



Appeal Decision

Site visit made on 16 January 2017

by **Graham Chamberlain BA MSc MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23rd January 2017

Appeal Ref: APP/E3525/W/16/3158478

George Hill Nurseries, Barningham Road, Stanton, Suffolk IP31 2AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs J Smith against the decision of St Edmundsbury Borough Council.
 - The application Ref DC/15/2422/OUT, dated 23 November 2015, was refused by notice dated 21 April 2016.
 - The development proposed is the erection of 12 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form indicates that the planning application was submitted in outline with all matters of detail reserved save for the access. The drawings submitted do not contradict this intention as they are marked as illustrative but the access is shown in some detail. I have considered the appeal accordingly. I have taken the application number from the decision notice and not the Case Officer's report.

Main Issues

3. The main issues in this appeal are:
 - The effect of the proposed development on highway safety, with particular reference to visibility and sightlines, biodiversity and the provision of education;
 - Whether the proposed development makes adequate provision for affordable housing;
 - Whether the appeal site constitutes a suitable site for housing with reference to local and national rural housing policy;
 - Whether the proposed development incorporates suitable measures to deal with surface water drainage and any risk that may arise from any land contamination;

Reasons

The effect on highway safety

4. The existing vehicular access to the appeal site is located towards the northern boundary of the appeal site. The appeal scheme proposes a new vehicular and
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pedestrian access located in the middle of the site frontage. The visibility splays of the proposed access are detailed on drawings 790/3 and 790/4. I share the view of the Local Highway Authority that it is not sufficiently clear that the proposed visibility splays are in the ownership of the appellant and/or within the public highway. The splays appear to cut across land belong to third parties and therefore it is not a certainty that the splays would be kept free of obstruction. If the splays do become obstructed then the reduction in visibility at the appeal site access would result in significant harm to highway safety as the risk of collision between motorists would be heightened.

5. Notwithstanding the above, the Local Highway Authority are also of the opinion that the splays would not be long enough, being significantly below the 2.4m x 90m set out in the Design Manual for Roads and Bridges (DMRB). There is no substantive evidence before me to suggest the application of these splays, or the use of the DMRB, is flawed or that a lesser splay would be acceptable in an area subject to a 30mph speed limit. As such, the inadequate length of the splays would result in a heightened risk of collisions if motorists exiting the appeal site were unable to adequately see vehicles within the road. This would also result in significant harm to highway safety.
6. The appellants suggest the proposed access would be a significant improvement upon the existing access which is single width with restricted visibility. Nevertheless, it is unclear what visibility splays are achievable at the current access and how frequently it has been, and could be, used. As such, I am not satisfied the evidence presented demonstrates the proposed access would be a significant improvement upon the existing situation or that this would justify visibility splays that would be significantly below the standards referred to by the Local Highway Authority, and the harm to highway safety this would entail.
7. I therefore conclude that the proposal would harm highway safety and that this would be contrary to Policy DM2 of the DMP¹, which seeks to protect highway safety. Moreover, the appeal scheme would be contrary to Paragraph 32 of the National Planning Policy Framework (the 'Framework') which requires a safe and suitable access to developments.

The effect on biodiversity

8. The appeal site is currently overgrown with mature vegetation along its boundaries, including a dense hedge along its frontage with Barningham Road. The buildings on site are also open-sided and apparently disused. In light of these site characteristics I share the Council's view that there is a reasonable chance that the site may have been colonised by a range of protected species². In the absence of a protected species survey there is no certainty either way.
9. The appeal scheme would result in the existing buildings within the appeal site being demolished and much of the overgrown vegetation throughout the site removed. In particular, the hedge along the site frontage would be breached for the site access and visibility splays. As such, there is a reasonable prospect that if protected species are present, they could be harmed by the proposed development. It is therefore necessary to establish the presence or otherwise of protected species and whether there is any necessity for mitigation.

¹ Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document Feb 2015

² Defined in The Wildlife and Countryside Act 1981 (as amended)

10. The Planning Practice Guide states³ that *Local planning authorities should only require ecological surveys where clearly justified, for example if they consider there is a reasonable likelihood of a protected species being present and affected by development.* It goes on to state that *assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.* From the evidence before me, I am satisfied that there is a reasonable likelihood of protected species being present at the appeal site and harmfully affected by the proposal. As such, protected species surveys would be both necessary and proportionate in this instance.
11. In coming to this view I note that the appellants have suggested that the Council's own records do not indicate the presence of protected species and the Suffolk Biological Records Office has no records of protected species either. The Council has not disputed these points. However, given the vacant appearance of the site it would be prudent in this instance to undertake a site survey in addition to a desk based assessment of existing records. I also note the Council reached its conclusion without recourse to an ecologist, but so have the appellants. Consequently, I have based my considerations on the evidence before me and my own experience and have come to conclusion I have.
12. A survey could not be left to a planning condition as this would be contrary to the advice in Circular 06/2005 - Biodiversity and Geological Conservation, which states that ecological surveys should only be left to a planning condition in exceptional circumstances, which do not apply in this case.
13. I therefore conclude that in the absence of a survey I cannot be certain the development would safeguard protected species and thus biodiversity. The proposal is therefore contrary to Policies DM10, DM11 and DM12 of the DMP, which together seek to protect biodiversity including protected species. This, the proposal is also contrary to the aims of Paragraph 118 of the Framework, which seeks to conserve and enhance biodiversity.

Whether the proposal makes adequate provision for affordable housing

14. The appeal scheme proposes in excess of 10 dwellings. In this instance, Policy CS5 of the CS requires 30% of the homes to be affordable housing. Policy CS5 is consistent with Paragraphs 47 and 50 of the National Planning Policy Framework (the Framework), which require local planning authorities to meet the full, objectively assessed needs for market and affordable housing and where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.
15. The appellants are proposing 25% on site provision (3 homes). To ensure the 30% threshold is met, the Council are also seeking a commuted sum equivalent to 0.6 homes. The appellants have suggested that they would have been happy to complete an obligation to this end but the Council did not provide a draft agreement. The appellants have not provided an explanation as to why they have not pursued a unilateral undertaking.
16. Notwithstanding this, the appellants have also suggested that the affordable housing could be secured through the imposition of a planning condition and have provided the wording of such a condition in their statement. Policy CS5 states that

³ Paragraph: 016 Reference ID: 8-016-20140612

affordable housing can be secured through a planning condition or legal obligation. A condition could therefore be imposed to secure the provision of 25% affordable housing on site.

17. However, this would not render the appeal scheme as policy compliant as the remaining commuted sum could not be secured through a planning condition. This is because the Planning Practice Guide does not permit such an approach⁴ unless the development is complex and strategically important, which is not the case in respect of the appeal scheme.
18. Consequently, on the basis of the evidence before me, the need for the contribution sought by the Council arises from the development and satisfies the 3 tests⁵ in Regulation 122(2) of the Community Infrastructure Regulations 2010. However, a financial obligation towards affordable housing is not before me and therefore the proposal would be contrary to Policy CS5 of the CS as 30% affordable housing would not be provided as part of the appeal scheme. I therefore conclude that in the absence of a planning obligation the proposal would not make adequate provision for affordable housing.

The effect of the proposed development on the provision of education

19. The Council's sixth reason for refusal alleges that the proposed development would not secure the effective provision of infrastructure. Suffolk County Council (SCC) have submitted evidence to demonstrate that the appeal scheme would be sited within the catchment of Stanton Primary School but there is insufficient capacity available at the school to cater for the demand for school places that would arise from the development. I have no reason to disagree with these findings or SCC's suggested level of mitigation (£36,543), which would be used to address the shortfall of places at the school. I therefore consider it would be highly probable that without mitigation the development would harm local education infrastructure by increasing pressure upon it.
20. The appellants do not dispute the evidence provided by the Council through SCC but has not provided a planning obligation that would secure the mitigation sought. As I have not been presented with such a planning obligation, the harmful impact of the development on the provision of education would not be mitigated if this appeal were to be allowed.
21. However, before I can conclude on this matter I must consider whether the Council's proposed mechanism for securing the mitigation is consistent with Regulation 123 of the CIL Regulations. Regulation 123 states that from the 6 April 2015 a Council can only 'pool' up to five contributions for a particular infrastructure project or for a type of infrastructure that is capable of being funded through a CIL contribution ('education' being a type of infrastructure).
22. SCC have stated that the infrastructure project in this instance would be additional school places at Stanton Primary School and that only four planning obligations have gone towards this to date. As such, I am satisfied the obligation sought would adhere with Regulation 123 and consequently I could have taken such an obligation into account had it been in front of me.

⁴ See Paragraph 005 Reference ID: 21a-005-20140306 and 005 Reference ID: 21a-005-20140306

⁵ Necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development

23. Consequently, the need for the contribution sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Regulations 2010. However, there is no mechanism before me that would mitigate the impact upon the provision of education, which would arise from the development. I therefore conclude that the proposal would be contrary to Policies CS5 and CS14 of the CS, which seek to ensure that all development proposals make adequate provision for the infrastructure requirements arising from development. These aims are consistent with Paragraph 72 of the Framework.

Whether the appeal site constitutes a suitable site for housing with reference to local and national rural housing policy

24. It is common ground between the appellant and the Council that the appeal site is located outside of a defined settlement boundary and is in the countryside. The nearest discernible settlement is Stanton, which is defined in in Policy CS4 of the Core Strategy (CS) as a Key Service Village. The development plan directs new housing to sites within settlement boundaries unless that housing would be an 'exception' as set out in Policies DM5, DM26, DM27 and DM29 of the DMP. The appellant has not advanced a case that the appeal scheme is an exception within the meaning of these policies. I have seen no evidence to suggest the Council are unable to currently demonstrate a five year housing land supply, which would otherwise render these policies as out of date. As a consequence the proposed development would be at odds with the rural housing policies in the development plan and the Council's Rural Vision 2031.
25. Planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance, the appellants have advanced a number of material considerations that they consider indicates that an approval of planning permission should be forthcoming, despite the 'in principle' conflict with the development plan. The first is that the Council have not actually identified any harm arising from the appeal scheme's location in the countryside save for a policy conflict. I share this conclusion as the Council's first reason for refusal identifies a policy conflict but does not allege any harm. A policy conflict is of course a noteworthy matter of some significance but in my view there needs to be some harm arising from the policy conflict for planning permission to be ultimately withheld and it is not clear what the Council consider this to be.
26. A more significant material consideration that has been referred to by the appellant is that the appeal scheme would adhere to Paragraph 55 of the National Planning Policy Framework (the 'Framework'). Paragraph 55 of the Framework specifically addresses the provision of housing in rural areas. It states that housing should be located where it will enhance and maintain the vitality of rural communities by avoiding isolated homes unless there are special circumstances. The Framework does not define the meaning of 'isolated'. Nevertheless, I consider there are two main aspects to be assessed when considering 'isolation', these being the site's physical and spatial relationship with a settlement and its functional connectivity to services.
27. The appeal site is located slightly north of a cluster of housing that is centred on Duke Street, around which the Council have drawn part of the settlement boundary of Stanton⁶. The appeal site is also flanked by residential properties.

⁶ See Inset Map 47 of the Local Plan Policies Map 2015

Further north are the George Hill Units and a residential care home. Moving further north along George Hill is a small residential estate at Chare Road, which also has a settlement boundary. The presence of this development nearby would ensure any residential redevelopment of the appeal site would not have the appearance of a physically isolated and incongruous incursion into the countryside, subject to an acceptable design at the reserved matters stage.

28. Moreover, the appeal site is already occupied by a number of large buildings. Thus, the physical impact upon the countryside from a redevelopment of the appeal site would be tempered by the presence of these existing structures, as the magnitude of change would not be as great as development within an otherwise undeveloped site. The appellants suggest the appeal site is previously developed land and the Council does not dispute this. Additionally, the site is located within a cluster of 10 or more dwellings but the provision of only 2 dwellings at the appeal site, in accordance with Policy DM27, would be an inefficient use of a site which is reasonably accessible to local services. These are also matters that weigh in favour of the appeal scheme.
29. There is a pavement of a reasonable width running along the western side of Barningham Road. This connects the appeal site to a bus stop around 20m to the south of the site. But more importantly, the pavement also provides a link with Old Barningham Road, which in turn provides a pedestrian route into Stanton village centre and the numerous facilities therein. Stanton is described in the Council's Core Strategy as being the largest of the Key Service Centres and I was able to observe that there are many facilities available in the village which would meet many of the everyday needs of the appeal scheme's future occupants.
30. The pedestrian route into the village centre through Old Barningham Road would require future occupants of the appeal scheme to cross Bury Road, a busy bypass. However, there are pedestrian traffic islands in the road. Consequently, this is a route that is apparently well used already by the residents of properties in the sections of the village's settlement boundary, and those outside, already located north of Bury Road. Thus, the services in the village would be as accessible to any future residents of the appeal scheme as they are to existing residents. Future residents of the appeal scheme would not be dependent on a private motor vehicle to access everyday services and facilities. As such, the appeal site is not in an isolated position relative to local services.
31. Taking the above factors together, I am satisfied the appeal scheme would be consistent with Paragraph 55 of the Framework. I therefore conclude that the appeal site would constitute a suitable site for housing when having regard to national rural housing policy. As such, the proposed dwellings would not be isolated and would contribute towards the vitality of the rural community of Stanton. This is a material consideration of sufficient weight, which in this instance dictates that planning permission should be withheld on this matter in spite of the conflict with the rural housing policies of the development plan.

Whether the proposal incorporates suitable measures for surface water drainage

32. The appellants have confirmed that surface water drainage would be managed through ground infiltration in the form of soakaways. As such, they have demonstrated an initial commitment to a sustainable drainage system. However, the appellants' submissions have failed to demonstrate that infiltration would be suitable. This is particularly pertinent as there is a clay capping layer near to the appeal site and this could impact upon the effectiveness of soakaways as an

appropriate sustainable drainage system. It is therefore unclear, in the absence of soakage tests, whether the appeal scheme would incorporate suitable infiltration measures to deal with surface water.

33. Nevertheless, the appellant has suggested that this is a matter that can be addressed through a planning condition and a draft condition is set out in paragraph 25 of the appellants' statement. The Council have not explained why such a condition would be unacceptable in addressing its concerns. Nor has it suggested that there would be an inherent inability to provide some form of sustainable drainage system at the appeal site as part of the proposed development. Significantly, Suffolk County Council (SCC) has also set out a planning condition in its statement which would apparently address this matter. Of particular note is that the condition suggested by SCC includes a procedure that can be followed in case infiltration is not appropriate or possible.
34. Whilst it would be advantageous to undertake soakage tests prior to the determination of the application, this does not appear necessary in light of the conditions suggested, which have not been disputed by the Council. I am therefore satisfied that with a suitably worded planning condition imposed, the appeal scheme would incorporate suitable measures to deal with surface water drainage. As such, the proposal would adhere to Policy DM6 of the DMP, which seeks to secure appropriate on-drainage details.

Whether the proposal would suitably address any risks from land contamination

35. The Council's Case Officer suggested in their report that the planning application was not accompanied by an assessment of possible land contamination. As the appellants rightly point out, this is incorrect. The application was accompanied by a 'Sitecheck' assessment, which concluded that the risk would not be such that the property (the appeal site) would be designated 'Contaminated Land' within the meaning of part 2A of the Environmental Protection Act. This was however, a conclusion reached without a site visit. The Environment Agency also categorised the previous use of the appeal site as being a low risk in respect of land contamination.
36. The Council considers the previous use of the site, and the sensitive nature of the end users of the development, would suggest a Phase 1 land contamination assessment is necessary, it is nevertheless unclear why this cannot be addressed through the imposition of a planning condition in this instance. This is something the appellants have suggested in their statement. The possibility of investigating and remediating land contamination through a planning condition is not a point considered by the Council during their assessment of the planning application or addressed in any appeal submissions. The appellants suggest such a condition has been applied to other sites in the County and it is not clear why this solution would not be appropriate at the appeal site in connection with the appeal scheme.
37. I am therefore satisfied, from a consideration of the evidence before me, that the risk of significant land contamination is apparently low and therefore any further investigation and remediation could be addressed through a suitably worded planning condition. As such, I conclude that there would be a low risk to future occupants of the appeal scheme from potential contamination and thus no conflict with Policy CS2 of the CS or Policy DM14 of the DMP, which require developments to be safeguarded from hazards.

Other Matters

38. I note the concerns of interested parties that the development would be out of character. I accept that a standard cul-de-sac layout such as that shown on drawing 790/2 would be unduly suburban, but this is only an illustrative sketch. There is nothing to suggest that with some imagination an appropriate scheme could not be devised at the reserved matters stage. I also acknowledge that care would need to be taken to ensure the living conditions of neighbours would be safeguarded, particularly the privacy and therefore the layout shown has some limitation. Nevertheless, this is also a matter that would be best addressed at the reserved matters stage. Given the intervening distance, I am satisfied the proposal would not harm the setting of the nearby listed farmhouse. I have seen no substantive evidence that the drains could not cope with the demands of the appeal scheme, that sufficient parking could not be accommodated or that the site should be marketed for employment purposes before a residential scheme is considered.
39. The appellant considers that the proposal would be sustainable development when the economic, social and environmental benefits are considered and weighed in an overall planning balance. The development would increase housing supply and choice but with 12 homes proposed this is only a moderate social benefit. The appeal scheme would facilitate some economic benefits to the construction industry, including jobs, but these would be for a limited time. There would also be some benefits to the local economy from the circulation of funds from future occupants. Given the size of the development, this would be a modest benefit. The houses would be sited in a location accessible to local services, but this is to be expected and is therefore a neutral matter rather than a benefit. I therefore afford these benefits moderate weight overall.
40. Alternatively, the appeal scheme would be located in the countryside and would be contrary to the rural housing policies of the development plan. But in the absence of any identifiable harm arising from this policy conflict it is not a determinative matter in this instance. Nevertheless, the proposal would significantly harm highway safety and would place pressure on local education infrastructure. It may also fail to preserve biodiversity and would not deliver a policy compliant level of affordable housing through a commuted sum. These are matters accruing considerable weight against the appeal scheme.

Conclusion

41. The benefits that I have identified as material considerations carry only moderate weight in favour of the proposal and are not sufficient to outweigh the harmful impacts I have identified, which are contrary to the development plan and thus carry considerable weight. As such, the development is not sustainable development for which the Framework carries a presumption in favour. Accordingly the appeal should fail.
42. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR