



Appeal Decision

Site visit made on 2 December 2019

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

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

Decision date: 8th January 2020

Appeal Ref: APP/E9505/W/19/3226955

Watergate, Riverside, Beccles Road, St Olaves, Norfolk

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Grant Hardy against the decision of the Broads Authority.
 - The application Ref BA/2018/0303/FUL, dated 20 July 2018, was refused by notice dated 20 December 2018.
 - The development proposed is a proposed dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted a revised Flood Risk Assessment (FRA);¹ a Flood Warning and Evacuation Plan;² and an Arboricultural Impact Assessment³ as part of his Statement of Case (Soc) and has asked that I consider these documents as part of this appeal. The documents provide additional information regarding flooding and the impact on a tree as part of the overall layout and design. The updated reports dealing with flooding have been seen and commented upon by the Local Planning Authority (LPA) and the Environment Agency (EA). The documents do not change the scheme and on the basis of the 'Wheatcroft Principles'⁴ I find that the acceptance of this further information would be appropriate and would not deprive anyone who should have been consulted of the opportunity of such consultation. As such, I will base my decision upon it.
3. It is noted that the Reasons for Refusal in the Council's Decision Notice cited the Broads Authority Core Strategy 2007 saved Policies CS1, CS18, CS20, CS24; and the Broads Authority Development Management Policies 2011 saved Policies DP2, DP4, DP5, DP22, DP28, and DP29. During the appeal process, the Broads Authority Local Plan 2019 (LP) was adopted by the LPA on 17 May 2019, superseding the policies of the Core Strategy and the Development Management Policies. The LPA has supplied copies of the relevant policies of the LP against which this decision is to be assessed and has commented that this change in policy does not change any of the elements of the reasons for refusal. The appellant has also had the opportunity to comment upon the adopted LP. I have therefore made my decision on this basis and have only referred to the adopted policies of the LP in this decision.

¹ By Evans Rivers and Coastal, Ref: 2125/RE/07-18/01 Revision A, Dated February 2019

² By Evans Rivers and Coastal, Ref: 2125/RE/07-18/02, Dated February 2019

³ By A.T. Coombes Associates Ltd, Dated 3 April 2019

⁴ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

Main Issues

4. The main issues are:

- Whether the site would be suitable for residential development, having regard to its risk from flooding;
- Whether the development would preserve the setting of the listed drainage wind pump (Grade II*), and the St. Olave's Bridge (Grade II);
- The effect of the proposed development upon the character and appearance of the area and the Broads, with particular regard to design and appearance;
- The effect upon living conditions of surrounding occupiers; with particular regard to outlook and privacy; and
- Whether the proposal would provide a suitable site for development, having regard to its location in conjunction with the Housing Strategy of the area.

Reasons

Suitability of the site with regards to flooding

5. The appeal site is a vacant parcel of land that is located on the eastern bank of the River Waveney. The site has a mooring cut within its frontage and a close boarded timber fence to the side and rear boundaries with a Public Right of Way (PROW) running behind the rear boundary fence. To the rear of the site, on the opposite side of the PROW, is a flood defence wall, followed by an unmade track which leads to a storage shed where it is proposed to utilise this area for vehicle parking for the proposed dwelling.
6. The appeal site is entirely located within Flood Zone 3b, where this classification means that the site is within the 'functional floodplain' during a flood event. I note that the FRA which supports the scheme casts doubt upon this classification as there is the ability to place a caravan on the site. However, the caravan is not currently present and I am not convinced that on the basis of the information provided, that the site (or even a small section which replicates the footprint of a caravan) should be considered to be within a Flood Zone 3a as would an existing permanent dwelling in a similar situation.
7. I acknowledge reference to the site having a Certificate of Lawful Use or Development (CLUD)⁵. This is for the use of land for the stationing of a caravan only as an ancillary part of the use of the land for the mooring of vessels. The CLUD is utilised by the appellant as a comparison to a residential use where (in the appellant's view) the proposed dwelling would also provide accommodation similarly to a caravan sited on the land. An argument is put forward that in the case of the caravan, this use would be lower in height than the proposed dwelling (which is to be located on stilts) and would be at greater risk of being flooded. The consideration of a CLUD only seeks to understand whether a use or development is liable to enforcement action, it does not mean that the use is acceptable in planning terms against a consideration of planning policy. In other words, if planning permission was applied for the caravan on a permanent basis as a residential use, the presence of a CLUD would not necessarily mean that the planning application would be granted. Having

⁵ Council Ref: BA/2014/0257/CLUED

regard to the terms in which the CLUD was granted, I do not believe that it provides a justification for a permanent dwelling on the appeal site. As such I afford the CLUD little weight in this decision.

8. I also note reference to two planning applications⁶ where the LPA has permitted the development of a replacement dwelling and where the appellant seeks that these cases are utilised as precedents for the proposed scheme. Having reviewed the officer reports and FRA provided with regards to these cases, I note that in both cases the permanent established residential use involved an existing dwelling which prevented the floodplain from functioning. According to the EA, both of the dwellings were considered therefore to be Flood Zone 3a⁷ in accordance with current policy and guidance.
9. In both cases, the schemes resulted in a betterment to the operation of the land during a flood event which was given weight in the determination of the applications. Both schemes appear to have involved permanent buildings and permanent residential uses. They are not therefore comparable with the circumstances of this appeal. I therefore attach little weight to these cases.
10. The submitted FRA undertakes an assessment of the risks to life as a result of modelled flood events in accordance with relevant policy and guidance. It is noted that the FRA states that the majority of flooding which could cause risk to human life is tidal flooding from the river itself. Other sources of flooding, such as ground water flooding and surface water flooding from artificial sources, are seen to be at a lower risk. The FRA also states that in some instances during climate change tidal events that, although there would be safe refuge (however not a dry refuge) to occupants of the proposed dwelling from a flood event, that there may be difficulty leaving/accessing the site. In this case, reliance is placed on the emergency services, personal protection and evacuation procedures and registration with the EA's Flood Warnings Direct.
11. When assessing sites within areas of flood risk, Policies SP2 and DM5 of the LP as well as the Framework apply a sequential approach. It appears that the FRA only assesses the sequential approach within the appeal site itself. It does not consider other sites in the local area which are less at risk of flooding. The LPA in their SoC state that there are other more sequentially preferable sites that are within the main cluster of buildings forming the settlement of St. Olaves, approximately 250 metres away. These sites would not be within Flood Zone 2 or 3 and therefore would be more sequentially preferable than the appeal site for the development of a dwelling. Based on the information provided, the appellant has not undertaken a sequential test and agree with the LPA that other sites within St. Olaves are available and sequentially preferable. As such the proposal would not pass the sequential test referred to at paragraphs 157 and 158 of the Framework.
12. It is noted in the Framework that an 'exception test' may be required to be undertaken, dependent upon the Flood Risk Vulnerability Classification as provided by Tables 2 and 3 of the National Planning Practice Guidance (NPPG).⁸ A building that is used as a residential dwelling is categorised as a 'More Vulnerable' use. According to Table 3 of the NPPG development of more

⁶ LPA Ref No: BA/2018/0042/FUL & BA/2018/0253/FUL

⁷ Letter from Environment Agency to the Planning Inspectorate, Dated 5 June 2019, Ref:AAE/2018/123199/01-L02

⁸ Paragraph: 067 Reference ID: 7-067-20140306, Revision date: 06 03 2014

vulnerable uses should not be permitted in Zone 3a. This weighs further against the acceptability of the proposal.

13. Whilst there is no need to apply the Exception Test in this case, even if it was applied, the proposed site would not be suitable for permanent residential accommodation. The development would not provide wider sustainability benefits to the community that outweigh the flood risk and, based on the information submitted, there are concerns as to whether the development would be safe for its lifetime taking account of the vulnerability of its proposed users and that safe egress/exit from the site is restrictive.
14. Additionally, the proposed scheme would be reliant on emergency services for safe evacuation which not only results in increased risk for future occupiers, particularly if they have mobility impairments, but to the safety of the emergency services themselves and the additional resources needed. I acknowledge that a flood warning evacuation plan has been undertaken which recommends a family flooding evacuation plan is made by future occupants. However, this does not alleviate the exposure of the occupants to real flood risk, the lack of ability to escape in some instances as well as placing undue pressure on emergency services during a flood event.
15. Whilst I acknowledge that there are historic permanent residential properties adjacent and opposite the appeal site that have similar issues with flood risk and ability to evacuate, this does not provide adequate justification to place further lives at risk from flooding as a result.
16. In conclusion, the proposal would not be a suitable site for residential development as a result of risks due to flooding. The proposed development would therefore be contrary to LP policies DM5 (which sets criteria in order to demonstrate acceptability of development within the Flood Zones) and SP2 (which seeks that all new development be located to minimise flood risk). It would also be contrary to Chapter 14 of the Framework and the NPPG (which prescribe tests for developments within the Flood Zone).

Listed Building considerations

17. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 prescribes a duty upon a decision maker to have special regard to the desirability of preserving the significance of a listed building or its setting.
18. The appellant's SoC has a small section on heritage, but is predominantly focussed upon the setting of the wind pump located on the bank of the river, 80 metres north of the appeal site. Whilst stating that an assessment of setting in accordance with the Historic England guidance has been undertaken, no evidence of this is presented within the appeal documents. Such statements of significance for historic assets should seek to understand the heritage values which derive from tangible and intangible elements, associations and relationships that make up the significance of the listing, including their setting. The Planning Statement does not undertake this assessment of significance or setting and hence is limited in aiding understanding of significance, or harm caused to this significance as a result of development within the setting of the listed structures. Nevertheless, having regard to all the evidence before me, I am satisfied that I have sufficient information to assess the appeal proposals.

19. I agree with the LPA that the heritage assets most affected by the development would be the wind pump (Grade II*) which is located to the north of the appeal site and St. Olave's Bridge (Grade II) to the south of the appeal site. The wind pump dates from 1910, with restorations undertaken in the late twentieth Century. It takes the form of a trestle type wind pump with four sails and lies on the east bank. Whilst the wind pump itself has heritage values which contribute to its significance, its setting is predominantly related to how it is seen and experienced within the riverside environment which also has a historic association. Despite mid-late twentieth century development along both sides of the river changing the setting, these are relatively similar in design and are low scale and allow the wind pump to dominate the character and appearance of the area, particularly when viewed from the PROW, the nearby St. Olave's Bridge, and from the river itself. As such, the surrounding riverside environment which includes the built development surrounding is part of the setting which contributes to the significance of the wind pump.
20. With regards to the St. Olave's Bridge, this dates from 1847 where evidence suggests that the site is a medieval ferry crossing and a location where other historic bridges were located prior to the current bridge. The setting of the bridge is also contributory to its significance within the riverside environment contributing to the bridge's location, identity and function as a river crossing. Whilst components of this setting have been altered due to twentieth century development, the scale is relatively low and allows views across to the wind pump which maintains this relationship between the historic structures which have a strong association with the river and riverside environment.
21. The development of the appeal site would introduce a form, design and scale unlike anything surrounding. The building would be located on what appears to be a smaller plot in terms of its overall size. It would sit on stilts with forward projecting gable ends which would make the building appear much taller and more cramped than the development adjoining. The proposal would not blend in seamlessly with the riverside environment. On the contrary, it would compete with and distract from the nearby listed buildings, particularly the wind pump and views from and towards the St. Olave's Bridge. Whilst it is appreciated that dark cladding, roof tiles and window frames are to be utilised in an attempt to make the design inconspicuous, in my view this would have the opposite effect in that it would make the building stand out, bearing in mind how different the design would be in terms of form, quality of materials, colour, layout and scale compared to the riverside development surrounding.
22. I conclude that the proposed development of the appeal site would cause harm to the significance of St. Olave's Bridge and the wind pump via development within their settings. The proposal would therefore fail to preserve the settings of the listed buildings.
23. I conclude that the proposed scheme would be contrary to LP Policy SP5 of (which seeks that the historic environment of the Broads will be protected and enhanced and that key buildings, structures and features which contribute to the Broads' character and distinctiveness will be protected from inappropriate development); LP Policy DM11 (which seeks that all development will be expected to protect, preserve, or enhance the significance and setting of historic, cultural and architectural heritage assets and elements of the wider historic environment that give the Broads its distinctive character) and LP

Policy DM20 (which seeks that development in fringe areas conserve and where possible enhance visually sensitive skylines, significant views to landmark features such as drainage mills).

24. Although serious, the harm to the heritage asset in this case would be 'less than substantial,' within the meaning of the term in paragraph 196 of the National Planning Policy Framework (the Framework). Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
25. The public benefits of the scheme were outlined in the appellant's SoC which states that the development would deliver an additional dwelling which would be deliverable and developable, which would make a modest contribution to meeting housing need and the development of small sites. The dwelling would also support the limited facilities of the village and those surrounding, as well as result in short term employment opportunities in the construction of the dwelling, and the socio-economic contribution to local expenditure from future occupiers. These factors weigh moderately in favour of the development.
26. Overall, I find that the public benefits arising from the proposed development would not outweigh the harm I have identified and to which I accord considerable importance and weight. The proposals would be contrary to the Framework, as it relates to the historic environment.

Landscape character

27. Paragraph 172 of the Framework states that the Broads have the highest status of protection with regard to conserving and enhancing landscape and scenic beauty. In line with these aims, the LPA has adopted Policy SP7 and DM16 of the LP which seek to ensure that the location or intensity of the use is appropriate to the character and appearance of the Broads. The policy also seeks that proposals are informed by landscape assessments which conserve and enhance landscape features. It is also noted that Policy DM50 of the LP provides criteria for the principle of development of leisure plots and mooring plots and seeks to restrict structures having regard to the existing character of the area.
28. The site is located within Landscape Character Area (LCA) 9 'St Olave's to Burgh Castle,' and also borders LCA 18 'Haddiscoe Island to the west of the Waveney.' Whilst there are negative elements of the site including the unkept nature and close timber boarded fence to the side and rear of the property, the site does have positive elements of this LCA. These include the well vegetated backdrop to the site; a willow tree to the front of the site; and the undeveloped nature of the site which adds to the spacious character and spaces in and around the buildings which comprise commercial and residential based uses. In this location there is also an inherent association and inter-connectivity with the St. Olave's Bridge and river based structures such as the wind pump.
29. The existing buildings along this stretch of the river are low scale, the majority of which range between one and one and a half stories and are set within plots with spaces around dwellings with setbacks allowing views of well vegetated farmland behind. These gaps and character are also experienced from a more

elevated position from the St. Olave's Bridge. Materials are predominantly timber and metal cladding with tiled roofs and designs tend to be functional and simple in appearance.

30. The proposed development would introduce a form and appearance unlike anything surrounding. The use of stilts would give an awkward appearance to the dwelling that would make it taller than buildings surrounding. This would restrict views towards the well vegetated aspect behind. Due to the restrictive size of the plot, the building would also appear cramped given that the surrounding dwellings have a more spacious quality in their setbacks. The colouring and quality of the proposed materials utilising cement products for walls and roofs of mock products have a synthetic appearance when seen against the more traditional and natural products such as timber and clay tiles. I appreciate the appellant's comments that they are willing to consider changes to the materials and landscaping to improve the appearance which includes the treatment and retention of the Willow Tree. However, this does not alter the inherent issues with the design of the scheme and its relationship to the plot and the greater landscape character as a whole.
31. I also note comments that the development of the site would improve its current unkept character, however a well-maintained appearance of the site with a better boundary treatment could also be obtained without the proposed dwelling.
32. In conclusion on this matter, it is clear that given the riverside location and the strong contribution that the appeal site has as part of the riverside landscape setting and to surrounding buildings, the proposed dwelling would cause a discordant and significant effect to the landscape character of the area.
33. The scheme would therefore be contrary to LP Policies SP7 and DM16 (where development should seek to ensure that the location or intensity of the use is appropriate to the character and appearance of the Broads and that proposals are informed by landscape assessments which conserve and enhance landscape features); LP Policy DM20 (which seeks that development in fringe areas conserve and where possible enhance visually sensitive skylines, significant views to landmark features such as drainage mills; LP Policy DM43 (which sets a number of design principles to ensure development integrates effectively with its surroundings and reinforces local distinctiveness); and Policy DM50 of the LP (which seeks to restrict the development of leisure plots and mooring plots having regard to the existing character of the area).

Living Conditions

34. The LPA is concerned about loss of outlook and privacy due to the height of the building and views from the front balcony and external staircase to the adjacent properties.
35. It is noted that there would be no windows to the sides of the proposed dwelling that would look directly into neighbouring properties. The front balcony would be inset into the gable and as such the side walls would restrict any views towards the neighbouring dwellings. There would however be the potential for overlooking from the landing on the external staircase to the rear of the building. However, this is not a balcony and it seems unlikely that future occupants would stand on the landing looking towards neighbouring properties for any significant period of time.

36. Whilst there would be a noticeable change to the appearance of the area from the adjacent occupiers as a result of the increased height and form, the front boundaries of the site which open out into the river would allow a sufficient open character. Although the proposed dwelling would change the appearance of the site, this would not be sufficient to cause adverse detriment as a result of loss of outlook. A sufficient setback is given to the rear of both adjoining properties which, whilst causing a difference to the existing, is unlikely to result in significant harm.
37. Taking the above into account, I conclude that the proposed scheme would not be harmful to living conditions as a result of loss of outlook and privacy. The scheme would therefore be in conformity with LP Policy DM21 (which seeks that all development provide occupiers/users with a satisfactory level of amenity).

Suitability of the site for development

38. The Council's Housing Strategy consists of LP Policies DM35 and SP15 which seeks that most new dwellings are located within defined settlement boundaries in accordance with a settlement hierarchy. The appeal site is not within a designated settlement boundary for delivering growth under these policies. However, I also note that flexibility is given within paragraph 78 of the Framework to locations of new housing in settlements where they are able to support the facilities of another settlement which is also a material consideration to this determination.
39. Paragraph 103 of the Framework also stresses the importance of provision of sustainable transport modes and travel choice. It also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
40. In assessing the suitability of the proposed scheme in terms of its accessibility and reliance on private vehicle, the appeal site is not 'isolated' considering relevant case law⁹ as the site is located within a small group of dwellings within this riverside environment. The direct area around the St. Olave's Bridge has a restaurant, public house, a railway station with an hourly service each way to Norwich, and employment uses. Whilst there is a bus stop along Beccles Road, it operates Monday to Saturday and has an average of hourly frequency in each direction to Great Yarmouth during the day. The nearest larger settlements capable of catering for the day-to-day needs of the appeal site are Belton, Thurlston and Bradwell which are between 3-5 miles away and the larger Great Yarmouth and Lowestoft that are approximately 7-8 miles away. There is no footpath to nearby villages, which are considerably out of walking distance and is not an ideal cycling environment as roads are typically narrow rural carriageways.
41. There is however a footway to the train station which gives some ability to use public transport, so that future occupants would not be entirely dependent upon private vehicle to access the services of nearby villages, which would not be such a long journey. Whilst the development would result in increased vehicular use in this particular location, the addition of one dwelling would not add significantly to the journeys which already occur from this location.

⁹ Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Development Limited [2017].

42. Therefore, taking these findings as a whole, I conclude that the location would not be unsuitable for the proposed development with regards to whether occupants of the proposed dwelling would have adequate access to services and facilities without undue reliance on private vehicle use. Consequently, there is no conflict with Policy DM35 and SP15 of the LP.

Other Matters

43. I note comments from interested parties with regards to concerns over the location of sewerage infrastructure and the disposal of sewerage. I have not been presented with any information which would suggest that this issue could not be dealt with via condition.

Conclusion

44. I have found in the appellant's favour with regards to the main issues that the site would be a suitable location for development from a purely accessibility perspective and that the scheme would not result in adverse detriment to living conditions of neighbouring residents in terms of loss of outlook and privacy. However, these factors, combined with the benefits of the development as outlined previously, are insufficient to outweigh the harm caused by other matters such as the risk from flooding, the impact towards landscape character as a result of design, and harm to the setting of heritage assets. The proposals would be contrary to the development plan when considered as a whole.
45. For the reasons given above, I conclude that the appeal be dismissed.

J Somers

INSPECTOR