with the Local Lead Flood Authority (LLFA), with a statement that a viable strategy for disposal of surface water has not been demonstrated.
21. Whilst acknowledging the appellant's consternation that the LLFA have not been open to talks regarding the discharge to a local watercourse, I must take a precautionary approach to development proposals likely to give rise to an increased risk of flooding. There is clearly a concern from both the Council and local residents, and the proposed development would likely exacerbate the issue without appropriate mitigation.
22. I note that the main parties suggest a Grampian condition requiring submission of a surface water drainage and management strategy. The condition is worded to allow for two options being either to secure the reinforcement works for Anglian Water, if required, or for the private means of disposal to be detailed.
23. In respect of the Anglian Water works, the process of determining what upgrades are necessary, to fund such upgrades and to implement them would appear to me to be unachievable within the period of time in which development normally commences. In respect of the private solution, I note the need for agreements to be secured with the highways authority where mains would be underneath the A134 and Plough Lane, whilst a location for a private pumping station would need to be agreed with the LLFA within the appeal site. Neither seem to be quick to resolve and the very fact that there is optionality suggests to me that an appropriate drainage system has not been identified. With reference to the national planning practice guidance Reference ID: 21a-009-20140306, Grampian conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. I do not therefore consider it appropriate in this instance to defer drainage matters to conditional approval.
24. Appeal 3352565 was found acceptable with regards to drainage matters. However, in that case the issue was one between the appellant and local residents, with the Council satisfied. Anglian Water were also in agreement with that proposal, whereas in the case of the current appeal there is a clear outstanding objection.

25. I conclude the development would not be able to mitigate its own impacts on drainage or flood risks arising. Therefore, the development would cause an unacceptable impact on local drainage and flood risk, contrary to policy LP27 of the JLP and policy LEAV4 of the LNP, that seek to minimise the risk of flooding to the site and the surroundings.

#### *Social infrastructure*

26. The Council identify the appeal development would not provide on-site recreational green space or play equipment, and the reasons for refusal raise other concerns regarding a lack of educational funding and affordable housing contributions.
27. I am in receipt of the S106 that has been signed by all interested parties confirming the provision of school transportation contributions. The S106 also contains a detailed description of affordable housing provision, including the expected clauses for its retention in perpetuity and marketing. That both the Council and County Council are signatories to the agreement strongly indicates to me such elements have been satisfactorily resolved, and I have no reason to disagree having reviewed the drafting of the S106.
28. With regards to on-site recreational space, the appeal is in outline form, so the quantum and distribution of open space may change in any future layout to that shown on the indicative plans. I do however note that clauses within the signed S106 secure the provision of up to 1.1 hectares (ha) of open space as well as an open space commuted sum. Whilst the indicative plans show circa 3,400 square metres of open space, significantly below the 1.1ha target, the S106 has been signed by the Council. It is therefore my view that open space would be provided to a policy compliant level, mitigating any impacts of the development.
29. I consider that the measures in the S106, in relation to this main issue, are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework (the Framework).
30. I find that the proposal would mitigate and manage its own effects upon local social infrastructure. The proposal would therefore comply with policies LP29 and SP02 of the JLP, as well as policy LEAV12 of the LNP, that seek appropriate and proportionate contributions from all developments towards the community.

#### *Biodiversity Net Gain*

31. Policy LP16 of the JLP states that applicants should identify and pursue opportunities for securing measurable net gains, equivalent of a minimum 10% increase, for biodiversity (BNG).
32. The Council argues that the proposal does not provide for reasonable biodiversity enhancements for protected and priority species, required to secure net gains for biodiversity. The appellant's response is three-fold insofar as the application was submitted prior to BNG becoming mandatory via the Environment Act 2021, policy LP16 is out-of-date in that context and BNG could be provided either on-site or off-site on the appellant's own land. In respect of that final point, the appellant's S106 agreement contains several clauses and provisions for delivering BNG.

33. Whilst noting the timing of the application submission, I am aware of the national direction of travel with regards to BNG and consider that policy LP16 adequately reflects the current position. I am confident that, even though no immediate strategy for BNG is presented to the appeal, a measurable and deliverable BNG scheme could come forward at the reserved matters stage. That such a strategy would be provided in line with a S106, as opposed to just conditional approval, adds weight to that confidence.
34. Therefore, I find that the proposed development would provide a minimum of 10% Biodiversity Net Gain in accordance with Policy LP16 of the JLP and that this reason for refusal has been overcome.

#### *Housing Mix*

35. Of the 40 dwellings proposed, the application form for the proposal states that a total of 6 units would be four beds, and 3 would be five beds. The Council object to this on the grounds of LNP policy LEAV7, though recognise that this is an outline application with the matter of access submitted only.
36. Policy LEAV7 does not appear to prohibit or prevent larger dwellings from being constructed, so I do not consider it a strong policy objection to what is being proposed by the appellant. Nonetheless, notwithstanding any details submitted at this stage, it would appear a planning condition requesting housing mix to be agreed as part of any reserved matters submission would amply serve to resolve this issue.
37. For this reason, I am confident that an appropriate mix of housing could be secured on the appeal site. The proposal would therefore be compliant with policy LEAV7 of the LNP, and the housing requirements stipulated therein.

#### *Stour and Orwell Estuaries SPA*

38. The proposed development falls within the 13-kilometre zone of influence for the Stour and Orwell Estuaries SPA. The proposal would give rise to increased numbers of residents and increased recreational pressure upon the SPA. If unchecked, this recreational pressure would give rise to an adverse effect on the integrity (AEoI) of the SPA.
39. The Council, in partnership with Natural England, have adopted the Suffolk Recreational Disturbance Avoidances and Mitigation Strategy in an effort to prevent the AEoI occurring. To comply with the principles of this strategy, a financial tariff would be imposed on any new development, gathering contributions to fund, amongst other things, signage and wardens.
40. The appellant, via the signed and executed S106, has committed to provide the necessary financial contributions proportionate to the number and size of dwellings being delivered. This appears to have been accepted by the Council, a signing party to the S106.
41. As I am dismissing the appeal for other reasons, I have not undertaken an appropriate assessment in this instance. Nonetheless, on the face of the evidence before me, the appeal proposals would mitigate its effects on the SPA and be compliant with policy SP09 of the JLP.

## **Other Matters**

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that my determination must be in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
43. Paragraph 4.3 of the Council's statement of case claims that the tilted balance does not apply because a five-year housing land supply can be demonstrated, and the Housing Delivery Test is being passed.
44. In a letter dated 5 March 2025, the appellant points to the evidence submitted in respect of appeal 3352565, within which the appellant on that scheme argued a case that the Council could only demonstrate a 4.31-year supply. However, the appellant acknowledges not submitting any evidence in respect of the housing supply position, and I have none of that other appellant's evidence before me on this appeal to determine if their case even had merit. The Inspector on the 3352565 appeal did not make any conclusions on the matter. Therefore, whilst the Council has not substantiated their case with any specific figures or evidence, I have nothing to the contrary to doubt the claimed position.
45. For these reasons, I find in favour of the Council in this instance bearing in mind the JLP was found sound in 2023. Whilst the proposal would provide both market and affordable housing, I do not consider that paragraph 11(d) of the Framework is invoked, and I do not need to weigh the harms against any claimed project benefits.
46. I conclude there are no material considerations to warrant a departure from the development plan. Whilst there are some aspects of the proposed development that accord with local planning policies, I have identified conflict with the development plan as a whole, including the made neighbourhood plan.

## **Conclusion**

47. For the reasons given above the appeal should be dismissed.

*D Wallis*

INSPECTOR