Planning Inspectorate

Appeal Decision

Site visit made on 4 August 2026

by C Walker BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2026

Appeal Ref: 6005638
Land east of Capel Road, Bentley, IP9 2DN

- 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 Darren Webb of Mixbrow Construction against the decision of Babergh District Council.
- The application Ref is DC/24/05240.
- The development proposal is 'Outline Planning Application (Access to be considered, all other matters reserved) - Erection of 18 no. dwellings (including 12 no. affordable units and public open space)'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the interests of clarity, I have used the Council's description of development.

3. The appeal is made in outline form, with only the means of access to be considered at this stage. I have considered the appeal on that basis.

4. A proposed site plan has been advanced. However, as 'layout' is a reserved matter I have treated this plan as indicative only.

Main Issues

5. The main issues are:

   - whether the site is a suitable location for the proposed development, having regard to the Council's housing strategy;
   - whether the effects of the development make it necessary to secure financial contributions towards local infrastructure;
   - the effect of the development on the integrity of European habitat sites; and
   - whether a development of the quantum proposed is capable of appropriately responding to the character of the area.

Reasons

Suitable location

6. The appeal site lies beyond the settlement boundary for Bentley, as defined by both the Babergh and Mid Suffolk Joint Local Plan – Part 1, (2023) (JLP) and the

Bentley Neighbourhood Plan 2018-2037 (made 2022) (BNP). Therefore, in planning policy terms the site comprises countryside.

7. JLP Policy SP03 sets out that outside of settlement boundaries, development will only be permitted where it is either (a) allocated for development, (b) in accordance with a Neighbourhood Plan or (c) a policy listed within Table 5 of the JLP or (d) in accordance with paragraph 80 (now 84 in the updated version) of the National Planning Policy Framework (the Framework). It is common ground that the exceptions (a) and (d) of Policy SP03 do not apply here.

Rural exception

8. As the scheme is promoted as a rural exception development, it falls to be assessed against BNP Policy BEN1 and JLP Policy LP07. These policies differ from Paragraph 76 of the Framework in that they do not require such schemes to be community-led. Given that the evidence indicates the development plan is up to date, I attach greater weight to the development plan policies in this regard.

9. Policy BEN1 is supportive of small-scale affordable housing on rural exception sites. However, I have not been pointed to anywhere in the BNP where it defines what is meant by ‘small scale’.

10. Policy LP07 requires that the scheme demonstrates it is well connected to the existing settlement and proportionate to it. The proposal lies adjacent to the defined settlement edge and proposes a new footpath link across the site frontage to connect to the existing footway on Capel Road. Accordingly, I find it is well connected to the existing settlement. There is no definition contained within Policy LP07 to confirm what it means by proportionate. However, the supporting text sets out that this ‘would normally be considered to be not greater than either 5% of the total number of built dwellings, or not greater than 1ha.’

11. At 1.19 hectares, the site exceeds the size referred to within the supporting text to the policy. However, the guidance is not expressed in absolute terms, and the use of the word “normally” indicates that there may be circumstances in which a larger site would be acceptable. Furthermore, the supporting text makes clear that proposals of any scale should demonstrate an appropriate mix of development that responds to identified local needs. In my view, this indicates that scale alone should not be determinative, provided that no other planning harm arises as a consequence of the site's size.

Local needs

12. Although local need is not explicitly referred to within the text of JLP Policy LP07, the supporting text makes clear that proposals will need to demonstrate local needs which can be identified via a local survey. Furthermore, BNP Policy BE1 requires that for a rural exception site to be supported, there should be a proven local need for affordable housing.

13. A Local Housing Needs Assessment (LHNA) dated July 2023 supports the scheme. This draws on a number of sources, including the 2021 Census, the now defunct Core Strategy and the development plan policies that were emerging at the time of its preparation. The LHNA provides a statistical analysis, based on district wide need applied to local demographic characteristics. It is not clear

whether the emerging policies referred to within it went on to be adopted without modification.

14. The LHNA considers a number of approaches to assessing need, including modelling it to meet the 35% affordable housing target for greenfield sites exceeding 0.5ha that is expected in the adopted JLP Policy SP02. It concludes that, depending on which approach is used, there would be a need for between 14 and 22 homes across Bentley Parish for the period of 2023-2037. It does not include a targeted local housing needs survey to identify people in need of affordable housing in Bentley, those with a local connection to it, or those who wish to live there, as advocated by the Council's Housing Supplementary Planning Document (2024) (SPD).

15. Evidence before me suggests that between 2023 and 2024, the Council's Housing Register included an average of 5 households with a local connection to Bentley who were on the waiting list for housing. These households would have been those looking to secure affordable or social rented housing rather than shared ownership tenure. Given the proposed equal tenure split of six affordable/social rented units and six shared ownership units, the evidence is indicative of a local need for affordable housing broadly comparable to the six affordable/social rented dwellings proposed. Whilst the figures do not directly support the shared ownership element of the scheme, they nevertheless demonstrate an identified affordable housing need within the settlement.

16. Moreover, I note the supporting text of BNP Policy BEN1 indicates that the Neighbourhood Plan Housing Needs Assessment (AECOM January 2020) identified a total of 18 affordable homes would be required in Bentley over the plan period with a broadly equal tenure split between affordable/social rent and affordable home ownership. As this is contained within the development plan, I attach this significant weight, which I consider should override the guidance contained in the SPD.

17. I am mindful that in rural hinterland locations, opportunities for sites over the qualifying threshold for affordable housing will likely be infrequent. Indeed, no evidence has been provided to show that this identified need has been met, either in whole or part. Accordingly, the available evidence points to an unmet local need in Bentley that this scheme that includes 12 affordable homes could help to meet.

Cross Subsidy

18. JLP Policy LP07 sets out that where a rural exception scheme includes an element of open market housing, this must not exceed 35% of the total number of dwellings. It also requires such proposals to be supported by a robust viability assessment which convincingly demonstrates that the open market housing element is the minimum necessary to cross-subsidise the delivery of the affordable housing. This requirement is reinforced by BNP Policy BEN1, which contains the same expectation. It further states that, in exceptional circumstances, a small number of market homes may be permitted only where it can be demonstrated that there is no other available means of funding the construction of the affordable housing.

19. The proposed development comprises 18 dwellings, of which 12 would be affordable homes and 6 would be open market dwellings. Consequently, the open market element would represent 33.3% of the total number of dwellings, which

falls below the 35% maximum permitted by JLP Policy LP07. In this respect, the proposal complies with the numerical limit for open market housing within a rural exception scheme.

20. The Planning Practice Guidance (PPG) is clear that a viability assessment should be presented in a way that allows clear interpretation and interrogation of it. It expects inputs to be evidenced, and explanations given for any differences from the inputs and assumptions used in the viability assessment that formed the basis of the development plan.

21. A Viability Assessment (VA) has been submitted in support of the proposal. However, the assessment contains limited explanation as to how the various cost and revenue assumptions have been derived. For example, insufficient justification has been provided for the assumed sales values, including how they reflect the proposed quality and specification of the development or how they relate to market evidence from comparable sales within the local area. Whilst I have not been furnished with the published viability assessments which underpinned the development plan policies or the Community Infrastructure Levy (CIL) rates, the Council assert that the assumed figures in the VA are significantly higher. Although I note matters such as inflationary costs are cited, I have no substantive evidence to support these assertions. Moreover, 'site costs' are said to be £600k without justification. This figure has not been shown to be based on the existing use value together with an appropriate premium for the landowner, to establish a benchmark land value, which is the correct approach advocated by the PPG.

22. On the evidence before me, the total financial contribution to be secured through the planning obligation amounts to £26,034, comprising monies towards secondary school transport and its associated monitoring fee. This is substantially below the £100k allowance assumed within the VA. Furthermore, the other infrastructure costs referred to, including those relating to education, libraries and waste, would be funded through the CIL, rather than by a planning obligation.

23. The assessment of CIL costs within the VA also raises concerns. The assumed liability is based on the 2016 charging rates and does not take account of the Council's most recent 2025 CIL Charging Schedule. In addition, no allowance has been made for the financial contribution required to secure habitats mitigation, notwithstanding the appellant's acceptance that such mitigation is necessary for the development to proceed.

24. The VA concludes that, having regard to all costs and revenues, the scheme would generate a profit margin of 1.16%. The PPG indicates that a developer return in the order of 15–20% of gross development value is generally regarded as an appropriate range for plan-making and viability assessment purposes. Even if I were to accept that the VA provides an accurate assessment of the scheme's viability, the very limited profit identified raises questions as to whether the development would be sufficiently attractive to proceed in practice.

25. In any event, the VA does not clearly demonstrate that the provision of 6 open market dwellings represents the minimum quantum necessary to facilitate the delivery of the affordable housing. No sensitivity testing or alternative scenarios have been provided to show whether a lower proportion of market housing could achieve the same objective. As such, the assessment does not convincingly

establish that the level of market housing proposed is the minimum required to cross-subsidise the affordable homes, as required by Policy LP07.

26. Furthermore, the recommendations contained within the VA include seeking reductions in planning obligations and CIL liabilities in order to improve viability. Whilst planning obligations may be subject to scrutiny where justified, CIL is a fixed statutory charge and is not ordinarily open to negotiation. The VA also identifies grant funding as a potential source of financial support. This indicates that cross-subsidy from market housing is not necessarily the sole means by which the affordable housing could be delivered. That conclusion sits uneasily with BNP Policy BEN1, which permits market housing within a rural exception scheme only where it can be demonstrated that there is no other available means of funding the construction of the affordable homes.

27. Drawing these matters together, I am not satisfied that the VA provides a robust and reliable evidential basis for concluding either that the proposed 6 market dwellings constitute the minimum quantum necessary to cross-subsidise the affordable housing, or that market housing is the only available mechanism through which the affordable homes could be delivered. Consequently, the proposal fails to satisfy the requirements of JLP Policy LP07 and BNP Policy BEN1 and is therefore in conflict with the development plan in this respect.

Securing the affordable housing

28. In order to attach meaningful weight to the provisions and benefits of affordable housing, there would be a requirement to secure its delivery and retention, including a mechanism to ensure these homes are first offered to those with a local connection. Indeed, these are the expectations of BNP Policy BEN1 which sets out that these restrictions should be delivered through a legal agreement.

29. No legal agreement is before me and there is no means of securing the affordable housing. Consequently, I give this very limited weight which brings into question whether this can be considered as a rural exception scheme at all.

Conclusions on suitable location

30. For the reasons I have set out, the proposal does not meet the expectations of JLP Policy LP07 or BNP Policy BEN1. No other relevant policies have been drawn to my attention that offer support for this scheme. Consequently, I find the site is not a suitable location for the proposed development, in conflict with JLP Policy SP03 which relates to the sustainable location of new development, and thus, in conflict with the Council's housing strategy.

<u>Local infrastructure</u>

31. On the evidence before me, I have already found that education contributions towards early years, primary, secondary and sixth form expansions, special education needs provision, libraries improvements and waste infrastructure should not be secured by planning obligation. Although a cost has been attributed to each of these needs, these are irrelevant given they would be funded by the CIL. Accordingly, I disregard these in my considerations.

32. Secondary school transport is a need arising from the development that is not covered by the levy. The CIL compliance statement sets out the justification for it. It forecasts that the development of 18 houses would give rise to 3 secondary

school pupils. Given the nearest school is over 3 miles away, they would be entitled to free school transport. The location of the development would place an additional financial burden on the local education authority to provide this. Based on the costs of provision for 3 pupils attending from year 7 to 11, I am satisfied that the required amount is fairly and reasonably related in scale and kind to the development, is directly related to the development and is necessary to make the development acceptable in planning terms. As such the contribution complies with Regulation 122 of the CIL Regulations 2010 and Paragraph 58 of the Framework.

33. However, no planning obligation is before me to secure this. The PPG is clear that planning conditions should not be used to impose financial obligations or that require a planning obligation to be entered into, unless there are exceptional circumstances. There are no such exceptional circumstances before me. Consequently, the development does not secure the necessary finances to mitigate the infrastructure impacts that the development would generate. Therefore, the proposal runs contrary to the expectations of JLP Policies LP30 and LP32 as well as BNP Policy BEN19. Amongst other things, these policies seek to ensure that infrastructure impacts are managed, mitigated and delivered.

34. Had I been minded to allow this appeal, it would have been necessary for me to consider whether the public open space as described within the description of development could be adequately secured and maintained by the Council's suggested condition. However, as I am dismissing the appeal for other reasons, it is not necessary for me to consider this further.

Integrity of habitat sites

35. The site lies within the zone of influence of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar sites. These are European designated sites, afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the Habitat Regulations).

36. The SPA and Ramsar are both a marine site and land that is not subject to tidal influence. It includes extensive mudflats, low cliffs, salt marsh and small areas of vegetated shingle on the lower reaches, along with areas of low-lying grazing marsh. Its qualifying features are a range of overwintering birds. The conservation objectives are to ensure the integrity of the site is maintained or restored as appropriate, and to ensure it contributes to achieving the aims of the Wild Bird Directive, by maintaining and restoring the extent, distribution, structure and function of the qualifying features.

37. The main threats to the SPA and Ramsar site are through development pressures and additional recreational disturbance, resulting in damage and disturbance to the bird's habitat. The proposal would create a net gain of 18 dwellings and, in combination with other developments permitted in the area, there would be a likely significant adverse effect on these habitat sites.

38. The Suffolk Coast Recreational Disturbance and Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by pooling tariff style financial contributions made per dwelling, towards a range of mitigation and avoidance measures. These include staff resources, signs and interpretational material, awareness raising, dog related measures and other targeted approaches to relieving pressure from the sites. It is clear that contributions towards these avoidance and measures are necessary to mitigate adverse impacts.

39. Planning permission can only be granted if, after taking account of mitigation measures in an appropriate assessment made under the Habitat Regulations, a decision-maker concludes the development would not adversely affect the integrity of the habitat sites. To come to such a conclusion, I must be satisfied beyond all reasonable scientific doubt that any adverse effect on the integrity of the habitat sites would be avoided.

40. In the absence of an effective mechanism before me through which the payment of the tariff could be secured, I do not have the necessary certainty that the adverse effects on the integrity of the habitat sites would be avoided. A condition would not be appropriate in this situation, and no planning obligation is before me.

41. Imperative reasons of overriding public interest of a social or economic nature are not present that would be sufficient to overcome the harm that would be caused to the habitat sites. In the absence of any mitigation, the proposal would be likely to increase recreational pressure, and thus would, in combination with other plans and projects, have a likely significant effect on the integrity of the sites. Therefore, I must conclude that the proposed dwellings would have an adverse effect on the SPA and Ramsar, contrary to the Habitats Regulations. The proposal would also be contrary to JLP Policies SP09 and LP16 as well as BNP Policies BEN1, BEN8 and BEN9, the objectives of which, seek to protect biodiversity including European designated sites.

Character and design

42. Situated at the edge of the settlement, the appeal site comprises an open field located between loosely knit, predominantly detached dwellings. Development becomes increasingly sporadic in character and pattern towards the north-west, reinforcing the site's transitional relationship with the countryside beyond.

43. The submitted site plan should be treated as indicative only, given that layout is a reserved matter. Notwithstanding the Council’s concerns, I am satisfied that the appeal site is of sufficient size to accommodate 18 dwellings whilst broadly reflecting the density and grain of surrounding development.

44. Although I share the Council’s concern that the indicative layout places higher density development adjacent to the open countryside, where a lower-density form might be more effective in providing a sympathetic transition to the rural area, such matters could be addressed through revisions at the reserved matters stage. Consequently, I am satisfied that a scheme could be brought forward within the site’s parameters that would achieve a high standard of design and integrate appropriately with the character and appearance of the surrounding area.

45. For these reasons, I find that a scheme of the quantum proposed is capable of appropriately responding to the existing character of the area. Accordingly, I find no conflict with JLP Policies LP24 or SP02, or BNP Policies BEN1 or BEN3, which seek to secure locally distinctive and high-quality design that responds to and safeguards existing character, and expects development to be tenure blind. Neither do I find conflict with the Framework, which also places high importance on good design that is sympathetic to local character.

Planning Balance and Conclusion

46. Collectively, the benefits of the scheme are considerable. The proposal would contribute to the supply of housing across the district and would generate social and economic benefits, including support for the construction industry during the build period, increased local expenditure, and additional support for local services and facilities. The proposal would also deliver environmental benefits, including biodiversity net gain, which is capable of attracting positive weight in the planning balance.

47. However, a scheme of this scale without the ability to secure its advanced affordable housing for local needs would represent an unsustainable departure from the development plan without proper justification. Neither has it been shown that the impacts arising from the development can be appropriately mitigated which would place strain on existing infrastructure provision. Additionally, there would be likely significant effects on the integrity of important European designated habitat sites, which I afford great weight to. These harms are significant weighing heavily against the scheme.

48. For the reasons set out above, the proposal conflicts with the development plan and there are no other material considerations that indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

C Walker

INSPECTOR