



Appeal Decision

Site visit made on 29 September 2020

by **S Tudhope LLB (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 December 2020

Appeal Ref: APP/X3540/W/19/3242698

Land to the rear of 21 Birds Lane, Lowestoft NR33 0NP

- 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 Bellis, Wheelbarrow Developments against the decision of East Suffolk Council.
 - The application Ref DC/19/1589/FUL, dated 12 April 2019, was refused by notice dated 11 June 2019.
 - The development proposed is described as "erection of a four storey dwelling with three storey each end and erection of another 2, four storey dwellings, comprising of 9 residential units in total".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the address of the appeal site as given on the appeal form, which includes the additional words "Land to the rear of", as this more accurately identifies the site.
3. The appeal form describes the proposed development as "Construction of six residential dwelling with three storey high". The appellant asserts the scheme was amended during the course of the planning application in order to address concerns raised by the Council and that the appeal should be determined on the basis of the amended scheme. It is further asserted that the amended scheme was accepted by the Council and that this is demonstrated by the Council having changed the description of development shown on its website, and by making the amended plans publicly available. The appellant advises that subsequently the description on the Council's website reverted to the original description and the amended plans were removed. I do not consider that these actions demonstrate a formal acceptance of the amended scheme.
4. The Council's officer report, decision notice and appeal evidence make clear that the application was determined on the basis of the original plans and description of development as shown in the banner heading above. The Council has advised that it did not formally accept the amended scheme and did not carry out consultation in respect of it. The appellant acknowledges that other parties have not had the opportunity to fully consider the amended proposal. The Procedural Guide Planning Appeals - England is clear that the appeal process should not be used to evolve a scheme and it is important what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

5. I acknowledge that the appellant attempted to evolve the scheme during the planning application process and I further acknowledge the frustration experienced by the appellant lack of communication from the Council in relation to the submitted revisions and its non-acceptance of the revised plans. However, the Planning Practice Guidance¹ makes clear that it is at the discretion of the local planning authority whether or not to accept such changes. Therefore, with the Wheatcroft principles² in mind, it is my view in this case that the appeal must be determined on the basis of the plans as originally submitted to the Council and upon which it based its decision. To do otherwise could prejudice the interests of the Council, third parties and consultees. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted.
6. The main parties indicate that the development would have likely significant effects on one or more European sites. The appellant has submitted evidence that payment has been made to the Council in accordance with the requirements set out in the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy. The Council has sought not to defend its fourth reason for refusal as a result. I return to this matter later in my decision.

Main Issues

7. The main issues are (i) whether the proposed housing mix is acceptable having regard to development plan policy; (ii) the effect of the proposal on the character and appearance of the area; (iii) the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular regard to outlook; and (iv) whether the proposed development would be in a suitable location with regard to local and national policies relating to flood risk.

Reasons

Housing mix

8. Policy WLP8.1 of the East Suffolk Council Waveney Local Plan 2019 (LP) requires proposals for new residential developments to provide at least 35% of the total number of new dwellings as one or two bedroom properties, unless it is satisfactorily demonstrated to be unfeasible.
9. The appellant accepts that the appeal scheme, which would comprise 7 three bedroom units and 2 two bedroom units, does not meet the policy percentage requirement. The proposal amounts to 22% provision of two bedroom properties and would, therefore, provide a mix of dwellings and go some way to meeting the identified needs. However, in the absence of any substantive evidence to justify the shortfall in the required mix of dwelling types, I conclude that the development would not provide a housing mix that meets local housing needs. Thus, it conflicts with LP Policy WLP8.1 where it seeks to secure a mix of dwellings on development sites that meet identified local needs.

Character and appearance

10. The appeal site lies to the rear of properties on the north western side of Birds Lane and to the east of Kirkley Run. The site comprises an 'L' shaped parcel of

¹ Paragraph 061 Reference ID: 14-061-20140306 Revision date 06.03.2014

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

garden and former smallholding land. The site would be accessed from Birds Lane. The proposed development would be in a cul-de-sac layout with a turning head at the rear of the site. It would comprise 9 dwellings divided between three blocks; with two blocks of two, four storey, properties positioned to the north west of the site and an opposite terrace of 5 dwellings, with the three central units being four storey, with the fourth floor being rooms within the roof space, and the two end dwellings being three storey. Each property would have a garage, patio area and enclosed stairwell at ground floor. The main ridge height would be approximately 12 metres above ground level.

11. The scale, arrangement and plot sizes of the proposal would be inconsistent with that of the surrounding area. As such the proposal would be unsympathetic to the existing built environment and would cause harm to the character and appearance of the area. The development would bear little resemblance to the existing houses near to the site. The use of sympathetic materials would not significantly diminish the harm that would arise from these attributes.
12. Even taking into account the staggered roof line of the five unit block, the proposed dwellings would have an appreciable mass, be conspicuously taller, and would display a fenestration pattern and overall appearance which would be at odds with dwellings on Birds Lane and Kirkley Run. This would be the case, even taking into account the position of the proposed development away from the immediate street scene.
13. The proposed development would be viewed through gaps between properties and would be highly visible from the rear elevation windows and the surrounding gardens of its neighbours. Although larger scale development has been accepted within the vicinity of the site, notably the terrace of three storey dwellings on the western side of Kirkley Run; those properties have their main roof line at a similar height as the ridge lines of the neighbouring properties. Thereby generally reflecting the predominant building height. The appeal proposal would exceed the height of surrounding development by some margin, due in part to the ground floor being comprised of non-habitable space. In any case, the dwellings referred to on Kirkley Run appear prominent and incongruous in the street scene and are not an example that I consider draw favour toward the appeal proposal.
14. The appellant considers that landscaping could be agreed to soften and assimilate the development into the surroundings. Whilst the purpose of planting and landscaping is to integrate development into its surroundings; it is not a means of hiding development that is otherwise unacceptable. In any case, due to the overall height and mass of the proposal, a condition requiring such planting would not mitigate the harm I have identified.
15. I conclude that the proposal would unacceptably harm the character and appearance of the area. It would conflict with LP Policy WLP8.29 which requires development to demonstrate high quality design and to respond to local character.

Living Conditions

16. The separation distances between the proposed dwellings and existing dwellings on both Birds Lane and Kirkley Run would be sufficient to ensure no direct overlooking of the rear elevation windows of neighbouring properties.

However, the appeal proposal would result in significant new built form close to the shared boundaries with existing dwellings and would be readily visible from the houses and gardens of those neighbours.

17. Although the proposed buildings would be between approximately 27 to 50 metres distance away from the rear elevations of neighbouring properties, the significant height, proximity and massing, would result in the proposal appearing unacceptably overbearing and visually intrusive in the outlook when viewed from the neighbouring rear gardens. The development would loom large over the neighbouring gardens and be overly dominant, resulting in poor outlook. This would contrast significantly to the existing substantially more open outlook and would be detrimental to the enjoyment of the users of those gardens.
18. In conclusion the proposal would result in unacceptable harm to the living conditions of the occupiers of neighbouring properties, with regard to outlook. Thus, it would conflict with LP Policy WLP8.29 which seeks a high standard of design and the protection of amenity of neighbouring existing uses.

Flood risk

19. LP Policy WLP8.24 requires development proposals to consider flooding from all sources and take into account climate change. The policy also requires that proposals at risk of flooding should only be granted planning permission subject to a number of provisos, including that there are no available sites suitable for the proposed use in areas with a lower probability of flooding. This is consistent with the National Planning Policy Framework (the Framework), which requires the application of a sequential, risk based approach to the location of development, that takes into account the current and future impacts of climate change, so as to avoid, where possible, flood risk to people and property.
20. The appellant carried out a sequential test and updated the search for alternative sites for the appeal. It considers alternative sites across the 'Lowestoft Area' including local plan allocations, sites on the Council's brownfield register and other sites identified from an internet search of land for sale. A large number of sites were considered, all of which were assessed as being unsuitable and were discounted for a variety of reasons. In short, the appellant considers that there are no reasonably alternative sites available for the proposed development.
21. However, when assessing whether there are reasonably alternative sites at a lower risk of flooding, it is not appropriate to automatically discount sites on the basis that they are much larger than required, that a site is allocated for a mixed use where that mixed use includes housing, or that a site does not have planning permission. I see no reason why the quantum and type of development proposed here could not be accommodated within a larger allocation or other site or within a mixed use site. I acknowledge that sites up to 0.4ha, being almost double the appeal site size, were given consideration. However, they were largely discounted on the basis that the number of dwellings that could be accommodated would be significantly higher than proposed. This approach seems to rely on an overly narrow focus of finding a similar sized site to the appeal proposal which may rule out otherwise suitable sites.

22. Further, it is not clear why sites over 0.4ha would be fundamentally unsuitable just because a significantly higher number of dwellings than that proposed could be accommodated. There is no substantive evidence suggesting why a suitable proportion of the allocated or larger sites in question could not be delivered in conjunction with other developers to realise a comprehensive development. By setting artificial parameters the outcomes are limited, which inevitably reduces the likelihood of finding suitable alternatives and does not reflect the actual situation regarding potential site availability in lower flood risk areas. The approach does not represent an adequate application of the sequential test and site comparison.
23. Although the Council suggests that there are several windfall sites within the wider settlement of Lowestoft that the appellant has not considered, details of these have not been provided. I do not, therefore, consider this matter to be determinative in my assessment of the application of the sequential test.
24. Ultimately, the aim of the sequential test is to steer development away from areas at highest risk of flooding. Given the Council's housing land supply position, and the inadequacies identified in respect of the sequential test, I am not persuaded that the level and type of development proposed in this case could not be located in zones with a lower risk of flooding.
25. Furthermore, even if it were satisfactorily demonstrated that there were no reasonably available sites within Flood Zones 1 and 2, because the appeal scheme proposes 'more vulnerable' development on land which lies within Flood Zones 2 and 3a, when taking into account climate change, it would be necessary to apply the exception test. This was not undertaken. Without proper application of the sequential test and, if necessary, the exception test, it is not possible to establish whether the principle of development is acceptable with regard to flood risk.
26. I have some concerns about the overall acceptability of the design of the development, regarding the safety of future occupiers in relation to flood risk, which relies on the living accommodation being above ground floor level. Whilst it is stated that safe (dry) refuge would be available across the first floor during the design and extreme event, it is further stated that access and egress of the building would not be possible, fittings within the ground floor level would need to be 'durable' or 'sacrificial', the mains supply of electricity would need to be turned off and vehicles would need to be moved to higher ground prior to the flood event in order to ensure they do not become a hazard. In addition, although occupiers would be able to receive flood warnings the evidence indicates that it is likely that by the time warnings are issued, Birds Lane and the wider evacuation route could already be flooded. However, as I have found that the sequential test has not been satisfied, I have not considered it necessary to go back to the parties to pursue this matter further in this instance.
27. Overall, for the reasons above, I conclude that the proposed development would not be in a suitable location with regard to local and national policies relating to flood risk. Consequently, the appeal proposal fails to comply with the Framework and LP Policy WLP8.24 which seek to protect people and property from flooding.

Other Matters

28. The Council did not translate its concerns regarding highway safety matters into a reason for refusal. However, as I am dismissing the appeal on other substantive grounds, I do not find it necessary to consider this matter further.
29. I note the support for the proposal, including the potential improvement for turning of vehicles within Birds Lane, the introduction of new people into the community and residential use being preferable to other potential alternative uses. However, this does not lead me to a different overall conclusion on the main issues.
30. The proposal would make a modest contribution to the supply of housing by the delivery of 9 dwellings in an accessible location. I afford this benefit moderate weight commensurate with the quantum of development proposed. A mix of dwelling types would be provided and would be suitable for family homes, but the mix would not meet the identified local needs and I therefore afford this benefit minimal weight. There would be additional parking spaces provided within the site to serve numbers 17 and 19 Birds Lane, thereby relieving parking pressure within the lane. This would be a small benefit to which I attach modest weight.
31. The proposal has the potential to provide a range of renewable low carbon energy technologies and to incorporate sustainable construction methods that would exceed building regulation requirements. The appellant has indicated that electric vehicle charging points would be installed. These are potential benefits which attract modest weight.
32. In acknowledging these benefits, I do not consider that they outweigh the harm and the policy conflicts I have identified and to which I attribute significant weight. Accordingly, there are no material considerations which indicate that a decision should be made other than in accordance with the development plan. It is, therefore, not necessary that I consider the effect of the proposal on European sites, as such an assessment would have no bearing on my decision. Although the Council considers this matter to have been addressed, should I have found the proposed development acceptable, it would have been necessary for me to give further consideration to the impact upon European sites in accordance with the Habitats Regulations.

Conclusion

33. For the reasons above the appeal is dismissed

S Tudhope

Inspector