



Appeal Decision

Site visit made on 17 March 2020

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2020

Appeal Ref: APP/X3540/W/19/3242751

Alderlee, Main Road, Kelsale Cum Carlton IP17 2NS

- 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 Mr Patrick Hockley, Michael Howard Homes against the decision of East Suffolk Council.
 - The application Ref DC/19/1027/FUL, dated 8 March 2019, was refused by notice dated 20 June 2019.
 - The development proposed is the erection of 10 dwellings at land adjacent to Alderlee, Main Road, Kelsale.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the development is in an appropriate location for new housing;
 - Whether it has been adequately demonstrated that a satisfactory method of surface water drainage can be achieved;
 - Whether the effect of the development on the protection zone of the nearby European Designated Habitat Areas can be suitably mitigated; and
 - Whether it has been demonstrated that any impacts of the development on reptiles and Great Crested Newts could be satisfactorily mitigated.

Reasons

Appropriate Location

3. The appeal site comprises a piece of land located to the rear of existing dwellings. It is currently vacant and somewhat overgrown with some outbuildings in various states of repair. The neighbouring dwellings comprise of bungalows as well as a larger property to the north and two storey properties opposite. There is open countryside beyond to the north and west. The proposed development would introduce 10 dwellings into the appeal site. Access would be from Main Road leading to an estate style layout of the properties.

4. Policy SP1 of the Suffolk Coastal District Local Plan Core Strategy and Development Management Policies DPD (2013) (CSDMP) seeks to relate new housing development to a variety of services and infrastructure. The appeal site falls outside of the defined physical limits of Kelsale Cum Carlton and so for the purposes of local plan policy is classed as being located in the open countryside.
5. However, although the appeal site is located outside of the physical defined limits of the settlement, I have had regard to the immediate surroundings. The proposed development would sit adjacent to existing dwellings and would physically adjoin the wider settlement. The presence of the dwelling to the north serves to enclose the appeal site within the built environment and prevents undue encroachment of development into the countryside.
6. Policies SP27 and DM3 of the CSDMP and Policy SSP2 of the East Suffolk, Suffolk Coastal District Site Allocations and Area Specific Policies Development Plan Document seek to direct housing to within the defined physical limits or where there is proven local support, and for development in the countryside only permit this subject to a number of criteria. However, in this instance, the Council have not specified the harm that would arise in terms of the location of the site. The Appellant highlights that Kelsale is identified as a Local Service Centre in Policy SP19 of the CSDMP, having a number of nearby facilities including a primary school. I have also had regard to the general proximity of Saxmundham to the South, which is classed as a town and hosts a number of services including sports clubs, a supermarket and train station.
7. Accordingly, whilst the appeal site is located in an area defined as being in the countryside, and therefore there is some conflict with the requirements of Policies SP27 and DM3, I find that given the surroundings, the existing built form and the proximity to a number of local services and facilities, that the proposal would not be in an unsuitable location for new housing. Accordingly, I do not find conflict with the aims of Policies SP1, SP19, SP27 and DM4 of the CSDMP which collectively seek to locate housing in relation to services and infrastructure, enhance accessibility to services and support development within clusters subject to an acceptable scale and a lack of harm to the character and appearance of the area, amongst other things.

Surface Water Drainage

8. The appeal site is located within Flood Zone 1. The original application to the Council was supported by a Flood Risk Analysis and Drainage Strategy and I have carefully considered the content of this. The submitted analysis included infiltration testing and proposed to discharge surface water into the existing ground via piped networks, soakaways and permeable paving. However, it appears that only part of the document has been provided and the Appellant has suggested that the most relevant parts only have been submitted.
9. Consequently, based on the evidence before me, limited details have been put forward pertaining to the proposed use of SuDS and the calculations or results and effectiveness of the infiltration testing, nor any attenuation measures, to indicate that this would be a suitable method of drainage.
10. I have had regard to the Appellant's comments in relation to the provision of a Flood Risk and Drainage Strategy as part of a previous application. However, I do not find it unreasonable that the Council would expect that all of the

relevant documentation would be resubmitted with any subsequent application. Accordingly, the comments and decision made would be based on the submitted documents.

11. Whilst the National Planning Policy Framework (the Framework) supports the use of conditions where reasonable and necessary, based on the evidence before me it has not been sufficiently demonstrated that a suitable method of drainage could be achieved on site therefore it would not be appropriate to rely on conditions that may or may not be able to be complied with in this instance.
12. I therefore conclude that the level of information provided in respect of this matter is insufficient to give a satisfactory degree of certainty that a suitable method of drainage could be achieved for the appeal site and proposed development. It would therefore fail to comply with the requirements of the Framework. I note also that, whilst no policy was identified within the Council's reason for refusal, the Suffolk Flood Risk Management Strategy (2016) sets out criteria to be satisfied in relation to drainage which includes that the risk of flooding is managed through the use of appropriate SuDS, amongst other things.

European Designated Habitat Areas

13. The appeal site is located within the 13km protection zone of European Designated Sites relative to the Sandlings SSSI and SPA. Policy DM27 of the CSDMP states that development proposals that would cause a direct or indirect adverse effect to the integrity of internationally designated environmental sites or other designated areas will not be permitted unless prevention, mitigation and where appropriate compensation measures are provided so that the impacts no longer outweigh the benefits of the development, amongst other things.
14. As a result of the location of the site the proposed development would have the potential to give rise to additional recreational pressure upon these areas as well cumulative impacts on the other European Designated Habitat Areas in the locality including the Alde-Ore Estuary SPA and Ramsar Site. Accordingly, the proposed development would require a Section 106 Agreement to secure the necessary mitigation and compensation in accordance with the requirements of Policy DM27.
15. I have not been provided with a signed completed copy of an agreement to secure this, nor confirmation that one is being progressed. As such, in the absence of this the proposed development would not comply with the requirements of Policies DM27 and SP14 of the CSDMP in this instance.

Reptiles and Great Crested Newts

16. The appeal site is somewhat overgrown and has a number of dilapidated buildings within it. The Council have identified that a number of protected species have been recorded within the vicinity of the site including mammals, birds and amphibians.
17. The Appellant has provided an Ecological Impact Assessment (Nov 2018) which has carried out a desk study, phase 1 habitat study, assessment of protected species and preliminary roost assessment. The submitted assessment found that the site has the potential to support reptiles, Great Crested Newts and other amphibians and recommended that further survey works for these

particular species is carried out in order to fully evaluate the ecological impacts of the proposed development. It also includes recommendations to ensure the protection of breeding birds and bats, as well as habit enhancement.

18. Policy DM27 of the CSDMP requires all development proposals to protect the biodiversity and geodiversity value of land and buildings and minimise fragmentation of habitats amongst other things. I have carefully considered the representations of the Appellant regarding the use of conditions however I am mindful of Circular 06/2005. Although the Circular states that surveys should only be required where there is a reasonable likelihood of species being present, it advises that surveys should be carried out before planning permission is granted. Consequently, it indicates that surveys should only be required by condition in exceptional circumstances.
19. The submitted information provides limited information in relation to the identification and securing of appropriate safeguarding of the protected species identified. Therefore, given the degree of uncertainty in relation to mitigation, the use of conditions in relation to the protection of reptiles and Great Crested Newts would not be appropriate in this case. Moreover, the absence of this information means that it is not possible to be certain that the proposal would not result in significant harm to biodiversity as envisaged by Paragraph 175 of the Framework. Furthermore, the proposal would also fail to achieve the requirements of Paragraph 170 of the Framework, in which planning should contribute to conserving and enhancing the natural environment.
20. In conclusion, from the information provided and following the recommendations of the Ecological Survey, it has not been sufficiently demonstrated that the proposal would not significantly harm protected species or that a suitable method of mitigation could be achieved. The proposal would therefore be contrary to Policies DM27 and SP14 of the CSDMP and Section 15 of the Framework.

Planning Balance

21. It is common ground between the parties that the Council currently has a 5-year housing land supply. Accordingly, the provisions of paragraph 11d of the Framework are not engaged. Nevertheless, it is necessary to consider the harm against the potential benefits of the proposed development. These include the visual improvements to the appeal site, the provision of new housing, economic benefits through the addition of ten households and employment during construction and potential highway improvements. I have also noted that matters relating to the visual impact, design, highway safety and living conditions would be acceptable in the opinion of the Council. However, based on the scale of development proposed I find that these are relatively modest benefits and therefore conclude that, taken collectively, they do not significantly and demonstrably outweigh the harms that I have identified above.

Conclusion

22. For the reasons given above, and having carefully considered all matters raised, I conclude that the appeal should be dismissed.

R Norman INSPECTOR