
Appeal Decision

Site visit made on 1 September 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2020

Appeal Ref: APP/V2635/W/20/3252842

37 South Moor Drive, Heacham, King's Lynn PE31 7BW

- 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 & Mrs Beecroft against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 19/02128/F, dated 2 December 2019, was refused by notice dated 2 March 2020.
 - The development proposed is described on the planning application form as "change of use from annex to summerhouse/holiday let".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has been submitted retrospectively. I have dealt with the appeal on that basis.
3. The site is located within the zones of influence of The Wash Special Protection Area (SPA) and Ramsar Site, and The Wash & North Norfolk Coast Special Area of Conservation (SAC). 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 reason 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 effect of the development on European sites; and (ii) the effect of the development on highway safety.

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. The Council consulted Natural England (NE) because of the appeal proposal's potential to affect the integrity of European sites. The Council has subsequently stated that

the development is not of a type that is considered to be a concern with regard to impacts on European sites and, therefore, it considers that it can be determined that the appeal proposal is unlikely to pose a risk to such sites. However, this conclusion is in conflict with the Council's Natura 2000 Sites Monitoring and Mitigation Strategy 2015 (the Strategy), which clearly sets out that a financial contribution is required from all forms of tourist accommodation proposals from one unit upwards, to cover monitoring and small-scale mitigation at the European sites. This confirms that the appeal proposal is of a type considered likely to pose a risk to the integrity of European sites.

6. The Wash SPA and Ramsar site and The Wash and North Norfolk Coast SAC 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.
7. Human activity, in particular dog walking, on, or close to the European sites could result in significant disturbance to their integrity. NE have not objected to the proposal. Nevertheless, having regard to both parties' evidence, I find that it is not possible to rule out that the appeal scheme, not alone, but 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.
8. In terms of mitigation, the Strategy sets out that this would be achieved through an "interim habitats and mitigation payment". DMP Policy DM19 states that all new development must ensure there is no adverse effect on a European site through the provision of appropriate measures. I have not been provided with any conclusive evidence that the appellant has made the required financial contribution. However, the Council's Habitats Regulations Monitoring & Mitigation Payments Guidance indicates that payment can be made at application submission stage, or by way of the provision of a draft unilateral undertaking and that this is part of the validation process. It therefore appears likely that payment was required at that stage. If payment has been made, then the appellant could perhaps reasonably expect that the matter of mitigation has been dealt with.
9. However, even if a financial contribution has been made, I have some reservations about this 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 such a 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.

10. 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 such contributions are directed towards specific projects, in a timely fashion. However, I do not have details of that process. I can appreciate that 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 Wash SPA and Ramsar site and The Wash and North Norfolk Coast SAC.
11. In light of the above, following Appropriate Assessment and adopting a precautionary approach, as I am required to do, 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 generated by the appeal development, in combination with other plans and projects, 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.

Highway Safety

12. The appeal building is a detached residential outbuilding in the rear garden of 37 South Moor Drive (No 37). The building has been present on the site for approximately 10 years and was previously used for ancillary accommodation for No 37. It is modest in size, offering an open plan sleeping and kitchenette area and en-suite shower room facilities. There is a covered outside seating area attached to the front of the building. Parking is provided to the front of the dwelling.
13. The submitted plans show three parking spaces; one for use in conjunction with the holiday let and two for the use of the occupiers of No 37. One of the spaces is within the existing garage. This is the number of spaces required by the Council to serve the dwelling and the holiday let. However, the Council considers that the garage does not count as a parking space as it is below the size standard set by DMP Policy DM17.
14. The Council is also concerned that the proposed parking and turning area is very tight and allows little space for manoeuvring. Cars would have to be either reversed out of the driveway onto the highway or reversed from the highway into the parking spaces. The Council, therefore, considers that this situation, combined with the proximity of the appeal site's access to that of the neighbouring property's access (No 35 South Moor Drive), and the location of the end of cul-de-sac turning head, would mean that any increased use of No 37's parking area would result in unacceptable impact on highway safety.
15. The Highway Authority agree that the garage is below the size required to count as a parking space, but nevertheless consider the proposed parking

- arrangements to be acceptable, subject to the imposition of a condition on any grant of planning permission to ensure provision and retention of the spaces.
16. Given the limited size of the holiday accommodation, it does not lend itself to occupation by more than two people, or to an extended period of stay. The use of the building as a small holiday let would not, therefore, generate a significant increase in vehicular movements to or from the site compared with those which could arise as a result of the use of the building by a family occupying No 37 at present. Likewise, it would not result in a significant increase in parking demand over and above that associated with the existing residential use of the site.
 17. The minimum garage size standard is intended to allow for space to park a car and for a small amount of storage. There is an existing shed at the rear of the garage which, the evidence suggests, provides for additional storage space, such that the garage could, in this particular case, be counted as a parking space. No evidence has been provided of any complaints arising from the use of the building as a holiday let in the 10 months it has been operating prior to the Council's determination of the application, and no objections have been received from any neighbours in regard to highway safety or any other reasons.
 18. The appellant states that the need to reverse onto the highway from the appeal site is no different to the existing situation at the site, and at many other properties along this part of South Moor Drive. I agree that existing unsatisfactory arrangements do not justify a further increase of the same. However, due to the small scale nature of the development, and the likely low numbers and slow speed of vehicular movements in the vicinity of the access to the site and generally within the small cul-de-sac, I consider that any increase in the type of movements of concern to the Council, would not be so significant as to result in unacceptable risk to highway safety.
 19. Taking all of the above matters into consideration, I conclude that the development does not give rise to an unacceptable risk to highway safety. Thus, it accords with DMP Policies DM15 and DM17 which together and amongst other matters, require safe access and adequate parking facilities.

Other Matters

20. The emerging Heacham Neighbourhood Plan (NP) has been drawn to my attention, with the suggestion that there is strong community objection to any increase in holiday accommodation in Heacham. However, DMP Policy DM11 is supportive of new holiday accommodation, subject to certain criteria being met. The Council has not raised concern in respect of Policy DM11, and I see no reason to disagree. In light of this, and because the NP is still emerging and I have little information on the nature of any policies of the NP, and how they would affect the proposal, I can only attribute this matter very limited weight.
21. Concern has been raised regarding the payment for and provision of commercial bins in conjunction with the holiday use. These matters are outside the remit of this appeal. However, I am satisfied that any additional bin requirement could be adequately accommodated within the site, without compromising the proposed parking arrangements.

22. I am mindful that there would be small social and economic benefits arising from the provision of a single unit of holiday accommodation and I have found that the proposal would be acceptable in regard to highway safety.
23. 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

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

S Tudhope
Inspector