

PLANNING COMMITTEE SOUTH – 24 SEPTEMBER 2019
APPLICATION NO. DC/19/0438/FUL

EXPIRY DATE: 26 March 2019
APPLICATION TYPE: Full Application

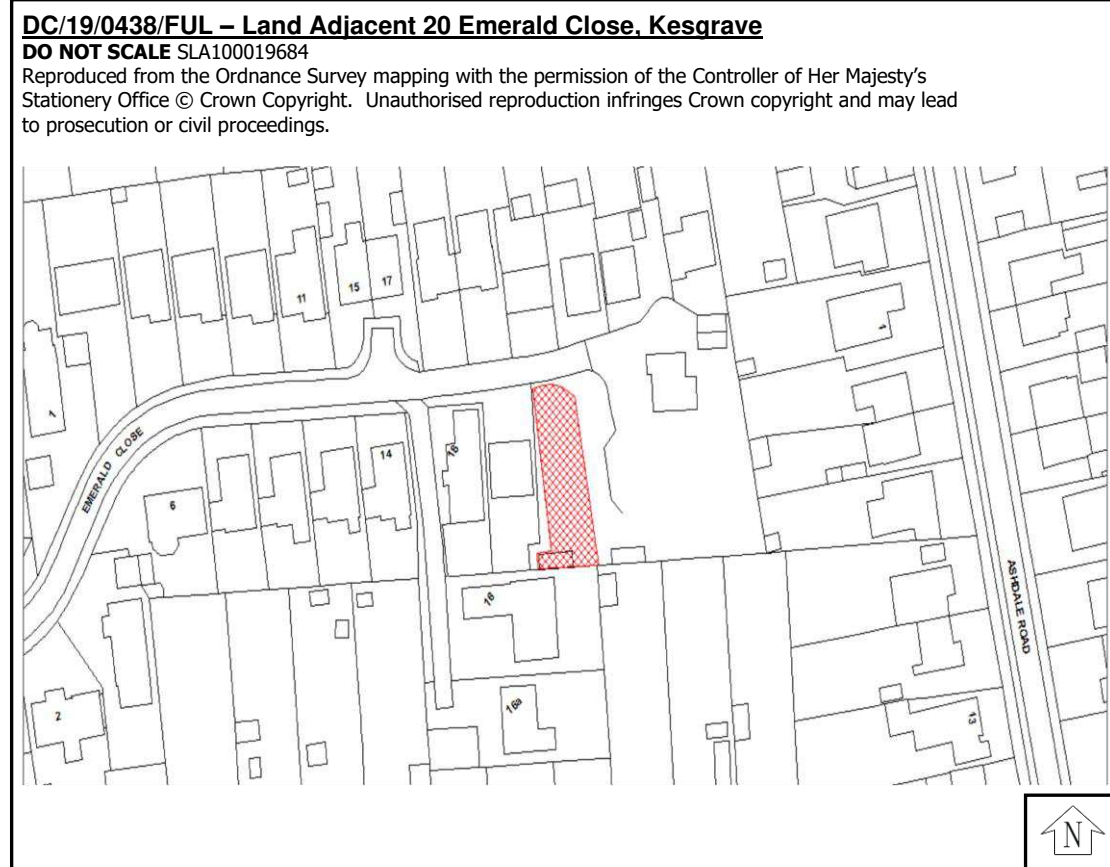
APPLICANT: Mr Nicholas Ray

LOCATION: Land Adjacent 20 Emerald Close, Kesgrave, Suffolk

PARISH: Kesgrave

PROPOSAL: Erection of a dwelling.

CASE OFFICER: Joe Blackmore
Email: Joe.Blackmore@eastsuffolk.gov.uk
Phone: 01394 444 733



1 EXECUTIVE SUMMARY

- 1.1 The application seeks full planning permission for the erection of a dwelling and garage on land adjacent 20 Emerald Close, Kesgrave.
- 1.2 Officers consider that the proposed dwelling would be a second phase of the existing residential development at Emerald Close, and that this would bring the total number of dwellings at the development from nine to ten. On developments of ten or more homes, affordable housing should be provided at a 1 in 3 provision; in exceptional circumstances, a commuted sum to fund the provision of affordable housing at a different site in the same area can be acceptable. In this instance, no on-site affordable homes would be provided and a planning obligation to deliver an appropriate commuted sum has not been provided or agreed with the Council. The proposal is thus contrary to the strategic objectives of policies SP2 and DM3 to deliver the housing type and tenure of accommodation required to meet the needs of the District. It is also contrary to the NPPF requirement that major housing developments deliver affordable homes.
- 1.3 The application is before members having been referred to the Planning Committee by the Referral Panel to enable the issue of phased development and affordable housing requirement to be fully considered. It was triggered before the Referral Panel, as the 'minded to' decision of officers is one of refusal, contrary to the recommendation of the Town Council.

2 SITE DESCRIPTION

- 2.1 The application site is located in the town of Kesgrave and comprises approximately 0.1 hectares of land to the east side of No. 20 Emerald Close (former registered address of 191 Main Road).
- 2.2 The southern and eastern boundaries of the application site adjoin the residential development under construction on land at Emerald Close ("The Emerald Close development"), approved under planning application ref. DC/16/2770/FUL, which permitted the construction of nine open market dwellings. The application site is accessed via the new access road serving the Emerald Close development. The existing dwelling at No.20 Emerald Close has been renovated and refurbished. The Emerald Close development appears largely complete with the dwellings sold and occupied. The construction process is still ongoing though as the road surfacing has yet to be completed.

3 PROPOSAL AND PLANNING HISTORY

- 3.1 This application seeks full planning permission for a new dwelling and garage on the application site. The proposed dwelling would be one-and-a-half storeys in scale, covering a rectangular ground footprint of some 94.4 square metres comprising three-bedroom accommodation. The dwelling would have a simple dual pitch roof covered in red clay pantiles to match the existing Emerald Close development. The external walls would be constructed of mixed brindle brickwork, again to match the existing development. A detached double garage is proposed in the rear garden, with two parking spaces in front accessed from the drive shared with plots 7, 8 & 9 of the Emerald Close development.

- 3.2 A previous planning application was submitted to the Council (ref. DC/18/0974/FUL) by the landowner, Mr N Kearney, seeking planning permission to demolish the existing dwelling at 191 Main Road (now No.20 Emerald Close) to allow the erection of one replacement dwelling; and also the erection of a new dwelling on the adjacent plot (the current application site). This application was refused for the following reason:

“The proposed site is in the same ownership as the existing development on land at Emerald Close and, because of the access road arrangement and the way the properties are oriented around it, the proposed development of the site - in combination with the existing development - would form one planning unit. It would clearly read as a single development and the proposal is therefore a second phase of the existing development on land at Emerald Close. This second phase would take the total number of dwellings across the development from nine to eleven. In this regard, the proposal fails to satisfy the requirements of policies SP3 and DM2 through its inadequate affordable housing provision and there are no exceptional circumstances, in this instance, that would justify a financial contribution instead.

The development proposal is therefore contrary to policies SP3 (New Homes) and DM2 (Affordable Housing on Residential Sites) of the Suffolk Coastal District Local Plan (Development Plan Document) July 2013.”

- 3.3 The current application before members has been submitted by a different applicant; however, Certificate B on the application form has been completed indicating that the land is still in the same ownership as the previous refused application. The second element of change with the current application is that the existing site at 20 Emerald Close has been excluded from the proposal, and this application is for a single dwelling only on the undeveloped plot.

4 CONSULTATIONS/COMMENTS

- 4.1 Kesgrave Town Council: “Approve – However the committee are very concerned that this application should be reviewed as a ‘second phase’ application NOT a single development. Therefore, further scrutiny as to the total number and type of properties built and proposed for this site.”
- 4.2 SCC Highways: No objections.
- 4.3 Head of Environmental Health: No objections (standard condition recommended).
- 4.4 Third Party Representations: No comments received.

5 PUBLICITY

- 5.1 The application has not been advertised in the press as there is no statutory requirement to do so, in this particular case.

Category	Publication date	Expiry	Publication
N/A	N/A	N/A	N/A

6 SITE NOTICES

6.1 The following site notice has been displayed at the site:

Site Notice Type	Reason	Date Posted	Expiry Date
General Site Notice	New Dwelling	04.02.2019	25.02.2019

7 PLANNING POLICY

7.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) 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. The Development Plan comprises:

- East Suffolk Council - Suffolk Coastal District Local Plan – Core Strategy and Development Management Development Plan Document (Adopted July 2013); **“The Core Strategy”**
- East Suffolk Council - Suffolk Coastal District Local Plan – Site Allocations and Site Specific Policies Development Plan Document (Adopted January 2017); **“The SAASPD”**
- East Suffolk Council – Suffolk Coastal District Local Plan - The Felixstowe Peninsula Area Action Plan (adopted on 26 January 2017); **“The FPAAP”**
- East Suffolk Council - The ‘Saved’ Policies of the Suffolk Coastal Local Plan incorporating the first and second alterations.

7.2 The relevant policies of The Core Strategy are:

SP1 - Sustainable Development

SP1A - Presumption in Favour of Sustainable Development

SP2 – Housing Numbers and Distribution

SP3 – New Homes

SP14 - Biodiversity and Geodiversity

SP19 - Settlement Policy

SP20 – Eastern Ipswich Plan Area

DM2 – Affordable Housing on Residential Sites

DM21 - Design: Aesthetics

DM22 – Design: Function

DM23 - Residential Amenity

DM27 - Biodiversity and Geodiversity

DM28 - Flood Risk

7.3 The relevant policies of the SAASPD are:

SSP2 - Physical Limits Boundaries

SSP32 – Visitor Management: European Sites

7.4 The National Planning Policy Framework (NPPF) 2019 is a material planning consideration when determining planning applications.

7.5 The new Local Plan (covering the former Suffolk Coastal area) was submitted to the Planning Inspectorate (PINS) for examination on Friday 29th March 2019, and the hearings are currently taking place. At this stage in the plan making process, the policies that received little objection (or no representations) can be given more weight in decision making if required.

7.6 In terms of the new Local Plan, policies SCLP11.1 (Design Quality); and SCLP11.2 (Residential Amenity) promote development that is well designed and amenable to neighbouring residential properties.

7.7 The new Local Plan continues to focus on mitigating the impact of new housing development on the integrity of sites designated as being of international importance for their nature conservation interest through policy SCLP10.2 (Visitor Management of European Sites). This reflects the objectives of current Development Plan policies SP14, DM27 and SSP32.

7.8 The consultation period on Kesgrave Neighbourhood Plan (NP) has recently closed and the NP will likely be submitted for its soundness examination shortly. At this stage in the plan making process, emerging policies can be given very limited weight, although the NP does not include any policies relevant to affordable housing that would need to be considered on this application.

8 PLANNING CONSIDERATIONS

Principle of Development

8.1 The site is within the built up area of Kesgrave defined as a town forming part of the Ipswich Policy Area under the settlement hierarchy policy SP19 of the Core Strategy. It is therefore able to accommodate larger forms of development to coincide with its strategically sustainable location. The principle of residential development in this location is supported by policies SSP2, SP19 and SP20.

Phased Development and Affordable Housing Provision

8.2 Following on from the previous refused application, the main issue to consider with this proposal is whether it constitutes phased development and thus triggers the requirement for affordable housing to be provided.

8.3 The NPPF (2019) sets out in Chapter 5, paragraph 63 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). To support the re-use of brownfield land, where vacant buildings are being re-used or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.”

8.4 Annex 2 to the NPPF provides a glossary. In respect of the above paragraph, major housing development is defined as:

“For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.”

8.5 Where development would result in ten or more homes, suitable provision for affordable units is required in accordance with National Government Planning Practice Guidance and the requirements of Core Strategy policies SP3 and DM2. This would usually be a 1in3 provision.

8.6 The existing Emerald Close development provides nine dwellings and thus no affordable housing was secured through the planning process of the original permission (DC/16/2770/FUL) because the proposal was not deemed to be major housing development. It fell below the threshold so all nine units are open market dwellings; all appear to have been sold and now occupied.

8.7 The "Tripartite Test" is established in case law - R (Westminster City Council) v First Secretary of State and Brandlord Limited [2003] - and provides guidance on considering whether a proposal constitutes phased development. The three key factors being:

- land ownership;
- whether the site is a single planning unit; and
- whether the development should be treated as a single development.

8.8 In this particular instance, the application site is in the same ownership as the existing Emerald Close development. Whilst the applicant has changed, land ownership is unchanged. During the construction phase of the Emerald Close development, the application site has been used as a compound for the stationing of vehicles, materials and other equipment associated with the development. The site would also share a point of access with the entire development, and then share a short stretch of drive with plots 7, 8 & 9. The proposed new dwelling is oriented around the development access road in a fashion that reflects the wider Emerald Close development. The external appearance, scale and form of the proposed dwelling would follow the existing development. The proposed dwelling would clearly read as the final plot (10) of the Emerald Close development. It is not a disconnected, independent development site; it forms part of the wider development site which is deemed by officers to be a single planning unit and single development.

8.9 For these reasons, officers judge that the current proposal constitutes phased development: an additional dwelling to the nine already approved and built. This phase would, therefore, take the total number of open market units across the development from nine to ten. Accordingly, the development would now be classified as Major

Development under the NPPF and the affordable housing requirements of the NPPF, NPPG and Core Strategy policies SP3 and DM2 would be engaged. These policies set out the Council's strategic aim to provide a mix of housing sizes, type and tenure of accommodation to meet the needs of the District. In respect of affordable housing, the Council consider the affordable housing need to be 24% of all new homes. Policy DM2 delivers this strategic objective and sets out that, whether in total or in phases, the District Council will expect 1 in 3 units to be affordable housing unless its provision is not required due to: (a) lack of identified local need in the area; and/or (b) site conditions, suitability and economics of provision. Normally, three affordable homes would need to be provided on this site.

- 8.10 As the nine existing units have been sold as open market dwellings, there is clearly no prospect of securing on-site provision of affordable homes. However, in exceptional circumstances a financial or other contribution towards the provision of affordable housing on a different site within the same area can be acceptable; however, the Council has not been able to agree an appropriate commuted sum with the applicant.
- 8.11 The proposed application would bring the Emerald Close development to ten dwellings and no affordable housing has been provided on site, nor has a suitable financial contribution toward off-site provision been agreed. Thus, the proposal fails to satisfy the requirements of Core Strategy Policies SP3 (New Homes) and DM2 (Affordable Housing on Residential Sites).

Design of Development and Neighbour Amenity Impact

- 8.12 The proposed dwelling and garage are good design and relate well to the Emerald Close development. The proposal would make effective use of the application site at an appropriate density of development. The scale of the buildings; position and size of openings; and separation from adjacent residential development means there would be no adverse impact on local living conditions. In all respects the design of the development is acceptable and in accordance with the objectives of Core Strategy policies DM21, DM22 and DM23.

Biodiversity and Geodiversity: Impact on Designated European Sites

- 8.13 The application site falls within 13km of three designated European Sites: the Deben Estuary SPA/Ramsar Site; the Stour and Orwell Estuaries SPA/Ramsar Site; and the Sandlings SPA.
- 8.14 The Suffolk Recreation Avoidance Mitigation Strategy ("Suffolk RAMS") identifies that new housing development within a 13km zone of influence ("ZOI") of any designated European site in Suffolk will have a likely significant effect on the interest features of those sites through increased recreational pressure, both alone and in-combination with other housing in the ZOI. To mitigate this, a per-dwelling financial contribution of £321.22 is required to fund the Suffolk RAMS. No planning obligation has been submitted with the application to deliver this financial contribution and, therefore, the Local Planning Authority cannot conclude 'no likely significant effects' arising from the development proposal on the aforementioned European sites.

- 8.15 The proposal is therefore contrary to the objectives of Development Plan policies SP14 and DM27(i) (Biodiversity and Geodiversity); and SSP32 (Visitor Management of European Sites) - which seek to protect designated sites in accordance with The Conservation of Habitats and Species Regulations 2017 and Chapter 15 of the National Planning Policy Framework.

Other Matters

- 8.16 The site is located in flood zone 1 and is therefore suitable for residential development. There are no concerns in respect of highways safety or risk to human health from ground contamination sources. This is reflected in no objections being raised by the relevant statutory consultees, in this regard.

9 CONCLUSION

- 9.1 The proposal would deliver some small benefits: an additional dwelling to housing supply; some short-term construction jobs; and support for local shops and services through spend by occupants. However, from one additional dwelling the benefits above-and-beyond the existing Emerald Close development would attract only modest weight.
- 9.2 It is also considered that the design of the development and impact on neighbour living conditions would be acceptable in accordance with the relevant policies, and that the proposed development would, in the view of officers, represent a physically acceptable final stage of the Emerald Close development.
- 9.3 However, the proposal represents phased, major housing development that delivers no on-site affordable housing as a proportion of the total development. No financial contribution to fund off-site provision has been delivered and the proposal is therefore contrary to the objectives of policies SP3 and DM2. Such policy conflict weighs heavily against the proposal. Furthermore, to allow phased applications in this manner where it would subvert affordable housing requirements would undermine the Council's plan-led approach to provide a mix of housing type and tenure of accommodation to meet the needs of the District. Officers have sought, as an exception to the preference for on-site provision, to agree an appropriate financial contribution but the applicant has not been able to agree to such a commuted sum. On this basis, the proposal does not represent sustainable development in accordance with the Development Plan and the NPPF. Planning permission should be refused.

10 RECOMMENDATION

- 10.1 **REFUSE**, for the following reasons:

1. The proposed site is in the same ownership as the existing development on land at Emerald Close and, because of the access road arrangement and the way the properties are oriented around it, the proposed development of the site - in combination with the existing development - would form one planning unit. It would clearly read as a single development and the proposal is therefore a second phase of the existing development on land at Emerald Close. This second phase would take the total number of dwellings across the development from nine to ten. In this

regard, the proposal fails to satisfy the requirements of policies SP3 and DM2 through its inadequate affordable housing provision and no planning obligation has been provided to deliver an appropriate commuted sum to fund provision of affordable housing at a different site within the same area.

The development proposal is therefore contrary to policies SP3 (New Homes) and DM2 (Affordable Housing on Residential Sites) of the East Suffolk Council (Suffolk Coastal) District Local Plan (Development Plan Document) July 2013.

2. The application site falls within 13km of three designated European Sites: the Deben Estuary SPA/Ramsar Site; the Stour and Orwell Estuaries SPA/Ramsar Site; and the Sandlings SPA.

The Suffolk Recreation Avoidance Mitigation Strategy ("Suffolk RAMS") identifies that new housing development within a 13km zone of influence ("ZOI") of any designated European site in Suffolk will have a likely significant effect on the interest features of those sites through increased recreational pressure, both alone and in-combination with other housing in the ZOI. To mitigate this, a per-dwelling financial contribution of £321.22 is required to fund the Suffolk RAMS. No planning obligation has been submitted with the application to deliver this financial contribution and, therefore, the Local Planning Authority cannot conclude 'no likely significant effects' arising from the development proposal on the aforementioned European sites.

The proposal is therefore contrary to the objectives of Development Plan policies SP14 and DM27(i) (Biodiversity and Geodiversity); and SSP32 (Visitor Management of European Sites) - which seek to protect designated sites in accordance with The Conservation of Habitats and Species Regulations 2017 and Chapter 15 of the National Planning Policy Framework.

**BACKGROUND
INFORMATION:**

See application ref: DC/19/0438/FUL at:
<https://publicaccess.eastsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=PS1SK0QXK9700>