



Appeal Decision

Site visit made on 16 July 2025

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th August 2025

Appeal Ref: APP/X3540/W/25/3359223

Land At Tunstall Common, The Common, Tunstall, Suffolk, Grid Ref Easting: 637726, Northing: 254878

- 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 Declan Shepherd against the decision of East Suffolk Council.
 - The application Ref is DC/24/0633/OUT.
 - The development proposed is outline planning application for up to two dwellings and access with all other matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with 'appearance', 'landscaping', 'layout and 'scale' being matters reserved for future consideration. Therefore, insofar as those reserved matters are shown on the submitted drawings, I have treated them as illustrating how the proposed scheme could be developed.

Main Issue

3. The main issue in this appeal is whether the appeal site would be in an appropriate location for new housing with particular regard to the spatial strategy in the development plan.

Reasons

4. The spatial strategy in the East Suffolk Council Suffolk Coastal Local Plan, Adopted September 2020 ("the LP"), seeks to encourage housing development in locations where people can access services and facilities, and where there is a choice of transport modes including walking, cycling and public transport.
5. The appeal site is located close to a collection of predominantly residential buildings and the Baptist Chapel ("the BC"). I have not been made aware of any services or facilities within the locality of the appeal site, except for the BC. Based on the Council's settlement hierarchy in LP Policies SCLP3.2 and SCLP3.3, it appears that Tunstall or Rendlesham, which are designated as a 'Small Village' and 'Large Village' respectively, would accommodate the day-to-day services and facilities likely to be visited frequently by future occupants of the appeal development. The designated 'Market Town' of Woodbridge appears further away still.

6. I have not been referred to any bus services between the appeal site and the settlements where services and facilities are likely to be located. Journeys to those settlements would generally be along country roads that are mostly subject to the national speed limit and largely devoid of footpaths and streetlights. Given the distances and road conditions, I consider that walking and cycling to those settlements would be an unattractive option for future occupants of the proposed development.
7. Consequently, future occupants of the proposed development would live in a location that is remote from day-to-day services and facilities. In turn they would be expected to be heavily reliant upon the private car to reach them, with few opportunities for travel by sustainable modes. Although car journeys from two dwellings would be relatively small, they would nonetheless cumulatively add up over the lifetime of the development, as would the negative environmental effects of their greenhouse gas emissions.
8. Given the locational objectives of the LP's spatial strategy, it is understandable why the appeal site and the nearby buildings are not within a designated settlement boundary. Therefore, the appeal site is located in the countryside for planning purposes, where opportunities for housing development will be carefully managed by the LP in accordance with national planning policy the strategy for the countryside, and not permitted except where specific policies in the LP indicate otherwise.
9. LP Policy SCLP5.3 sets out the types of development permissible in the countryside as an exception to the spatial strategy's approach of focussing development within designated settlement boundaries. These include limited housing within existing countryside clusters as defined by LP Policy SCLP5.4, and development consistent with the policy on residential development in the countryside in the National Planning Policy Framework ("the Framework").
10. In these respects, the LP recognises that housing in small settlements in the countryside can be beneficial in helping to sustain rural communities. However, the LP also recognises that housing in small countryside settlements that have few if any services and facilities, or opportunities for sustainable transport results in reliance upon the private car and harm to the environment. In seeking to permit some housing in the countryside LP Policy SCLP5.3 seeks to achieve what the LP describes as the "correct balance" between those benefits and disbenefits.
11. The provision in LP Policy SCLP5.4 for limited housing development within existing countryside clusters which do not have the range or amount of facilities to be classed as a Major Centre, Town, Large Village or Small Village, is one such exception to achieve that balance. LP Policy SCLP5.4 defines a 'cluster' as consisting "*of a continuous line of existing dwellings or a close group of existing dwellings adjacent to an existing highway; and contains 5 or more dwellings*".
12. The appeal site is located on the south side of a narrow, hardsurfaced access road that runs east-west from its junction with Mill Lane to the BC. It widens out close to the BC and was being used for car parking at the time of my site visit. The parties refer to it using terms including 'road', 'driveway' and 'track', and by the name of Rose Lane, albeit I was not aware of any formal name signage at my visit.
13. There appears to be no dispute between the main parties that there are at least 5 dwellings forming a close group around Rose Lane, including Rose Cottage, which

is attached to the Chapel, and the bungalow 'Lucerne'. The Council Officer's report to the Planning Committee ("the CR") refers to Rose Cottage as unoccupied, in the ownership of the BC, and that its lawful residential use remains. An extension of its garden appears to have been granted planning permission. No formal decision confirming the abandonment of Rose Cottage is before me and I have proceeded on the basis that its residential use has not been abandoned.

14. The starting point and natural sequence of assessing the appeal proposal against LP Policy SCLP5.4, is to determine whether those dwellings form a close group adjacent to an existing highway. The Council's Housing in Clusters and Small Scale Residential Development in the Countryside, Supplementary Planning Document, 2022 ("the SPD") was adopted to provide guidance on the application of the Policy and its criteria.
15. Paragraph 2.7 of the SPD states that the dwellings in a cluster must also be adjacent to an existing highway. The SPD takes its definition of a highway from the Local Highways Authority as being any route over which the public has the right of way and therefore roads such as private driveways will not be considered as highways. Therefore, if the requisite number of dwellings form a close group adjacent to an existing highway, they are a cluster.
16. The CR, states that a 'highway' is generally taken as being a road over which the public has a right to pass and repass. This can therefore include a private road or track, but it would not include a private driveway which would usually serve one home and which the public has no right to use if not invited by the owner. The appellant states that Rose Lane, although not a designated public right of way, is a highway that benefits from permissive access rights given by the BC as the owner of the highway to pass and repass over it, and it is not a private driveway.
17. Based on the main parties' cases and the representations from interested parties there are broad similarities between the descriptions of a highway that are before me. Together they describe a route over which the public has the right to use and to my mind such a right would imply that they can do so without hindrance. Those descriptions are broadly comparable to the SPD's definition of a highway. Therefore, I have determined the appeal based on the SPD's definition.
18. The CR suggests that Rose Lane was included in a conveyance of land in 1957 to be used as a roadway or driveway between the public roadway and the BC. This correlates with a sign displayed on Rose Lane that notifies the public that access along it is permissive only, with no public right of way under Section 31(3) of the Highways Act 1980.
19. Rose Lane was also gated around halfway along its length and a second sign on the gate advises that the car park is private and for the use of the BC and its visitors. The gate may be locked at any time and would be a barrier to travel along Rose Lane. Together, these factors are strong indicators that the public does not have a right of way to travel unhindered along Rose Lane but instead can use it with the BC's permission.
20. The CR questions the force of those notices and suggests that highway rights might have already arisen through the passage of time. However, the CR's analysis of this matter, which took account of advice from its legal team, does not by its own admission establish the status of Rose Lane for any legal purpose and is far from definitive on this point. Consequently, I am not satisfied on the evidence

before me that Rose Lane has acquired highway rights by the means suggested by the CR.

21. The CR states that because Rose Lane serves two residential properties and the BC, which is a community facility open to the public, it is an unadopted private road and not a private driveway. However, I am not satisfied that the number of properties served by Rose Lane is a determinative factor when assessed against the above definition of a highway, and in my experience, it is not unusual for private drives to serve a number of properties.
22. The CR also states that in accordance with the judgment in *Bhamani v Sattar* [2020] EWHC 2488, the BC has no unilateral or unfettered right to exclude members of the public from its premises, and therefore the public must be able to reach the BC, thus making Rose Lane a public right of way and a highway. However, *Bhamani* was concerned with whether the trustees of a charity had the right to prevent or exclude certain members of the public from accessing a place of worship, not with the status of the road leading to it or the meaning of a highway. Even if the BC does not, as per *Bhamani*, have an unfettered right to exclude members of the public from attending BC as a place of worship, this does not mean that Rose Lane must be a highway as a consequence.
23. The evidence suggests that the BC permits the public to use Rose Lane to attend services/functions held there, as distinct from the public having a right to use Rose Lane for any purpose of their choosing. As indicated by the gates and signage, it would appear open to the BC to remove that permission and stop the public from using Rose Lane, for example if it ceased to use the premises. To my mind the use of Rose Lane is consistent with the CR's description of a private drive, in that the public only has a right to use it if invited by the owner to do so, or they have a specific legal right to use it.
24. On the evidence before me I am not satisfied that the public has a right of way to pass and repass over Rose Lane without hindrance. As such, the evidence indicates that Rose Lane is private road and not a highway within the definition given by the SPD. Even if the appellant was to obtain a legal right to use Rose Lane, it would not alter my conclusion on this matter. It therefore follows that the dwellings located in the vicinity of Rose Lane do not comprise of a close group adjacent to an existing highway. Accordingly, the appeal site and the proposed dwellings would not constitute development within a countryside cluster under LP Policy SCLP5.4, irrespective of any assessment against the Policy's criteria in b), c) and d).
25. Whilst the appellant refers to the illustrations in the SPD as caring not whether a road is public or private, I am satisfied that the SPD and LP Policy SCLP5.4, require dwellings in a cluster to be adjacent to an existing highway. It is therefore reasonable to suppose that the roads shown in the SPD's are highways that meet the definition. Otherwise, those illustrations would appear to offer little assistance with the interpretation of LP Policy SCLP5.4. The potential development site in illustration 7 appears to be adjacent to a highway that runs along the full length of one of its boundaries.
26. The appellant has put it to me that there is nothing in the development plan or SPD that requires the proposed dwellings to relate to a highway. However, LP Policy SCLP5.4 and the SPD are clear that dwellings in a cluster must also be adjacent

to an existing highway. This qualification means that only housing adjacent to a highway falls within scope of the Policy and this ensures that housing development in small countryside settlements remote from services and facilities is genuinely limited.

27. This ensures that the LP's spatial strategy achieves its objective of striking the correct balance between the benefits and disbenefits of housing in the countryside as an exception to directing most new housing to locations where travel can be reduced through good access to facilities and services. As such, it is understandable why opportunities for housing development in the countryside are relatively narrowly drawn by LP Policies SCLP5.3 and SCLP5.4.
28. Consequently, the appeal development would not constitute limited housing in a countryside cluster under the terms of LP Policy SCLP5.4. It would therefore result in housing remote from services, facilities or opportunities for sustainable transport, where future occupants would be heavily reliant upon the private car and its harmful environmental effects. The appeal proposal would harmfully undermine the LP's spatial strategy for housing development in conflict with LP Policies SCLP5.4, SCLP5.3, SCLP3.2 and SCLP3.3.
29. The proposed dwellings would not be isolated in terms of the Framework. However, Framework Paragraphs 83 and 84 do not direct that all non-isolated homes in locations where future occupants could give support to services in nearby villages must be approved. The Framework, as a material consideration, must be read as a whole and in the context of the development proposed.
30. Whilst the Framework provides some support for rural housing in enhancing or maintaining the vitality of rural communities – as specifically reflected in the LP's spatial strategy – it also sets out that patterns of housing growth should be managed to prioritise sustainable modes of transport, giving priority to walking and cycling, and that development should be located where it would help to reduce greenhouse gas emissions. To my mind, the LP's spatial strategy is consistent with the Framework's objectives referred to above. As a result, LP Policies SCLP3.2, SCLP3.3, SCLP5.3 and SCLP5.4 are collectively consistent with the Framework and therefore the conflict with them is an important matter that weighs significantly against the appeal proposal.
31. I therefore conclude on this main issue that the appeal site would not be in an appropriate location for new housing with particular regard to the spatial strategy in the development plan. There would also be conflict with the Framework's objectives for managing patterns of growth to prioritise sustainable modes of transport and locating development where it would help reduce greenhouse gas emissions.

Other Matters

32. The proposed dwellings would make a small but positive contribution to housing supply in the Council's area. Economic, social and environmental benefits would be delivered through construction and occupation of the development, including occupants contributing to facilities and services in the wider area. Beneficial gains in biodiversity and ecological enhancement could be secured. Given the scale of the development, those benefits carry modest weight in favour of the appeal proposal.

33. The Council considered that the appeal proposal would not harm the character and appearance of the area, highway safety or the living conditions of nearby residents, including through construction. Conditions could secure satisfactory drainage arrangements access improvements and protect ecology. However, an absence of harm in those respects are neutral factors that weigh neither in favour nor against it.
34. I am advised that a financial contribution has been secured to mitigate the in-combination effects of recreational disturbance by future residents of the proposed development on a number of designated habitats sites protected under EU-derived law, including Special Protection Areas and Special Areas of Conservation. As I am dismissing the appeal for other reasons, I need not consider this matter further as it would not alter the outcome of the appeal. Being mitigation, this contribution would be a neutral factor that would not weigh in favour or against the proposal.
35. The Council's Planning Committee is entitled to exercise its own planning judgement and reach a different conclusion to that recommended by Council Officers. I have had careful regard to the Officer's recommendation in reaching my decision on this appeal.

Conclusion

36. For the reasons given above, as the appeal proposal would not constitute limited development within an existing countryside cluster it does not benefit from the exception to the Council's spatial strategy for such development. It would therefore be contrary to the spatial strategy and would result in housing in the countryside where future occupants would be remote from services, facilities or opportunities for travel by sustainable modes of transport, thus leading to reliance upon the private car and harm to the environment.
37. The proposal's conflict with the spatial strategy and LP Policies SCLP3.2, SCLP3.3, SCLP5.3 and SCLP 5.4, brings it into conflict with the development plan as a whole and this carries significant weight against it. The material considerations, including the benefits of the proposal and the provisions of the Framework, do not indicate that the appeal should be decided other than in accordance with the development plan. The appeal is dismissed.

G Sylvester

INSPECTOR