



## Appeal Decision

Site visit made on 4 April 2023

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 3 July 2023**

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**Appeal Ref: APP/D3505/W/22/3309496**

**The Vista, Aldham Road, Hadleigh, Suffolk IP7 6BS**

- 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 Garry Hill of Vi'Elle Developments Ltd against the decision of Babergh District Council.
  - The application Ref DC/22/01036, dated 24 February 2022, was refused by notice dated 7 July 2022.
  - The development proposed is the demolition of the existing dwelling, garage and workshop and the construction of 2no 2 storey detached houses with integral garages.
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### Decision

1. The appeal is allowed, and planning permission is granted for the demolition of the existing dwelling, garage and workshop and the construction of 2no 2 storey detached houses at The Vista, Aldham Road, Hadleigh, Suffolk IP7 6BS in accordance with the terms of the application, Ref DC/22/01036, dated 24 February 2022, subject to the conditions in the schedule to this decision below.

### Procedural Matters

2. I have amended the description of development from that within the planning application form to exclude the integral garages, as the Council's decision was based on revised plans that omitted these from the scheme. The amended description therefore more accurately defines the proposal.
3. The appeal site is located within the Zone of Influence (ZoI) of the Stour and Orwell Estuaries Special Protection Area/Ramsar site (SPA). However, Natural England had not been consulted on the planning application. As the competent authority on this matter, I consulted Natural England and copied their response to the main parties for comment. Consequently, the appellant submitted a Unilateral Undertaking to secure the financial contribution towards the Recreational disturbance and Mitigation Strategy (RAMS); a copy of which was sent to the Council. I have therefore determined the appeal on this basis.

### Main Issues

4. The Council has stated that the appellant has paid directly to them a sum of money towards measures to mitigate any adverse impacts of the development on the SPA. The Council has confirmed that this satisfies their requirements. Nevertheless, it is incumbent upon me as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is therefore necessary for me to consider this matter as a main issue.

5. Therefore, the main issues are the effect of the proposed development on:
  - a) the character and appearance of the surrounding area;
  - b) the living conditions of the occupiers of The Old Forge, with particular reference to light, privacy and outlook; and
  - c) the integrity of the SPA.

## **Reasons**

### *Character and Appearance*

6. The appeal site comprises a detached bungalow constructed of buff brick with a concrete tiled pitched roof, a detached single storey outbuilding/workshop is located to one side of the bungalow and positioned within the front garden is a detached single storey garage. It is set within a large plot that slopes downwards from south to north. The dwelling is positioned on the northern side of a bend in the road (whose name changes from Aldham Road to Red Hill Road) and is visible at the head of the road when travelling north.
7. The host dwelling is the end dwelling in a row of detached dwellings that form the edge to Hadleigh. To the west of the appeal site is an area of open space (Beaumont Park), to the north is an open field with the A1071 beyond, and to the south/southeast is further residential development. The ground levels in the surrounding area are undulating. The dwellings in the surrounding area comprise a mix of designs, materials, heights and architectural features. Along the western boundary of the appeal site is a Public Right of Way (PRoW) that links Aldham Road/Red Hill Road to the A1071.
8. It is proposed to demolish the existing bungalow, workshop and garage and construct two detached, two-storey dwellings that would share the existing access. The dwellings would have individual designs but would have similar external materials. They would have an elongated design; the dwelling on Plot 2 would be set behind the dwelling on plot 1 creating a staggered appearance; and they would largely occupy the footprint of the existing buildings.
9. There is no consistency between plot sizes, plot shapes and gaps between plots in the surrounding area. The resulting plots would be significantly larger than the majority of the existing plots, and the gaps between the proposed houses and between plot 1 and the adjacent dwelling (The Old Forge) would be comparable to some and greater than others in the area. The proposed dwellings would sit comfortably within their plots, allowing for the retention of existing hedges to the boundaries, with sufficient space for the parking and manoeuvring of private cars and a large rear garden. Therefore, they would not result in overdevelopment.
10. While the proposed dwellings would have an elongated design, they would not be dissimilar to the elongated design of the bungalows that front onto Aldham Road or the L-shaped elongated design of the dwellings on Red Hill Road.
11. The proposed dwellings would be more visible when travelling north along Aldham Road than the existing bungalow and outbuildings, as they would be two-storeys in height. However, they would be sited a substantial distance from the road, particularly the dwelling on plot 2 which would be sited at the head of Aldham Road/Red Hill Road, and their ridge heights would be similar to

the adjacent dwelling, The Old Forge. While the dwellings in the row tend to reduce in height towards Beaumont Park, this is not readily noticeable from the surrounding area due to the narrowness of the roads and the intervening buildings and vegetation. Furthermore, the density of the dwellings within the row varies.

12. Along the eastern side of Aldham Road, opposite Beaumont Park, is a row of bungalows. The bungalows are not uniform in their appearance and differ from the host dwelling's design. The proposed development would be viewed in the context of these bungalows, but they would also be viewed in the context of the varied character and appearance of the dwellings in the wider surrounding area. Therefore, the proposed dwellings would add to this diversity.
13. The PRoW is narrow and, along the boundary shared with the appeal site, is enclosed on both sides by a high hedge. Therefore, views of the proposal from this part of the PRoW would be extremely restricted. The PRoW is less enclosed where it adjoins the adjacent field, however, the existing boundary treatment and sloping land would highly screen the proposed development and what would be visible would be seen in the context of a row of predominantly two-storey dwellings.
14. The proposed development would be visible from a footpath that traverses Beaumont Park to the west of the appeal site. While the dwellings would be higher than the existing bungalow, they would be partially screened by trees and other vegetation planted along the boundary with the PRoW. Furthermore, The Old Forge would project forward of the front elevations of the proposed dwellings and they would be viewed against the backdrop of the ribbon of development, including other two-storey dwellings. Therefore, they would not appear unduly prominent.
15. Concern has been raised regarding the bland design of the proposed dwellings. However, the proposed dwellings would be of individual designs, would include different materials to the ground and first floor, and the dwelling on plot 1 would include a projecting front gable. Furthermore, the design and materials of the proposed dwellings would not be dissimilar to others in the surrounding area.
16. In respect of the main issue, the proposed development would not adversely affect the character or appearance of the surrounding area. It would therefore adhere to Policy CN01 of the Babergh Local Plan Alteration No 2, adopted 2006 (LP) and Policy CS15 of the Babergh Local Plan 2011-2031 Core Strategy & Policies (Part 1 of New Babergh Local Plan), adopted 2014 (CS) which, amongst other things, seek to ensure that proposals make a positive contribution to local character, shape and scale of the area and pay particular attention to the scale, form and nature of adjacent development and the environment surrounding the site. It would also comply with Section 12 of the National Planning Policy Framework ('the Framework') that seeks to achieve well-designed places.

#### *Living Conditions of the Occupiers of The Old Forge*

17. The dwelling to the east of the appeal site, The Old Forge, comprises an L-shaped detached dormer bungalow with an attached double garage. The dwelling is sited closer to Red Hill Road than the appeal property. Dormer windows are positioned in the front and rear roof slopes, with two dormers also

directly facing towards the appeal site's front garden. The ground floor room closest to the appeal site is dual aspect, with a window to the front and rear.

18. Plot 1's first floor windows that would face The Old Forge would comprise a bathroom window, while a rooflight would be positioned above the stairs and within an en-suite. These are rooms that would not be frequently used by future occupiers and therefore would not result in significant overlooking of the neighbouring property. Ground floor fenestration would include a door and a window to a utility, a window to a WC and patio doors with windows to either side to a kitchen/family room. However, any outlook from these openings could be mitigated by the construction of suitable boundary treatment agreed as part of the landscaping and boundary treatment conditions suggested by the Council.
19. The rear balcony at Plot 1 would be positioned away from the boundary shared with The Old Forge and beyond its rear elevation. Therefore, any overlooking would be from an oblique angle and of the mid to rear portion of The Old Forge's rear garden rather than the patio area immediately to the rear of the dwelling that would be more frequently used. Consequently, the proposed balcony would not adversely affect the living conditions of the occupiers of The Old Forge.
20. Although the proposed dwelling on Plot 1 would be two-storeys in height and therefore have a greater eaves height than The Old Forge, its scale and bulk would be offset by the staggered design of its rear elevation, its siting over 5m from the side elevation of the neighbouring property, and its limited projection beyond the front and rear elevation of The Old Forge closest to the shared boundary. Therefore, views of the proposed dwelling from The Old Forge's windows closest to the appeal site would be oblique and would not adversely affect the outlook of the occupiers of the neighbouring property. Furthermore, the proposed dwelling on Plot 1 would be sited west of The Old Forge and therefore, while some shadowing would likely occur to the neighbouring property later in the day, this would not be significantly adverse.
21. Concern has been raised regarding the Right to Light and the occupants of The Old Forge not having received a Light Obstruction Notice. However, this is a legal easement that falls outside of the scope of the planning regime.
22. In regard to the second main issue, the proposed development would not adversely affect the living conditions of the occupiers of The Old Forge, with particular reference to light, privacy and outlook. The proposal would therefore adhere to Section 12 of the Framework that seeks to create places with a high standard of amenity for existing users.
23. The Council referenced Policy CN01 of the LP and Policy CS15 of the CS within the Council's reason for refusal. However, neither of these policies are directly relevant to this matter and therefore I have not concluded against them.

#### *Integrity of the SPA*

24. The appeal site lies within the 13km Zone of Influence of the SPA. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have

- a significant effect on the integrity of the SPA, either alone or in combination with other plans and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA), rather than at the screening stage<sup>1</sup>. This responsibility now falls to me as the competent authority.
25. Evidence shows that the SPA is under significant pressure from an increase in the level of public access for recreation, and disturbance of bird species, as a result of urban development. The proposed development has the potential to impact on the integrity of the SPA, through increased recreational disturbance. The increase in recreational pressure can lead to such issues as an increase in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, nutrient enrichment, loss of vegetation and soil erosion. Accordingly, disturbance by humans and their pets, amongst other factors, can have an adverse effect on the SPA.
26. There would be a likelihood of future occupiers visiting the SPA and therefore the proposed development would be likely to result in recreational disturbance to the bird populations. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
27. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPA. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council has been operating a strategy for the protection of the SPA, which is set out in the Habitats Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy for Ipswich Borough, Babergh District, Mid Suffolk District and East Suffolk Councils – Technical Report (2019). Natural England has stated that they fully support the aims of the strategy and advise that a suitable contribution to the RAMS should be sought to ensure that the delivery of the RAMS remains viable. The SPD identifies that mitigation could include the provision of wardens/rangers, signage, car park rationalisation and access/visitor management.
28. The appellant has paid £121.89 directly to the Council towards the RAMS to alleviate any adverse impacts of the development on the SPA for which a receipt has been submitted. I have been provided with a signed Unilateral Undertaking that ensures the money is to be used for the RAMS. Therefore, the payment would be properly secured, and I am able to give it full weight.
29. In respect of the third main issue, the proposal would not harm the integrity of the SPA. Therefore, it would comply with Policy CS15 of the CS which, with regard to SPAs, states that any development that would have an adverse effect on the integrity of a European site either along or in combination with other plans or projects will be refused.

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<sup>1</sup> People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

## **Other Matters**

30. I acknowledge that the Council has a housing land supply of deliverable housing sites that exceeds their 5-year target. However, this is not a maximum figure that prevents the approval of additional dwellings. The assertion that there is little need to add to the stock of high-end detached houses in Hadleigh and instead there is high demand for single storey housing stock has not been substantiated with evidence.

## **Conditions**

31. The Council has provided a list of conditions which I have had regard to with respect to the tests for conditions set out within the Framework. I have undertaken some minor editing and rationalisation of the proposed conditions in the interests of precision and clarity. In addition to the standard condition which limits the lifespan of the permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions relating to the submission, approval and implementation of materials, a landscaping scheme and boundary treatments are necessary to ensure the appearance of the development would be satisfactory.
32. I am satisfied that conditions in respect of visibility splays (including the requirement for these to be free from obstruction by removing permitted development rights for gates, walls and fences above 600mm high); the access to be constructed in accordance with Suffolk County Council's standard access drawing; the surfacing material of the first 5m of the access; the provision and retention of areas for the parking and manoeuvring of vehicles; and a means of preventing surface water runoff onto the public highway, are all necessary in respect of highway safety.
33. The provision and retention of covered cycle storage facilities and the provision of electric vehicle charging points are necessary to increase the environmental advantages of the proposed development and to promote the use of more sustainable modes of transport. Furthermore, the provision and retention of bin storage and presentation areas are necessary to ensure the appearance of the development would be satisfactory, and they would not pose a highway safety issue. A Demolition and Construction Management Strategy is reasonable and necessary in the interests of highway safety due to the narrowness of the surrounding roads. This is a pre-commencement condition, and the appellant has agreed to its inclusion. It is necessary to restrict the hours of working on the site as well as deliveries to and from the site to between specified hours to safeguard the living conditions of adjacent occupiers.
34. A condition in respect of a Biodiversity Enhancement Strategy is reasonable and necessary to comply with national planning guidance on this matter. However, a condition regarding good practice to follow to avoid ecological impacts during the construction phase was recommended by the Ecological Consultant as an Informative, not a condition.
35. Although not included in the Council's list of suggested conditions, the Environmental Services Team requested a condition in respect of contamination due to the proximity of the appeal site to a former landfill site and the potential for ground gases to be present. I agree that this condition is necessary to make the proposed development acceptable. The appellant has agreed to the inclusion of this pre-commencement condition.

36. The Council has recommended the removal of permitted development rights within Classes A-E and H of Part 1, Schedule 2 and Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The Planning Practice Guidance states "conditions restricting the future use of permitted development rights...may not pass the test of reasonableness or necessity". The staggered layout of the proposed dwellings would necessitate the removal of Class A, Part 1, Schedule 2 of the GPDO to protect the living conditions of existing and future occupiers. However, the developments that could be undertaken by Classes B-E and H would not harm the character and appearance of the surrounding area or the living conditions of the occupiers of neighbouring properties, particularly due to the substantial size of the resulting plots and the mixed appearance of the existing dwellings. Furthermore, a condition requiring the submission, approval, implementation and retention of the agreed boundary treatments means that it is not necessary to remove Class A, Part 2, Schedule 2 of the GPDO.
37. A condition in respect of RAMS is not necessary as the appellant has paid the financial contribution and has submitted a signed Unilateral Undertaking. Conditions controlling external lighting and chimneys due to a possible future impact on the living conditions of the occupiers of neighbouring properties are not reasonable or necessary and would be controlled by other legislation. Furthermore, a condition controlling the burning of waste is not reasonable or necessary as it would be controlled by other legislation.

### **Conclusion**

38. For the reasons given above and having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed.

*A Berry*

INSPECTOR

### **\*\*\*Schedule of Conditions\*\*\***

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 0029/01A, 0029/09A, 0029/10A, 0029/11A, 0029/12A, 0029/14C, 0029/16, 0029/17
3. Prior to development above slab level, details of the manufacturer and types and colours of the external facing and roofing materials of the development shall be submitted to and approved in writing by the Local planning authority. The development shall be carried out in accordance with the approved details.
4. No development above slab level shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping and boundary treatment works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site, indicating any to be retained.

5. 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 as may be approved in writing by the local planning authority up to the 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 seriously 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.
6. Prior to the installation of the new boundary treatments shown on the approved landscaping scheme, details of any proposed gate(s), fencing, means of screening, or walling with sections and detailed large scale (1:5, 1:10 or 1:20 scale) drawings of the specified treatment to be installed/constructed, and manufacturer's literature as appropriate, to include details of materials, precise specification of brick-bond/mortar mix and finish colours where appropriate shall be submitted to and approved in writing, by the local planning authority. The development shall be carried out in accordance with the approved details prior to the occupation of the approved dwellings and shall be retained thereafter.
7. A Biodiversity Enhancement Strategy (BES) for protected and priority species shall be submitted to and approved in writing by the local planning authority. The content of the BES shall include the following:
  - (a) Purpose and conservation objectives for the proposed enhancement measures;
  - (b) detailed designs to achieve stated objectives;
  - (c) locations, heights and orientations of the proposed enhancement measures by appropriate maps and plans; and
  - (d) persons responsible for implementing the enhancement measures.The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.
8. Prior to the occupation of the development, visibility splays shall be provided as shown on Drawing No. 0029/17 with an X dimension of 2.4 metres and a Y dimension of 43 metres to the nearside edge of the carriageway and thereafter retained in the specified form. Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) 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.
9. Prior to the occupation of the development, the existing vehicular access shall be 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. Thereafter the access shall be retained in the specified form.
10. Prior to the occupation of the development, the modified vehicular access onto the highway shall be 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 in such a form thereafter.

11. Prior to the occupation of the development, the area(s) within the site shown on Drawing No. 0029/14C for the purposes of manoeuvring and parking of vehicles shall be provided and shall be retained and used for no other purposes thereafter.
12. No development above slab level shall take place until details of secure, lit and covered cycle storage and electric vehicle charging infrastructure shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out prior to the occupation of the development and shall be retained thereafter and used for no other purpose.
13. No development above slab level shall take place until details showing the means to prevent the discharge of surface water from the development onto the highway including any system to dispose of the water shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out prior to the occupation of the development and shall be retained thereafter.
14. Prior to the occupation of the development, 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 first occupation and shall be retained thereafter for no other purpose.
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 development shall take place in accordance with the approved strategy.
16. Prior to the commencement of development:
  - (a) A strategy for investigating any contamination (including ground gases) present on site shall be submitted for approval by the local planning authority.
  - (b) Following approval of the strategy, an investigation shall be carried out in accordance with the strategy.
  - (c) A written report shall be submitted detailing the findings of the investigation referred to in (2) above, and an assessment of the risk posed to receptors by the contamination (including ground gases) for approval by the local planning authority. Subject to the risk assessment, the report shall include a Remediation Scheme as required. The Remediation Scheme shall detail any measures necessary to contain, manage and/or monitor any ground gases with the potential to reach the application site.
  - (d) Any remediation work shall be carried out in accordance with the approved Remediation Scheme.
  - (e) Following remediation, evidence shall be provided to the local planning authority verifying that remediation has been carried out in accordance with the approved Remediation Scheme.

17. The development hereby approved shall be constructed between the hours of 7:30am and 6pm Mondays to Fridays and between 7:30am and 2pm on Saturday. There shall be no working on Sundays and Bank Holidays. There shall be no deliveries to the development outside of these hours.
18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extensions or alterations under Schedule 2, Part 1, Class A shall be undertaken.

**\*\*\*End of Conditions\*\*\***