



Appeal Decision

Hearing Held on 10 July 2019

Site visit made on 10 July 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 19 July 2019

Appeal Ref: APP/K2610/W/18/3205994

**Land south of Broadland Gate, adjacent to Postwick Interchange,
Postwick, Norwich, Norfolk NR13 5NP**

- 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 Monte Blackburn Ltd and Pigeon Investments Ltd against the decision of Broadland District Council.
 - The application Ref 20170095, dated 18 January 2017, was refused by notice dated 22 February 2018.
 - The development proposed is described as 'full planning application for the proposed development of 1 No. petrol filling station and 2 No. drive through restaurants, together with various infrastructure and landscaping works'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for an award of costs was made by Monte Blackburn Ltd and Pigeon Investments Ltd against Broadland District Council. This application will be the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - Whether the proposed development would accord with the spatial strategy within the development plan, with particular reference to policies concerned with the location of development; and
 - The effect of the proposed development on the public water supply.

Reasons

Whether the proposed development would be in a suitable location

4. The Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS)¹ identifies growth targets for the area and sets out the strategy for achieving these targets through a settlement hierarchy. It states that new development is to be directed to, and focussed upon, defined settlements in order to locate it close to existing services and facilities.

¹ Adopted March 2011, amendments adopted January 2014

5. Policy GC2 of the Broadland District Council Development Management Development Plan Document 2015 (DPD) builds on the approach in the JCS. It states that new development will be accommodated within defined settlement limits². Outside these areas development which does not result in any significant adverse impact will be permitted where it accords with a specific allocation and/or policy of the development plan. Accordingly, this policy sets out two tests for development outside settlement boundaries - that it must adhere to a policy or allocation in the development plan and not result in a significant adverse impact. There is a negative corollary that a proposal which fails to do this would be at odds with Policy GC2.
6. The appeal site currently encompasses a largely undeveloped tract of predominantly rough grassland loosely enclosed by trees and shrubs, with some hardstanding relating to the historic use of part of the site as a compound. It is sandwiched between the A47 and the A1042. It is in very close proximity to the Postwick Hub Interchange, a signalised junction where the A47, A1270 (Northern Distributor Road - NDR) and A1042 converge. The interchange is an urban feature currently set within a rural landscape on the city fringe and is not, therefore, included within a settlement boundary. The open verdant appearance of the appeal site is viewed as a component of the wider rural landscape between Thorpe St Andrew and Postwick, particularly in longer distance views. The proposed development would be an urbanising incursion into the countryside outside a rationally drawn settlement boundary.
7. Policy TS1 of the DPD seeks to safeguard the land required for the improvement of the transport network. In this respect the policy does not allocate land. The appeal site is identified on the Policies Map as being land safeguarded by Policy TS1. The policy does not define what constitutes an improvement of the transport network, but a reasonable interpretation of the policy is that it aims to safeguard land for transport improvement projects defined in the development plan.
8. The key to the Policies Map refers to land being protected for the proposed Postwick Hub Scheme. Moreover, the scheme is a defined improvement project referred to in the Growth Triangle Area Action Plan 2016 (AAP) as well as the Site Allocations Development Plan Document 2016. The evidence before me does not suggest roadside facilities were intended, planned or allocated as part of this defined scheme/project, which is a junction improvement. I was advised by the Council at the hearing that the junction improvement has been completed as approved and this seems accurate from what I observed. Accordingly, the appeal scheme is outside the scope of Policy TS1 as it is not part of the defined Postwick Hub Scheme or any other transport improvement project specifically identified in the development plan.
9. The appeal site is not identified within any of the other allocations within the development plan, including those in the Site Allocations Development Plan Document 2016 or the AAP³. There is no other specific policy that would support the principle of development. Accordingly, being development outside a settlement boundary that does not adhere to a specific allocation or policy,

² These are defined on the Policies Map - An extract of the policies map was provided during the hearing showing the location of the appeal site relative to the settlement boundary

³ The appellants have submitted the appeal site as part of the Regulation 18 consultation on the emerging Greater Norwich Local Plan in an attempt to get it allocated for road side services. The emerging local plan is not at a stage where it can be afforded more than very limited weight.

the appeal scheme cannot adhere to Policy GC2 regardless of whether it has a significant adverse impact or not. Thus, the proposal would be at odds with, and harmfully undermine, the adopted spatial strategy for the location of new development. Policy GC2 is consistent with the National Planning Policy Framework (the 'Framework'), which seeks a genuinely plan led approach to the scale and location of development.

The effect of the proposed development on the public water supply

10. The proposal would involve the installation of large petrol tanks and in the interests of public safety these would need to be underground. The appeal site is located close to an Anglian Water (AW) operated public water supply bore hole which provides drinking water to around 25,000 households and businesses in a large area to the east and north east of Norwich. It is also a backup facility for the residents of Norwich in the event the supply to the city is disrupted. The bore hole is therefore a very important component of the public water supply. Thus, the area around it is recognised by the Environment Agency as being a Source Protection Zone 1 (SPZ1), where the highest level of protection to ground water is required.
11. It was agreed by the main parties at the hearing⁴ that the ground water supplying the bore hole is a sensitive receptor and the appeal scheme would introduce the potential for a pollutant (the fuel stored in underground tanks). The local ground conditions would provide a pathway for the pollutant to reach the receptor. The implications of fuel reaching the public water supply, even in very small amounts, would be of severe magnitude as the use of the bore hole would need to cease with significant consequences for the public water supply.
12. The risk that fuel could leak into the public water supply could never be entirely discounted, but the appellant is of the view that the risk can be reduced to a level described as being as low as reasonably practical. A tertiary containment system is suggested that would involve a double skin tank with additional protection provided by lining and a concrete vault. The system would have alarms that would be triggered if one layer of containment were breached. The appellant advised that there is no evidence of a system such as this being breached. The Council and AW conceded at the hearing that if a tertiary containment system were installed correctly the risk to the public water supply would be acceptable in the short term. The risk was described by the Environment Agency as being negligible.
13. However, the main concern of both the Council and Anglian Water (AW) is that the system could be incorrectly or inadequately managed and monitored and that it could deteriorate over time increasing the risk of a leak. During the hearing AW referred to an example in Grantham where a small but persist leak from a petrol facility contaminated a bore hole, which had to cease operation. In that case AW were able to fall back on other infrastructure so the magnitude of the incident was not as great as if a similar event were to occur at Postwick.
14. It is unclear whether the petrol tanks at Grantham had the same level of protection as that proposed by the appellant i.e. a tertiary containment system, but it is nevertheless a pertinent example that demonstrates that leaks can occur with potentially serious implications to the public water supply.

⁴ The appellant, the Council, Anglian Water and the Environment Agency

15. The appellant suggests that a scheme of monitoring and management would ensure mitigation in the long term and that this could be secured through the imposition of a planning condition. The Environment Agency (EA) has recommended such a condition, which was accepted by the Council's Planning Officers although not the Council. The condition would require a scheme of management and monitoring to be submitted and approved.
16. The scheme would build upon the details outlined in the appellant's Design, Implementation and Operational Method Statement. This document refers to a third party (Fairbanks Environmental Ltd) managing and monitoring the fuel stock, the implementation of a failure response procedure and confirmation that further advice would be provided on standard operating procedures, training, surface spillage containment and audit trails.
17. Given the high sensitivity of the site and the very serious implications that would occur from any leak, it is essential that the tanks and associated infrastructure are properly maintained and monitored. The Council would be responsible for enforcing the scheme of monitoring and management and ensuring the procedures therein are being followed. Ensuring compliance with the condition could require technical expertise and proactive inspections covering a period of decades, perhaps necessitating independent third-party specialists, which the Council may not have access to. Accordingly, it is unclear whether the Council would be able to properly monitor whether a scheme approved pursuant to the planning condition is being adhered to.
18. The EA confirmed at the hearing that the requirement for a detailed monitoring and management plan is not standard procedure. It is required in this instance as a bespoke solution given the high sensitivity of the site. The EA were unable to provide an example of any situation where a condition along the lines suggested had been imposed. Accordingly, I do not have comparable evidence before me to suggest the recommended condition has proven to be an effective, appropriate and acceptable means of mitigating the medium to long term risk of a leak.
19. The EA accepted that they needed to defer to the Council on the enforceability of the condition. The Council confirmed at the hearing that it did not consider the condition to be enforceable in the long term, as knowledge, priorities and personnel could change over time. This is a reasonable concern as the need to monitor the facility will endure beyond the tenure of existing staff and well into the future. The Council may also need to monitor the input of third parties such as Fairbanks Environmental Ltd. However, long term conditions are imposed on other forms of development, such as that relating to waste and minerals. Nevertheless, it is unclear how the Council would, in practice, be able to detect a breach of condition and have it remedied. Therefore, the extent to which the suggested condition can be properly and reasonably enforced is a matter of considerable doubt.
20. Furthermore, I share the views of AW that a greater level of upfront detail is required regarding risk, management, monitoring and decommissioning⁵, such as standard operational procedures, maintenance of the tanks and training of staff. This is because adequate monitoring and management is an important component of determining the acceptability of fuel tanks at the appeal site.

⁵ AW refer to the need for the upfront submission of a Pollution Prevention Plan and a Hydrological Risk Assessment/Remedial Options Appraisal as part of the submissions

21. It would be in the interests of the appellant to properly monitor and manage the fuel tanks as a leak could have serious and expensive consequences for the business. Euro Garages is an experienced operator which appears to undertake its responsibilities diligently. Nevertheless, it cannot be guaranteed that the site would always be operated to the same level of conscientiousness. Similarly, the long-term management and monitoring may not be a problem in the future if vehicles become electrically powered and the tanks became superfluous. However, it would be imprudent to rely on this instead of a proper scheme of long-term management and monitoring.
22. In summary, the implications of a leak would be very serious with the consequences being of a high magnitude to the public water supply were it to occur. However, there was broad agreement amongst the experts present at the hearing that the probability of a leak could be reduced to an acceptable extent through a tertiary containment system along the lines outlined. I share this view. However, the experts disagree on whether the information submitted demonstrates the installation would be adequately managed and monitored to maintain the low probability of a leak over the life term of the development. On this point, I am not satisfied for the reasons given. In considering the risk, I have attached some weight to the fact that the proposal is not essential infrastructure required to be sited at the appeal site and it is unusual for AW to object to a planning application. In the circumstances, it is sensible to take a precautionary approach.
23. It may be that a planning obligation, which can set out more detail, would be a more appropriate mechanism to deal with monitoring and management, but such an obligation is not before me.
24. Thus, it has not been adequately demonstrated that the proposal would not present a significant long-term risk of contamination to the public water supply. Consequently, the proposal would be at odds with Policy EN4 of the DPD and Policy 1 of the JCS, which states that groundwater sources will be protected, and development will only be permitted where there would not be significant adverse impacts to human health and the natural environment. Such an approach is consistent with Paragraphs 170 and 180 of the Framework.

Other Matters

25. The appellant has suggested that the development plan is 'silent' on the matter of roadside services and therefore the tilted balance in Paragraph 11d) of the Framework applies. When considering the term 'silent' it is necessary to assess whether the development plan contains a policy or body of policies relevant to the proposal under consideration and whether these are sufficient to enable the acceptability of the proposal to be judged. 'Sufficiency' for that purpose does not require an allocation or specific policy as general development management policies may suffice.
26. In this instance there is Policy GC2 of the DPD, which guides the location of development. There are other policies within the development plan that address the impacts of a proposal, such as GC4 and EN2 of the DPD, which relate to design and the landscape. As such, the development plan is not silent as there is a sufficient body of policies in place to enable a determination against the development plan to be made. Consequently, Paragraph 11 of the Framework is not engaged for the reason advanced by the appellant.

27. The appeal scheme would deliver several social and economic benefits as it would provide around eighty jobs as well as support to the construction industry and a local facility for residents. The job creation would, in a modest way, assist in achieving the employment target in Policy 5 of the JCS of 27,000 additional jobs before 2026. The support to the construction industry would be short lived but not insignificant. There are already other similar facilities nearby so the additional provision of two further restaurants, a shop and petrol station would not be a notable benefit for the local community save for increasing choice. The proposal would make use of vacant and underused land, but this would be a more significant benefit if the appeal site were located within a settlement boundary, where the principle of development is supported. The site is, after all, predominantly a greenfield site in the countryside.
28. The proposal would provide roadside facilities for Heavy Goods Vehicles (HGV) parking. Paragraph 107 of the Framework states that decisions should recognise the importance of such facilities taking into account any local shortages. Substantive evidence has not been provided to demonstrate there is a local shortage for overnight lorry parking facilities. Nevertheless, the comments from Norwich City Council are relevant as it is suggested that there is a local shortage, although it is unclear what this conclusion is based on. In the absence of clear evidence on this point, the provision of HGV parking is a point of moderate weight in favour of the proposal.
29. The appeal scheme would provide general roadside facilities that would aid the safety, welfare and comfort of motorists by providing somewhere on the eastern side of Norwich for them to safely stop, rest and refuel. Circular 02/2013⁶ recommends that the distance between services on trunk roads should be equivalent to 30-minute driving time. There are comprehensive 'on line'⁷ services at Thickthorn that include parking, a petrol station, hotel and restaurant. Further services are available within a 30-minute driving time at Brundall (petrol station, restaurant and parking). There are also facilities within the Broadland Business Park (restaurant/public house, coffee shops and a Sainsburys Supermarket with petrol station), which is located in-between.
30. The availability of other services nearby diminish the benefit to motorists offered by the appeal scheme. However, the facilities at the Broadlands Business Park are off line as they are not visible to motorists on the A47. The Brundall services are unlikely to be particularly useful to motorists that are not heading east of Norwich. Moreover, the Thickthorn services may not appeal to those using the NDR. Alternatively, the appeal site is well placed to serve motorists using all three of the routes that converge on the Postwick Interchange and this would aid their welfare.
31. The benefits, in combination, may suggest the application should be determined other than in accordance with Policy GC2, particularly as it would be difficult to identify on line services within a settlement boundary, as demonstrated by the appellant's sequential assessment, or at a strategically better location. However, the benefits would not outweigh the totality of harm I have identified, as the long-term risk to the public water supply is a significant and unresolved matter.

⁶ The Strategic Road network and the Delivery of Sustainable Development – Department for Transport 2013

⁷ On-line facilities are close to, and visible from, the route they serve with convenient access

32. The appeal site is located in close proximity to the Broads National Park. The National Park Authority have indicated that the proposal would not have an adverse impact on the landscape, but it is unclear upon what basis this conclusion was reached as the application was unsupported by a Landscape and Visual Impact Assessment or some other similar study. I would need to see further evidence before I was satisfied that the proposal would not harm the wider landscape, including that of the National Park. However, given my overall conclusion it has not proven necessary to consider this point further.
33. Similarly, various concerns have been raised by interested parties including reservations regarding the impact on highway safety and air quality, which I have noted. However, given my findings above it has not been necessary for me to address these matters either, as the appeal has failed.

Conclusion

34. The proposed development would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR

APPEARANCES

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Postwick with Witton Parish Council
Postwick with Witton Parish Council

Environment Agency
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DOCUMENTS SUBMITTED AT THE HEARING

Doc 1 – Background document set out the context for the Postwick WTW
Doc 2 – Extract from the Broadland Policies Map
Doc 3 – Decision notice & Landscape Framework Plan relating to application 20081773