
Appeal Decision

Site visit made on 7 December 2017

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 February 2017

Appeal Ref: APP/K2610/W/16/3156445

Oasis Sport and Leisure Centre, 4 Pound Lane, Thorpe St Andrew, Norwich NR7 0UB

- 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 Serruys Property Company Ltd against the decision of Broadland District Council.
 - The application Ref 20151132, dated 1 July 2015, was refused by notice dated 10 June 2016.
 - The development proposed is the re-development of Oasis Leisure Club, including erection of replacement spa and wellbeing club (full planning) and provision of 27 residential units (outline) including affordable housing units.
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Decision

1. The appeal is allowed and planning permission is granted for the re-development of Oasis Leisure Club, including erection of replacement spa and wellbeing club (full planning) and provision of 27 residential units (outline) including affordable housing units at Oasis Sport and Leisure Centre, 4 Pound Lane, Thorpe St Andrew, Norwich NR7 0UB, in accordance with the terms of the application, Ref 20151132, subject to the conditions in the attached schedule.

Preliminary Matters

2. An application for full planning permission was submitted for the redevelopment of the leisure centre and outline planning permission was sought for the residential element of the scheme, with scale, layout and appearance reserved for future consideration. The application description refers to 59 residential units, and the scheme was advertised as such, but it was amended prior to determination with the planning committee report, decision notice, appeal form and the wording of the unilateral undertaking all referring to 27 units. Furthermore, an amended site plan¹ received by the Council on 26 April 2016 also shows 27 units. I have therefore dealt with the appeal on the basis the appellant is seeking outline planning permission for up to 27 residential units as set out in the banner heading above.
3. A planning obligation was submitted with the appeal relating to affordable housing and open space provision, management and maintenance. I deal with this in more detail below.

¹ Drawing ref. 2357 – 28k

Application for costs

4. An application for costs was made by Serruys Property Company Limited against Broadland District Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is the effect of the proposal on protected species.

Reasons

6. The leisure centre is located on the western side of the appeal site, set back from the road within mature landscaped grounds. In addition there are a number of other buildings on the site including children's nursery. Abutting the site to the west and fronting Pound Lane is Tawny Lodge, a detached dwelling with a detached garage. There are residential properties to the west of Pound Lane and to the east of the site. Woodland to the north is designated as a County Wildlife Site, and contains several ponds, including a large pond about 50m from the appeal site.
7. Paragraphs 117 and 118 of the Framework state that if significant harm to priority habitats and species resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.
8. Policy EN1 of the Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS) (2011, with amendments published in 2014) requires proposals to protect and enhance the biodiversity of the District, avoid fragmentation of habitats and support the delivery of a green infrastructure network.
9. Policy GT2 of the Growth Area Action Plan identifies the appeal site as part of Thorpe Ridge, a primary green infrastructure corridor. However, development along the route of a corridor is not precluded, and can provide for open space, ecological enhancements and additional landscaping. Furthermore, this is described by the Council as an emerging policy and thus only limited weight can be attached to it.
10. A Protected Species survey submitted with the planning application² reported that some of the fitness centre buildings contained minor day roosts for small numbers of bats, and a medium population of great crested newts was identified in the large pond adjacent to the north boundary of the site. The survey indicates that the appeal proposal would have a minor negative effect on bats and a minor to intermediate negative effect on Great Crested Newts.
11. Developments that would result in a breach of the protection afforded to European Protected Species (EPS) require a derogation licence, to avoid an offence under the Conservation of Species and Habitats Regulations 2010 (the Regulations). There is no requirement for an EPS derogation licence to be provided prior to grant of planning permission, but the decision taker must be assured that there would be a reasonable prospect of the licence being granted by Natural England, having regard to the requirements of the Habitats Directive³.

² Protected Species Survey - Wild Frontier Ecology (July 2015)

³ The Conservation of

12. The Oasis Leisure Centre is currently in a poor condition and offers limited facilities. Without redevelopment of the leisure centre, the centre would continue to fall into disrepair and is likely to become less viable as a commercial enterprise, with the result that the facilities may cease to become available to local residents in the future.
13. Moreover, the Council has an acknowledged shortfall in the supply of housing. The development would make a contribution to housing supply in the borough. In addition, whilst it lies outside the settlement boundary the site is in a sustainable location near to local facilities and the public transport network, and will provide benefits in supporting services. These benefits are weighed against the low to moderate impacts on local populations of common bat species and displacement of Great Crested Newts from a small portion of the locally available habitat. Consequently it would provide social and economic benefits to the public and would meet the IROPI test within a licensing context⁴.
14. I have also considered the feasibility of alternative options to the appeal proposal. In doing so I have had regard to guidance from Natural England on European Species and the Planning Process,⁵ which advises that a proportionate approach should be taken which is relative to the likely impact. The appellant has put forward two alternatives to the appeal scheme; firstly to do nothing or renovate the fitness centre in the same place, and secondly to rebuild the fitness centre somewhere else within the site.
15. In the first scenario there would be no little or no new housing provided, and without redevelopment of the leisure buildings, the bat day roost would remain, albeit the building may continue to fall further into disrepair. Existing roosts could also be damaged in any refurbishment. In the second scenario the quantum of housing would be significantly reduced with potentially a similar impact on EPS. Proceeding with the development as proposed would provide the maximum social and economic benefit. On balance, taking into account the mitigation measures proposed, including new roost provisions and exclusion fencing, I am satisfied that there are no satisfactory alternatives to the appeal proposal.
16. Finally, with regard to the third derogation test, the County ecological officer⁶ has confirmed that the Protected Species Survey was prepared in line with best practice and that the site was capable of accommodating the proposed development. Mitigation and compensation measures are proposed, and thus subject to appropriate conditions, the favourable status of the species would be maintained.
17. Taking all of the above into account, I conclude that the proposal should meet all three derogation tests and that there is a reasonable prospect of Natural England granting a licence. I therefore conclude that the proposal would not have an adverse effect on protected species, and would accord with Policy EN1 of the JCS.

⁴ There are imperative reasons of overriding public interest (IROPI)

⁵ Natural England Guidance Note: European Protected Species and the Planning Process – Natural England's application of the 'Three Tests' to Licence Applications (2010)

⁶ Consultation response from Senior Green Infrastructure Team – Norfolk County Council

Other Matters

18. A signed and executed section 106 agreement has been submitted by the appellant. Nine on-site affordable housing units would be provided, in accordance with JCS Policy 4, which requires 33% affordable housing on sites of 16 dwellings or more. The unilateral undertaking (UU) would secure a contribution towards off-site amenity space for the Dussindale Park project in Thorpe St Andrew in accordance with the Council's Open Space Policies at a rate set out in Schedule 3 Part 3 of the agreement, and provides for land to be set aside within the appeal site for an amenity area space, the extent, location and boundaries to be determined by subsequent reserved matters approval. Whilst an out of date plan has been attached to the legal agreement showing 59 residential units,⁷ this plan is purely for the identification of the land rather than the housing layout shown, and the agreement states that the application is for 27 residential units.
19. In light of the demands for local infrastructure that would be generated by future occupants of the scheme, I am satisfied that the contribution for open space would meet the tests in paragraph 204 of the Framework and the provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. Furthermore, there is nothing before me to indicate that the open space contribution would offend the pooling restriction on planning obligations set out in CIL regulation 123 (3).
20. The Council has confirmed that a section 52 legal agreement was attached to the planning permission for Tawny Lodge, to prevent the development of the meadow to the north of that dwelling and the site of the proposed leisure centre. However, I have judged the development on its own merits, and my decision to allow the appeal does not supplant that legal agreement. If the appellant intends to implement this planning permission separate steps may need to be taken to address this matter.
21. Concerns have been expressed regarding noise emanating from the leisure centre on previous occasions late at night. However, I have no evidence before me in respect of noise complaints and the Council have not proposed any limitations on the operating hours of the spa and wellbeing club. As such I can give this matter only limited weight.
22. Likewise, in relation to any highway safety risk to pedestrians including children travelling to Thorpe St Andrew School, the existing road is lightly trafficked with wide footways, and there is no objection from the Highway Authority on highway safety. Consequently there is insufficient evidence to substantiate an objection on these grounds.
23. With regard to the loss of trees on site, an arboricultural impact assessment, tree protection plan and method statement have been submitted and the Council's arboricultural officer has confirmed that the most significant trees would be retained, and additional planting, including along site boundaries will be carried out. Conditions can be imposed to ensure development is implemented in accordance with the submitted documents.
24. Finally, the loss of existing private views from nearby residential dwellings are not protected in planning policy, and The Woodlands, whilst said to be one of

⁷ Drawing 2357-23

the oldest buildings in Thorpe St Andrew and one of last remaining Georgian properties in the area, has undergone significant alterations and is not a designated heritage asset. As such these matters would not alter my overall conclusions.

Conditions and Conclusion

25. I have found that the proposal is acceptable, subject to certain conditions, having regard to the Framework. In addition to the ecology conditions referred to above, I have specified the approved plans for certainty⁸. I have imposed a condition limiting the maximum number of dwellings permitted to 27 as set out in the application. I have also imposed the standard conditions requiring the reserved matters applications to be submitted within three years of the date of this permission, and for the development to be begun within two years of the last reserved matters permission.
26. I shall impose conditions requiring surface water drainage details to prevent surface water run off to highway, and visibility splays, on-site car and cycle parking, turning and servicing areas to be provided and retained, and off-site highway improvements for the Spa and Wellbeing Club. I shall also require the access to be limited to that shown on drawing No 2357-28k only, and all other existing accesses to be permanently closed, with a detailed scheme to be submitted and approved by local planning authority. All of these conditions are necessary in the interests of highway safety.
27. With regard to the residential element of the scheme, full details of proposed roads, footways, visibility splays, foul and surface water drainage, access, parking, loading and turning, wheel cleaning, construction traffic restrictions and off-site highway improvements are required, again in the interests of highway safety. The Council has suggested conditions which include a requirement to close the existing access to Tawny Lodge, to avoid any conflict with the increased level of traffic on Pound Lane associated with the development. Whilst Tawny Lodge is within the appellant's ownership, it lies outside the red line of the appeal site and therefore does not form part of the scheme. Moreover the access serves only a single dwelling and so traffic movements to and from this access are likely to be very modest. Consequently it is not necessary to stop up the access for the development to be acceptable and I shall not impose this requirement through the suggested conditions.
28. If permission is granted there would be nothing to prevent the residential units from being completed in isolation from the spa and wellbeing club and there is no requirement for the development to be completed in full. The Council sought phasing controls on the development through the legal agreement, but I agree with the appellant that this could also be achieved through the imposition of a condition to require the a phasing scheme to be submitted to the satisfaction of the local planning authority, setting out the order of commencement and completion of the dwellings, demolition of the existing leisure centre and the construction of the replacement spa and wellbeing club. This will ensure a leisure use is retained on the site.
29. I shall impose conditions requiring the development to be carried out in accordance with the submitted Arboricultural impact assessment, Tree

⁸ Taken from Appendix 4 to the appellant's statement of case which sets out the amended plans submitted to the Council prior to the determination of the application.

Protection Plan and Arboricultural Method Statement to safeguard the character and amenity of the area.

30. A condition requiring a photographic survey to be undertaken of former early 19th century dwelling prior to demolition works and for site investigations to be completed prior to the commencement of the development is necessary to enable the archaeological value of the site to be properly recorded and understood, in accordance with DMP Policy EN2. A condition requiring a land contamination assessment prior to commencement of construction work is necessary due to the sensitive end users of the site.
31. Evidence that at least 10% of the energy supply of the development will come from decentralised and renewable energy sources is required to ensure the development complies with the energy performance requirements of JCS Policy 1. A surface water drainage scheme is required to ensure that the development would not increase and where possible would decrease surface water run-off beyond the site.
32. Fire hydrants are required to be provided if appropriate prior to the commencement of any parcel or phase of development to ensure the development would be adequately served by such equipment in the event of a fire.
33. Finally, conditions requiring all buildings and structures are to be demolished within 12 months of new club building being brought into use, all materials not to be used in the development to be removed from the site, and the submission of a materials management plan are required to maximise the reuse of aggregates in accordance with paragraph 142 of the Framework.
34. For the reasons set out above, I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates in respect of the replacement spa and wellbeing club and associated infrastructure shall be begun not later than two years beginning with the date on which this permission is granted.
- 2) Application for the approval of the reserved matters with respect to the residential dwellings must be made to the local planning authority not later than the expiration of three years beginning with the date of this decision. The development hereby permitted must be begun in accordance with the reserved matters as approved not later than the expiration of two years from either the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such reserved matter to be approved.
- 3) Application for the approval of the reserved matters shall include plans and descriptions of the: appearance of all buildings including the precise details of the type and colour of the materials to be used in their construction; scale; and layout. Approval of these reserved matters must be obtained from the local planning authority in writing before any development is commenced and the development shall be carried out in accordance with the details as approved.
- 4) The development hereby permitted shall not be carried out otherwise than in accordance with the following plans and documents; Drawing 2357-23 shows the extent of the site only (as shown by the red line); Drawing No. 28k – Site Plan; Drawing No. 30B – General Views; Drawing No. 32 – Replacement Spa Floor Plans – sections and elevations; Drawing No. 03i; Drawing No. 28g Landscaping; Drawing No 28g Arb 1 – Tree Protection Plan – Site Demolition Procedures and Tree Protection; Drawing No 28g Arb 2 – Tree Protection Plan – Site Construction and Tree Protection.
- 5) Vehicular, pedestrian and cyclist access and egress to the adjoining highway shall be limited to the access shown on drawing No 2357-28k only. Any other access or egress shall be permanently closed and the highway verge reinstated in accordance with a detailed scheme to be agreed with the local planning authority prior to the bringing into use of the new access.
- 6) Prior to the commencement of the development hereby permitted the vehicular access shall be upgraded to a minimum width of 4.8 metres. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.
- 7) Prior to the commencement of the development hereby permitted a visibility splay measuring 2.4 x 59 metres shall be provided to each side of the access where it meets the highway and such splays shall thereafter be maintained at all times free from any obstruction exceeding 0.225 metres above the level of the adjacent highway carriageway.
- 8) Prior to the commencement of the development hereby permitted the proposed access, on-site car and cycle parking, servicing, loading and unloading, turning and waiting area shall be laid out, demarcated, levelled,

surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.

- 9) No works shall commence on site until the details of wheel cleaning facilities for construction vehicles have been submitted to and approved in writing by the local planning authority. For the duration of the construction period all traffic associated with the construction of the development permitted will use the aforementioned approved wheel cleaning facilities.
- 10) Notwithstanding the details indicated on the submitted drawings no works shall commence on site otherwise agreed in writing until a detailed scheme for the off-site highway improvement work (a footway along the site frontage and an appropriate crossing facility) have been submitted to and approved in writing by the local planning authority. Prior to the commencement of the use hereby permitted the aforementioned off-site highway improvement works shall be completed to the written satisfaction of the local planning authority.

Residential development – outline planning permission

- 11) Prior to the commencement of the residential units hereby permitted full details of the roads and footway, foul and surface water drainage, visibility splays, access arrangements, parking provision in accordance with the adopted standard, loading and turning areas shall be submitted to and approved in writing by the local planning authority. No works shall commence on site until the details of wheel cleaning facilities for construction vehicles have been submitted to and approved in writing by the local planning authority. For the duration of the construction period all traffic associated with the construction of the development hereby permitted shall use the approved wheel cleaning facilities provided.
- 12) No works shall commence on site until a detailed scheme for the off-site highway improvements, comprising a footway along the site frontage and an appropriate crossing facility) have been submitted to and approved in writing by the local planning authority. The aforementioned off-site highway improvement works shall be completed to the satisfaction of the local planning authority prior to the commencement of the use.
- 13) No demolition shall take place within the site until a programme of historic building recording has been submitted by the applicant and approved in writing by the local planning authority. The programme shall comprise a photographic survey of the former early 19th century dwelling to be carried out prior to demolition and monitoring and further photographic recording during its demolition.
- 14) No development shall take place until an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; the programme and methodology of site investigation and recording; the programme for post investigation assessment; analysis of the site investigation and recording; publication and dissemination of the analysis and records of the site investigation and nomination of a competent person or persons/organisation to undertake the works set out within the aforementioned WSI. No development shall take place other than in accordance with the WSI, and the development shall not

be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the WRI and the provision for analysis, publication and dissemination of results and archive deposition has been secured. In this instance the programme of work will commence with trial trenching to establish the scope of any further archaeological mitigation measures required. Briefs for the historic building recording and archaeological work will be issued by the Norfolk Historic Environment Service on request.

- 15) Prior to the commencement of construction work and following the clearance of the existing structures from the site an assessment of the ground for the presence of contamination must be undertaken by a suitably qualified and competent professional. Where the risk of contamination or possible risk is identified further site investigation work must be undertaken by a suitably qualified and competent professional to determine the ground conditions and carry out a risk assessment based on the findings. Details of the work undertaken and the findings must be provided to the local planning authority in a written report. If further investigation is required this must be referred to the local planning authority for written approval before implementation. Prior to first occupation of the development a report detailing the nature, source and quality of the imported soils must be submitted to the local planning authority for written approval. The imported soils must be demonstrated to be fit for use at the development and not pose a risk to human health or the wider environment. If the soil is not found to be suitable for use further work will be required to ensure suitability of gardens and other areas of soft landscaping.
- 16) Prior to the commencement of development a Materials Management Plan (MMP) shall be submitted to and approved in writing by the local planning authority jointly with the minerals planning authority. The MMP shall contain details of the potential for re-use of on-site materials, and disposal of material which cannot be used on site. The development hereby permitted shall be carried out in accordance with the approved MMP. During construction an annual return of material used on site and the amount returned to an aggregate processing plant shall be provided on request to the local planning authority and mineral planning authority.
- 17) No development shall take place until a surface water drainage scheme is submitted to and approved in writing by the local planning authority. The scheme shall include details of on-site storage of surface water; modelling of the surface water drainage network and details of run-off into Anglian Water sewers and confirmation that Anglian Water has given permission for discharges into their sewers.
- 18) Prior to the commencement of any parcel of phase of development a scheme for the provision of fire hydrants as may be required shall be submitted to and approved in writing by the local planning authority. Any fire hydrants provided shall be retained thereafter.
- 19) Prior to the commencement of any works on site including works on the fitness centre buildings, ground clearance or vegetation removal, the local planning authority shall have been provided with either: a licence issued by Natural England pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activity/development

to go ahead; or a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence. The development hereby permitted shall be carried out in accordance with the mitigation and compensation measures as set out in paragraphs 7.1 to 7.5 of the submitted Protected Species Survey by Wild Frontier Ecology dated July 2015.

- 20) Prior to the commencement of construction work on site, the detailed recommendations in the Arboricultural Impact Assessment, Tree Protection Plan and Method Statement, dated January 2016 including supplemental information in relation to trees dated February 2016, shall be carried out to the satisfaction of the local planning authority in consultation with the Conservation (Arboricultural) Officer and in accordance with the requirements of BS 3998:2010 and BS 5827:2012 'Trees in relation to design, demolition and construction – Recommendations.'
- 21) Prior to the occupation of any part of the development the landscaping scheme as indicated on the approved plan (drawing number 2357-28g/Landscaping) received by the local planning authority shall be carried out in accordance with a programme agreed in writing with the local planning authority. The scheme as approved shall be carried out no later than the next available planting season following the commencement of development. If within a period of five years from the date of planting, any tree or plant or any tree or plant planted in replacement for it, is removed, uprooted or is destroyed or dies or becomes in the opinion of the local planning authority seriously damaged or defective another tree or plant or the same species and size as that originally planted shall be planted at the same place.
- 22) No trees or hedges shall be cut down, uprooted, destroyed or pruned in any manner, (be it branches, stems or roots), other than in accordance with the approved plans and particulars. Any trees or hedges removed without consent shall be replaced during the next available planting season with trees of such size and species as agreed in writing with the local planning authority. All tree works shall be carried out in accordance with BS 3998 and BS 8545 Trees: from Nursery to independence in the landscape – Recommendations. The landscape proposals shall be carried out and subsequently maintained in accordance with the details contained in the Landscape Management Plan dated January 2016 and which are hereby approved.
- 23) The reserved matters referred to above shall relate to the construction of up to a maximum of 27 dwellings only.
- 24) Within 12 months of the new club building first being brought into use, all existing buildings and structures associated with the existing leisure use shall have been demolished and all materials not to be reused in the development hereby permitted removed from the site.
- 25) No development shall commence until a detailed scheme of phasing for the construction of the dwellings, demolition of the existing leisure club and the construction of the replacement spa and wellbeing club on the development hereby approved has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the order of commencement and completion of the dwellings, demolition of the existing

leisure club and the construction of the replacement spa and wellbeing club. The development shall be carried out in accordance with the approved scheme of phasing.