



Appeal Decision

Site visit made on 11 August 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 29th September 2020

Appeal Ref: APP/X3540/W/20/3250557

Land adjacent to and south of Sitwell Gardens, Station Road, Framlingham

- 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 Michael & Mrs Rosalind Ford against the decision of East Suffolk Council.
 - The application Ref DC/19/2018/FUL, dated 14 May 2019, was refused by notice dated 11 November 2019.
 - The development proposed is 4 new 3-bedroom dwellings with associated parking and amenity space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are, firstly, whether the proposal is acceptable in principle having regard to the location of the appeal site in an area with a medium probability of flooding and, secondly, the effect of the proposal on trees.

Reasons

Flood risk

3. The appeal scheme seeks permission for the erection of four detached dwellings served by the existing access onto Station Road. To overcome the potential risk to flooding from the River Ore which flows along the eastern site boundary, the dwellings would be constructed on stilts. The scheme also includes a raised walkway between the houses and the road to provide safe access/egress in the event of the site flooding.
4. The housing strategy for Framlingham is set out in Policy FRAM 2 of the Framlingham Neighbourhood Plan (FNP). Amongst other things, this states that infill development will be considered acceptable within the settlement boundary of Framlingham, subject to various criteria including '*other material planning considerations*'.
5. The appeal site is located in Flood Zones 2 and 3a, within which the Planning Practice Guidance (PPG) indicates that a Sequential Test followed by an Exception Test need to be applied in order to justify '*more vulnerable development*', such as houses.
6. The National Planning Policy Framework (the Framework) sets out strict tests to protect people and property from flooding and advises that where these

tests are not met, new development should not be allowed. Paragraph 158 requires that a sequential approach should be applied in areas known to be at risk from any form of flooding. It states that the aim of a Sequential Test (ST) is to steer new development to areas with the lowest probability of flooding, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. If the ST is passed then an Exception Test should be carried out. At a local level these requirements are reflected in Policy DM28 of the Core Strategy¹ (the CS).

7. A definition of whether a site is '*reasonably available*' under the terms of the ST is not provided, but the PPG advises that a pragmatic approach on the availability of alternatives should be taken.
8. The Appellants have undertaken a Sequential Test Assessment (STA). This found that there were no reasonably alternative sites within the search area that matched the scale and type of development proposed. Consequently, it was concluded that the ST was passed. Moreover, the STA found that the criteria set out in paragraph 157 of the Framework were also satisfied.
9. Through its reason for refusal, the Council argues that Framlingham lies within a large geographical housing market area where allocations for residential development have been made through the FNP and the Site Allocations document². These allocations are considered to be sufficient to enable the Council to maintain a five-year supply of housing and as such there is no need to accommodate housing on this particular site. Whilst that maybe so, the Council's approach is inconsistent with the Framework which does not contain a blanket ban on all sites in areas at risk of flooding in situations where the Council can demonstrate an adequate supply of housing.
10. The Council also raises concern about the approach of the STA to discount large sites on the basis of '*inefficient use of land*'. It is argued that this approach neglects the fact that these larger sites can accommodate development in areas which are not at risk of flooding. However, the Framework refers to "*reasonably available sites appropriate for the proposed development*". Based on the foregoing, a site allocated for say 100 houses in the Local Plan, would not be appropriate for a development of four houses.
11. The screening criteria adopted by the STA in identifying reasonably alternative sites was to set a size range of between 0.25-0.4ha. Any sites larger than this were deemed to be too big to accommodate the proposed development and would therefore result in an inefficient use of land. Whilst the principle of setting a range is consistent with the pragmatic approach advocated in the PPG, there is nothing in the STA that explains how the range in this instance was decided upon. It is noted that the size of the appeal site at approximately 0.4ha represents the upper limit of the range. That in itself is puzzling. The standard approach to these matters is to set a range within a certain percentage of the application site, usually 15 or 20% either way. Looking at the site plan, I can see no clear reason why the dwellings could not be accommodated on a slightly larger site. In my judgement therefore, the

¹ Full Title East Suffolk Council - Suffolk Coastal District Local Plan – Core Strategy and Development Management Development Plan Document (2013)

² Full Title: East Suffolk Council – Suffolk Coastal District Local Plan – Site Allocations and Area Specific Policies (2017)

screening criteria used in the STA is unduly restrictive. Furthermore, it would not be unreasonable to expect consideration to be given to sites larger than 0.4ha, parts of which might be made available for development of the scale proposed.

12. Given the above, the STA has not demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal therefore fails the ST and would be contrary to Policy DM28 of the CS as well as paragraphs 157 and 158 of the Framework.

Trees

13. The appeal site is a parcel of undeveloped land approximately 0.4ha in size to the south of Framlingham town centre. The surrounding area is predominantly residential containing a wide range of building styles.
14. The site has a high level of visual containment being bounded on three sides by mature landscaping. The southern site boundary contains an established tree belt beyond which there is a public footpath and associated area of open space. As the Council's Tree Officer notes, most of the trees along the southern boundary fall outside the appeal site and would not be affected by the development. As to whether the Appellants control the land immediately to the south, the evidence is unclear.
15. The Council's second reason for refusal is concerned predominantly with the effect of the development on these trees, one of which, a black Poplar, is covered by a Tree Preservation Order. The application was accompanied by an Arboricultural Report which the Appellants argue demonstrates the retained trees will not be unduly affected by the proposed development. In response to the Council's decision, a supplementary report was submitted with the appeal which addresses specifically the points raised by the Council.
16. In respect of the black Poplar, the Arboricultural Report found that the tree has been in decline for several years and has a limited life expectancy due in part to previous crown reduction works.
17. I accept that it would be possible, subject to various safeguards, to build the proposed dwellings in a way that safeguards the health of the protected trees. However, the creation of the residential curtilages extending towards the trees would inevitably bring with it a risk of pressure to fell the trees. Such fears are acknowledged by BS 5837:2012 which advises that the relationship of buildings to large trees can cause apprehension to occupiers resulting in pressure for their removal.
18. Even a cursory glance at the proposed site plan shows that the outlook of all the dwellings would be heavily dominated by the trees. The effect would be more pronounced in this instance because of the orientation of the trees to the east, south and south-west of the dwellings. Particularly in the summer months when in foliage, the trees would result in an oppressive amount of shading.
19. This combined with the perceived safety risk by future residents from falling branches together with the inconvenience of seasonal leaf litter would, I believe, inevitably lead to pressure to fell if useable gardens were to be maintained and the living conditions of future occupiers to be safeguarded.

20. I have given due consideration to the Appellants' argument that the development is the best way to secure the retention of the trees given that, black Poplar aside, the remaining trees are not worthy of protection and therefore could be felled at any time. Whilst that maybe so, the amenity value in this case derives mainly from the group which is greater than the sum of its parts.
21. For the reasons I have set out above, and notwithstanding the land ownership arguments, I do not agree that the proposed development would represent the optimum way to secure the long-term future of the trees. In my view, a tree management plan would not resolve the fundamental conflict between the trees and the living conditions of future occupants.
22. Given the varied character of Station Road and the height of plot 1, I do not consider there would be any significant effect on the street scene. Nonetheless, given its potential effect on established trees, I find the development would conflict with Policies SP15, DM7, and DM21 of the CS and FNP Policies FRAM 1 and FRAM 2 insofar as they seek high quality design that protects the character of its surroundings and existing site features of landscape value.

Other Matters

23. The Preliminary Ecological Appraisal identifies that in the vicinity of the site, the River Ore provides a commuting and dispersal habitat for otters and water voles. It is suggested that a minimum of an 8m development free buffer should be maintained along both sides of the riverbanks on site. The proposed layout does not provide such a buffer. However, it is not clear from the information available where the requirement for the buffer zone comes from or whether it is policy or guidance. Given these uncertainties and given that I am dismissing the appeal on other grounds, I have chosen not to pursue this matter.
24. The Appellants have confirmed they are willing to make the required financial contributions required towards the emerging Suffolk Recreational Disturbance Avoidance and Mitigation Strategy. Given that I am dismissing the appeal, it was not necessary to request a planning obligation.

Conclusion

25. Whilst the development would make efficient use of land and be built to high design standards, these benefits do not outweigh the harm I have identified in terms of flood risk and trees.
26. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

D. M. Young

Inspector