



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: 21 October 2020

Appeal Ref: APP/V2635/W/20/3248172

Aldorcar, Coaly Lane, Ingoldisthorpe PE31 6NU

- 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 Ged King against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 19/01212/F, dated 15 July 2019, was refused by notice dated 6 September 2019.
 - The development proposed is described as "Redesign of proposed new dwelling from single storey to 1 1/2 storey following grant of planning permissions 15/01952/O & 16/01633/RM".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal form suggests that the appellant is a different person to that which is specified on the application form. The appellant has confirmed that the name specified on the application form is correct. This is reflected in the heading above.
3. The site is located within 3.5km of the Roydon Common and Dersingham Bog Special Area of Conservation (SAC) and Ramsar sites, The Wash and North Norfolk Coast SAC and The Wash Special Protection Area (SPA) and Ramsar site. As a consequence, I am required to assess the implications of the proposal on the conservation objectives of the designated areas. Whilst the matter does not form part of the Council's reason for refusal, the statutory duty derived from the Conservation of Habitats and Species Regulations 2017 (the Regs) is sufficient for this to be elevated to a main issue in the appeal. As it was not included in the Council's reasons for refusal, I have sought and received further comments from the main parties on this issue.

Main Issues

4. The main issues are (i) the effects of the proposal on European sites; and (ii) whether the site would be in a suitable location for a dwelling having regard to the development strategy for the area and accessibility to services and facilities.

Reasons

European Sites

5. Policy DM19 of the Council's Site Allocations and Development Management Policies Plan 2016 (DMP) sets out a suite of measures required to monitor recreational pressure and, if necessary, to mitigate adverse impacts in order to avoid any significant effect on the integrity of any European sites. A financial contribution is required from new housing development to cover monitoring and small-scale mitigation at the European sites.
6. Roydon Common and Dersingham Bog SAC is East Anglia's largest remaining example of a pure acid valley mire grading into dry heathland. It principally includes extensive bog and wet heath. In addition to its internationally important plant communities, it supports important assemblages of birds.
7. The Wash and North Norfolk Coast SAC and The Wash SPA is a vast intertidal embayment which incorporates one of the largest and most important areas of estuarine mudflats, sand banks and salt marsh in Britain. Wintering waterbirds include internationally important numbers of numerous species, notably up to 17,000 passerines (perching songbirds). The site is also of outstanding international importance for passage birds, notably waders.
8. Human activity, in particular dog walking, on, or close to the European sites could result in significant disturbance to their integrity. Having regard to both parties' evidence, and the advice of Natural England (NE), I find that it is not possible to rule out that the appeal scheme, when considered in combination with other plans and projects, is likely to have a significant effect on identified European sites through increased recreational pressure. Consequently, an Appropriate Assessment is required. The Regs contain a precautionary principle that, in the absence of evidence that an adverse effect from any proposal or project on the integrity of a protected site would not occur, planning permission should not be granted.
9. In terms of mitigation, the Council's Natura 2000 Sites Monitoring and Mitigation Strategy 2015 (the Strategy) sets out that this would be achieved through an "interim habitats and mitigation payment". DMP Policy DM19 confirms this payment as £50 per house to cover monitoring/small scale mitigation. It is clear that the appellant has made the interim payment, and Policy DM19 is therefore complied with. The payment was made by way of direct payment to the Council. In this respect the appellant could perhaps reasonably expect that the matter of mitigation has been dealt with. In addition, I have consulted NE and it has not objected to the proposal or this mechanism for securing mitigation.
10. However, I have some reservations about the payment arrangement which does not have the same legal basis as an obligation under Section 106 of the Town and Country Planning Act 1990, whereby the Council would be obliged to use the payment for its intended purpose. In addition, both the Strategy and Policy DM19 indicate that the amount payable will be reviewed following the results of the 'visitor surveys at European sites across Norfolk during 2015 and 2016'. It is now some four years since that survey and I have not been provided with any evidence that the review has been undertaken or, if it has, what the results might be. Further, it is unclear from the evidence exactly what monitoring and or small scale mitigation measures would be funded by this

payment. It is, therefore, unclear from the evidence exactly what the contribution would provide for in this case, and if the payment is still at an appropriate level or not.

11. That is not to suggest that the Council may not spend the contribution appropriately, and it may be that the Council has agreed a specific, audited system to ensure that the monies are directed towards specific projects, in a timely fashion. However, I do not have details of that process. I can imagine a situation where an authority determining a planning application which is also responsible for implementing the mitigation could satisfy itself that a sufficiently robust link exists between effect and mitigation. However, I am the competent authority under the Regs in respect of this appeal and the submitted evidence does not give me the required certainty that the appeal scheme, in combination with other development, would not adversely affect the integrity of the Roydon Common and Dersingham Bog SAC and Ramsar sites, The Wash and North Norfolk Coast SAC and The Wash Special Protection Area SPA and Ramsar site.
12. In light of the above, following Appropriate Assessment and adopting a precautionary approach, I am unable to conclude that likely significant effects on the integrity of the European sites, due to the potential increased disturbance through recreational activity, can be excluded. The proposal would therefore fail to comply with the requirements of the Regs as well as Paragraph 175(a) of the National Planning Policy Framework 2019 (the Framework) which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused.

Location

13. Policy CS06 of the King's Lynn and West Norfolk Borough Council Core Strategy 2011 (CS) and DMP Policy DM2, state that land outside development limits will be treated as countryside, where new development will be restricted, and that in rural areas, the countryside will be protected for its intrinsic character and beauty. The site is not allocated for development in the DMP.
14. Although the site is situated between built development, for the purposes of planning policy, the site is located within the designated countryside. The defined development boundary runs along the site's eastern boundary, which I return to later in my decision. Consequently, development at the site is limited to the uses identified as being suitable in rural areas. None of the exceptions set out in Policy DM2 apply in this case. Accordingly, there would be a clear conflict with Policy DM2.
15. I conclude that the proposal would not be in a suitable location for housing with regard to the spatial strategy for the area. As such it would conflict with DM Policy DM2 which does not support the provision of market housing in this location.

Access to services and facilities

16. Whilst there is some disagreement between the parties regarding the level of services available within Ingoldisthorpe, it is nevertheless designated as a Rural Village under CS Policy CS02. It is therefore accepted that there are services in the area that can satisfy limited additional residential development. Dersingham and Snettisham lie close to the south and north of Ingoldisthorpe.

Taken as a group the three villages contain a wide range of services and facilities sufficient to support residents in their day-to-day needs.

17. The Council considers that the nearby services and facilities in Snettisham and other villages are likely to require future occupiers to use private motor vehicles. However, the Council also advised that Ingoldisthorpe is served by good public transport links. I saw on my site visit that there is a bus stop within approximately a one minute walk from the appeal site. There are paved footways that run both directions along Lynn Road from the end of Coaly Lane to both Snettisham and Dersingham. It is approximately a 15 minute walk to the convenience store in Snettisham and the footway is lit for the majority of this journey.
18. Consequently, the occupants of the proposal would be able to access local services either by use of the footway or by bicycle or bus services. This would likely lessen reliance on the use of the private motor vehicle. The development would therefore be well related to an area where small scale development is acceptable in principle and consistent with the aim of developing in accessible and sustainable locations.
19. I conclude that future occupants of the proposed dwelling would have reasonable access to facilities and services. Thus, the proposal would comply with Policy CS06 where it seeks to ensure housing is provided in close proximity to employment, services and other facilities.
20. The proposal would also comply with the Framework where it is concerned with the planning system actively managing patterns of growth in support of promoting sustainable transport objectives, and in locating housing where it will enhance or maintain the vitality of rural communities, amongst other matters.
21. The Council has not identified any harm in relation to the matters covered by Policy CS08, such as high quality design or sustainable construction methods. I therefore find no conflict with this particular policy.

Other Considerations

22. I note the planning permissions that the appellant has directed me to, in respect of effects of those developments on European sites. However, in those applications the competent authority for the purposes of the Regs was the Council. As set out in my reasoning above, I am the competent authority in respect of this appeal, and I am not able to be certain, in this case, that the appeal scheme, in combination with other development, would not adversely affect the integrity of the identified European sites. Therefore, the existence of the referenced permissions does not alter my opinion in respect of this matter.
23. I have been referred to a 2017 planning permission, granted for a place of worship, situated along Coaly Lane beyond the appeal site. As this is a type of development identified under Policy DM2 as being suitable in a rural area, outside of the development boundary, its existence does not offer support to the acceptability of the appeal proposal.
24. Outline planning permission was approved at the site in 2016 for the erection of a single storey dwelling. This was followed by approval of the reserved matters. However, at that time the Council was unable to demonstrate a 5 year supply of deliverable housing sites. This meant that paragraph 14 of the

National Planning Policy Framework 2012 was engaged, and the presumption in favour of sustainable development applied. Permission was granted on that basis. As those permissions have lapsed and the Council now has a 5 year supply of deliverable housing land, I give the expired permissions little weight in this case.

25. There is conflict with the development plan in relation to the appeal site being outside the defined development boundary. However, although classed as open countryside in policy terms, the development boundary runs along the eastern boundary of the site and its character and appearance is not that of open countryside, positioned as it is between a dwelling and a commercial storage site. As such, I consider that the proposed development would not be detrimental to the character of the surrounding area or landscape. The site is well related to the existing built form of the village. Notably, the Council has not identified any harm to the character and appearance of the countryside. I, therefore, consider that the extent of the conflict with the development plan is relatively small, and the proposed development would result in only minor harm to the Council's overall strategy.
26. The proposal for the provision of a single dwelling would make a small contribution to the local housing supply. The benefit in this regard would be very modest, especially as the Council can demonstrate a 5 year supply of deliverable housing land. Nevertheless, housing requirements are set as minima and the development would still deliver an additional home, thereby boosting the supply of housing. Further, the harm that would result from the location of the proposal outside of the development boundary would be minor, and I have found that in relation to access to facilities and services the location of the development would be acceptable.
27. However, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on European sites, unless an Appropriate Assessment has concluded that there would be no adverse effect on the integrity of the sites. As I cannot be certain, beyond all reasonable scientific doubt, that there would be no adverse effect on the integrity of the identified European sites I must dismiss this appeal.

Conclusion

28. For the reasons given above the appeal is dismissed.

S Tudhope

Inspector