
Appeal Decision

Site visit made on 4 August 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/V2635/W/20/3249875

Goosebec, Church walk, Burnham Market, Kings Lynn PE32 8DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Goosebec Developments LTD against King's Lynn and West Norfolk Borough Council.
 - The application Ref 19/01375/F, is dated 1 August 2019.
 - The development proposed is demolition of existing dwelling and erection of eight three bedroom dwellings and detached car barn.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing dwelling and erection of eight three bedroom dwellings and detached car barn is refused.

Procedural Matters

2. The appeal was submitted against the non-determination of the application. The Council's appeal statement assessed the proposal and outlined the reasons the proposal would have been refused had the appeal not been submitted. The Council's concerns relate to design and layout, and the impact of the proposal on a protected tree, biodiversity and the living conditions of the occupiers of a neighbouring property. I have had regard to these putative reasons for refusal in my consideration of the appeal.
3. Amended plans were submitted during the course of the planning application. The Council refers to the amendments in its appeal statement. I am satisfied that all parties have had the opportunity to see the amended plans and I have determined the appeal on this basis.
4. During the course of the appeal the appellant submitted an updated Ecology Report. The Council was given the opportunity to comment on this information. I am therefore satisfied that no party is prejudiced by my taking it into consideration.

Main Issues

5. The main issues are the effect of the proposed development on (i) the character and appearance of the area; (ii) a protected tree; (iii) biodiversity, with particular regard to Great Crested Newts; and (iv) the living conditions of the occupiers of a neighbouring property, Harpoon House, with regard to privacy and sunlight and daylight.

Reasons

Character and appearance

6. There is no dispute between the parties that the principle of residential development at the site is acceptable. The majority of the site is within the designated settlement boundary of Burnham Market which is identified as a key rural service centre under Policy CS02 of the King's Lynn and West Norfolk Borough Council Core Strategy 2011 (CS).
7. The appeal site comprises a substantial one and a half storey dwelling set within a large garden. There are residential dwellings located to the east, as well as on the opposite side of Church Walk to the south, with a doctor's surgery to the west, a tree belt and fields to the north. The site is served by a single access point onto Church Walk. The site's boundary with the road comprises mature trees and shrubs; a large sycamore tree on the south west of the site is protected by a Tree Preservation Order (TPO). A protected oak tree is also located close to the boundary on the adjacent site to the west.
8. The area surrounding the site is predominantly characterised by a strong linear pattern of development with dwellings fronting the street, each served by individual accesses. Although there are semi-detached and terrace properties on the opposite side of Church Walk, the properties to the east of the appeal site are detached. There is a mixture of types, sizes and design style, but plot widths and depths are generally consistent, as is the building line. The properties on the opposite side of the road are set back behind generous grass verges; this combined with the mature frontage trees and shrubbery at the appeal site and at the surgery to the west, give this part of the street a pleasing spacious and verdant appearance.
9. The appeal proposal would result in a row of semi-detached two, and two and a half storey dwellings, that would be set back into the site behind a further pair of dwellings and a stand-alone cart lodge style garage. The garage would serve four of the proposed dwellings, with four further parking spaces in front of the building. A 'T' shaped access road would serve the development, positioned centrally within the road frontage. Consequently, only one of the proposed dwellings would appear to front Church Walk, albeit without an individual access. This form of layout would be in marked contrast to the usual pattern of development along this part of the street.
10. I acknowledge that residential development at the site is acceptable in principle and that the site is capable of accommodating more than the single dwelling that currently occupies the site. I also acknowledge that the proposed development would provide adequate levels of parking, turning and amenity space for each dwelling. Furthermore, the appellant has attempted to terminate the end of the residential development on this side of the street in such a way as to provide visual interest, and to accentuate the importance of the landscaped green space on the neighbouring site to the west. However, despite this intention, plots 1 and 2, by virtue of their scale, semi-detached nature, orientation, absence of direct frontage onto Church Walk and with garden areas that run parallel rather than perpendicular to Church Walk, further highlight the uncharacteristic nature of the overall layout.
11. Whilst the slightly lower ground level at the site may allow for the heights of the proposed dwellings to be somewhat consistent with the neighbouring

- roofscape, the position of plots 3 to 8, set back within the site, would not sit comfortably within the street scene. The break from linear form would be harmful to the established character. I find that the proposal would result in an unsympathetic form of development that would detract from the more uniform and linear nature of its surroundings.
12. Despite evolving the scheme during the course of the planning application, and the proposed use of locally distinctive materials, including flint, the number of proposed dwellings, combined with their size, scale, massing and layout in relation to the site and the surrounding area, would cause them to appear inharmonious. The result would be dwellings which would not fully relate to, or integrate with, their context and as such would significantly harm the character and appearance of the area.
13. The appellant states that the layout, in terms of separation and arrangement is in line with the Council's guidance. However, I have not been provided with any such information and the Council have stated that they do not have specific guidance in this respect. Therefore, in the absence of such guidance, I am satisfied that a planning judgement should be made in relation to the context in which the proposed development would sit.
14. Accordingly, I conclude that the proposed development would have a harmful effect on the character and appearance of the surrounding area. As such, it would conflict with CS Policy CS08 and Policy DM15 of the Council's Site Allocations and Development Management Policies Plan 2016 (DM). Amongst other matters, and along with Paragraph 127 of the National Planning Policy Framework (the Framework), these policies seek to ensure that new development should respond to the context and character of places, be of high quality design and respond sensitively and sympathetically to the local setting.

Protected Tree

15. The Council is concerned with the effect of the proposed development on the protected Sycamore tree. This tree is identified as T12 in the appellant's updated tree report¹ (AIA) but is T2 in the original tree report and in the appellant's 'overshadowing analysis report'² (OAR). For clarity, I will refer to it as T12. It is an attractive mature specimen, which due to its height, and the spread and overall shape of its canopy, contributes appreciably towards its surroundings. This is reflected by its TPO status.
16. Plot 1 of the proposed development would encroach into the root protection area (RPA) of T12. The AIA concludes that this encroachment would amount to less than 5% of the RPA and that pre-emptive root pruning would need to be carried out to minimise the damage caused to roots, should they be present. The AIA refers to the appellant's OAR, indicating that a 'small reduction of the tree will increase light to an acceptable level for a residential dwelling'. However, no analysis of the effect of the encroachment into the RPA or such a reduction of the tree on the health or amenity value of the tree is provided.
17. Furthermore, the OAR advises that '...the following changes have been made to the model ... The height of T2 [the protected Sycamore, T12] had been reduced by 3m and the crown radius reduced by 1m'. Therefore, whilst the OAR concludes that the development could achieve adequate levels of daylight

¹ Arboricultural Impact Assessment - AT Coombes Associates Ltd. Dated 03 October 2019

² Contract Report - Goosebec, Burnham Market; Flow Analysis Ltd. Dated 1 October 2019

and sunlight, both internally and externally, for future occupiers of the proposed development, in relation to Plot 1 this relies on a more significant reduction in the height and spread of T12 than has been considered in the AIA.

18. The need to carry out such a significant reduction of the tree, combined with the impact of the encroachment of its RPA would substantially reduce the amenity value of the tree and potentially threaten its long-term health. In addition, and notwithstanding the reductions proposed, the position of Plot 1 in relation to T12 means that its canopy spread markedly overhangs the garden area of this dwelling. As a consequence, I find that the potential for overshadowing, safety and maintenance would be likely to lead to future pressure for the tree to be lopped, topped or felled. Any loss or work detrimental to the appearance of the tree would further harm the character and appearance of the area.
19. I conclude that the proposed development would be likely to have an unacceptable effect on the amenity value of the protected Sycamore tree, T12. As such, it would not comply in this regard with DM Policy DM15 and CS Policy CS12 which together and amongst other matters seek to protect and enhance the amenity of the wider environment and to avoid adverse impacts on biodiversity. It would also conflict with paragraphs 170, 175, and 180 of the Framework which require that development contributes to the natural and local environment, avoids significant harm to biodiversity, and is appropriate for its location taking into account the natural environment.

Biodiversity

20. The Council has raised concern that Great Crested Newts (GCN) have been found in a nearby site and that the Preliminary Ecological Appraisal Report, submitted with the planning application, provided insufficient information in order to fully determine the impact of the appeal scheme.
21. As previously mentioned, the appellant has submitted an updated Ecology Report³. This report states that a pond some 30 meters to the west of the appeal site has a confirmed medium population class of GCN. It further states that there is an abundance of suitable terrestrial foraging and refuge habitat within the appeal site and that a European Protected Species (EPS) mitigation licence will be required for development at the site to proceed. In addition, whilst no evidence of bat roosts were found in the existing dwelling, it is considered to have low bat roost potential. A bat roost was confirmed in a Poplar tree within the site.
22. The assessment concludes that potential impacts to designated nature conservation sites, valued habitats and protected/conservation concern species can be adequately mitigated and recommends measures to both maintain and enhance biodiversity. However, I note that the report is based on a development proposal for 5 dwellings and not on the appeal scheme before me. I accept the findings of the current ecological status of the site and consider that if a development of 5 dwellings would require an EPS mitigation licence, then it logically follows that the appeal scheme would also require such a licence from Natural England to avoid an offence under the Conservation of Habitats and Species Regulations 2017.

³ Ecology Report; Wildlife Frontier Ecology. Dated August 2020.

23. There is no requirement for a licence to be provided prior to grant of planning permission, but the decision maker must be assured that there would be a reasonable prospect of the licence being granted by Natural England.
24. Having regard to the three tests used to establish whether a licence may be issued, in the knowledge that the recommended mitigation and enhancement measures proposed are based on a different level of development at the site and therefore a different layout, I cannot be certain that a favourable conservation status would be maintained. As such I am not satisfied that there is a reasonable prospect of Natural England granting a licence.
25. Consequently, I conclude that it has not been sufficiently demonstrated that the proposal would not significantly harm biodiversity, with particular regard to GCN. The proposal would therefore be contrary to CS Policy CS12 which seeks to protect and enhance the biodiversity of the district. It would also be contrary to paragraph 175 of the Framework, which seeks to protect and enhance sites of biodiversity value, minimise impacts on and to provide net gains for biodiversity.

Living conditions

26. The proposed semi-detached dwellings in Plots 7 and 8 would be situated near to the site's boundary with the neighbouring property, Harpoon House. The eastern elevation of Plot 8's dwelling would face the rear garden area of this neighbour. Five windows are proposed in the eastern elevation, three being at first floor level. The plans indicate that these windows would serve two bathrooms and the third would serve as a secondary window to a bedroom, with the primary window facing the rear of the site.
27. Concern has been raised in relation to an unacceptable loss of privacy to the occupiers of Harpoon House due to overlooking from the proposed openings. The appellant has stated that all three of the windows at first floor level in the eastern elevation could be obscure glazed. I accept that obscurely glazing a bedroom window is not usually acceptable in terms of the effect on the living conditions of future occupiers. However, in this instance, it would be a secondary window serving that bedroom and, it being obscurely glazed, although not particularly appealing, would not result in unacceptable harm to the living conditions of future occupiers. Obscure glazing of these windows would protect the occupiers of Harpoon House from a detrimental loss of privacy. If I were to allow the appeal the obscure glazing could be secured by the imposition of a condition.
28. The Council considers that Plot 8 would cause some overshadowing to the rear of Harpoon House at certain times of the day. The appellant's OAR did not assess the impact of the proposed development on this neighbouring property. However, despite the height and scale of the Plot 8 dwelling, I consider that its separation distance from the boundary and the retention of the existing intervening mature hedge, combined with the orientation of the development in relation to the path of the sun, would not result in overshadowing to such a degree, or diminish the amount of sunlight or daylight reaching the neighbouring property, as to cause unacceptable harm to their living conditions.
29. I conclude that the proposal would not cause unacceptable harm to the living conditions of the occupiers of Harpoon House with regard to privacy, daylight

and sunlight. Thus, the proposal would not conflict in this respect with DM Policy DM15 which seeks, amongst other matters, to protect the amenity of neighbouring uses and their occupants.

Other Matters

30. CS Policy CS09 requires residential development to make an appropriate contribution to affordable housing. The Council has advised that it requires a financial contribution amounting to £84,000. The appellant has confirmed that the level of contribution required as part of the development would be acceptable and has agreed to enter into a legal agreement to secure this financial contribution. However, there is no planning obligation before me and so there is no mechanism to deliver the required contribution.
31. In this regard, Planning Practice Guidance is clear that a condition which limits the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases, and would require "exceptional circumstances" (Paragraph: 010 Reference ID: 21a-010-20190723). No such exceptional circumstances have been put to me in this case, and the use of a planning condition would therefore not be appropriate. Accordingly, the development would fail to make an appropriate contribution towards affordable housing provision.
32. The Council has not raised concerns in regard to the effect of the proposal on the character or appearance of Burnham Conservation Area (CA) which is located some distance to the east of the appeal site. Due to the separation distance between the appeal site and the CA, I have no reason to come to a different conclusion in this regard. I am satisfied that there would be no harmful effects on the CA and as such, its character and appearance would be preserved. Similarly, I am satisfied that, should the appeal be allowed, conditions could be imposed to ensure there would be no harmful effects on potential archaeological interests within the site.
33. The site lies within the Norfolk Coast Area of Outstanding Natural Beauty (AONB). The Council has not raised objection on the basis of the effect of the proposal on the AONB and from the evidence before me I see no reason to disagree.
34. It would appear that the appeal site is within a Zone of Influence for one or more European designated sites. In this instance, the Council has raised no objection to the scheme's impact in this regard and the appellant has indicated that they are willing to enter into a legal agreement to secure a habitat mitigation payment.
35. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European site, must consider mitigation within the framework of an Appropriate Assessment (AA). Given that the appeal is going to be dismissed for other reasons, upon which an AA would have no bearing, it is not necessary to explore this issue any further.
36. I note the frustrations expressed by the appellant in relation to the level of communication from the Council leading up to this appeal. However, this is not a matter for this appeal, which in determining, I have only had regard to the planning merits of the case.

Planning Balance

37. There is no objection in principle to a residential development on this site and I have found that the proposal would not harm the living conditions of neighbouring occupiers. These matters are neutral in the planning balance. The Government is seeking to significantly boost the supply of housing. The provision of 8 dwellings would make a modest contribution towards the housing mix and therefore towards this aim.
38. However, these modest benefits would be outweighed by the harm that I have identified. Whilst I have found above that the affordable housing provision has not been properly secured as part of this appeal, even if it were to have been secured, this would not result in the combined benefits of the scheme outweighing the identified harm.
39. Consequently, no material considerations justify a decision other than in accordance with the development plan.

Conclusion

40. For the above reasons the appeal is dismissed.

S Tudhope
Inspector