



## Appeal Decision

Hearing (Virtual) held on 6 June 2023

Site visit made on 7 June 2023

**by D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 June 2023**

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**Appeal Ref: APP/W3520/W/23/3316136**

**Land West of Suffolk House, Ixworth Road, Norton, Suffolk, IP31 3LP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Ash Property Partnership Ltd against the decision of Mid Suffolk District Council.
  - The application Ref DC/22/01941, dated 8 April 2022, was refused by notice dated 23 December 2022.
  - The development proposed is Erection of 9 self-build/custom build dwellings.
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### Decision

1. The appeal is allowed, and planning permission is granted for the erection of 9 self-build/custom build dwellings at Land West of Suffolk House, Norton, IP31 3LP in accordance with the terms of the application, Ref DC/22/01941, dated 8 April 2022, the Unilateral Undertaking submitted with it and subject to the conditions in the attached schedule.

### Preliminary Matters

2. The application is submitted in outline form with all matters reserved except for access. In the Hearing, it was confirmed that the plan reference 100-225/006E, whilst marked as indicative, constituted full details of the access arrangements against which the development was assessed. I have taken this into account in my decision.
3. Policies referenced in the Council's decision notice are from the Mid Suffolk Local Plan 1998 (MSLP), the Core Strategy 2008 (CS) and the Core Strategy Focused Review 2012 (CSFR). These policies are prior to the preparation of a Joint Local Plan (JLP) between the Council and neighbouring Babergh District Council. During the Hearing it was reported that the Examination in Public of the JLP was ongoing and thus emerging policies could only be given limited weight at the current time. I have taken this policy position into account in my decision.
4. A Unilateral Undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) accompanies the appeal. A signed version was provided to the Hearing, to which the Council agreed served the purpose required of it. Some formatting and typographical amendments were agreed to be necessary during the Hearing, and a final signed version of the UU was received on 26 June 2023. I shall return to this later in my decision.

## **Main Issues**

5. The main issues for the appeal are:

- whether the appeal site is in an appropriate location for the type of development proposed; and
- whether there are material considerations to warrant a departure from the Development Plan.

## **Reasons**

### *Whether the site is an appropriate location*

6. The appeal site constitutes an open field in undeveloped countryside to the rear of properties within the village of Norton. It is broadly rectangular in shape and abuts the settlement of Norton on its eastern and southern boundaries. Access to the appeal site is to the east off the A1088, Ixworth Road, in between a pair of bus stops and along the boundary with Suffolk House.
7. The appeal proposal would provide 9 new self-build dwellings, all of which would be outside of the village. It was indicated during the Hearing that the settlement boundary for Norton would be unlikely to change in the emerging JLP. The Development Plan, particularly policies H7 of MSLP and CS1 of the CS, directs new development to within existing settlements. There is an expectation within policies CS1 and CS2 that the areas outside settlements, identified as being countryside, would be protected for their own sake.
8. I note the Council's unchallenged submissions that it has a robust five-year housing land supply position<sup>1</sup> with more than enough land to meet its housing requirements within existing settlements and allocations. In light of this, it is clear to me that development of the appeal site for housing would be contrary to the spatial strategy of the Council and would undermine a plan-led system.
9. On this basis, the proposal would conflict with the aims of the adopted Development Plan seeking to locate housing growth within existing settlements. The appeal site would therefore be an inappropriate location for new housing, in conflict with policies H7 of the MSLP, and policies CS1 and CS2 of the CS.

### *Whether there are material considerations to warrant a departure*

10. The appellant highlights that the appeal scheme is for self-build and custom housing and has submitted a UU to secure the development as such. The appellant stated that a failure of the Council to provide enough serviced plots to meet the housing needs constituted a breach of the statutory duties for the authority under the Self-Build and Custom Housebuilding Act 2015 (as amended) (the Act). This should, it was argued, weigh in favour of allowing the appeal.
11. The Council admitted that only 153 permissions for self-build units had been granted compared to a register of 286 self-builders, thus a shortfall of 133 units<sup>2</sup> currently exists.

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<sup>1</sup> Purported to be in excess of 10 years at the date of the Hearing

<sup>2</sup> Document entitled: "Appeal Self Build Custom Build by Base Period" submitted during the Hearing

12. The appellant stated the shortfall was likely to be higher because the Council's self-build register, shared jointly with Babergh Council, identified that 585 self-builders required a serviced plot, not just 286. Furthermore, the appellant criticised the Council's use of Community Infrastructure Levy (CIL) forms to reach the 153-dwelling figure, stating that actually only few permissions granted genuinely secure housing for such purposes. In addition, it was alleged the Council had not taken into account secondary data sources in calculating its housing need.
13. I have reviewed the evidence and there is no doubt, even on the best-case position of the Council, that there is an actual shortfall of self-build and custom dwellings of a minimum of 133 units. The statutory duty under the Act to provide enough serviced plots has therefore not been met to date, nor over the last few years<sup>3</sup>. In these circumstances, even if the reality is that the shortfall in supply may be greater than envisaged, the weight of failing to meet the statutory duty is substantial. Taking into account the advice of the planning practice guidance<sup>4</sup>, I recognise that the Council has been making progress in seeking to provide for self-build dwellings, but this does not reduce the weight of the failed duty. Such weighs in favour of the proposal as a departure from the Development Plan.
14. The appellant also raises that, in the absence of a planning policy within the adopted Development Plan tackling self-build housing, the tilted balance in paragraph 11(d) of the National Planning Policy Framework (the Framework) is engaged. Appeal decisions were submitted evidencing a similar approach and conclusions on this matter.
15. The Council accepted that it does not have an adopted policy for self-building at the current time, giving only limited weight to policy LP08 in the emerging JLP that would support provision of self-build units. Paragraph 11(d) of the Framework directs that where there are no relevant development plan policies, permission should be granted subject to 11(d)(i) or 11(d)(ii). I was not presented with any compelling evidence for me to take a different view to that of other Inspectors in the appeal decisions cited. Therefore, despite the Council demonstrating a five-year housing land supply, I conclude that the tilted balance does apply in this instance.
16. The appeal development would result in the loss of an undeveloped greenfield site, although I have not been presented with any argument that the landscape is of particular significance or sensitivity. None of the restrictions in footnote 7 to paragraph 11(d)(i) of the Framework are said to apply. Future residents may have high reliance on the private car due to the limited public transport options, but the Framework acknowledges access to public transport is likely to differ between urban and rural areas. Furthermore, it is reasonable to conclude that a proportion of trips could be carried out to services within the village on foot or by bike. I do not therefore consider there is significant environmental harm arising from the development.
17. From my site visit, I noted that the appeal development would be in close proximity to the village hall, primary school, grocery store and the nearby public house. I observed that all of the local services for day-to-day living said

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<sup>3</sup> Paragraph 4.7 of the LPA Appeal Statement of Case

<sup>4</sup> Paragraph: 038 Reference ID: 57-038-20210508

to be available by the appellant<sup>5</sup>, as agreed by the Council, were within easy walking distance. In this context, the appeal development would be suitably located to make use of local shops and services and thus contribute to the viability and vitality of these facilities. It would therefore contribute economically and socially to the rural community.

18. I note that the Council had not alleged the appeal site was in an unsustainable location in previously refused applications for open-market housing. It was said during the Hearing that the appeal site effectively had become more unsustainable with the ever-increasing housing land supply of the Council<sup>6</sup>. However, it was confirmed in the Hearing that the economic, social and environmental parameters regarding the appeal site and the village of Norton had not changed since the previously refused schemes. I therefore find no reason to consider the appeal site an unsustainable location on the basis of the land supply position alone.
19. Whilst the Council argue that parts of policies CS1 and CS2 of the CS are consistent with the Framework, I have no substantive evidence to convince me to depart from the findings of other Inspectors on the weight to be given to these policies<sup>7</sup>. I therefore consider the conflict between the appeal scheme and the Development Plan to have reduced weight.
20. Objectors to the development have raised issue with highway safety, effects on heritage assets and wildlife. However, no arguments have been advanced by the Council or its consultees on these grounds and there are no detailed submissions to substantiate the arguments made. To this extent, there is nothing before me to justify a case of planning harm arising from the development.
21. In conclusion, the tilted balance is engaged and the planning benefits of providing 9 self-build units, in light of an identified shortfall, would be substantial. The submission of the UU, which I have reviewed and consider meets the necessary tests for obligations<sup>8</sup>, adds security to the benefits of meeting the local housing needs. These benefits include the economic and social support for the rural community as well as meeting the local housing needs. Whilst the development would conflict with the spatial strategy of the Council, this would not significant and demonstrably outweigh the benefits. This is particularly in recognition of the statutory duty upon the Council to deliver serviceable plots.
22. On the basis of the above, I consider there are material considerations to warrant a departure from the Development Plan in this instance. The appeal should therefore succeed.

### **Conditions**

23. A list of conditions was supplied by the main parties within the signed statement of common ground, which included the implicit agreement of the appellant to those conditions requiring submissions prior to commencement of development. The conditions were discussed and, in part, revised during the Hearing. Nonetheless I have the following comments to make.

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<sup>5</sup> Paragraph 11 in the appellant statement from Mr Cobbald

<sup>6</sup> Purported to be in excess of 10 years at the date of the Hearing.

<sup>7</sup> Appeal 3291011 and the Appeal cited in paragraph 6.27 in the Appeal Statement of Tetlow King Planning

<sup>8</sup> Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

24. For clarity on the development hereby permitted and how reserved matters submissions should be managed, having regard to the self-build nature of the development, I have imposed conditions 1, 2 and 3. This includes a 5-year period for reserved matters submissions to be made to the local planning authority, as agreed between the main parties in the Hearing.
25. In imposing condition 4, I have taken into account the annotation that plan 100-225/006E is indicative. However, the main parties confirmed this was the only plan that secured the means of access to the appeal site and had formed the basis of all highway assessments to date. It is therefore logical to ensure, in the interests of highway safety, that the access is carried out in accordance with that plan.
26. Conditions 5 and 6 are necessary to ensure archaeological assets are duly protected, whilst conditions 7, 8, 9, 11 and 12 are all required in the interests of highway safety for all users.
27. The footway crossing required under condition 10 would be provided, in part, on land forming part of the public highway. Delivery of the footway would therefore have to be secured via an agreement pursuant to section 278 of the Highways Act 1980 (as amended). The Highway Authority have requested the crossing and, from my site visit, I believe it to be necessary to ensure safe use of the highway by all users, given the speed and nature of traffic. I have imposed condition 10 so that the local planning authority are notified of the approved details. I have modified the condition to require the crossing to be fully completed prior to the occupation of the first dwelling rather than the ninth, to ensure delivery of the necessary infrastructure in the event that less than 9 dwellings are built.
28. Condition 13 is necessary for proper management of the development whilst conditions 14 and 15 are imposed to ensure construction across the site is undertaken without detriment to the living conditions of nearby occupiers. To ensure adequate protection and enhancement for local wildlife, conditions 16 to 19 are necessary.
29. During the Hearing, the main parties agreed to an additional condition securing a phasing plan for the scheme. I consider that the wording of condition 20 broadly reflects the agreement reached, and the condition is both reasonable and related to the development hereby permitted.

### **Conclusion**

30. For the reasons given, subject to the conditions in the attached schedule and the UU, I conclude that the appeal should succeed.

*D Wallis*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) Approval of the details of the layout of the development, the scale and appearance of buildings, and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before the construction of the dwelling on that particular plot is commenced. The development of each plot shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 5 years from the date of this permission
- 3) The development of each individual plot hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved for that plot.
- 4) The development hereby permitted shall be carried out in accordance with the details shown on the Local Plan received by the Council on 11 April 2022 and, insofar as it relates to the matter of access to which this permission relates, Drawing 100-225/006E.
- 5) Prior to the commencement of development, the applicant shall secure the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI), which has been submitted to and approved in writing by the local planning authority. The WSI shall include an assessment of significance, research questions and:
  - i. The programme and methodology of site investigation and recording
  - ii. The programme for post investigation assessment
  - iii. Provision to be made for analysis of the site investigation and recording
  - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - v. Provision to be made for archive deposition of the analysis and records of the site investigation
  - vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
  - vii. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.
- 6) No building shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under the above condition and the provision made for analysis, publication and inspection of results and archive deposition.
- 7) Before the access is first used, vehicular visibility splays shall be provided as shown on Drawing No. 100-225/006E with an X dimension of



2.4 metres and a Y dimension of 38 metres in North direction and 59 metres in the South direction to the nearside edge of the carriageway and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction to visibility shall be erected, constructed, planted or permitted to grow over 0.6 metres high within the areas of the visibility splays.

- 8) No part of the development hereby permitted shall be commenced until the existing vehicular access has been improved, laid out and completed in all respects in accordance with Suffolk County Council's standard access drawing DM01, with a minimum entrance width of 4.5 metres for a shared access and made available for use. The access shall be retained as such thereafter.
- 9) Prior to the development hereby permitted being first occupied, the improved vehicular access onto the highway shall be properly surfaced with a bound material for a minimum distance of 5 metres measured from the nearside edge of the metalled carriageway, in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority. The access shall be retained as such thereafter.
- 10) Prior to the commencement of development, details of the new footway crossing on A1088 shall be submitted to and approved in writing by the Local Planning Authority. The footway shall be laid out and constructed prior to the occupation of the first dwelling hereby approved in accordance with the approved scheme. The footway shall be retained thereafter in its approved form.
- 11) Concurrent with each submission of reserved matters for an individual plot, details of vehicle parking, including secure, lit and covered cycle storage and electric vehicle charging infrastructure for that plot shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the relevant plot is brought into use and shall be retained as such thereafter.
- 12) Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway including any system to dispose of the water. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained as such thereafter.
- 13) Concurrent with each submission of reserved matters for an individual plot, details of the areas to be provided for the storage and presentation for collection/emptying of refuse and recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved bin storage and presentation/collection area shall be provided for each dwelling prior to its first occupation and shall be retained as such thereafter.
- 14) Any construction work associated with the proposal shall be restricted to:
  - i. 08.00 and 18.00hrs Mondays to Fridays;
  - ii. and between the hours of 09.00 and 13.00hrs on Saturday.

There shall be no working and/or use operated on Sundays and Bank Holidays. There shall be no deliveries to the development outside of these approved hours.

- 15) Prior to the commencement of development, a demolition and construction management strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include access and parking arrangements for contractors' vehicles and delivery vehicles (locations and times) and a methodology for avoiding soil from the site tracking onto the highway together with a strategy for remedy of this should it occur. The construction of the development on any and every plot shall only take place in accordance with the approved strategy.
- 16) Mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecology Survey (MHE Consulting Ltd) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.
- 17) Prior to the commencement of development (including any demolition, ground works, site clearance) a Biodiversity Mitigation Method Statement for mobile protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the method statement shall include the following:
  - i. purpose and objectives for the proposed works;
  - ii. detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
  - iii. extent and location of proposed works shown on appropriate scale maps and plans;
  - iv. timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - v. persons responsible for implementing the works;
  - vi. initial aftercare and long-term maintenance (where relevant); and
  - vii. disposal of any wastes arising from works.

The works shall be carried out strictly in accordance with the approved details and shall be retained as such thereafter.

- 18) Prior to works above slab level, a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
  - i. purpose and conservation objectives for the proposed enhancement measures including birds, bats and hedgehogs;
  - ii. detailed designs to achieve stated objectives;



- iii. locations of proposed enhancement measures by appropriate maps and plans;
- iv. timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- v. persons responsible for implementing the enhancement measures; and
- vi. details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

- 19) Prior to the occupation of the development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained as such thereafter. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.
- 20) Prior to the commencement of development, a Community Infrastructure Levy (CIL) phasing plan shall be submitted to and approved in writing by the Local Planning Authority. This shall detail the delivery of CIL to the local planning authority on a plot-by-plot basis and how relevant dates and milestones will be recorded. The development shall be carried out in accordance with the phasing plan, which shall remain in effect until all dwellings hereby permitted have been constructed.

## **APPEARANCES**

### FOR THE APPELLANT:

Phil Cobbald  
Simon Gray  
Andrew Moger

### FOR THE LOCAL PLANNING AUTHORITY:

Daniel Cameron  
Robert Feakes

## **DOCUMENTS**

1. Statement of Common Ground signed 5 June 2023
2. Unilateral Undertaking signed 26 June 2023
3. Appeal Self Build Custom Build by Base Period
4. Appeal Decision 3291011