The Planning Inspectorate

Appeal Decision

Site visit made on 8 June 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th June 2020

Appeal Ref: APP/K2610/W/20/3245147
Riverdale, 20 Strumpshaw Road, Brundall, Norwich NR13 5PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr C. Biss (SSIB Holdings) against the decision of Broadland District Council.
- The application Ref 20190894, dated 29 May 2019, was refused by notice dated 26 July 2019.
- The development proposed is development of land with one dwelling.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with all matters reserved except for access. I have had regard to the site location and tree location plans but have treated each element of the drawings as indicative, apart from the location of the proposed access, when considering the likely impact of the proposal on the matters set out in the main issues below.

3. The proposed development was refused for four reasons. The Council has advised that they no longer wish to defend the third reason for refusal in relation to the visibility from the proposed access. Therefore, I have confined my assessment of the appeal scheme to the remaining three reasons for refusal.

Main Issues

4. The main issues are: -

    - the effect of the proposed development on the character and appearance of the area;

    - the effect of the proposed development on the ecology and biodiversity of the site and its surroundings, including the Broadland Ramsar, Broads Special Protection Area, Broads Special Area of Conservation and Yare Broads and Marshes SSSI; and

    - whether the proposal would be a suitable location for housing, having regard to the policies of the development plan.

Reasons

Character and appearance

5. The appeal site is situated to the rear of a number of properties on the southern side of Strumpshaw Road, but separated from them by a public footpath that leads from the road toward the railway station. There are numerous examples of development set back in the form of cul-de-sacs but, beyond the junction of Brecklands Road, the layout of properties to the southern side of the road changes notably to properties with a frontage to Strumpshaw Road. Mature tree and hedge planting form the backdrop of some gardens, particularly those to the east of the site, and to the site itself where it meets the railway embankment. This provides a transition to the open countryside of the Broads that lies beyond. The part of Strumpshaw Road beyond Brecklands Road therefore has a spacious verdant character with a clear and distinct pattern to development, absent of backland development. These features therefore make a positive contribution to the character and appearance of the area.

6. Although the site is occupied by some built development, this is small in scale and appears to be associated with its current use. The location of the proposed dwelling, behind the street frontage, would therefore appear as a discordant insertion that would jar with the coherent pattern of development described above and reduce the spacious and open backdrop to the dwellings within Strumpshaw Road. The proposed development would therefore have a significantly harmful impact on the character of the area.

7. The presence of mature planting around the site provides some enclosure to the site in visual terms. However, given the presence of the public footpath, the existing dwellings to the north and planting alongside the footpath, within the site and wider landholding, would be unlikely to screen the proposal from view. Although additional planting could be implemented as part of the proposal, and the scale and appearance of the proposal are reserved for future consideration, it is unlikely that planting would have a meaningful effect, in softening the effect of the presence of built development within the site, for some time. Nevertheless, landscaping should not be relied upon to hide development from view that would otherwise be visually harmful, as it could fail to establish. The proposal would therefore introduce development that would have a significantly detrimental effect on the appearance of the area.

8. For the reasons outlined above, I conclude that the proposed development would have a significantly harmful effect on the character and appearance of the area. Hence, the proposal would not accord with Policy EN2 of the Broadland District Council Development Management DPD 2015 (Adopted 3 August 2015) (DMDPD), which states that in order to protect the character of the area, development proposals should consider any impact upon as well as seek to protect and enhance where appropriate, green spaces including natural and semi-natural features which make a significant contribution towards the defining character of an area.

Ecology and Biodiversity

9. The appeal site, and the appellants' wider landholding, both incorporate mown grass and a large pond with a bridge and jetty. To a certain extent, they could therefore be considered to have some similarities with the more managed

environments of nearby residential gardens. I also understand that they have been used in recent times for pleasure purposes, including the keeping of horses. Nonetheless, the pond and the mature planting to the perimeter of the site and within its surroundings would be in close proximity of the proposal.

10. The appeal site is also a short distance from several nationally and internationally protected sites[1] to the south, designated as a result of their importance for nature conservation due to the presence of a myriad of habitats. Whilst the boundary of the appeal site is marked by a railway embankment of some height and this provides some separation, the vegetation within the site is contiguous with the vegetation either side of the railway embankment. I understand that the land immediately south of the railway is also undeveloped. Accordingly, there is potential for the site to be connected to the protected sites.

11. No ecological appraisal of the site and its surroundings has been undertaken, including the potential effect of the proposal on the protected sites. As an alternative, the appellants rely on the Supporting Statement to the planning application, their Statement of Case and other correspondence. The evidence before me does not satisfactorily demonstrate that the pond and planting would not be suitable habitat for protected species, including for foraging, commuting or nesting, or that the proposal would not have a harmful effect on the protected sites to the south. The proposed development could therefore also have an unacceptably harmful effect upon these as habitat.

12. I have had regard to Circular 06/2005[2] (the Circular), insofar as it is relevant to the appeal before me, and this states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. Although the Circular states that surveys should only be required where there is a reasonable likelihood of species being present, it advises that surveys should be carried out before planning permission is granted. Consequently, it advises that surveys should only be required by condition in exceptional circumstances. This includes where a survey has recently been carried out and final checks are required before construction begins to establish whether species have recently colonised a site. In the case of the appeal, although proposed planting could be secured by planning condition and would make a positive contribution to the biodiversity of the site, I am not satisfied that such exceptional circumstances exist to impose a planning condition to assess the ecological impact of the proposal at a later date.

13. I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on Strategic Protection Areas. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposed development.

14. However, having regard to all of the above and the particular circumstances of this case, I must conclude that there is insufficient evidence before me that the

[1] The Broadland Ramsar, The Broads Special Protection Area, The Broads Special Area of Conservation and Yare Broads and Marshes SSSI.
[2] 'Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System', which is still an active document.

proposed development would not have a harmful effect on the ecology and biodiversity of the site and its surroundings, including the protected sites to the south. Hence, the proposal would not accord with Policy EN1 of the DMDPD which, amongst other things, requires that development proposals protect and enhance the biodiversity of the district and avoid fragmentation of habitats.

15. The proposals would therefore also offend the requirements of the Circular; and be in conflict with paragraph 170 of the Framework. In particular, the latter requires that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

16. Therefore, in light of the above, unless there is another material planning consideration which suggests that permission should be granted, it is not necessary for me carry out the Appropriate Assessment.

Location of Development

17. The appeal site is situated between the defined settlement limit of Brundall and the edge of the district administrative area, as shown in the Broadland District Council Site Allocations DPD Policies Map (2016). It is therefore defined as countryside.

18. Policy 14 of the Joint Core Strategy for Broadland, Norwich and South Norfolk (Adopted March 2011, amendments adopted January 2014) (JCS) sets out the settlement hierarchy for the three authorities and suggests that fifty dwellings will be allocated in Brundall. However, Policy 9 of the JCS suggests that the delivery of a minimum of 2000 dwellings across smaller sites in Broadland will be made in accordance with the settlement hierarchy and local environmental and servicing considerations. Moreover, the supporting text to Policy 14 states that additional development in Brundall must ensure that there is no detrimental impact on the protected sites in the Broads, it would respect the form and character of the settlement and bring sustainability benefits for the existing population, as well as providing for new residents. I will address whether the proposal amounts to sustainable development in the Planning Balance.

19. Policy GC2 of the DMDPD goes further and states that new development will be accommodated within the settlement limits defined on the policies map. Outside of these limits, 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.

20. I have not been referred to any other relevant policies of the plan that are supportive of development in such locations and I have already found harm in relation to local environmental considerations in respect of the character and appearance of the area and the ecology and biodiversity of the site and its surroundings. In light of this, despite the physical proximity of the site to the settlement, I conclude that the appeal site would not be a suitable location for housing, having regard the policies of the development plan. Hence the proposal would not accord with Policy GC2 of the DMDPD and Policies 9 and 14 of the JCS.

Other Matters

21. Third parties have identified a land ownership issue regarding the appeal site that could have a potential impact on the proposed development. Although I have given due consideration to these matters, this is a legal matter which cannot be dealt with in this appeal and it is for the relevant parties to resolve.

Planning Balance

22. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.

23. The development plan for the area comprises the JCS, DMDPD and the Brundall Neighbourhood Plan (NP). I have not been referred to any policies of the NP and note that the JCS and DMDPD both predate the Framework. However, the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework.

24. Policies EN1 and EN2 of the DMDPD are consistent with the Framework in respect of the requirement to protect and enhance sites of biodiversity and landscape value respectively, including the approach to mitigation. Nonetheless, whilst the Council did not find harm in respect of heritage, Policy EN2 refers to designated heritage assets so the policy should be assessed as a whole. Policy EN2 does not exceed the relevant statutory duties[3] or go further than the requirements of paragraph 192 of the Framework. Nonetheless, Policy EN2 fails to acknowledge the balancing exercises required by the Framework, so is out-of-date for the purposes of the Framework. Hence, I attach only moderate weight to the conflict of the proposal with this policy, which lessens the magnitude of that conflict.

25. In terms of Policy GC2 of the DMDPD, a settlement limits policy, in isolation of other considerations, would not be wholly aligned with the more flexible and balanced approach outlined in the Framework. However, the policy does not fundamentally undermine the continued relevance of locating development where it will enhance or maintain the vitality of rural communities. Accordingly, there is still a clear rationale for development boundaries in order to focus residential development within settlements supported by shops, services, facilities and employment opportunities. Similarly, Policies 9 and 14 of the JCS set out the spatial strategy for development in Broadland in accordance with a settlement hierarchy which also includes the wider Norwich Policy Area (NPA). This is also based on the provision of and accessibility to shops, services, facilities and employment. I have therefore regarded the underlying objectives of these policies, as being consistent with the Framework.

26. The Council has referred to their latest Housing Land Supply Assessment[4] (HLSA), which replaces that referred to by the appellant from the previous year. It is suggested that this demonstrates significantly in excess of five-years supply of deliverable housing land within Broadland. The 2019 Housing Delivery Test (HDT) results were published on 13 February 2020 and indicate that,

[3] Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
[4] Joint Core Strategy for Broadland, Norwich and South Norfolk Annual Monitoring Report 2018-19 (January 2020), Appendix A – Greater Norwich area Housing Land Supply Assessment 1st April 2019.

together with Norwich and South Norfolk, the Council managed to deliver 140 per cent of the total number of homes required across the three authorities, within the previous three years. The HDT results indicate that, when applying paragraph 73 of the Framework, a 5 per cent buffer should be applied to demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against the Council's housing requirement. The latest evidence before me includes this buffer.

27. Other than pointing to the potential fragility of the Council's position, the appellant has not provided any substantive evidence to dispute this latest position. Nonetheless, I am mindful that the presence of a five-year supply and a buffer does not represent a ceiling on the delivery of housing. Moreover, the Framework supports the Government's objective to significantly boost the supply of homes and the Council has made a similar point in its HLSA. Furthermore, as a policy most important for determining the appeal is out-of-date, in this case Policy EN2 of the DMDPD, paragraph 11 of the Framework is engaged. This requires that permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (paragraph 11(d)(ii) of the Framework).

28. In the context of paragraphs 59 and 68 of the Framework and the content of the government white paper *Fixing our broken housing market*, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. Whilst there is no threshold for the assignment of weight to the quantity of proposed dwellings within the planning balance, the appeal before me would deliver one home, which would contribute to the overall housing mix and supply in Broadland and the wider NPA. However, given the scale of development proposed, I afford this benefit limited weight.

29. The appellants have advanced a case that the proposal would be a self-build project and there is support in paragraph 61 of the Framework, which requires that planning policies should reflect the needs of people wishing to commission or build their own homes. I have not however, been provided with any substantive evidence that local policies have not been applied to the development; or that no land is allocated or consented for self-build dwellings in the locality. In addition, I have also not been provided with any legal mechanism, such as a planning obligation, to guarantee that the dwelling would be a self-build project as promoted by the appellants. Consequently, whilst the appellants may be a self-builder, I only give very limited weight to such personal circumstances in this instance given the lack of substantive evidence to support the case.

30. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period and future occupiers would also contribute to the local economy through expenditure, which would carry moderate weight.

31. I also recognise that the proposal could be said to make more efficient use of the site. However, the Framework is clear that making efficient use of land should include taking into account the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive and healthy places.

32. The proposed development would not comply with development plan policy in respect of the harm to the character and appearance of the area, its location and the ecology and biodiversity of the site and its surroundings. Whilst one of the development plan policies most important for determining this appeal is out-of-date, the proposal would not amount to sustainable development under the terms of the Framework. Overall, the adverse impacts of the proposal are matters of significant weight against the grant of planning permission.

33. The adverse impacts identified would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This does not indicate the proposal should be determined other than in accordance with the development plan.

Conclusion

34. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR