

DEVELOPMENT CONTROL COMMITTEE – 10 FEBRUARY 2015

APPLICATION NO DC/14/4023/OUT

9

LOCATION

Land At The Bungalow
The Avenue
Kessingland
Lowestoft
Suffolk
NR33 7QD

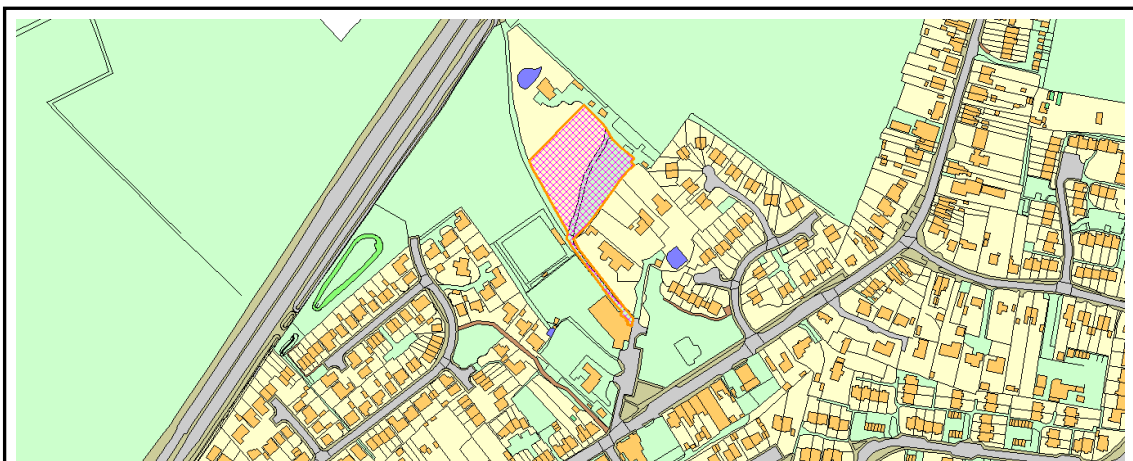
EXPIRY DATE 28 January 2015

APPLICATION TYPE Outline Application

APPLICANT Badger Building (E Anglia) Ltd

PARISH Kessingland

PROPOSAL Outline Application - Construction of four bungalows



DO NOT SCALE SLA100042052

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SUMMARY

- 1.1 This outline application proposes the construction of four bungalows in the grounds of an existing bungalow. The site outside the “physical limits” for Kessingland, but is well enclosed by planting such that bungalows will have a very limited impact on the wider landscape.
- 1.2 However the vehicular access is narrow and has poor visibility at its junction with The Avenue. Suffolk Highways recommend refusal.

SITE DESCRIPTION

- 2.1 The Avenue runs north from High Street and provides access to the telephone exchange, a social club and five dwellings, as well as providing some parking spaces.
- 2.2 At the side of the social club a single vehicle width track bears north west. It provides access to a single dwelling, "The Bungalow", set in large grounds totalling just over 1 hectare. There are mature trees along the south west boundary and a tall hedge on the south east boundary.
- 2.3 The track is also a public footpath, which continues along the western boundary of the site past the access to "The Bungalow" to the A12.
- 2.4 There are existing dwellings adjoining the south west boundary of the site, agricultural land to the north west, and the site which was recently granted permission at appeal for 30 dwellings as an extension to "Heritage Green" is on the opposite side of the footpath to the south west.
- 2.5 The site lies outside the "physical limits" for Kessingland identified on the Proposals Map and also outside the "Strategic Gap" identified under policy DM28.

PROPOSAL

- 3.1 The application has been submitted in outline, although layout and access are for consideration at this stage. The proposal is to construct four bungalows. It is intended to use the existing hard surfaced driveway to access the properties, with one bungalow on its south side and the remaining three on the north side.
- 3.2 The site area is 0.52 hectares, giving a density of 7.7 dwellings/hectare.

CONSULTATIONS/COMMENTS

- 4.1 **Neighbour consultation/representations:** one letter has have been received from the occupier of Beech Lodge, 9 The Avenue: expresses concerns about highway safety – visibility from the access is poor, and is sometimes obstructed further by delivery vehicles to the club.
- 4.2 **Kessingland Parish Council Comments:** "Kessingland Parish Council at its meeting held on the 14th January 2015 had the following comments to make about the outline planning application DC/14/4023/OUT, construction of 4 bungalows on land at The Bungalow, The Avenue, Kessingland.
- 4.3 This site is located outside the Physical Limits of the Village and within the Strategic Gap. This proposed site will be located on land that is only accessible by the existing access to The Bungalow, which is in fact Footpath 2, one of Suffolk County Council's designated footpaths around Kessingland. Therefore the Parish Council agree with Suffolk County Council's Rights of Way Officer and object on the basis :-
- 4.4 - There is insufficient width for walkers and vehicles to pass safely and there are no passing places or places to escape to in the event of a large vehicle using the footpath.
- 4.5 - It is not an acceptable route for any construction traffic due to lack of the width and the likely damage to the largely unmade road surface.
- 4.6 - In addition, the applicant must have private rights to take motorised vehicles over the public right of way. Without lawful authority it is an offence under the Road Traffic Act 1988 to take a motorised vehicle over a public right of way other than a byway.

- 4.7 With regards to this it would be appropriate in this case to request to see what rights the existing landowner has and what is being passed over to the developer - A sight of any documentation would be appropriate and WDC should request to see that and it should be made available to all parties to this application.
- 4.8 In addition WDC Environmental Planning Officer, Mark Seaman. Is on record in an email to Richard Amor (Planning Officer) dated the 23rd September 2013. This is in relation to an adjacent site by the same developer (Heritage Green) which states:-
- 4.9 "With regards to noise the LPA should be aware that this department is continuing to investigate complaints concerning an alleged noise nuisance from the nearby wind turbines. Our investigation is ongoing but officers have witnessed noise generated by the turbines which was audible within complainants' properties and capable of causing a statutory nuisance. There is also the issue of noise from the turbines impacting upon the quality of outdoor space and amenity such as gardens".
- 4.10 Information has reached the Parish Council that the existing owner is very much affected by the wind turbines located nearby which cause noise, flicker from the rotating blades and loss of sleep at night, and other health issues.
- 4.11 To build another 4 homes in the same locality cannot be right only adding to people's health problems and WDC should take notice of its own EPO's advice and this should be another reason for refusing this application.
- 4.12 This development will provide no benefits to the Community and it would appear that Badger Building are determined to push development further outside the Physical Limits of the village into the Strategic Gap - for profit.
- 4.13 Their reference to the recent Planning Inspectors ruling in respect of Heritage Green, which they are placing reliance on for this application, is exactly that a decision for Heritage Green. Any other site it is argued should be dealt with on its own merits and not be held to precedent from a previous planning application.
- 4.14 This site was also Site 155 when WDC were seeking opinions and views on suggested land usage under Site Specific Allocations in 2007. At that time one of Kessingland's Parish Councillors responded to the consultation and a copy of his response form is attached. This site was eventually turned down by WDC as a site for future development.
- 4.15 Copies of photographs taken of the access into the site are also attached.
- 4.16 Kessingland Parish Council ask that WDC refuse this application for the reasons stated. In addition we will be asking our District Councillor to "call this" application in so that it can be before the full Development and Control Committee".
- 4.17 *In relation to the Parish Council's comments, the agent has responded:*
- 4.18 *"The owner of this site has asked me to point out that contrary to the "here say" of the Parish Council they have suffered no inconvenience, health issues or loss of sleep from the wind turbines.*
- 4.19 *Whilst I was at the site this morning I measured the width of the access and can confirm that it is 4.8 m wide along the whole of its length. This of course is sufficient for vehicles to pass and for access by large delivery vehicles. It has a hard rolled consolidated surface.*
- 4.20 *I hope this information is of assistance.*

Consultees

- 4.21 **Suffolk County - Highways Department:** On the existing drive off the end of The Avenue, there are at present four houses.
- 4.22 Should this proposal for four dwellings proceed, the total numbers of vehicle movements from both the existing and proposed development are unlikely to be high.
- 4.23 Notwithstanding, SCC as Highway Authority recommends refusal of this application for the following reason:
- 4.24 There is no defined edge to the carriageway adjoining the Club building here. However, the edge of the carriageway area over which vehicles drive has been taken as around 1m from the adjacent Club building.
- 4.25 On the existing access from the subject site, the visibility available from a set-back of 2m from the edge of the road of vehicles from the south direction is around 8m when measured to a line 1m away from the adjacent building.
- 4.26 A consequence of this is that road users approaching from the south and drivers of vehicles leaving the site have restricted inter-visibility which may result in increased hazards to road users.
- 4.27 The visibility available to the north is also restricted. However, since this is a private drive, it is accepted that the speed of vehicles approaching from that direction are likely to be lower.
- 4.28 Note: Deliveries to the adjacent Club premises are made by goods vehicles parked in the driveway leading to the subject site. At times, the development site would not be accessible to vehicles.
- 4.29 **WDC Environmental Health - Contaminated Land:** The author of the phase 1 study submitted with the application has not identified any sources of contamination likely to impact upon the site and has concluded that no further investigation or assessment of contamination is warranted. However, the development involves disturbance to land and I would advise the LPA to impose a planning condition requiring the reporting of any suspected contamination encountered during development.
- 4.30 **Anglian Water** was consulted on the 18 December 2014.
- 4.31 **Essex and Suffolk Water PLC:** I acknowledge receipt of your emailed letter dated 18th December 2014 regarding the above. We would advise you that our existing apparatus does not appear to be affected by the proposed development. We have no objection to the development subject to compliance with our requirements. Consent is given to this development on the condition that a new metered water connection is made onto our Company network for each new dwelling for revenue purposes.
- 4.32 We would draw attention to the fact that the nearest water main to the site is approximately 90 metres away; therefore to provide a water supply to the proposed four bungalows a main requisition Form will have to be completed by the Developer.
- 4.33 Should you require any further information, please do not hesitate to contact us.
- 4.34 **Suffolk County - Rights of Way:** Thank you for your consultation concerning the above application. Kessingland Public Footpath No. 2 provides access to the proposed development site.

- 4.35 This service is OBJECTING to the proposal for the following reasons:
- 4.36 There is insufficient width for walkers and vehicles to pass safely and there are no passing places or places to escape to in the event of a large vehicle using the footpath.
- 4.37 It is not an acceptable route for any construction traffic due to the lack of width and the likely damage to the largely unmade path surface.
- 4.38 In addition, the applicant must have private rights to take motorised vehicles over the public right of way. Without lawful authority it is an offence under the Road Traffic Act 1988 to take a motorised vehicle over a public right of way other than a byway. We do not keep records of private rights.
- 4.39 **Waveney Norse - Property and Facilities** were consulted on the 18 December 2014.

PUBLICITY

- 4.40 The application has been the subject of the following press advertisement:

Category	Published	Expiry	Publication
Public Right of Way Affected,	26.12.2014	15.01.2015	Beccles and Bungay Journal
Public Right of Way Affected,	26.12.2014	15.01.2015	Lowestoft Journal

SITE NOTICES

- 4.41 The following site notices have been displayed:

General Site Notice	Reason for site notice: In the Vicinity of Public Right of Way, Date posted 30.12.2014 Expiry date 19.01.2015
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PLANNING POLICY

- 5.1 The Waveney Core Strategy was adopted in January 2009. Policy CS01 sets the Spatial Strategy for the District and policy CS11 deals with housing.
- 5.2 The Development Management policies were adopted in January 2011. Policy DM01 sets Physical Limits, policy DM02 sets design principles, policy DM16 refers to housing density and policy DM22 considers housing development in the countryside.
- 5.3 The National Planning Policy Framework is also relevant to the consideration of the application.
- 5.4 These policies are considered in more detail below.

PLANNING CONSIDERATIONS

- 6.1 The first consideration is planning policy. The Spatial Strategy for the District is set by Core Strategy policy CS01. This states that most new development is to be concentrated in Lowestoft, with 15-25% of housing growth taking place in the four market towns. Up to 5% of housing growth will take place in the larger villages, of which Kessingland is one.

- 6.2 Policy CS11 deals specifically with housing. The policy allocates approximately 5000 new dwellings to Lowestoft, 1,500 to the four market towns and up to approximately 300 new dwellings in the larger villages.
- 6.3 This housing growth covers the period 2001-20025 and the supporting text to this policy explains that because of the permissions granted in the larger villages in the period 2001-2007 it is not necessary to allocate further housing land in the larger villages.
- 6.4 Policy CS11 also sets out a sequential approach for the consideration of allocated sites and proposals for new development, in the following order:
- Previously developed land within the “physical limits of settlements.
 - Previously developed land on the edge of settlements
 - Greenfield sites within settlements
 - Greenfield sites on the edge of settlements.
- 6.5 Development Management policy DM01 states that development will be concentrated within the physical limits of the listed settlements (which include Kessingland as a “larger village). It also states that preference will be given to the development of previously used land.
- 6.6 As noted previously in this report, the site is outside the physical limits of Kessingland and as part of a garden is considered to be “greenfield” land. As such the site is in the least sequentially preferable location for new development.
- 6.7 Areas outside the physical limits are deemed to be “open countryside” in planning policy terms and policy DM22 establishes a presumption against new development in the countryside, except in certain specified exceptions, none of which apply here.
- 6.8 These policy considerations lead to the conclusion that the development is contrary to adopted Local Plan policies.
- 6.9 Kessingland parish council state in their comments (paragraph 4.3 above) that the site is within the “Strategic Gap” identified under policy DM28, but this is not the case, although the site does adjoin the Strategic Gap.
- 6.10 However national policy is also a “material consideration”, in particular the National Planning Policy Framework (NPPF), which was adopted in 2012. The NPPF states:
- 6.11 “At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking...For decision-taking this means:
- 6.12 • approving development proposals that accord with the development plan without delay; and
- 6.13 • where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- 6.14 — any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- 6.15 — specific policies in this Framework indicate development should be restricted”.
- 6.16 In relation to housing, the NPPF states that:

- 6.17 “Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land”.
- 6.18 The NPPF goes on to state that:
- 6.19 “Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”
- 6.20 Members will be aware that the current applicant applied for planning permission for 30 dwellings as an extension to the Heritage Green development adjacent to this site. That application was refused in December 2013, but was recently allowed at appeal following a public inquiry. Part of the appellant’s case was that the Council does not have a five year land supply, because not all sites are deliverable, either at all or within the next five years.
- 6.21 This issue was extensively debated at the inquiry, but the inspector concluded that “the Council has demonstrated a 5-year supply of deliverable housing sites”.
- 6.22 The thirty dwellings allowed by the inspector can be added to the housing supply, and the Council can therefore be confident that its local plan can be considered to be up to date.
- 6.23 Nevertheless the appeal was still allowed and the inspector’s conclusions are very relevant to the current application. The inspector first considered whether the development would cause harm. The inspector commented:
- 6.24 “However, the strong barrier created by the A12 with its hedging means this relatively small area of land does not form a visual part of the wider rural landscape either when looking westwards from in the village or when on the east side of the A12 facing towards Kessingland. Rather it appears as an isolated remnant that was left over when the by-pass was built. Furthermore, it is not large enough to generate a rural character in its own right. Therefore, to my mind its development for housing would not adversely affect the countryside and would not detract from the countryside’s intrinsic character and beauty. Moreover, the size of Kessingland means the scale of this development would not be inappropriate in relation to the village as a whole or that the size of the settlement would change significantly.
- 6.25 A second area of concern raised by Mr Amor on behalf of the Council was that developing this greenfield site would, in part, diminish the attractiveness of regeneration proposals in Lowestoft. I appreciate the spatial strategy focuses development on Lowestoft. I also acknowledge that to promote the reuse of previously developed land will inevitably involve discouraging development on greenfield sites, whether that be large individual proposals or a myriad of smaller parcels that had not been developed before. However, no specific evidence was offered to indicate the scale of this contention, and I accept it would be difficult to identify how this site in isolation would have such an effect. As such, this constitutes a further harm to that already identified, although the paucity of evidence to support this concern, and the limited effect of this development in isolation, diminishes the weight it can be afforded”
- 6.26 The inspector also considered the benefits of the scheme. He concluded that: “The relatively sustainable nature of the development and the provision of additional homes, 10 of which would be affordable, are benefits of the scheme”.

- 6.27 The inspector then proceeded to weight the harm against the benefits. His conclusions on the appeal were as follows:
- 6.28 “The only harm I have identified is a conflict with the development plan arising from a failure to show a need for the development of this greenfield site outside the ‘physical limits’ of Kessingland, and the potential for some adverse effect on the regeneration of Lowestoft. However, given the limited evidence I have received relating to these areas of harm, in my opinion they are outweighed by the significant and more tangible benefits resulting from this relatively sustainable additional housing.
- 6.29 In coming to this view, I have noted the comments about precedent. However, a key factor in this proposal being acceptable has rested on the confined nature of the site between the settlement and the A12 that has appreciably diminished its effect on the wider countryside. Such circumstances would not be readily apparent at other sites outside the physical limits of the larger villages.
- 6.30 Moreover I have taken into account the comments about localism. However while the Framework places a clear and bold emphasis on the primacy of the development plan and the opportunities communities have to shape the scale, location and timing of new housing, it strongly emphasises the presumption in favour of sustainable development as well. Therefore, while the concerns of elected representatives and local residents have been noted, they do not, on this occasion, offer me a basis to resist this relatively sustainable scheme.
- 6.31 Accordingly I conclude that the identified harm is outweighed by the benefits of this additional housing in this relatively sustainable development, and to my mind these constitute material considerations that indicate the decision need not be in accordance with the development plan”.
- 6.32 This decision is clearly relevant to the current application as this site is currently well screened and between the village and the A12. Provided development is restricted to bungalows as is proposed in the application, development will be barely visible from outside the site. This is a small scale site that will have no significant impacts for the surroundings and will effectively become an infill development by virtue of the recently allowed appeal for the extension of the Heritage Green site for additional housing.
- 6.33 Although this development will not provide any affordable housing, it will be in a relatively sustainable location, a factor the inspector identified as a benefit to the Heritage Green proposal. It will also result in CIL payments and generate a “New Homes” bonus.
- 6.34 There are no other sites where the same argument could be in the immediate vicinity of the site.
- 6.35 There are further issues that must also be considered however. Suffolk County highways object because of the poor visibility at the junction between The Avenue and the track leading to the site. In part this poor visibility is caused by the existing club building at the junction, and it is hard to see how this situation can be improved. Clearly this is an existing situation which applies to traffic travelling to and from the site at present; the additional traffic generated by this development would exacerbate the situation, although as SCC highways note, the total numbers of vehicle movements from both the existing and proposed development are unlikely to be high.
- 6.36 Suffolk Rights of Way object, primarily because there is insufficient width for walkers and vehicles to pass safely and there are no passing places or places to escape to in the event of a large vehicle using the footpath. However this is a situation which could occur at present as traffic to and from “The Bungalow” must use the track, and this objection is not considered significant enough to justify refusal.

- 6.37 The applicant has confirmed that the owner of the site already has a vehicular right of way to his property which he can extend to any new properties constructed. He suggests that with regard to a temporary access for construction traffic they could possibly provide this through the Heritage Green site.
- 6.38 Development Management policy DM16 states that the Council will aim to make the most efficient use of land, and will seek to achieve a minimum density of 30 dwellings per hectare across the district. The density of this site at 7.7 dwellings per hectare is significantly less than this but in view of the limitations of the access this density is considered acceptable.
- 6.39 The parish council refer to noise and shadow flicker from the Kessingland wind turbines. Both issues were raised at the Heritage Green inquiry, but the inspector did not consider that they carried sufficient weight to justify dismissing the appeal. This site is marginally further from the turbines than the Heritage Green site. No complaints about shadow flicker have been received from the existing property.

CONCLUSION

- 7.1 This development is contrary to the Council's policies and the Council was held to have a five year land supply by the inspector who determined the Heritage Green appeal.
- 7.2 Nevertheless that appeal was allowed and the inspector's decision is a material consideration in the determination of this application. The site is well screened and it is difficult to identify any great landscape harm arising from the proposal.
- 7.3 However the access track is narrow and has poor visibility at its junction with The Avenue and Suffolk highways recommend refusal on these grounds.
- 7.4 Accordingly the application is recommended for refusal on highways grounds alone.

RECOMMENDATION

That permission be refused for the following reason:

1. There is inadequate visibility for traffic on the existing access from the site, in part because of the adjoining the Club building. The visibility available from a set-back of 2m from the edge of the road of vehicles from the south direction is around 8m when measured to a line 1m away from the adjacent building. A consequence of this is that road users approaching from the south and drivers of vehicles leaving the site have restricted inter-visibility which may result in increased hazards to road users.

BACKGROUND INFORMATION: See application ref: DC/14/4023/OUT at www.waveney.gov.uk/publicaccess

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