
Appeal Decision

Site visit made on 27 January 2020

by S A Schinaia MSc EngD FGS

an Inspector appointed by the Secretary of State

Decision date: 12th May 2020

Appeal Ref: APP/F2605/W/19/3238845

Land adjacent to The Cottage, Fakenham Road, East Bilney, Beetley NR20 4HT

- 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 DH and AA Melton against the decision of Breckland District Council.
 - The application Ref 3PL/2019/0098/F, dated 28 January 2019, was refused by notice dated 4 September 2019.
 - The development proposed is construction of single-storey three bedroom dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. In the banner, I have adopted the address stated in the appeal form as it describes better the location of the appeal site.
3. Since the decision to refuse planning permission was made, the Council has adopted the Breckland Local Plan (November 2019) (BLP), superseding relevant policies within the Breckland Core Strategy and Development Control Policies (2009). The Council's decision notice has provided reference to new policies relevant to the appeal case, which superseded the policies of the previous development plan.
4. The new policies relevant to this appeal are ENV06, COM03, ENV05, ENV02 & ENV03, which superseded previous policies DC12, DC1, CP11 & CP10 respectively. Policy ENV06 states that development requiring the loss of protected trees or hedgerows will only be permitted where "it would allow for a substantially improved overall approach to the design and landscaping of the development that would outweigh the loss of any tree or hedgerow".
5. With the adoption of the new local plan, the Council issued a new five-year housing land supply and is able to demonstrate a deliverable five-year housing land supply of 6 years. In respect of the Government's Housing Delivery Test Measurement, the evidence indicates that Breckland has achieved 119% delivery.

Main Issues

6. The main issues are (i) the effect of the proposal on the character and appearance of the area, with regards to the relationship with a hedgerow on

the site and (ii) the effect of the development on biodiversity and on protected species and their habitats.

Reasons

Character and appearance of the area

7. The land of the appeal site is currently used as a grass paddock and garden land and is adjacent to countryside and woodland to its north and east and agricultural land to its west beyond Fakenham Road. The proposal involves the removal of a significant portion of hedgerow along the highway to achieve a suitable level of visibility from the access looking north on Fakenham Road. The mature hedgerow provides a positive landscape feature with views of the woodland and the countryside and its removal would be detrimental to the character and appearance of the rural character of the area.
8. A Hedgerow Evaluation Report (HER) has been submitted to inform the planning application on the result of a survey undertaken to evaluate whether the hedgerow to be removed qualifies as "important" and therefore legally protected under The Hedgerow Regulations 1997. According to the assessment, the hedgerow appears in maps predating 1850s, but "it is considered likely" that it is not classified as "important" due to the lack of sufficient woody species. The choice of the adverb "likely" may be important in this context as it indicates that the survey may be considered not comprehensive of the status and species composition of the hedgerow, which may undergo seasonal changes. Furthermore, the Council appraisal of the report has highlighted missing details on the number and identity of relevant species identified in the survey and has therefore suggested to categorise the hedgerow as "important".
9. Notwithstanding, the HER has highlighted the presence of an association of relevant species and the historic importance and presence of the hedgerow within the local landscape. Therefore, I am inclined to apply a presumption in favour of retaining such an important feature of the rural setting of the area. Furthermore, the development would not result in an "improved overall approach to the design and landscaping... that would outweigh the loss of any tree or hedgerow", as required by Policy ENV06. I also consider that the planting of a new hedgerow would not be an appropriate mitigation measure as maintained by the appellant, because it would take some time for it to grow to a maturity stage similar to existing one and the HER does not include timescales for when the hedgerow could reach its mature stage.
10. Contrary to the appellant's comments, I found that Policy HOU05 does not support the proposal as it does not satisfy all of the included criteria. In fact, the proposed development does harm the character and distinctiveness of the rural scene by removing a natural feature of the landscape as discussed above.
11. For the above reasons, I conclude that the proposal, due to the need to remove a section of the hedgerow for highway safety, would be detrimental to the rural character of the area and therefore contrary to Policies COM03 on the protection of amenity, ENV06 on the protection of trees and hedgerows and ENV05 on the protection and enhancement of the landscape of the BLP.

Biodiversity and protected species

12. I acknowledge the difficulties among best efforts by the main parties to demonstrate that the proposal would not have an unacceptable effect on

biodiversity or on any protected species and their habitats. However, the evidence submitted by the appellant in the Preliminary Ecological Appraisal (PEA), does not provide an appropriate and satisfactory ecological assessment as required by Policy ENV02 of the BLP on biodiversity protection and enhancement, because of missing details regarding the risk assessment relating to great crested newts.

13. Furthermore, the Council's ecological and biodiversity appraisal has pointed out that the PEA report states that the more valuable habitats in the site would be protected by the retention of hedgerow, trees and woodland. They also noticed that the PEA does not consider the removal of the hedgerow and pointed out that "this hedgerow is considered of ecological value and provides connectivity around the site to suitable habitats for great crested newts according to the PEA report and should be retained in accordance with the PEA report".
14. Therefore, I conclude that the proposed development would be contrary to Policy ENV02 of the BLP and to section 15 of the Framework on conserving and enhancing the natural environment. The removal of the mature hedgerow would have a negative effect on ecological functioning of the local wildlife, the proposal is contrary to Policies ENV05 and ENV06 of the BLP and to paragraph 175 (a) of the Framework.

Other Considerations

15. The appellant has maintained that the Council cannot demonstrate a five year housing land supply. However, as mentioned above, after the appeal application, with the adoption of the new local plan, the Council issued a new five-year housing land supply. I am satisfied on the evidence before me, that the Council is able to demonstrate a deliverable five-year housing land supply of 6 years. For the above reasons, paragraph 11 (d) of the Framework is not engaged.
16. I acknowledge the benefits that would arise from the development but, owing to the amount of development proposed, the social and economic benefits of the proposal in terms of housing supply, building contracts and support to the local community would be minimal. Furthermore, there would not be environmental benefits, but harm caused to biodiversity and protected species, the character and appearance of the area and from the likely use of unsustainable modes of transport.
17. In conclusion, and even if I had found that the local planning authority could not demonstrate a deliverable five year supply of housing sites, the identified adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Furthermore, I have found conflict with the development plan for the area.

Conclusion

18. For the above reasons, I conclude that the appeal should be dismissed.

S A Schinaia

INSPECTOR