



Appeal Decision

Site visit made on 1 December 2014

by **K R Saward Solicitor**

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

Decision date: 21 January 2015

Appeal Ref: APP/T3535/A/14/2217031

Land adjacent to The Nordalls, Kessingland, Suffolk NR33 7UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Laura Handford (Orbit East Housing Association) against the decision of Waveney District Council.
 - The application Ref DC/13/2169/FUL, dated 22 July 2013, was refused by notice dated 28 October 2013.
 - The development proposed is construction of 23 dwellings and associated works including ancillary parking, open space and foul water pumping station.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 23 dwellings and associated works including ancillary parking, open space and foul water pumping station at land adjacent to The Nordalls, Kessingland, Suffolk NR33 7UE in accordance with the terms of the application, Ref DC/13/2169/FUL, dated 22 July 2013, subject to the 14 conditions set out in the schedule at the end of this Decision.

Procedural Matters

2. A number of other documents were supplied with the appeal including a flood risk assessment, desk top study and risk assessment, affordable housing delivery plan, ecological assessment and surveys on bats and reptiles. I have considered all of the documents supplied in arriving at my decision.
3. At the site visit, the parties confirmed that a tree annotated T13 on the site layout plan is an unprotected tree. The tree annotated T7 is protected. Both trees would remain.
4. A unilateral planning obligation deed made under section 106 of the Town and Country Planning Act 1990 (as amended), dated 11 June 2014, has been completed to secure that all the dwellings shall be rented affordable housing. I return to this matter below.

Main Issues

5. The main issues raised in this appeal are :-
 - whether the proposed development would accord with development plan policy regarding the location of new housing;

- the effect of the proposed development on local infrastructure with particular reference to the school and doctors surgery in Kessingland;
- the effect of the proposed development on the character and appearance of the surrounding area;
- the effect of the of the proposed development on biodiversity, including protected species and trees; and
- whether there are other considerations which justify bringing forward the development now.

Reasons

Location of new housing

6. Part of the appeal site is the rearmost section of garden for the bungalow at No 138 Church Road which comprises a lawn planted with a number of small trees. For the most part, the appeal site is vacant land which is heavily overgrown located behind residential properties in The Nordalls, Church Road and Peregrine Way. The appeal site is within the 'physical limits' for the village of Kessingland where Policy DM01 of the Council's Development Management Policies¹ (DPD) document seeks to concentrate development. The proposal is for 23 affordable housing units.
7. A number of previous applications for residential development of the site have been refused. The last one being an application for 20 affordable dwellings which was dismissed on appeal in 2009². The sole reason for dismissal concerned the disposal of foul water and the un-quantified risk of additional flooding posed in the absence of any detailed assessment of the existing sewer.
8. At that time, the site was regarded as 'brownfield' land for the purposes of planning policy. Since then, the National Planning Policy Framework (the Framework) has been published, in 2012. This changed the definition of 'previously developed land' to exclude private residential gardens. The appeal site is now 'greenfield' land regardless of whether the majority of it has not been used actively as a garden for some years.
9. The purpose of the change in national policy was not to rule out development of garden land, but to remove the previous presumption in its favour. Paragraph 53 of the Framework also advises that local planning authorities should consider the case for setting out policies to resist inappropriate development of gardens. For example, where development would cause harm to the local area. The Council confirms that it has not done so, but relies upon more generic policies.
10. The Framework advises, against a background of boosting significantly the supply of housing, that housing applications should be considered in the context of the presumption in favour of sustainable development. Although services and facilities are relatively limited, Kessingland is one of seven larger villages identified within the Council's Core Strategy³ (CS) to accommodate up to 5% of the Council's housing growth over the plan period. Nevertheless, the Council says that Kessingland has already experienced growth over the past two or three

¹ 'Policies to Help Make Decisions on Planning Applications' Development Management Policies Development Plan Document, 2011

² Appeal Ref: APP/T3535/A/08/2085006 dated 26 February 2009

³ The Approach to Future Development in Waveney to 2021, Core Strategy Development Plan Document, 2009

decades and there is now limited development opportunity for development within its physical limits. It suggests that development should not take place until more services and facilities are in place. This is not the approach taken within its adopted policies, however.

11. In its decision notice the Council cites CS Policy CS11. This sets out how up to approximately 300 dwellings of the 5,800 to be provided between 2001- 2021 will be accommodated in the larger villages, which includes Kessingland. Only small-scale development commensurate with their scale and character will be allowed. There is no definition of 'small-scale'. Arguably, for the size of the village a development of 23 homes could fall within that category. In any event, a sequential approach to development is set out. This requires consideration of previously developed land before greenfield sites within settlements. Therefore, whereas the appeal site was first in the order of sequential preference prior to the Framework that is no longer the case.
12. Whilst the Council may not have stringently applied the sequential test prior to arriving at its decision, there is nothing within the CS to indicate that an affordable housing scheme is exempt from the requirement. The policy envisages development of greenfield sites within settlements in exceptional circumstances and ahead of those on the edge. The delivery of affordable housing may be an exception. Support for the importance of affordable housing is found within CS Policy CS01. This specifies that where a local housing need is demonstrated, priority will be given to affordable housing and recognises that development may be needed on greenfield sites on the edge of settlements.
13. Local policy therefore recognises that development of greenfield sites for affordable housing may be necessary and that sites within the settlement would be sequentially preferable to edge of settlement sites. Paragraph 50 of the Framework also specifies that where local planning authorities have identified that affordable housing is needed, they should set policies for meeting this need on site.
14. Nevertheless, as drafted Policy CS11 still requires the availability of previously developed land to be considered first. In recommending the proposal for approval, officers distinguished between affordable and market housing in the application of the sequential approach. This distinction is not made within the policy. An exception to policy for affordable housing can be applied in certain circumstances under the Waveney Affordable Housing Supplementary Planning Document, (SPD) 2012. At paragraph 7.9 it says that there may be limited opportunities for sites in the market towns and Kessingland to meet identified need for affordable housing. In light of this, the Council will consider edge of settlement locations where affordable housing cannot be accommodated within the physical limits boundary. As this is not a rural exceptions site, this provision in the SPD does not apply, but it does reinforce that a sequential approach should be taken for all development.
15. I note paragraph 6.15 of the Council officer's report acknowledges that there are no other suitable, previously developed sites of this size in the village, or on the edge of the village that could accommodate the local need for affordable housing in Kessingland. There is no explanation for this conclusion, but I give some weight to the professional officer's opinion.
16. The appellant has now undertaken a sequential test exercise summarised within the Grounds of Appeal document. It includes canvassing local estate agents for

developable sites. The conclusions reinforce the Council officer's view. However, the exercise has not been subject to scrutiny. Without any verification of the data, I am unable to assess the robustness of the information. I also note the appellant's examples of development permitted on greenfield land within the physical limits. I have not been supplied with the full details giving rise to those developments. I note the Council's comments that one site pre-dates the current policy requirements and others are much smaller developments. From the information, I am unable to draw direct comparisons.

17. On the first main issue I conclude that whilst there is some evidence to support the lack of sequentially preferable sites, this is not sufficiently conclusive to demonstrate that the proposed development would accord with development plan policy, specifically CS Policy CS11, regarding the location of new housing.

Effect on local infrastructure

18. The Council and objectors refer to the GP's surgery being close to maximum capacity. The local school has also been placed in special measures following an Ofsted inspection. Whilst some future occupiers may live already within the village, the provision of 23 new homes would invariably place at least some greater demand on both healthcare and the local school.
19. CS Policy CS04 requires developers to demonstrate to the satisfaction of the local planning authority or the infrastructure provider that adequate capacity either exists or that appropriate provision will be made. As an affordable housing scheme, the proposal would be exempt from the Council's requirements to make financial contributions towards local infrastructure through the community infrastructure levy.
20. I have not seen anything from the local education authority to confirm the appellant's submission that it predicted 5 primary school places would be generated. The appellant has produced a letter from the Head teacher of Kessingland CEVCP School dated 23 September 2013 stating that in the majority of year groups a maximum of between 5-10 places are available. There is no capability to expand further. The Head teacher concludes that the proposed housing would have a detrimental effect on the school. From these comments, there is remaining capacity at the school even though the Head teacher considers that more pupils would be of detriment. I have no up-to-date information to suggest that position has changed. No evidence has been produced that demand would be likely to exceed the stated capacity.
21. Whilst I recognise the concerns expressed by local people over the effects of existing pressures on healthcare, there has been no objection from the local health authority. If it considered there was insufficient capacity to meet additional needs arising from the proposed development then it would be reasonable to expect that it would have said so.
22. I do not discount the personal accounts of residents who have experienced serious difficulty obtaining surgery appointments. However, in the absence of substantive evidence to verify that the additional demands arising from this particular proposal would place an unreasonable burden upon health services, they carry limited weight only.
23. On the second main issue, I consider there is insufficient basis to conclude that the proposed development would have a significant adverse effect on local

infrastructure, with reference to the doctors' surgery. There is evidence from the Head teacher that detriment to the school would be caused from the additional burden. However, the information supplied indicates that there is some spare capacity without any projections to indicate that demand could not reasonably be met. In the circumstances, I am unable to find that significant material harm would arise contrary to CS Policy CS04.

Character and appearance

24. The appeal site would be accessed via The Nordalls at what is currently the head of a cul-de-sac. The Nordalls forms part of a residential housing estate made up of a mix of housing types. Those in The Nordalls are characterised by small terraced bungalows and modest terraced houses with open front gardens. There is some public open space with a scattering of trees. The appeal site is vastly overgrown, covered in brambles, but with a number of mature trees which are visible from various vantage points. Most of the trees would be removed. An area of open space would be provided at the front of the site where one large protected tree would remain.
25. The housing would comprise 1 and 2 bedroom bungalows and 2 and 3 bedroom houses in terrace form, correlating with the housing type found elsewhere within The Nordalls. At a gross density of around 44 dwellings per hectare⁴ the proposal would exceed the minimum density of 30 dwellings per hectare contained within DPD Policy DM16. This is a minimum figure and the policy provides that in all areas the Council will aim to make the most efficient use of land. Kessingland is not given as an example of one of the most accessible locations where a minimum density of 50 dwellings per hectare will be sought. However, it is clear that the proposed density strikes a middle ground.
26. Although the properties along Church Road have large spacious gardens, this is not reflected in the neighbouring residential estate where plots are much smaller. Whilst that housing is at a lower density than the proposal, it is not significantly less in some places and different policy criteria may have applied. Despite the individual plots being small, there would still be space about the terraces, rear gardens and areas of landscaping which would avoid a cramped appearance.
27. On the third main issue, I conclude that the proposed density would not have an adverse effect on the character and appearance of the surrounding area contrary to CS Policy CS02 or DPD Policy DM02 insofar as they seek high quality design appropriate to the locality. It would also fulfil the similar aims of Paragraphs 56 and 58 of the Framework.

Biodiversity

28. The appeal site encompasses numerous trees. A Tree Preservation Order (TPO) from 1988 originally covered 17 trees on the appeal site (an 18th tree being just outside). Of those 17, only 5 Poplars and 5 Sycamores remain on the appeal site. They are mainly located along the western site boundary shared with the rear garden of No 137 Church Road. There are also other unprotected trees.
29. Notably, the Council's Arboricultural and Landscape Officer recommends revocation of the TPO in view of the varying condition of the trees and their limited visual amenity as rear garden trees. She comments that the Poplars are

⁴ Figure provided by the appellant. The Council states 40 units per hectare.

mature and with age are prone to break or split. As the Council's expert, I place significant weight on this professional officer's opinion which has not been contradicted by other expert evidence.

30. If the TPO were lifted as suggested, then all of the trees could be removed at any time, subject to restrictions and controls regarding protected species. Aside from the visual amenity of the trees, the Council is also concerned with their biodiversity value along with that of the site generally.
31. An Ecological Assessment accompanied the original application. It identified the site as offering excellent foraging and nesting opportunities for a variety of bird species and providing a suitable habitat for amphibians and reptiles. It notes that only one reptile was recorded from a previous survey, making it unnecessary for another survey. It concludes that the proposal would have a significant negative change on the ecological value of the site. The report contains a number of recommendations including provision of bird nesting boxes and advises on site clearance measures to protect any animals present.
32. A bat survey and assessment has been undertaken with three species being positively identified. Low numbers of common and soprano pipistrelles were found feeding extensively on the site along with sightings of serotine bats. The possibility of brown long eared bats was also identified. These are all European protected species under the Conservation of Habitats and Species Regulations 2010 (as amended). The report recommends retention of as many boundary trees as possible and the removal of trees being mitigated with bat boxes.
33. Suffolk Wildlife Trust has commented on the loss of the majority of the habitat suitable for a range of species. It recommends that the design, layout and capacity of the site should be re-visited to allow for the retention of more of the existing habitat. It also advises on the retention of boundary trees which were identified as important for foraging bats. However, the Trust goes on to say that should the development be considered acceptable, it requests that the recommendations for mitigation and enhancements identified in the reports are implemented via the imposition of a planning condition.
34. On the fourth main issue I conclude that from the viewpoint of visual amenity, the proposed development would not have a significant detrimental effect on protected trees. Subject to the imposition of appropriate conditions, the effects of the proposed development on biodiversity, including protected species, could be satisfactorily mitigated to avoid significant harm. Accordingly, compliance would be achieved with DPD Policy DM02, CS Policy CS16 and Paragraph 118 of the Framework in their aim to protect and enhance the natural environment.

Other considerations

35. Whilst the Council has a deliverable 5 year housing land supply, there is a recognised need for more rented affordable homes in Kessingland which cannot be met from existing housing stock. The highest need is for 1 bedroom properties. The appeal proposal would deliver 23 rented affordable homes of which four would be 1 bedroom bungalows, thirteen 2 bedroom bungalows and houses and six, 3 bedroom houses. The Council agreed this mix. The units would be secured as affordable housing through the completed planning obligation deed requiring the homes to be transferred to a registered social landlord. I have considered the terms of this deed and am satisfied that it would fulfil these requirements. The obligations are necessary, related directly to the

development and fairly related in scale and kind. As such, the deed accords with Regulation 122 of the Community Infrastructure Regulations 2010.

36. A deliverable site offering 100% affordable housing in an area of recognised need, is a matter to which I afford very substantial weight in favour of the proposal. My view is reinforced by the SPD which acknowledges that there may be limited opportunities to meet identified demand for affordable housing in this particular village. This is why rural exceptions sites would be considered. An edge of settlement site is just as likely to place demands on local infrastructure and by their rural nature could have wider biodiversity implications.
37. The appeal site is also severely overgrown and I saw at my site visit that it has attracted some fly-tipping. The proposal would thus enable a vacant site to be brought back into use. This would also be a benefit.

Balance

38. I have concluded that it has not been sufficiently demonstrated that the proposed development would accord with the development plan in terms of the sequential approach. This conflict with the development plan must be balanced against the other considerations of the case. In my view, the harm from bringing this development forward now before a full appraisal of sequentially preferable brownfield sites, in circumstances where the Council has acknowledged that there are none suitable, is outweighed by the benefits of the proposed development. The appeal should succeed, accordingly.

Other Matters

39. There is a high level of local opposition to the proposal demonstrated through the volume of objections, a petition, copies of press coverage supplied and comments from the Parish Council. A common thread is concern about ongoing drainage problems in Kessingland. These appear well documented with flooding to roads, gardens and properties arising during heavy rainfall.
40. The Council acknowledges that the proposal will not exacerbate known flooding problems in the vicinity of the appeal site having considered the flood risk assessment which accompanied the application. This concludes that the risk of surface water flooding on site would be minimal and there would be no increased run-off from the site to cause increased risk to downstream properties. The proposal includes an on-site pumping station. By foul drainage being piped via this to an existing sewer underneath a field to the south of Church Road and to an existing pumping station, it advises that existing flooding problems in the area would not be exacerbated.
41. Objectors are sceptical that the pumping station would be effective and challenge the views of Anglian Water. Nonetheless, there is no substantive evidence that the site could not be adequately drained and that existing problems would worsen. I also note more recent reports of flooding issues in Lloyds Avenue. The appellant has commissioned an investigation report from Anglia Survey & Design dated 1 December 2014 in response to these submissions. The report refers to there being a long standing highway drainage issue in this road exacerbated by the bungalows being considerably lower than the road. It concludes that the surface water flooding issue is not related or affected by the proposed development. I have no reason to conclude otherwise.

42. I appreciate that local residents do not wish further development having experienced much growth over a number of years. The fact remains that Kessingland has a recognised need for more rented affordable housing and this site is able to provide a valuable contribution.
43. Suggestion has been made that there is a 'ransom strip' for the proposed access. It is not apparent from the submitted plans. Nevertheless, a planning permission would not negate or supersede any private rights. If there are land ownership issues they could affect delivery of the scheme, but private legal rights have no bearing on my assessment of the planning issues.
44. I recognise that many residents enjoy views of the appeal site as a natural space with numerous trees. However, as noted above the longer term presence of the trees is not guaranteed irrespective of this proposal. I have also considered all other objections, including issues of subsidence in Church Road, but they do not give me reason to dismiss the appeal.

Conditions

45. I have considered the conditions suggested by the Council in the event of this appeal being allowed in accordance with the provisions of Paragraph 206 of the Framework. Where appropriate, I have added or adjusted those conditions.
46. Apart from the standard time limit condition, it is necessary for the development to be carried out in accordance with the submitted plans for the avoidance of doubt and in the interests of proper planning. Conditions requiring the approval of materials and hard and soft landscaping works are necessary in the interests of visual amenity. A condition to protect trees to be retained during construction works is necessary and reasonable.
47. The Council's Environmental Protection Officer recommends an investigation and assessment for land contaminants. I have imposed simpler conditions than those suggested by the Council which fulfil the same aims and which shall ensure the well-being of the future occupiers. As the appeal site is located in an area of archaeological importance, a programme of archaeological works is appropriate to ensure the preservation of any heritage assets.
48. To ensure appropriate drainage, conditions are necessary to require approval and implementation of a strategy for the discharge of foul and surface water including measures for the drainage of surface water from hard surfaced areas. I have imposed a condition to require the proposed dwellings be built to Level 3 of the Code for Sustainable Homes to comply with the sustainable construction requirements of DPD Policy DM04. A condition to require compliance with the recommendations contained within the ecological assessment and bat survey is needed to protect biodiversity.

Conclusion

49. Notwithstanding that the development would be contrary to policy in terms of the sequential approach to the location of housing, I find on balance that the benefits of the proposed development described above outweigh the harm arising. For the reasons given above and, having had regard to all other matters raised, I conclude that the appeal should be allowed.

KR Seward INSPECTOR

Schedule of 14 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 approved plans: LOC 01; WCKD1/2; 1022_DRA_001-; SL02 Rev F; SS01 Rev B; PL20 Rev B; PL21 Rev B; PL22 Rev A; PL23 Rev A; PL24 Rev A; and PL25 Rev C.
- 3) No development shall take place until a site investigation of the nature and extent of any contamination has been carried out (in addition to any assessment provided with the planning application) in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be supplied to the Local Planning Authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before commencement of the remediation of the site. Before development begins the site shall be remediated in accordance with the approved measures and a post remediation validation report submitted to the Local Planning Authority to demonstrate the successful remediation of the site.
- 4) If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures.
- 5) No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The scheme of investigation shall include an assessment of significance and research questions; and
 - a) The programme and methodology of site investigation and recording;
 - b) The programme for post investigation assessment;
 - c) Provision for analysis of the site investigation and recording;
 - d) Provision for publication and dissemination of the analysis and records of the site investigation;
 - e) Provision for archive deposition of the analysis and records of the site investigation; and
 - f) Nomination of a competent person/s or organisation to undertake the works set out within the written scheme of investigation.

The site investigation shall be completed prior to the commencement of development or in such other phased arrangement as previously agreed in writing with the Local Planning Authority.
- 6) Following the completion of on-site archaeological investigations and recording the applicant must secure the implementation of a programme of post excavation work, in accordance with a written scheme which has previously been submitted to and approved in writing by the Local

- Planning Authority. This programme will comprise an archive of the records and finds, an assessment of the importance of the results and, if required by the Local Planning Authority, more detailed analysis and publication of the results.
- 7) No development shall commence until both a surface water strategy and foul water strategy have been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until all works have carried out in accordance with each strategy, as approved.
 - 8) Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hard standings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.
 - 9) No development shall take place until the existing trees on the site, agreed with the Local Planning Authority for inclusion in the scheme of landscaping, have been protected by the erection of temporary protective fences of a height, size and in positions which shall have been previously been agreed in writing with the Local Planning Authority. The protective fences shall be retained throughout the duration of building and engineering works in the vicinity of the tree to be protected. Any trees dying or becoming severely damaged as a result of any failure to comply with these requirements shall be replaced with trees of appropriate size and species during the first planting season thereafter unless the Local Planning Authority gives written consent for any variation.
 - 10) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed number/densities, where appropriate, and an implementation programme.
 - 11) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be completed within 12 months from completion of the last building shell or in accordance with the programme agreed with the Local Planning Authority. Any trees or plants which die during the first 3 years of being planted shall be replaced with trees of appropriate size and species during the next planting season.
 - 12) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.

- 13) The dwellings hereby permitted shall achieve a minimum of Level 3 of the Code for Sustainable Homes. The final dwelling shall not be occupied until a final Certificate from an accredited assessor certifying that a minimum of Code Level 3 has been achieved for each dwelling has been submitted to and approved in writing by the Local Planning Authority.
- 14) No development shall take place before details of measures to be undertaken, including timescales, to achieve compliance in full with the recommendations of the Code for Sustainable Homes Ecological Assessment dated 14 January 2013, sections Eco 2 "Ecological Enhancement" and Eco 3 "Protection of Ecological Features" and the Bat Survey and Assessment dated July/August 2013, have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out in full and in accordance with the agreed timescales.

Richborough Estates