



Appeal Decision

Site visit made on 7 June 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2022

Appeal Ref: APP/F2605/W/21/3282930

Agricultural Buildings, Dereham Road, Litcham, PE32 2NU

- 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 Robert Wall against the decision of Breckland Council.
 - The application Ref 3PL/2020/1374/F, dated 29 November 2020, was refused by notice dated 16 March 2021.
 - The development proposed is Creation of Holiday Accommodation following approval of Class C1 use as allowed by Class R Part 3 Schedule 2 General Permitted Development Order 2015 (as amended).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. The existing building on the site is to be demolished and I consider that a more appropriate description of development would be the erection of a single storey building to be used for the purposes of Class C1 (Hotel) following demolition of existing agricultural building. The Council agrees with this description but the appellant does not. However, for the reasons that I will set out in my decision I consider that the description I have suggested is the most appropriate.
3. The Council have referred to the proposed development as a Class C3 dwelling, however I have considered the appeal on the basis of what has been applied for, which is the construction of a single storey building to be used for the purposes of a Class C1 (Hotel).

Main Issues

4. The Council's first two reasons for refusal are framed to consider whether the development would comply with Class R of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). However, the application was for planning permission and therefore the requirements of the GPDO are not directly relevant.
5. Therefore, the main issues in this appeal are the effect of the development on:
 - flood risk;
 - the character and appearance of the area;
 - protected trees and hedgerows; and

- whether the appeal site is an appropriate location for the proposed development with reference to the spatial strategy in the development plan.

Reasons

Flooding

6. The Framework and the Planning Practice Guidance (PPG) indicate that residential development should be directed to areas of lowest flood risk. The Breckland District Council Level 1 Strategic Flood Assessment Update 2017 identifies that the site is within Flood Zone 3b, the functional floodplain where water has to flow or be stored in times of flood.
7. Paragraph 162 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The construction of a building used as a hotel is classified as a 'more vulnerable' development as defined within the PPG. Table 3: Flood Risk vulnerability and flood zone compatibility states that development should not be permitted. In addition, the PPG requires the appellant to carry out a sequential test which compares the proposed site with other available sites to show which one has the lowest flood risk.
8. In the absence of a sequential test, the proposed development is in conflict with the sequential approach in the Framework, and therefore it is not necessary for me to consider any flood mitigation proposals. It is only if the appellant could demonstrate that there are no reasonably available sites in Flood Zone 1 that I would go on to consider any mitigation as part of the exception test.
9. It has been put to me that as the application is for a change of use the sequential and exception tests do not need to be applied. However, the development proposed is not for a change of use as the existing building is to be demolished. Therefore, it must be considered as the erection of a building to be used as a hotel.
10. As it has not been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding the proposal is contrary to the Framework and the PPG.

Character and appearance

11. The appeal site comprises a rectangular plot, containing a small agricultural building with agricultural land beyond. It is relatively open and is characterised by hedgerows, mature trees and isolated agricultural buildings and features. Adjacent to the site is a more modern agricultural building. However, despite the existence of these buildings, the limited amount of existing development along Dereham Road positively contributes to the rural character of the area.
12. The introduction of a hotel in this location would alter the character and appearance of this rural site, resulting in an urban form that would intrude into the countryside. In addition, the proposed hotel would lead to a more intensive use of the site, with associated parking and access, with the effect of eroding the open and rural character of the immediate area.

13. It has been put to me that the existence of the structure on the site which benefits from Class R permitted development rights has already established a hotel on the site. However, Class R permits the conversion of the existing building which, as an agricultural building, is of a form and scale which would be more appropriate in this location. The proposed hotel in terms of its design, scale and materials has the appearance, with chimneys and a porch, which is more commonly associated with a suburban bungalow. This fails to respond appropriately to the character of the surrounding area.
14. The introduction of development in this location, results in a dominant feature, leading to an intrusion into the countryside, failing to recognise the intrinsic rural character of the countryside, contrary to policies GEN02, COM01 and ENV05 of the Breckland Local Plan November 2019 (LP) which together seek to ensure development protects and enhances the landscape, achieves high quality design which is sensitive to the character of the surrounding area.

Protected trees and hedgerows

15. The appellant has not provided an arboricultural impact assessment to demonstrate how the proposed hotel could be constructed on the site without detriment to the protected oak tree, which has a wide canopy and is a visible feature along Dereham Road which is characterised by hedgerows and larger tree specimens. Furthermore, there are no details provided of any mitigation which could be provided in terms of the overall design and construction of the development.
16. It would also not be appropriate for this level of detail to be left to be agreed by condition. As it is not possible, on the information before me, to conclude that the proposed development could be constructed without resulting in harm to the tree.
17. The Highway Authority have indicated that the proposal would also require visibility splays to be provided to ensure safe access and egress. The provision of such splays is likely to result in a requirement to remove sections of mature hedgerow, which the Council considers to be protected by the 1997 Hedgerow Regulations. Insufficient evidence has been submitted to demonstrate that vehicles entering and exiting the proposed development would be provided with sufficient visibility without the need for the hedgerow to be removed or whether a satisfactory means of access to the site could be achieved.
18. Based on the evidence before me, there is insufficient information to establish that the works required to construct the proposed hotel would not result in a serious and adverse impact on the existing protected tree and hedgerow.
19. There is nothing before me to indicate that the access proposals and associated parking area have the benefit of permission under Class R, as they would be operational development and as such would not represent a fallback position in relation to this main issue.
20. In conclusion the proposed development would be contrary to policy ENV 06 of the LP which requires proposals to demonstrate that both the short term and long term impacts of a development is evaluated at the earliest opportunity.

Spatial Strategy

21. Policy EC 07 of the LP sets out that smaller development proposals involving new tourism related development should be of a suitable scale and type to protect the character of the townscape and landscape within which they are situated subject to a number of criteria. These include whether the site is accessible or relies on a specific geographical resource. In the cases of proposals in the countryside, they should demonstrate the need for a rural location for that development.
22. Policy EC 06 of the LP sets out how farm diversification can accommodate tourism related development but the policy goes on to consider the re-use of existing buildings. It states that the scale and nature of diversification proposals should not have an unacceptable impact on landscape character and the enjoyment of the countryside.
23. Whilst the policies I have set out above are generally supportive of tourist accommodation such as that proposed, as I have identified harm to the character and appearance of the area, the development would fail to accord with policies EC 06 and EC 07 of the LP. As a result the proposed development fails to accord with the Council's spatial strategy which requires tourist development to protect landscape character.

Other Matters

Fallback Position

24. The appellant has indicated that there are material considerations such as the fallback position, which comprises the lawful development certificate 3PL/2020/0614/LU for the proposed development as allowed by Class R Part 3 Schedule 2 of the GPDO. This establishes that the building can benefit from Class R however, it does not permit any operational development required to facilitate the conversion.
25. I have had regard to the Court of Appeal decision¹ referred to by the Council which concluded that the clear desire of the landowner to develop and maximise the value of the site was sufficient to demonstrate that there was a real prospect to a fallback position. As such, I have had regard to the clear desire on the appellants part to develop the site in considering the weight to be given to the sites permitted development rights.
26. The permitted rights exist for a change of use of a building and any land within its curtilage, however as this appeal proposes the demolition of the building, it can not be considered to be operational development associated with implementing that change of use. Therefore, it is not necessary for me to come to a view as to whether the development would comply with requirements of Class R of the GPDO.

¹ Mansell v Tonbridge and Malling Borough Council 2017 EWCA Civ 1314

27. There is nothing in the evidence before me to indicate that the appellant has applied for planning permission for operational development to facilitate the conversion of the existing building to a Class C1 (Hotel) use. Therefore, it remains only a theoretical use and there is a lack of certainty that the building could be converted to such a use, noting its small footprint and the extent of works that would be required to facilitate such a use. Therefore, I have given the fallback position only limited weight in my consideration.
28. It has been put to me that the established fallback position means that matters of flooding and impact on the protected tree can not be considered. However, the proposal before me is not for a change of use of building or land and there is uncertainty as to whether the Class C1 use could be implemented within the footprint of the existing building. Therefore, in considering the development before me it is necessary for these matters to be addressed fully.

Habitats Regulation Assessment

29. The Council considers that the appeal site is located where it could have an impact on the Wensum and Broads Special Area of Conservation, due to the impacts of nutrients arising from the proposed development. However, the consideration of any measures to avoid or reduce the harmful effects upon the Wensum and Broads Special Area of Conservation and achieve nutrient neutrality can only be taken into account at the Appropriate Assessment stage of Habitats Regulation Assessment.
30. Furthermore, it would appear that the appeal site falls within an area where recreational impact mitigation measures for The Brecks, North Norfolk Coast and The Broads as described in the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMs) are required. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on designated sites are compliant with the Habitats Regulations.
31. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessments for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusion

32. The proposal would therefore conflict with the development plan and the Framework and there are no other considerations that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR