

Committee Report

Committee Date: 19th April 2017

Item No:

Reference: 0118/17
Case Officer: Steven Stroud,
Senior Planning Officer

Description of Development: Erection of detached one and a half storey dwelling and detached garaging (and associated works, including partial infilling of pond).

Location: Ye Old Smithy, Elmswell Road, Wetherden, IP14 3LL

Parish: Wetherden

Ward: Haughley & Wetherden

Ward Member/s: Councillor Rachel Eburne

Site Area: 0.06

Conservation Area: No

Listed Building: None

Received: 11/01/2017

Expiry Date: 09/03/2017

Application Type: Full Planning Permission

Development Type: Dwellings - Residential

Environmental Impact Assessment: Not Required

Applicant: Mrs Harvey

Agent: RGP

SUMMARY

The proposal has been assessed with due regard to adopted development plan policies, the National Planning Policy Framework, and all other material considerations. The officers recommend approval of this application, subject to resolution of outstanding matters relating to ecology. It is recommended that Members delegate authority to the Professional Lead to grant planning permission subject to a positive resolution in that regard.

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reason/s:

The applicant is a member of staff employed by the Council.

The Monitoring Officer has reviewed the application file and is satisfied that the application has been processed properly and correctly in accordance with all established procedures and requirements.

PART TWO – APPLICATION BACKGROUND

This section details history, policies, advice provided, other legalisation and events that form the background in terms of both material considerations and procedural background.

History

2. No planning history is considered relevant to the determination of this application.

Details of Previous Committee / Resolutions

3. None

Details of Member site visit

4. None

PART THREE – ASSESSMENT OF APPLICATION

Consultations

6. Summary of Consultations

Suffolk County Council - Highways

No objection subject to conditions.

MSDC - Environmental Protection - Land Contamination

In light of previous smithy activities on site there is a low risk of contamination. No objection to the application subject to a condition and advisory note.

Wetherden Parish Council

No objection to the application but concern raised regarding the partial infilling of the pond on site and whether this requires planning permission.

Place Services - Ecology

Holding objection: No objection in principle, however further surveys are required to establish and subsequently mitigate, where required, any impacts.

Representations

7. 2 representations (support), summarised as follows:

- designed in an attractive manner and is in keeping with its current surroundings
- confidence that the build will be carried out in a professional manner and will result in a positive addition to the area.

The Site and Surroundings

8. The application site forms part of the side garden of Ye Old Smithy; a semi-detached, part two-storey, part single-storey dwelling occupying a reasonably sized site in the countryside. Ye Old Smithy is set back a short distance from the highway and benefits from an existing vehicular access that leads into a large gravel area used for parking and turning. The application site is located approximately half way between Elmswell and Wetherden on the south side of Elmswell Road. The site is bound by the highway to the north, neighbouring property to the west, and hedge and outbuildings to the south. Agricultural fields are to the east.

The Proposal

Please note details of the proposed development including plans and application documents can be found online.

9. The application seeks Full Planning Permission for one new dwelling and a detached double garage.

The proposed new dwelling is a three-bedroom property with spacious living accommodation. The dwelling is one-and-a-half storeys high with living accommodation at first floor and large dormer windows to the front and rear.

The proposed new dwelling is set back further from the highway than the existing, neighbouring dwellings, and is adjacent to an existing pond that has been partially infilled.

The proposed new dwelling shares the existing vehicle access with Ye Old Smithy. The proposal provides three parking spaces for Ye Old Smithy and three parking spaces for the proposed new dwelling. Each dwelling has one garage parking space and two driveway parking spaces.

During the running of this application, it has been considered prudent to amend the description of development (with the agreement of the applicant) to include those infilling works to the pond, which are considered to amount to engineering works within the scope of the Planning Acts, and therefore require planning permission. The retrospective nature of this element has been considered, however there is nothing unlawful in this approach and the Planning Acts provide for situations where applicants seek to 'regularise' prior works or development.

NATIONAL PLANNING POLICY FRAMEWORK

10. The National Planning Policy Framework (NPPF) contains the Government's planning policies for England and sets out how these are expected to be applied. Planning law continues to require that applications for planning permission are determined in accordance with the Development Plan unless material considerations indicate otherwise. The policies contained within the NPPF are a material consideration and should be taken into account for decision-making purposes.

CORE STRATEGY

11. The key policies are as follows:
 - **Cor1** - CS1 Settlement Hierarchy
 - **Cor2** - CS2 Development in the Countryside & Countryside Villages
 - **Cor5** - CS5 Mid Suffolks Environment
 - **Cor3** - CS3 Reduce Contributions to Climate Change
 - **Cor4** - CS4 Adapting to Climate Change
 - **Cor6** - CS6 Services and Infrastructure
 - **Cor8** - CS8 Provision and Distribution of Housing
 - **Cor9** - CS9 Density and Mix
 - **CSFR-FC1** - PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT
 - **CSFR-FC1.1** - MID SUFFOLK APPROACH TO DELIVERING SUSTAINABLE DEVELOPMENT
 - **CSFR-FC2** - PROVISION AND DISTRIBUTION OF HOUSING

SAVED POLICIES IN THE LOCAL PLAN

12. The key policies for this application are:

- Policy GP1 “Design and layout of Development”
- Policy H13 “Design and Layout of Housing Development”
- Policy H15 “Development to Reflect Local Characteristics”
- Policy H16 “Protecting Existing Residential Amenity”
- Policy T9 “Parking Standards”
- Policy T10 “Highway Considerations in Development”
- Policy CL8 “Protecting Wildlife Habitats”

Main Considerations

13. From an assessment of relevant planning policy and guidance, representations received, the planning designations and other material issues the main planning considerations considered relevant to this case are set out including the reason/s for the decision, any alternative options considered and rejected. Where a decision is taken under a specific express authorisation, the names of any Member of the Council or local government body who has declared a conflict of interest are recorded.

The following are identified as the main considerations in assessing this application:

The Principle Of Development

Planning Policy Context

14. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of applications under the Planning Acts should be made in accordance with the development plan unless material considerations indicate otherwise. Whilst s38(6) presents a focus for the decision-taker to use the development plan as the starting point in the decision-taking process, it does not necessarily lend any systematic primacy to its application; it is then stressed that the development plan, where relevant and applicable, be followed *unless* material considerations indicate otherwise which might include, as an example, the National Planning Policy Framework (NPPF).

The NPPF contains the Government’s planning policies for England and sets out how these are expected to be applied. It states, and this is supported by the national Planning Practice Guidance (PPG), that the policies contained therein are a material consideration and should be taken into account for decision-taking purposes.

Paragraph 7 of the NPPF sets out that there are three dimensions to sustainable development: economic, social and environmental, and that these roles are mutually dependent and should be jointly sought to achieve sustainable development.

Paragraph 197 of the NPPF states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of

sustainable development, which should be seen as a golden thread that runs through the planning system.

Paragraph 14 specifically sets out the tests or direction for applying the presumption in favour of sustainable development, and can be viewed as the lynchpin of the NPPF. Where the second bullet-point under that paragraph applies, because a development plan is absent, silent or relevant policies are out-of-date: *“...the proposal under scrutiny will be sustainable development, and therefore should be approved, unless any adverse impacts significantly and demonstrably outweigh the benefits”* (see *CEBC vs SSCLG [2016] EWHC 571 (Admin)*). Specifically, *“another way of putting the matter is that the scales, or the balance, is weighted, loaded or tilted in favour of the proposal. This is what the presumption in favour of sustainable development means: it is a rebuttable presumption, although will only yield in the face of significant and demonstrable adverse impacts”* (*ibid.*). This is a fixed algorithm that decision-takers are expected to follow in respect of applying the ‘presumption’.

Paragraph 49 of the NPPF specifically signposts paragraph 14 in stating that housing applications should be considered in the context of the presumption in favour of sustainable development and that policies for the supply of housing should be considered out of date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

The Mid Suffolk District Council cannot presently demonstrate such a supply and therefore its policies for the supply of housing are out of date; the planning balance under paragraph 14 is therefore engaged, subject to the due weighting of policies within the development plan and an application within this ‘tilted balance’.

It must be stressed to Members that the NPPF and the development plan present a definition of sustainability that encompasses a wide-range of competing desires, of which there are three dimensions; social, economic, and environmental. One such desire and aspiration is to significantly boost housing supply, and this must be weighed carefully against any other considerations that might pull the decision-taker in different directions.

Hence, where a Council cannot demonstrate that has a five-year land supply of deliverable housing sites, its relevant policies for the supply of housing must be considered out of date. Therefore, the presumption is to grant permission unless any adverse impacts significantly and demonstrably indicate otherwise.

Connectivity and Sustainability of New Housing

15. Paragraph 55 of the NPPF states that to promote sustainable development in rural areas, housing should be located where it would enhance or maintain the vitality of rural communities and advises that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances; no special circumstances are necessary unless a home is to be isolated.

The NPPF does not define the term ‘isolated’ and neither does the development plan. Taking its ordinary meaning, it is considered reasonable for the following definition to be applicable, as taken from the Oxford English Dictionary: *“Placed or standing apart*

or alone; detached or separate from other things or persons; unconnected with anything else; solitary.”

The PPG states that: *“all settlements can play a role in delivering sustainable development in rural areas - and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided”*. This is consistent with paragraph 55 of the NPPF which places an emphasis on the vitality of settlements.

A new development outside of a settlement can still be ‘sustainable’ on the assumption that the future residents will support surrounding services and facilities. This interpretation is supported elsewhere within the NPPF where - at paragraph 29 - it is acknowledged that opportunities to maximise sustainable transport solutions will diminish when moving from urbanised to rural areas, and therefore the social and economic drivers of sustainability must also be considered. This report will now consider the impact, in principle, of the development in respect of the dimensions of sustainability.

Social and Economic Dimension

16. The inherent social benefits presented in contributing to the vitality of a community aside (see para. 55, NPPF), paragraph 19 of the NPPF also requires decision-takers to attach *“significant weight...on the need to support economic growth through the planning system”*.

Further, in terms of the social and economic dimensions, a new dwelling could feasibly offer the following:

- opportunities for small and medium-sized companies to enter or remain a viable part of the development market, helping to promote competition and quality of build;
- 1 no. home;
- support for local jobs and sustaining local growth given the use of local services and facilities, and;
- effective use of developable and available land.

Whilst some of the above bullet-points are likely only to present short to medium-term gains, there is nonetheless no reason to consider that a proposal for a new home [in a location such as this site] would be harmful in respect of the economy or the social dimension of sustainability and would indeed present moderate benefits; where the NPPF presents a duty to significantly boost housing supply, the contribution of a single, new home is still of significance.

Environmental Dimension (Location and Connectivity of Development)

17. The application site lies betwixt Wetherden and Elmswell, albeit is classed as sitting with the countryside for planning purposes. The former is a village considered to hold limited services and facilities. The latter is a Key Service Centre, being a highly-sustainable settlement and offering a significant and diverse range of facilities and services, including a well-serviced bus route provision.

The application site is connected by road to the settlement of Elmswell and is situated approximately 500 metres from the edge of the settlement boundary. The highway to this point has no footway or lighting. Some sections of the road benefit from grass verges however other sections are bordered by hedges that force pedestrians onto the road. Notwithstanding this, the village 'centre' is some 1.5km away, which would exceed the recommend walking distances provided by the Department for Transport; being 1.2km.

The application site is also located 600m from the former settlement boundary of Wetherden (removed following the adoption of the Core Strategy in 2008). Wetherden is a countryside village of dwellings which benefits from a pub, village hall and church. There is also a bus stop in the centre for the 384 and 385 bus service which operates regularly between Stowmarket, Elmswell, and Bury St Edmunds.

The state of connection between the site and these two settlements means that it is considered unlikely that residents would opt to walk into the centre of Elmswell to use the wide range of facilities and services required for future residents' daily needs, or walk to Wetherden to access the bus service, especially in inclement weather: The point being that the nature of the highways and footways/verges between locations, and the distances necessary to traverse to reach services and facilities, would most likely lead to a reliance on the private motor car; this would contradict the NPPF's treatment of the carbon economy.

Notwithstanding other considerations that affect the environmental dimension of sustainability, the development in question is considered to pose harm, albeit in your officer's opinion moderate harm, in respect of the impacts associated with the functional connectivity of the application site.

Conclusion

18. Very much as a matter of balanced planning judgement, the application site is not physically isolated and a new dwelling in this location would help to maintain, in a modest sense, the vitality of the community(ies) that would host it. It must be conceded, however, that the application site is somewhat disconnected from the kinds of services and facilities that would support a residential use. The harm posed in this respect, given a natural reliance on the private car, would be clear, albeit moderate.

An appraisal of those other key material planning considerations that affect the overall sustainability of this proposal are considered below, prior to executing the 'tilted balance' exercise at the end of this report.

Brownfield Land

19. The application site relates to an area of garden land to the side of Ye Old Smithy; it is therefore already residential (C3) in nature, being land ancillary to the host planning unit/dwelling. Where "*the carrying out of building... or other operations in, on, over or under land, or the making of any material change in the use of ... land*", represents 'development' under the TCPA 1990 it is reasonable to consider that the red-lined area subject to the application has already been developed.

That the application site should be viewed as 'brownfield' is supported through the NPPF and subsequent case law. The Glossary to the NPPF defines 'previously developed land' as:

"Land which is or was occupied by a permanent structure, including the curtilage of the developed land... and any associated fixed surface infrastructure. This excludes:... land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."

Taking a literal interpretation, a conclusion that residential gardens in the countryside or outside of built-up areas should be considered as brownfield is a valid one. This matter was considered in the case of *Dartford Borough Council v SSCLG [2016] EWHC 635 (Admin.)*, where the relevant *obiter* of the sitting judge agreed with the reasoning of the Secretary of State (i.e. following that reasoning above) by stating that *"It is impossible to read the definition of previously-developed land in... such a way as to exclude from it private residential gardens which are not in built-up areas. To do so is to contradict the clear words used in the definition [in the NPPF]"*.

Acknowledging, then, that the application site should be considered as brownfield, this is a material consideration that weighs in favour of the proposal. Paragraphs 17 and 111 of the NPPF place a requirement upon decision-takers to encourage the effective re-use of brownfield land; that such land should in effect be prioritised for development. Whilst the weight to be applied to such a consideration is in some ways limited by the word '*encourage*' it is nonetheless a factor that gives additional weighting to the acceptability of the principle of development in this instance.

Site Access, Parking And Highway Safety Considerations

16. The development seeks to utilise the existing vehicular access to Ye Old Smithy. The existing vehicular access would be improved and the local highway authority raise no objection to the development, subject to usual conditions relating to visibility and parking/turning.

The resulting traffic from one dwelling would not result in any adverse impact to the highway network in term of traffic generation and safety.

Impact On Visual Amenity And The Character And Appearance Of The Area

17. Notwithstanding the development plan (which in any event is consistent with the following), delivering quality design is a core planning principle of the NPPF which states that good design is a key aspect of sustainable development and is indivisible from good planning.

The application proposes a 'chalet-style' dwelling, which would not be overly prominent or conspicuous, with a relatively simple form reflective of the local vernacular. The materials proposed are also considered as acceptable and would complement the wider palette of the area; these have been pre-agreed with the applicant. The drawings provided illustrate a dwelling that would be set further back

from Ye Old Smithy, in deference to that dwelling, and would be commensurate in scale and form.

It is not considered that the development would pose any unacceptable detriment to visual amenity of the character and appearance of the area, by virtue of its siting and relationship to the public realm, and the scale, form and detailed design and layout of the dwelling/garage buildings.

Impact On Residential Amenity

18. The proposed new dwelling is separated from Ye Old Smithy by a driveway and double garage. It is considered that the proposed new dwelling would not harm neighbouring residential amenity in terms of light loss, privacy, overshadowing or outlook.

Biodiversity And Protected Species

19. In assessing this application due regard has been given to, *inter alia*, the provisions of the Natural Environment and Rural Communities Act 2006, and the provisions of Conservation of Habitats and Species Regulations 2010, Conservation of Habitats and Species (Amendment) Regulations 2012, and the Wildlife and Countryside Act 1981 (as amended) in relation to protected species.

Given the presence of the pond, the Council's ecological consultant has raised concern in respect the level of information provided and the extent of surveys required to adequately, and robustly, identify impacts on protected and priority species that may be present within the site or affected by the development.

Consequently, a holding objection is raised subject to further surveys that can be carried out as the season progresses. In the interests of expediency, Members will note that where this is the only outstanding matter to be resolved, it is recommended that authority for determination be delegated to officers to avoid this being represented at a later Committee.

Planning Contributions / CIL

20. If Members are minded to grant planning permission, the development will be assessed for any CIL liability shortly after the date of decision.

The proposal is for a single dwelling and therefore is not subject to affordable housing contributions in accordance with altered policy H4 of the Mid Suffolk Local Plan. Further, in accordance with the national PPG there are circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought from small scale and self-build development. This follows the order of the Court of Appeal dated 13th May 2016, which gave legal effect to the policy set out in the Written Ministerial Statement of 28th November 2014, and should be taken into account.

With reference to this application, the specific circumstance is that contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floor space of no more than 1000sqm. Therefore Members

are advised that the Council should not seek planning contributions in relation to public open space or affordable housing for this application.

PART FOUR – CONCLUSION

Planning Balance

21. At the heart of the balancing exercise to be undertaken by decision makers is Section 38(6) of the Planning and Compulsory Purchase Act 2004; which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, determination must be made in accordance with the plan unless material considerations indicate otherwise, which would include the NPPF and the related fact that the Council cannot demonstrate a five-year supply of deliverable housing sites.

Paragraph 14 of the NPPF requires, in circumstances such as this, that decision-takers grant planning permission unless the adverse impacts significantly and demonstrably outweigh the benefits when framed against the policies within the NPPF as a whole (and unless specific policies within the Framework indicate otherwise – which is not considered to apply in this instance).

When taken as a whole, and as a matter of planning judgement, the moderate harm in relation to a minor reliance on the private motor car is not considered to significantly or demonstrably outweigh the benefits in this instance; considering that the development would utilise a brownfield site, pose socio-economic benefit and is of a scale, form and detailed design that would not negatively impact upon surrounding environs.

The presumption in favour of sustainable development is further reinforced by advice relating to decision taking in the NPPF. Paragraph 186 of the Framework requires local planning authorities to *"approach decision taking in a positive way to foster the delivery of sustainable development"*. Paragraph 187 states that local planning authorities *"should look for solutions rather than problems, and decision takers at every level should seek to approve applications for sustainable development where possible"*.

It is considered that the proposal is therefore acceptable in planning terms and that there are no material considerations which would give rise to unacceptable harm.

Statement Required By Article 35 Of The Town And Country Planning (Development Management Procedure) Order 2015.

22. When determining planning applications, the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to explain how in dealing with the application they have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application. In this case it was

necessary to work with the applicant in respect of ecology and the scope of permission being sought.

Identification of any Legal Implications of the decision

23. The application has been considered in respect of the current development plan policies and relevant planning legalisation. Other legislation including the following have been considered in respect of the proposed development.

- Human Rights Act 1998
- The Equalities Act 2012
- Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990
- Natural Environment and Rural Communities (NERC) Act 2006 (any rural site)
- The Conservation of Habitats and Species Regulations 2010
- Localism Act
- Crime and Disorder Act 1998

RECOMMENDATION

(1) Subject to the adequate resolution of outstanding ecological issues, that authority be delegated to the Professional Lead - Growth & Sustainable Planning to grant planning permission subject to conditions, including:

- 1) Standard time limit
- 2) Development to be in accordance with the approved plans.
- 3) Development to accord with agreed materials schedule.
- 4) As required by LHA.

(2) If such ecological matters are not resolved to the satisfaction of the Professional Lead – Growth & Sustainable Planning, that authority be delegated to him to refuse planning permission, for the following reason (summarised):

- 1) Lack of information and/or measures to mitigate impacts upon protected and/or priority species, contrary to local and national planning policies.