

## **CD6.09**

# **Appeal Decision – Assington**

### **Preface:**

This appeal decision is important because it deals with scheme allowed despite being outside of the built up area boundary and the authority demonstrating a 5-year housing land supply which is relevant to the consideration of the appeal scheme. The Inspector recognises that demonstrating a 5-year housing land supply does not represent a limit on housing delivery.

The relevant paragraphs referenced in the Appellant's proof are highlighted yellow.



## Appeal Decision

Site visit made on 29 April 2019

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2019

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Appeal Ref: APP/D3505/W/18/3217096

Land east of The Street, Assington CO10 5LH.

- 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 Mr A and Mrs B Crossman against the decision of Babergh District Council.
  - The application Ref DC/18/02596, dated 4 June 2018, was refused by notice dated 3 August 2018.
  - The development proposed was originally applied **for as** "outline planning application with all matters reserved for the construction of 7 dwellings comprising 2 x three bed houses, 4 x three bed bungalows and 1 x four bed house."
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### Decision

1. The appeal is allowed and outline planning permission is granted for outline application with all matters reserved for the construction of 6 dwellings comprising 3 x three bed bungalows, 2 x three bed houses and 1 x four bed house at land east of The Street, Assington CO10 5LH in accordance with the terms of the application, Ref DC/18/02596, dated 4 June 2018, subject to 7 conditions.

### Procedural Matters

2. The application was originally submitted for 7 houses, but was amended to 6 houses. The appeal form and decision notice reflect this. I have used the description of development from the appeal form in the formal decision above.
3. All detailed matters are reserved for future determination. Although access, appearance, layout, landscaping and scale are not formally submitted for determination, I have had regard to illustrative details on plan 140 01 Rev A.
4. The appellants have submitted a planning obligation by Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended), which was signed and executed as a deed on 23 November 2018.

### Main Issues

5. The main issues in this appeal are:
  - a. whether the proposed development would be suitably located with regard to the development plan and the character and appearance of the area;
  - b. the effect of the proposed development on highway safety; and

- c. whether the proposed development should make appropriate provision for affordable housing.

## Reasons

### *Suitably located*

6. Assington is made up of primarily linear development which is concentrated along The Street, a narrow road without footpaths for much of its length. The Vicary Estate is sited behind The Street, providing greater depth to the village. **At the village's northern end, housing of a mixture of types and styles is spread out on large plots with front gardens with hedging or boundary walls. Though there is a generally verdant, open, rural character to this end of The Street, the permission allowed at appeal<sup>1</sup> for 10 houses which is currently being built out at St Edmund's Meadow somewhat suburbanises the character of this part of The Street and increases the village's depth from The Street at this point.**
7. Assington has a public house located some 120m to the **site's** south. Approximately 500m from the public house, there is a farm shop complex, including a convenience store, restaurant, tearoom, plant centre, interior design business, hair studio, and health facility. The village hall with a post office service and playing field are adjacent to the farm shop complex. There is also a local car repair garage. A bus stop is outside the Vicary Estate, with services to Colchester and Sudbury at 2 hourly intervals.
8. Situated adjacent to **Assington's** Built Up Area Boundary and within the locally designated Stour Valley Special Landscape Area (SVSLA), the site adjoins **St Edmund's Meadow, which comprises houses and bungalows.** The site is a rectangular area of grassland, **separated from St Edmund's Meadow by fencing** and from the open countryside by a hedgerow and fencing.
9. Policy CS2 of the Babergh Local Plan 2011-2031 Core Strategy and Policies **2014(CSP) sets out the Council's spatial strategy** to 2031. It outlines a settlement hierarchy, including hinterland villages like Assington. It states that in the countryside outside the identified settlements, including hinterland villages, development will only be permitted in exceptional circumstances and subject to a proven need. The Council has also referred to CSP policy CS3 which identifies 1,050 homes for rural areas, which includes windfall sites.
10. CSP policy CS11 confirms that development in hinterland villages will be approved where proposals are able to demonstrate a close functional relationship to the existing settlement and where a number of criteria are met. These criteria, amongst other things, include environmental and heritage characteristics, locational context, locally identified need including housing and community needs, cumulative impact, design and relationship to the pattern of development, identification of the site within and/or lack of conflict with a community or neighbourhood plan, and support for local services. CSP policy CS11 is supported by the Rural Development and Core Strategy Policy CS11 Supplementary Planning Document 2014 (CS11 SPD).
11. CSP policy CS15, amongst other things, requires development to demonstrate the principles of sustainable development and respect the character, landscape including locally designated Special Landscape Areas, streetscape and historic views in the area, consider access to services, and seek to minimise the need

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<sup>1</sup> APP/D3505/W/17/3168591, decision issued 14 August 2017.

- to travel by car, improving air quality. Policy CR04 of the Babergh Local Plan 2006 (LP) states that development in Special Landscape Areas will only be permitted where it maintains or enhances the special landscape qualities of the area, and is designed and sited so as to harmonise with the landscape setting.
12. The proposed development would comprise 3 x three bed bungalows, 2 x three bed houses and 1 x four bed house. During my site visit, I assessed public views of the site from The Street and from public footpaths outside the village. **While the previous Inspector notes that St Edmund's Meadow would appear** as incongruous development beyond the linear character of this part of the village, the proposed development would only slightly increase the extent of development stretching eastwards from The Street behind the largely **completed St Edmund's Meadow**. The ribbon form of development broken up by orchards and farmland noted in the Joint Babergh and Mid Suffolk District Council Landscape Guidance 2015 has been fundamentally altered in this location by reason of the infilling of a former field by **St Edmund's Meadow**.
  13. The proposed development would extend no further than the existing hedge line and the Vicary Estate. **Given the presence of St Edmund's Meadow and the Vicary Estate**, suburban development already projects into the open countryside and into the SVSLA. I consider that the proposed development would not have a harmful effect on its landscape setting, valley views and views of the church, when taken in the round with existing development. Although the proposed development's **layout** is reserved for future consideration, the indicative layout demonstrates that the proposed **development's** impact could be limited through landscaping. I therefore find that it would not erode the **area's** rural, verdant character.
  14. Based on the level of information provided, while plot sizes within the proposed development and gaps between buildings are likely to be smaller than those of and between most houses at the northern end of the village, the plot sizes and gaps between buildings are very similar to **those at adjoining St Edmund's Meadow**. It would be well-located relative to other village development and would represent a logical extension with a natural boundary in the form of a hedge. I therefore consider that the pattern of development would not cause harm to the character and appearance of the area, would be well-designed and well-related to the village, and would not represent an overdevelopment.
  15. However, CSP policy CS2 expects exceptional circumstances to warrant development in the countryside, while CSP policy CS11 requires assessment to be made of local housing and community needs, which does not appear to have taken place. Furthermore, while it would not prevent other development from coming forward, the assessment of the cumulative effect of developments does not appear to have occurred. While the appellant has not carried this out, the Council has only raised specific concerns about the cumulative effect of development in respect of highway safety, which I address below.
  16. Concern has been raised about the effect of the proposed development on the Dedham Vale Area of Outstanding Natural Beauty (AONB). The appeal site does not lie within the AONB and the Council has not objected to the proposed development in this regard. I have no reason to disagree with the Council.
  17. Concluding on this main issue, the proposed development would be contrary to the development plan as it would conflict with elements of CSP policies CS2 and CS11 and the CS11 SPD. However, it would not have a harmful effect on

the character and appearance of the area and would therefore comply with elements of CSP policies CS11 and CS15 in this regard and LP policy CR04. It would also meet paragraph 170 of the National Planning Policy Framework (the Framework) which confirms that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.

#### *Highway safety*

18. The Council considers that the proposed development would have inadequate vehicular access. The Highway Authority has objected to the proposed development based on speed data, stating that visibility splays of 2.4m x 60m would be required in each direction to the metalled carriageway's **nearside** edge with no obstruction over 0.6m without encroaching on third party land.
19. Although access is a matter which is reserved for future determination, the appellants have indicated that the proposed development's **access** would be the same as that for **the 10 units at St Edmund's Meadow**. This access is in place and currently terminates at a gate at **St Edmund's Meadow's eastern end**.
20. **The Highway Authority did not object to St Edmund's Meadow** on the basis of its access and visibility splays. Indeed, the Inspector in that appeal commented that revised drawings showed the front hedge's **removal** to allow adequate visibility for the access. I have only limited information on whether the access was intended for only agricultural vehicles. Notwithstanding this and based on my observations, the use of the private road and access **through St Edmund's Meadow** by 6 additional dwellings would not harm highway safety.
21. While I recognise that The Street is narrow and there is no footpath close to **the site and St Edmund's Meadow**, and residents have raised concerns about existing traffic speeds, the **proposed development's** access to services and facilities would be no different to that of the **houses at St Edmund's Meadow** or surrounding houses adjacent to the site. Furthermore, while there would be some additional traffic generation from the site, I consider that this would not be of such magnitude to cause harm. Additionally, the proposed development would provide its own off-street parking spaces as part of reserved matters.
22. Concluding on this main issue, I consider that the proposed development would not cause harm to highway safety. As such, it would be compliant with paragraph 108 of the Framework which requires that safe and suitable access can be achieved for all users.

#### *Affordable housing*

23. CSP Policy CS19 requires all residential development where there is a net gain of dwellings to provide 35% affordable housing. Individual targets may be set in hinterland villages, where justified and supported by up-to-date viability evidence, in development plan documents. I have not been provided with an individual target for Assington. CSP policy CS11 requires development in hinterland villages to meet a number of criteria including meeting a proven local need, such as affordable housing.
24. Dating from 2014, CSP policy CS19 is not entirely consistent with national policy expressed at paragraph 63 of the Framework, which confirms that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural

areas (where policies may set out a lower threshold of 5 units or fewer). The Council has not advised that this site lies within a designated rural area. This somewhat reduces the weight I afford to CSP policy CS19.

25. **The Council's Affordable Housing Supplementary Planning Document 2014** (AHSPD) supports CSP policy CS19. The AHSPD confirms that artificial or contrived subdivision of a site to circumvent affordable housing policies should not take place. If the Council believes there is a reasonable expectation of adjoining land coming forward for housing development, it will take account of the whole site area when calculating the affordable housing requirement.
26. The Council considers that the site could accommodate 5 affordable housing units as the site should be taken together with the 10 units at **St Edmund's Meadow**. I disagree with this contention. The exercise of taking account of the whole site area when calculating the appropriate quantum of affordable housing should have been undertaken by the Council as part of the earlier applications and appeal for **St Edmund's Meadow**. The **St Edmund's Meadow** appeal decision gives no indication that affordable housing was sought. In this instance, I consider that requiring 5 affordable housing units would place an unreasonable and disproportionate burden on the developer of this site, particularly as the 2 sites are now in different ownership.
27. Notwithstanding the major development threshold in the Framework, the appellant has committed to the provision of 2 affordable housing units on site. The planning obligation would ensure that 33% of the proposed dwellings (rounded down to whole units) would be affordable rented units and would be provided on plots 4 and 5. These are indicated to be semi-detached three-bedroom dwellings, but this would be confirmed as part of reserved matters.
28. It is necessary to assess the planning obligation against the 3 tests outlined in Regulation 122(2) of the Community Infrastructure Levy Regulations (2010) (as amended) (the CIL Regulations) and paragraph 204 of the Framework. These are that the planning obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development, and is fairly and reasonably related in scale and kind to the development.
29. Notwithstanding **the Council's assertions that affordable housing should be** provided on site and having been referred to a High Court judgment<sup>2</sup> which relates to a core village in the district, I have not been provided with evidence of the locally identified need for affordable housing in Assington and its wider functional clusters of Bures, Boxford and Nayland in line with CSP policy CS11 or housing need on a district-wide level. Although local policy sets out the requirement for affordable housing on smaller sites, the emphasis on tackling the disproportionate burden on small scale developers in the Framework and in **the Government's Written Ministerial Statement of 28 November 2014** post-date the CSP. Despite that change in circumstances, the Council did not advise the appellants during the application process that any affordable housing was necessary.
30. While the provision of 2 affordable housing units would accord with CSP policy CS19 based on the proposal for 6 units, the Council has not provided sufficient evidence to confirm that the planning obligation is necessary to make the

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<sup>2</sup> R (on the application of East Bergholt Parish Council) v Babergh District Council CO/2375/2016 [2016] EWHC 3400 (Admin)

development acceptable in planning terms or that it would be fairly and reasonably related in scale and kind to the development. This would be contrary to the CIL Regulations and paragraph 204 of the Framework.

31. As such, I conclude that the proposed development should not make provision for affordable housing. While there would be conflict with CSP policies CS11 and CS19 as a result of no affordable housing provision, it would be consistent with national policy set out at paragraph 63 of the Framework. The planning obligation would not constitute a reason for granting planning permission.

#### Other Matters

32. Local residents have raised various concerns with regard to the proposed development. To address concerns about foul water, surface water drainage, flood risk and pollution of a pond and the nearby brook and site of special scientific interest, I have imposed a drainage condition.
33. While the Neighbourhood Planning Group has been established for some time and a survey of local residents has been undertaken to understand their preferences for development locally, including biodiversity, traffic and the need for and location of future development, there is no Neighbourhood Plan in place. I am required to deal with the appeal before me on its merits.
34. Assington has experienced growth in recent years and there are planning permissions to be built out. However, the Council has not indicated that local infrastructure would be detrimentally affected by the proposed development, with the exception of highway safety which I have addressed above. I consider that subject to appropriate layout, it would not cause harm to the privacy of adjoining properties. Mention has been made of lack of open space provision for the proposed dwellings. However, the Council has not objected to the appeal on this basis and no open space requirement has been set out.

#### Planning Balance

35. **The scheme at St Edmund's Meadow was allowed on the basis of the Council having 3 years' supply of housing land against a requirement for 5 years' housing land supply (5YHLS). However, the July 2018 Annual Monitoring Report indicates that the Council can demonstrate at least the 5YHLS required by paragraph 73 of the Framework. The appellants have questioned the Council's 5YHLS, but have not quantified their concerns, and have referred to an appeal decision<sup>3</sup> within the district which refers to independent testing of the Council's position. As the Inspector highlighted in that instance, a written representation appeal would not provide the appropriate means to carry out an exercise to test the 5YHLS. I find that the Council's policies would not be out of date in respect of 5YHLS. It is not necessary to apply paragraph 11 of the Framework, with regard to whether any adverse impacts of approval would significantly and demonstrably outweigh the benefits when assessed against the Framework policies taken as a whole.**
36. **Notwithstanding this, meeting paragraph 73 of the Framework's requirements does not represent a limit on housing delivery, as the Framework supports the Government's objective to significantly boost the supply of homes. The 6 dwellings would be adjacent to the village's built-up area and there would be no harm to character and appearance and highway safety, and it would not be**

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<sup>3</sup> APP/D3505/W/18/3196882, decision issued 10 October 2018.

necessary to provide for affordable housing. Additionally, the proposed development would not result in the development of isolated homes in the countryside which paragraph 79 of the Framework seeks to avoid.

37. Although the proposed development would not clearly reflect local needs in line with paragraph 77 of the Framework, it would accord with parts of CSP policies CS11 and CS15 and paragraph 78 of the Framework, which states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and where this will support local services, recognising that where there are groups of smaller settlements, development in one village may support services in a village nearby. Although **the proposed development's residents** would be mainly dependent on private car journeys to nearby larger settlements such as Sudbury, this is only a short distance away and there is scope to use the bus service. In any event, paragraph 103 of the Framework requires that decisions take into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
38. Although the **proposed development would be contrary to the CSP's spatial** strategy as set out in policies CS2, CS11, CS19, CS11 SPD and the AHSPD, this would be balanced by the national policy considerations set out above. The contribution to housing supply from 6 dwellings would only be modest, but paragraph 68 of the Framework recognises that small and medium-sized sites can make an important contribution to meeting **an area's housing** requirement and are often built-out relatively quickly. Despite conflict with the aforementioned development plan policies, in this particular instance, there are significant and important material considerations which indicate that development should be allowed, and thereby justify making a decision not in accordance with the development plan.

### Conditions

39. The Council has suggested conditions which I have considered in light of the Framework and Planning Practice Guidance. I have amended the proposed wording for clarity and omitted some conditions. It is necessary to attach conditions limiting the life of the planning permission and setting out the requirements for the submission of reserved matters in accordance with the Act. The reserved matters conditions are pre-commencement conditions as it is fundamentally necessary to understanding the proposed development's **nature**. As it is not possible to rely on the description of development to control or limit a development to a particular number of units, I have also imposed a condition limiting the number of dwellings to be built on site to no more than 6. This has been agreed with the main parties.
40. The condition relating to surface water and foul water drainage is necessary to ensure that human health and the wider environment is protected and flooding is prevented. I have applied a condition on provision for refuse/recycling storage and collection in the interests of visual amenity and highway safety. Notwithstanding the reserved matter on landscaping, given the level of local concern about the proposed development's **effect** on the landscape, I consider it necessary to apply a condition on landscaping to ensure that any existing hedging would be retained and replaced in the event of damage or disease.
41. I have not applied **the Council's suggested** conditions on external materials, boundary treatments, and car parking as these matters would be dealt with as



part of reserved matters. I have also omitted the condition on contamination as the Council has not provided evidence to indicate that the site is likely to be contaminated. It would therefore be unreasonable to apply such a condition.

#### Conclusion

42. For the reasons given above, the appeal is allowed.

*Joanna Gilbert*

INSPECTOR

#### Schedule of 7 Conditions:

- 1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development takes place and the development 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 3 years from the date of this permission.
- 3) The development 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.
- 4) No more than 6 dwellings shall be constructed on the site.
- 5) Other than site clearance and preparation works, no works shall commence on the construction of the hereby permitted dwellings until a scheme for the treatment of surface and foul water drainage shall have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented on site prior to the first occupation of the development and shall be retained hereafter.
- 6) Prior to first occupation of the development, details of provision for the storage and collection of refuse/recycling bins shall be submitted to and approved in writing by the local planning authority. The approved refuse/recycling provision shall be provided prior to the first occupation of the development and shall be retained thereafter for no other purpose.
- 7) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October-March inclusive) following the commencement of the development or in such other phased arrangement approved in writing by the local planning authority prior to first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.