



Appeal Decision

Site Visit made on 14 October 2021

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH May 2022

Appeal A: APP/F2605/W/21/3271209

Molecatchers Cottage, Mill Road, Shipdham IP25 7LU

- 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 David Pyle against the decision of Breckland Council.
 - The application Ref 3PL/2020/1472/O, dated 21 December 2020, was refused by notice dated 15 February 2021.
 - The development proposed is a two storey detached house with single storey extension to rear.
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Appeal B: APP/F2605/W/21/3285894

Molecatchers Cottage, Mill Road, Shipdham IP25 7LU

- 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 David Pyle against the decision of Breckland Council.
 - The application Ref 3PL/2021/1181/F, dated 16 August 2021, was refused by notice dated 5 October 2021.
 - The development proposed is new build 3 bedroom, two-storey cottage.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. During the course of the appeals Natural England issued guidance concerning nutrient pollution adversely affecting Habitats Sites¹ across England. This included the River Wensum Special Area of Conservation (SAC) and the Broadland SAC and Broadland Ramsar sites, the catchment areas of which fall within the Council's boundary. The appellant and the Council were given the opportunity to comment on the implications of this for both appeals.
4. Furthermore, during the course of the appeals, the appellant submitted a Unilateral Undertaking (UU) with each appeal, with obligations to make a financial contribution towards mitigation measures for the recreational effect of the proposed developments on the integrity of Habitats Sites across Norfolk. Both potential nutrient and recreational impacts on Habitats Sites are dealt with further in my decision.

¹ As per the definition set out the glossary to the National Planning Policy Framework

5. As set out above there are two appeals on this site. They differ because Appeal A is submitted in outline form with some matters reserved, the specifics of which are detailed below. The application form confirms it would be a two-bedroom dwelling. Appeal B is submitted in full, the associated details confirming it would be a three-bedroom dwelling. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Appeal A

6. In respect of Appeal A, the application form accompanying the planning application confirms that this is an outline submission with appearance and layout reserved for future consideration. Article 2 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order) provides definitions for the five reserved matters. In summary, the definitions for the matters applied for as part of this outline proposal are:
- *'access' means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.*
 - *'scale' means the height, width and length of each building proposed within the development in relation to its surroundings.*
 - *'landscaping' means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated.*
7. The appeal is accompanied by a site plan² which was considered by the Council when they made their decision on the application. This plan shows the length and width of the building proposed. However, no details of the building's height are provided, save for the development description which describes the proposed height as two-storey. I return to this later in my decision.
8. The site plan also includes details of the layout. However, there is no indication in the appellant's evidence that layout has been applied for; on the contrary, the planning application form confirms that layout is a reserved matter. Moreover, it does not appear that the Council considered layout in reaching their decision. Therefore, I have treated the submitted site plan, insofar as it shows details of layout, as indicative only and I have determined this appeal on the basis that 'appearance' and 'layout' are reserved matters for future determination.

Main Issues

9. The main issues common to both appeals are the effect of the proposed developments on:
- The integrity of Habitats Sites;
 - The character and appearance of the area; and,
 - Highway safety.

² Plan ref – 1223/01

10. In respect of Appeal A only, I have considered the effect of the proposed development on the living conditions of existing and future occupiers.

Reasons

Habitats Sites

11. The Council have not stated that the appeal sites fall within the catchment area for the Broads SAC and Broadland Ramsar Sites, although the maps submitted with the appeals indicate to me that the appeal sites may be within the catchment area. Irrespective of this, I agree with the Council that the appeal sites lie within the River Wensum SAC catchment area. Natural England advise that it considers the interest features of the River Wensum SAC to be unfavourable, or at risk, from elevated nutrient levels, particularly as a result of phosphorous, which in turn can cause rapid growth of certain plants through eutrophication. Consequently, based on Natural England advice³, the Council considers that any development comprising overnight accommodation has the potential to cause adverse impacts with regard to nutrient pollution, and any increase would adversely affect the integrity of the SAC.
12. Each proposal would involve residential development which would generate wastewater as a result of its occupation for residential purposes. According to the appellant, the proposed new houses would connect to the mains sewer. However, no evidence has been submitted to me clarifying where the additional wastewater would be discharged to after effluent treatment at a wastewater treatment works. As a result of the foregoing, I cannot be certain that the development would not add to the existing nutrient burden and likely significant effects on the River Wensum SAC cannot be ruled out.
13. Furthermore, regardless of whether or not the site is within the Broads SAC and Broadland Ramsar catchment area, the Council confirms that new developments outside catchments could affect the integrity of Habitats Sites due to the effect of effluent discharge from wastewater treatment works. Notwithstanding this and based on the potential impact on the River Wensum SAC alone, it is necessary for me, as the competent authority, to undertake an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations), of the implications for the Habitats Site in view of their conservation objectives.
14. No calculation has been provided to me to clarify the anticipated phosphorous levels arising as a result of the proposed developments. However, given that they would generate wastewater and the aforementioned potential impacts of this, I am not persuaded that the developments would be nutrient neutral so that they would not add to the existing nutrient impacts.
15. I am aware that the Council has not yet developed a strategic mitigation scheme, and that they are currently assessing the implications of these matters for all development in their area. However, I have not received any information from the Council suggesting that further guidance and any potential mitigation strategies are imminent. Moreover, whilst the appellant has confirmed that surface water would soakaway from the site and be uncontaminated thus would not affect the integrity of Habitats Sites, the

³ Dated 22nd March 2022

matter of wastewater discharge remains unclear. In this respect, no mitigation has been put forward by the appellant.

16. Therefore, for these reasons, I cannot conclude that there would be no adverse effects on the integrity of Habitats Sites, including the River Wensum SAC, due to the potential for additional nutrients arising from the proposed developments and lack of appropriate mitigation in relation to nutrients.
17. Notwithstanding the issue of nutrients, the Council have also identified a need to ensure that recreational impact on Habitats Sites across Norfolk, in combination with other plans and projects, is mitigated. From 1st April 2022 they introduced a tariff-based approach on the basis of a RAMS⁴ strategy which applies to all development likely to generate additional recreation impact. The appellant has submitted a Unilateral Undertaking in relation to each appeal confirming that a payment would be made prior to the commencement of each development. However, this is a separate form of mitigation solely in relation to recreational impact and does address the issue identified in relation to an increase in nutrients.
18. Consequently, in the absence of any satisfactory mitigation and the necessary mechanism for achieving it, I am not satisfied that the proposals would not affect the integrity of Habitats Sites, including the River Wensum SAC. As a result, the proposals would conflict with paragraphs 174 and 180 of the National Planning Policy Framework (the Framework), which indicates that development should protect sites of biodiversity value and contribute to and enhance the natural environment having regard to water quality and pollution. The precautionary approach I have adopted is in line with the requirements of the Habitats Regulations.

Character and appearance

19. The appeal site occupies a gap amidst a run of mainly detached dwellings which front Mill Road. The age of properties on the street varies. Some of the buildings further along the row exhibit elements of traditional architecture and materials. However, generally dwellings close to the appeal site, including those on the opposite side of the street, have a divergent composition due to their varied scale, fenestration pattern and elevational treatments. Consequently, this part of the street lacks uniformity.
20. The width of the adjacent plot lying generally to the south ('The Nutshell') is comparable with the appeal site. Like the dwelling that exists on this plot, the width and length of the dwelling proposed would also comprise a building of modest proportions. In the case of both appeals, the Council's contention in part relates to the lack of separation between the proposal and The Nutshell adjacent. In respect of Appeal A, layout is a reserved matter, and the Council retains control over this element to be determined as and when it is sought. Nevertheless, it is acknowledged that the illustrative site plan demonstrates that it is likely there would only be sufficient space to leave a small gap between the proposed dwelling and the dwellings on either side. In respect of Appeal B, the proposed dwelling would occupy almost the full width of the plot and be arranged in an 'L' shape but it would be laid out in a similar manner to The Nutshell adjacent.

⁴ Norfolk Green Infrastructure and Recreational impact Avoidance and Mitigation Strategy 2021

21. Therefore, in the case of both appeals I acknowledge that the resultant gap between existing dwellings and the dwelling proposed would be smaller than gaps between other buildings further along the street. However, gaps that exist in the street between individual buildings are generally commensurate with the larger scale of buildings on those plots. Therefore, I am satisfied that a more compact spatial pattern of development in this location, with a small gap between buildings, would represent a suitable addition to the street which would not harm its appearance, and that a scheme could be conceived in the case of Appeal A, and is proposed in the case of Appeal B, so that the character and appearance of the area would not be unduly harmed.
22. In terms of height, both dwellings would be two-storey which would be in keeping with the prevailing height of dwellings on this side of the street. I recognise that the eaves height of The Nutshell is lower than other two-storey houses on the street and would be lower than the proposed dwelling, acknowledging that the details of the appearance associated with Appeal A are reserved for future determination. However, despite the variance in height of existing and proposed and their proximity to one another, the proposals would reflect the varied appearance of dwellings in the locality and would not harm the street scene.
23. In conclusion, due to the varied spatial and design characteristics of dwellings nearby, the dwelling proposed in the case of both appeals would not appear incongruous in the street. As a result, the proposals would not harm the character and appearance of the area. They would align with the requirements of Policies COM01, GEN02 and HOU6 of the Breckland Local Plan 2019 (the Local Plan) which seek, amongst other matters, to ensure high quality design which is of an appropriate density, respects the character and appearance of the surrounding area and makes a positive contribution to its location and context.

Highway Safety

24. Mill Road is a relatively narrow and straight residential street. Whilst no traffic count or speed survey information has been provided to clarify the typical traffic characteristics, on my early afternoon site visit (and notwithstanding the fact that this visit represents a snapshot in time outside AM and PM 'peak' hours) I observed that it was relatively lightly trafficked. Moreover, I was able to see that visibility for vehicles exiting several properties on the street was partially obscured by a combination of fencing and vegetation which is a feature of many of the frontages of properties along Mill Road.
25. Drivers of vehicles exiting the appeal site in forward gear would have a relatively unimpeded view of the street in both directions. This is due to the set-back of the houses along the street, the straightness of the road, and the low-level fencing associated with the properties on either side.
26. Nonetheless, as the Council have pointed out, there are technical shortcomings in relation to the information submitted with both appeals. This is due to the red-line boundary plans omitting the entirety of the land necessary to achieve the visibility splays as marked on each of the detailed site plans. Whilst the land associated with the adjacent property to the north, 'Molecatchers Cottage', is within the appellant's control, the land to the south associated with The Nutshell is not, and the visibility splays marked on the submitted plans includes

land associated with both these properties, along with other properties which lie further to the south along Mill Road.

27. Be that as it may, each of the proposals is for a single dwelling which would generate very limited levels of traffic. Furthermore, it would be reasonable to expect drivers exiting the site to exercise a degree of caution, as demonstrated by the fact that there are other properties on the street where visibility when exiting driveways is severely impeded, and the Council have not provided me with any evidence to show that there have been any accidents on this road, nor that the road is dangerous.
28. In any event, even if the red-line boundary was altered so as to include the land within the marked visibility splays associated with the properties to the south; this land appears to fall outside the ownership and control of the appellant, thus requiring it to be kept permanently free from obstructions which might adversely affect obtainable visibility for drivers when exiting the appeal site would not be either enforceable or reasonable⁵. Nevertheless, I am satisfied that, based on the prevailing road and traffic conditions, and a lack of evidence to suggest that highway safety would be compromised even though visibility is partly reliant on third party land, that vehicles could enter and leave the site in a safe manner.
29. In respect of Appeal B, it is unclear whether there would be sufficient space in front of the proposed dwelling for vehicles to turn so they could exit the property in forward gear, which I agree would improve the obtainable visibility for exiting drivers of both vehicles and pedestrians travelling along the street. However, there is no prohibition against residents reversing onto the road, and multiple examples of vehicles parked in a manner requiring them to reverse out onto Mill Road were evident when I visited the site. In particular, The Nutshell has a parking situation broadly similar to that proposed as part of this appeal.
30. For the foregoing reasons, and as layout is a reserved matter in respect of Appeal A, thus parking arrangements may alter depending on the layout, I am satisfied that the proposed access would be acceptable.
31. Consequently, I find that appeal schemes A and B would not have an unacceptable impact on highway safety. They would address the requirements set out in Policies TR01, TR02 and HOU6 of the Local Plan and paragraph 111 of the Framework which, in summary, require that development provides safe access for all users and integrates successfully into existing transport networks so as not to compromise highway safety.

Living Conditions (Appeal A)

32. The Council have not provided detailed evidence to support their assertion that the proposal would result in cramped and unsatisfactory living conditions for existing occupiers. In any event, the details of the layout associated with Appeal A are not known at this stage. However, the appeal site does not appear unduly constrained in terms of its overall size and shape, its relationship with nearby properties, and it is comparable with plots nearby. I see no reason why the scheme could not be designed so as to ensure no unacceptable overshadowing, loss of light, loss of privacy or overbearing effects for neighbouring occupiers. This is reinforced by the fact that the

⁵ and would fail the 'tests' set out in paragraph 56 of the Framework

dwelling associated with Appeal B is larger than the dwelling proposed as part of Appeal A, yet the Council do not raise any objection to the proposal relating to Appeal B in respect of the impact on existing occupiers. Furthermore, in the event Appeal A was allowed, the Council would retain control over determining the reserved matters as and when they are sought.

33. In respect of the occupiers of any future dwelling, the Council do not outline their detailed concerns. However, the position of windows would be provided as part of the reserved matters, along with the extent of available outdoor amenity space, and as details of the layout are not before me as part of this appeal, I am satisfied that the scheme could ensure a high standard of amenity for future occupiers.
34. Overall, I find that Appeal A would not be unacceptably harmful to the living conditions of occupiers of nearby properties, nor would either scheme result in unacceptable living conditions for future occupiers. The proposal would comply with Policies COM01, COM03 and HOU06 of the Local Plan which requires, amongst other matters, that development protects the living conditions of existing occupants and ensures adequate levels of amenity of future occupants.

Other Matters

35. It is put to me by the Council that there is an oversupply of two-bedroom houses in the authority area, thus Appeal A which would comprise a two-bedroom dwelling does not take into account the housing needs of the area. However, even if I was to assume that the Council are able to demonstrate a five-year supply, this is not an upper limit on provision. On the contrary, the Framework seeks to significantly boost the supply of homes, highlighting that housing supply should express the minimum number of homes needed⁶.
36. Moreover, the site lies within a settlement boundary and in line with the locational strategy for the district in a location where housing in principle is acceptable. In any event, Appeal A is for a single dwelling which would have a limited impact on the overall supply of housing in Breckland regardless of the need identified in the Strategic Housing Market Assessment. It would meet the thrust of local and national policy which is to boost housing supply in appropriate locations. Therefore, the principle of housing as proposed in Appeal A is in line with Policy HOU6 of the Local Plan.
37. I have been made aware of potential enforcement matters relating to a neighbouring property. However, this is a separate matter which has had no bearing on my determination of these appeals.

Conclusion

38. The proposals would not unacceptably harm the character and appearance of the area or be detrimental to highway safety. Appeal A would not be unacceptably harmful to the living conditions of existing or potential future occupiers.
39. However, compliance with the Local Plan in these respects would be outweighed by the conflict with the Framework in relation to adverse impacts on the integrity of the Habitat Sites and harm to the natural environment.

⁶ Paragraph 61 of the Framework

40. As a result, both appeals are dismissed.

M Woodward

INSPECTOR