



Appeal Decision

Site visit made on 6 February 2025

by **H Jones BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31st March 2025

Appeal Ref: APP/D3505/W/24/3348369

Land north of Assington Barns, The Street, Assington CO10 5LW

- 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 Thain against the decision of Babergh District Council.
 - The application Ref is DC/23/05459.
 - The development proposed is a single storey two bedroom self-build dwelling.
-

Decision

1. The appeal is allowed, and planning permission is granted for a single storey two bedroom self-build dwelling at Land north of Assington Barns, The Street, Assington CO10 5LW in accordance with the terms of the application, Ref DC/23/05459, subject to the conditions in the attached schedule.

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. The appellant's submissions include an Ecological Appraisal¹ which was not before the Council when it made its decision. The Ecological Appraisal proposes ecological measures which seek to minimise the effects of the proposed development upon habitats and species and in order to deliver biodiversity enhancements. The Ecological Appraisal does not, to any substantial degree, amend or evolve the proposed development.
4. Since its submission, the Council has had the opportunity to review the Ecological Appraisal. Furthermore, through the Council's notification processes during the appeal, third parties have also been given the opportunity to submit comments. I am satisfied that it is procedurally fair to accept the Ecological Appraisal and I have had regard to it in my decision.
5. The Council's fourth reason for refusal articulated its concern that the planning application was not accompanied by sufficient ecological submissions to demonstrate that adverse ecological effects would not result from the proposed development. Furthermore, the reason for refusal asserted that there had been a failure to pursue opportunities for biodiversity net gains. However, partly informed by the Ecological Appraisal now submitted, the Council has since set out that it is satisfied its objections within the fourth reason for refusal have fallen away. In the

¹ Preliminary Ecological Appraisal Including a Protected Species Assessment of Land Rear of The Barn, The Street, Assington, Suffolk. CO10 5LW dated March 2024

light of the Council's updated position, the ecological implications of the proposed development is not a main issue in my decision.

Main Issues

6. The main issues are:

- Whether the appeal site provides a suitable location for the proposed development having particular regard to relevant development plan policy which concern employment uses;
- Whether appropriate living conditions would be provided for the future occupiers of the proposed development with specific reference to their outlook;
- The effects of the proposed development upon the character and appearance of the area;
- Whether the proposed development would satisfactorily address any risks posed by site contamination and land instability; and
- The certainty of a self-build home being delivered and the implications of this.

Reasons

Location

7. Assington Barns is a business complex situated within Assington, a village within a rural area. Whilst Assington Barns is identified by the Assington Neighbourhood Plan 2018-2036 (NP) as a community facility, since it is a complex including various businesses, it provides for employment as well. Policy LP10 of the Babergh and Mid Suffolk Joint Local Plan – Part 1 (JLP) relates to development which would result in any changes from employment use.
8. The appeal site partly encompasses land providing the access to Assington Barns from the adjacent roads and a route through the complex's frontage carpark. The proposed development would not alter the layout of this part of the site.
9. The proposed dwelling, parking area and associated works would all be located on land to the rear of the complex. In summary, this part of the appeal site contains the dilapidated remains of a polytunnel, some hard-surfaced areas, a small timber building and, within the site and to its edges, various plantings and fencing. As a result, the proposed development would not alter the main buildings within Assington Barns which house its employment and, although the small timber building on the site would be demolished, I have no substantive evidence before me which indicates to me that it contributes towards the complex's employment role. Since a carpark is proposed, any parking taking place to the rear of the complex would be compensated for.
10. Given the above, the proposal would not result in the loss of land which is providing employment or which is adding to the complex's value to the community. Instead, land of mixed character beside those parts of the site providing that employment and community value would be re-purposed.

11. For these reasons, I find that the proposal would not compromise ongoing employment use nor would it result in the loss of a premises or site with an employment role. As a result, the proposal accords with JLP Policy LP10 which seeks to prevent development which would compromise ongoing employment use and prevent the loss of employment sites or premises unless demonstrations are made in respect of marketing and amenity related effects. Since I have identified that an employment premises or an employment site would not be lost in these particular circumstances, these demonstrations are not required in this case in order for the proposal to comply with Policy LP10.
12. In coming to these views, I note the Council's concerns with the effects of the proposal upon the future expansion of the business complex. However, firstly, I have no substantive evidence before me that the expansion of the existing business complex upon the land proposed for redevelopment is likely. Furthermore, since Policy LP10's emphasis is upon ensuring that sites in ongoing employment use are not compromised, and that land that tangibly constitutes employment land is not lost, I fail to see how the re-purposing of land next to the tangible employment land brings about any conflict with the policy.
13. The Council has cited an appeal decision² relating to an employment site. In doing so, it has drawn my attention to an extract of it where the Inspector referred to the consultation response of the Council's Economic and Tourism Team including the references within that response to a strong demand for small units across rural districts and the very limited opportunity for business growth. However, I have no such similar consultee comments before me in relation to this site. Moreover, appeal decisions are heavily dependent on the case-specific evidence and circumstances. I have come to my own views on this appeal having regard to the evidence before me now, my own experience and the particular circumstances of the case. I do not have the full details of the cited case before me, and it is not clear that the specifics of the case are very comparable with the appeal before me. For these reasons, the cited appeal decision is of limited weight in my decision.
14. Therefore, for the reasons I have given above, the appeal site provides a suitable location for the proposed development having particular regard to relevant development plan policy which concern employment uses.

Outlook

15. Aside from a small window within its entrance door, the windows within the front elevation of the proposed dwelling serve a bedroom and a home office. From these rooms there would be outlook across an area of garden which would terminate with a 1.2m high post and rail fence and, beyond, a hedge. Consequently, from the front of the dwelling there would be outlook across a private space associated within the dwelling and the hedgerow would provide a verdant feature on the boundary.
16. This hedge and the fence would together provide a quite effective screen to the parking area and hardstand beyond it. Consequently, I find that the parking and hardstanding would not be unduly close to the bungalow's front and that outlook from the bedroom and office would be satisfactorily pleasant. Furthermore, the proposed sitting room and kitchen/dining room would be located towards the back

² Appeal decision APP/W3520/W/23/3328850

of the house. They would include French doors which would open out to the rear garden and provide these key living spaces with a pleasant outlook.

17. For these reasons, I find that appropriate living conditions would be provided for the future occupiers of the proposed development with specific reference to their outlook. In coming to this conclusion, I have had regard to the findings of the Inspector in relation to outlook in the earlier appeal at the site³. However, that development involved four dwellings and the indicative layout I have before me shows that they would have a more intimate relationship with the parking and hardstanding areas than would be the case in the scheme the subject of my decision. Consequently, the Inspector's findings on this matter in that appeal are not a strong influence upon mine and are of limited weight in my determination.
18. The proposed development accords with Policy LP24 of the JLP and Policy ASSN14 of the NP. Together, and amongst other matters, these policies seek to ensure that developments are designed to be of high quality so that they protect amenity and are safe. The proposal also accords with those policies within the Framework which seek to ensure that developments are well designed and provide a high standard of amenity for future site users.

Character and appearance

19. Much of Assington exhibits a linear settlement pattern with properties lining, and fronting onto, the main roads which run through it in quite a uniform manner. However, close to the appeal site, many buildings are arranged in a far less ordered way. This is demonstrated by the Assington Barns complex itself being made up of a loosely S-shaped terrace of buildings whilst some of the nearest residential properties are irregularly positioned around curved estate roads and driveways. The development here is also greater in depth with some properties set well-behind others on The Street with access taken from, and routing behind, The Street. During my visit, I found it to be part and parcel of the character of the immediate surroundings of the appeal site that views of properties in the backdrop of others in the foreground were quite commonplace.
20. In this context, that the proposed dwelling would be positioned in a back-land type location would not be incongruous. The proposed dwelling would be single storey and modestly scaled, and this would assist in reducing its prominence and aid with its assimilation into the area. For the most part, views of the dwelling would be limited to neighbouring properties and from within Assington Barns itself, and it would be well screened from The Street.
21. I accept that the access route to the dwelling via the Assington Barns carpark would be somewhat unconventional. However, given the aforementioned pattern of buildings in the vicinity of the site, and the facets which would assist with the development's assimilation into it, I fail to see any harm would be derived from this unconventional access arrangement.
22. For these reasons, I find that the proposed development would be a suitably sympathetic addition to the area. The effects of it upon the character and appearance of the area would be acceptable.

³ Appeal decision APP/D3505/W/21/3287380

23. In coming to these views, I have had regard to the previous appeal decisions relating to the appeal site³ and nearby land⁴. However, once again, the proposal before me is for a single detached dwelling not four terraced units which, amongst other matters, the previous Inspector found would result in a cramped layout. Clearly, the appeal proposal is of a very different scale to the 18 dwellings the Inspector assessed on the nearby land. Given the different character of the scheme now proposed, I have considered it on its own merits and, as a result, the previous Inspector's views are of limited weight.
24. The proposed development accords with Policy LP24 of the JLP and Policy ASSN14 of the NP. Together, and amongst other matters, these policies seek to ensure that developments are designed to be of high quality which respond, reflect and would be compatible with local character, and which would maintain and create Assington's sense of place. The proposal also accords with those policies within the Framework which seek to ensure that developments are well designed, visually attractive and sympathetic to local character.

Site contamination and land stability

25. A completed version of the Council's Land Contamination Overview for Small (1-2 dwellings) Residential Developments on Existing Residential Land or Greenfield Sites (the Land Contamination Overview) and a Development Site Screening Report dated 29 November 2023 (the Site Screening Report) are before me. Together, these documents provide an overview, but quite limited detail, in respect of the risks posed to the development by contamination and land instability. A report, dating from 2019, is also referred to by the appeal parties. Whilst I have sought clarification in regard to it, a copy of it is not before me. Regardless, I note that the consultation response of the Council's Senior Environmental Management Officer indicates that the 2019 report did not relate to the appeal site. Consequently, it would also be unlikely to have comprehensively informed upon any contamination or land instability risks.
26. Despite its limitations, the Site Screening Report at Section 4 identifies no past mining activities likely to affect stability in the search area and a low risk of collapsibility, landslide or running sand is identified. Amongst other matters, Policy LP15 of the JLP requires proposals to include measures to address land instability, but only where identified and where necessary. I am also mindful that whilst the Planning Practice Guidance (PPG) sets out the type of documentation which can be submitted in relation to land instability, the thrust of the advice therein is that these should be made where instability is expected.
27. On the basis of all that is before me, I have no firm basis on which to conclude that land instability issues would be likely to affect the proposed development.
28. As outlined by the PPG, although land contamination is most likely in former industrial areas it can be present in other locations including the countryside where agricultural practices have taken place in the past. The appeal site also contains previously developed land which is another risk factor. Therefore, whilst I have no compelling reason to suspect that the appeal site will be contaminated, there is a sound basis on which to conclude it could be encountered, more so than land instability.

⁴ Appeal decision APP/D3505/W/21/3287373

29. As set out within the PPG, when used properly, conditions can be imposed to enable development to proceed where it would otherwise have been necessary to refuse planning permission. An appropriately worded condition could be imposed which would ensure that no development can take place until an assessment of the risks posed by contamination has been carried out. The condition could also ensure that, should any unacceptable risks be identified, remediation measures be devised and implemented, and that the proposed development not be occupied until a verification report has been completed.
30. I am satisfied that the imposition of such a condition would enable the appropriate investigation of and, as necessary, remediation of site contamination. My schedule of conditions therefore includes such a condition.
31. With this condition imposed in respect of contamination, and no good grounds to consider the development would be affected by instability, I find that the proposed development satisfactorily addresses any risks posed by site contamination and land instability. It accords with Policy LP15 of the JLP which requires development proposals to convincingly demonstrate the prevention and mitigation of pollution and, as necessary, to include measures to address site contamination and land instability. The proposed development also accords with content within the Framework which sets out that planning decisions should make sure that a site is suitable for proposed uses accounting for ground conditions, instability and contamination.

Self-build

32. The Framework includes a definition of self-build and custom-build housing and it refers to the legal definition within the Self-build and Custom Housebuilding Act 2015 (as amended). Expanding upon this, the PPG is clear that, in considering whether a home is a self-build or custom-build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout.
33. The description of the development proposed, which is taken from the planning application form, identifies that the dwelling would be a self-build home and exemption from payment of the Community Infrastructure Levy (CIL) has been claimed on that basis. This exemption process requires the appellant to submit further evidence in the future otherwise the CIL would become payable. Ultimately, the Council is the enforcing authority in this regard.
34. The appellant submits to me that the proposed dwelling would be occupied by his daughter. However, the evidence before me that she has had an active involvement into the development's design and layout is not compelling.
35. More significantly, and even if I was satisfied with the submissions made that the appellant's daughter has had primary input into the dwelling's design, there is no mechanism before me to secure the dwelling as a self-build home. An appropriate means to do so would be a planning obligation comprising of a Section 106 legal agreement. Altogether, in the absence of a means to secure the dwelling as a self-build home, and the insubstantial evidence that the initial owner has been actively engaged in the dwelling's design, despite the appellant's CIL exemption declarations the amount of weight I can attribute to the appellant's assertions that a self-build home would be delivered is limited.

36. Despite these findings, the proposal seeks the provision of a dwelling within a village which would utilise previously developed land. In my remaining four main issues, I have identified that various effects of the proposed development would be acceptable and that the proposal complies with relevant development plan policies and policies of the Framework. Even in a scenario whereby a self-build home did not come into fruition, on the basis of what is before me, an open market dwelling would be acceptable. Paragraph 58 of the Framework is clear that planning obligations must only be sought where certain tests are all met. This includes that the planning obligation is necessary to make the development acceptable in planning terms.
37. In this case, an obligation securing the proposed dwelling as a self-build home is not necessary to make the development acceptable. Therefore, although there is uncertainty that a self-build home would be delivered, in the particular circumstances of this case, the implications of this are not determinative and they provide me with no reason to conclude that the appeal should be dismissed. Policy LP08 of the JLP lends support to self-build homes, but it places no necessity upon the proposed dwelling to constitute one. Consequently, the proposal does not conflict with it.

Other Matters

38. The evidence before me indicates to me that the Council can demonstrate in excess of 7 years' worth of housing supply. Therefore, the Council's housing supply position is quite healthy. Even so, this does not act as a ceiling to housing development. I am also mindful of the content of the Framework which sets out the Government's objective of significantly boosting the supply of homes and which further sets out that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. The proposal would therefore make a further beneficial contribution to housing supply. Although it would only be a modest contribution it nevertheless clearly weighs in the proposal's favour.

Conditions

39. I have been provided with a schedule of suggested conditions. To ensure compliance with the advice on conditions contained within the Framework and the PPG, I have amended the schedule.
40. Condition 1 sets out the standard time limitation. Condition 2 is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty.
41. To ensure that mitigation measures are deployed, in the interests of protecting species and habitats, I have imposed conditions 3 and 4. Condition 3 is a pre-commencement condition. The reason for this is that the mitigation measures in respect of common lizards must be undertaken before the construction and demolition activities on site, which may harm them, take place.
42. Given the age of the planning application the subject of the appeal, the statutory framework for biodiversity net gain introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) does not apply. However, it is appropriate to give weight to development plan policies which concern biodiversity gains where they remain consistent with the statutory

provisions and indeed the Framework. JLP Policies LP16 and SP09 and Policy ASSN11 of the NP each seek to pursue measurable net gains for biodiversity and, given their degree of consistency with the Framework and the statutory net gain provisions, it is appropriate to attribute weight to them. To accord with them, condition 5 requires the development to deliver biodiversity enhancements.

43. My fourth main issue sets out the reasons why I have imposed condition 6. Condition 7 is necessary in order to ensure that the compensatory parking area to serve the business complex is delivered, together with parking and storage to serve the proposed dwelling, in the interests of ensuring appropriate living conditions and the promotion of sustainable transport.
44. Finally, the Council suggested a condition seeking to remove a number of permitted development rights. However, the PPG is very clear that the unjustified removal of freedoms to carry out domestic alterations to properties will not meet the tests for imposing conditions. In this case, it has not been shown to me that there is a clear justification for the removal of these freedoms. I have, therefore, not imposed such a condition.

Conclusion

45. The proposed development accords with the development plan as a whole, and there are no material considerations which indicate a decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be allowed, subject to the conditions in the attached schedule.

H Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans:
2419/102 Rev B
2419/111 Rev A
2419/112 Rev A
2419/113 Rev A
2419/114 Rev A
- 3) No development shall take place until a third reptile habitat pile has been created on the land identified by Figure 1 of Appendix 1 within the Preliminary Ecological Appraisal Including a Protected Species Assessment of Land Rear of The Barn, The Street, Assington, Suffolk. CO10 5LW dated March 2024 (Ecological Appraisal) and until a programme of common lizard translocation to the Figure 1 receptor site land from the appeal site has taken place in accordance with the details set out at paragraph 5.1.1 of the Ecological Appraisal.

Thereafter, monitoring of the Figure 1 receptor site land shall take place in accordance with the details contained within paragraph 5.1.1 of the Ecological Appraisal. Should the outcome of this monitoring identify a common lizard population decline then measures to address this shall be implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

- 4) The development hereby permitted shall be carried out in full accordance with the precautionary measures detailed at paragraphs 5.1.2 - 5.1.6 of the Ecological Appraisal.
- 5) No development other than demolition shall take place until a detailed scheme of biodiversity enhancements, based upon the measures outlined at paragraphs 5.2.1 – 5.2.6 of the Ecological Appraisal, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include a timetable for the implementation of the biodiversity enhancements.

Thereafter, the biodiversity enhancements shall be implemented in accordance with the agreed scheme and any trees or plants planted as part of it which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 6) No development other than demolition shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority.

If any contamination is found, no development (other than the aforementioned demolition) shall take place until:

- i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority; and
- ii. the site has been remediated in accordance with the approved measures and timescale.

Where remediation measures under i and ii above are required, the development shall not be occupied or brought into use until a verification report for those remediation measures has been submitted to and approved in writing by the local planning authority.

- 7) The dwelling hereby permitted shall not be occupied until the following, all shown on approved plan 2419/112 Rev A, have each been provided/implemented on site in accordance with the approved plan:

- i. the 17 overflow parking spaces;
- ii. the drive/turning area, 2 car parking spaces and EV charging point to serve the dwelling;
- iii. the bin storage/presentation area; and
- iv. the secure cycle storage area.

Thereafter, each of the elements identified at i to iv above shall be retained, maintained and used for no other purpose.