



Appeal Decision

Site visit made on 1 February 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/L2630/W/21/3276576

Land adjacent to Overtons Way/Devlin Drive, Poringland NR14 7WA

- 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 Stephen Litten (The Amari Group) against the decision of South Norfolk District Council.
 - The application Ref 2020/1689, dated 4 September 2020, was refused by notice dated 6 May 2021.
 - The development proposed is described on the application form as 'Construction of 9 no. new residential dwelling units consisting of 5 no. 2 bed apartments with shared amenity and allocated parking, 1 no. 1 bed apartment with allocated parking, 2 no. 3 bed detached, 2 storey residential dwellings with private parking and garden amenity, and 1 no. 4 bed detached, 2 storey residential dwelling with private parking and garden amenity. To include 1 no. retail unit facing North towards existing retail/commercial units.'
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Decision

1. The appeal is allowed and planning permission is granted for Construction of 9 no. new residential dwelling units consisting of 5 no. 2 bed apartments with shared amenity and allocated parking, 1 no. 1 bed apartment with allocated parking, 2 no. 3 bed detached, 2 storey residential dwellings with private parking and garden amenity, and 1 no. 4 bed detached, 2 storey residential dwelling with private parking and garden amenity. To include 1 no. retail unit facing North towards existing retail/commercial units at Land adjacent to Overtons Way/Devlin Drive, Poringland, NR14 7WA in accordance with the terms of the application, Ref 2020/1689, dated 4 September 2020, subject to the following conditions in the attached schedule.

Preliminary Matters

2. There have been two previous appeal decisions in respect of development proposed on the appeal site. The first was decided in May 2019 and pertained to a scheme comprising 'construction of 8 no. new 3 storey, 3 bedroom townhouses with private gardens and parking allocation'¹. The Inspector dismissed the appeal on the grounds that it would have been harmful to the character and appearance of the area. The subsequent scheme also proposed 8 residential units, this time comprising of a mixture of flats and detached dwellings. This proposal was also dismissed in an appeal decided in April 2020 (hereafter referred to as 'The Previous Appeal')², on the grounds that the development would have harmed the character and appearance of the area. The conclusions reached by the previous Inspectors, particularly in relation to

¹ PINS reference: APP/L2630/W/18/3214039

² PINS Reference: APP/L2630/W/19/3243415

the Previous Appeal, are a material consideration in the determination of this appeal. That said, I have considered the proposed development on its own merits.

3. The Poringland Neighbourhood Plan (PNDP) was formally made part of the Development Plan on 26 July 2021. Both main parties have had the opportunity to comment on the implications of this for the proposed development. I have had regard to these representations as well as those submitted by Poringland Parish Council and interested parties.
4. Furthermore, on 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The appeal process has allowed the main parties sufficient opportunity to comment on the revised Framework and I have had regard to it in considering this appeal.
5. Since the Council refused planning permission, the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy 2021 (GIRAMS) has been published. This has implications for the proposed development, which is located within the Zone of Influence (ZoI) of several European Sites. As such, I have provided the main parties with further opportunity to make representations in relation to this matter and it forms a main issue for this appeal.
6. In addition, the Council raised the issue of Nutrient Neutrality during the course of the appeal. Natural England has advised LPAs that a Habitats Regulations Assessment (HRA) of water quality impacts on the habitats sites is undertaken for developments that are within, or discharge to Wastewater Treatment Works (WwTW) within, the Wensum and The Broads nutrient neutrality catchment areas. The appeal site is outside of these catchment areas and the Appellant has provided evidence to show that foul and surface water drainage would not discharge into them. As such, it is not necessary for me to consider this matter further given the absence of likely significant effects in this regard.
7. The appellant has submitted a Unilateral Undertaking (UU) dated 25 August 2022. The UU has been prepared by the appellant in conjunction with the Council. I have considered whether this meets the tests set out under Framework Paragraph 57 and Regulation 122(2) of the CIL Regulations. My findings are set out later in this decision.

Main Issues

8. The main issues are:

- The effect of the proposed development on the character and appearance of the area.
- The effect of the proposed development on the integrity of European Sites.

Reasons

Character and Appearance

9. The appeal site comprises an area of grassland which is located adjacent to a roundabout at the intersection of The Street and Devlin Drive. Overtons Way borders the site to the west and provides access to commercial units to the north of the site. The site is located in quite a prominent location and views into the site are possible from all sides. The evidence indicates that previous

- hedgerows and vegetation have been cut back with a short hedgerow to the north of the site retained.
10. The surrounding area predominantly comprises of residential development which varies in appearance, scale and layout. There is however some uniformity in terms of building materials. To the south and west of the site the residential buildings have a relatively modern appearance and some of those fronting Devlin Drive are fairly prominent and orientated such that they are in close proximity to the adjacent footway. On the opposite side of The Street, development is typically lower density, comprising predominantly of single storey dwellings in spacious plots. The commercial units (with flats above) to the north are relatively prominent in terms of their scale and they comprise a more modern design, which is not particularly synonymous with the surrounding residential development.
 11. The proposed buildings would be focussed around the perimeter of the site, with parking provided to the centre (behind the units). In comparison to the Previous Appeal proposal, the proposed development includes a reduction in the scale of the eastern wing of the proposed block of flats, changes to the parking layout, a reduction in massing of the detached dwellings fronting Overtons Way, reorientation of Plot Three (such that it would now be accessed from Devlin Drive) and changes to the composition of fenestration and elevational detailing throughout. An additional dwelling and a retail/commercial unit are also proposed.
 12. As a result of the changes to the design of the proposed development, the southern frontage facing Devlin Drive would include far more visual interest than previously proposed, incorporating more fenestration and entrance ways fronting the footway, with additional porch detailing now proposed. The proposed development also now incorporates a more active frontage, which better reflects the active frontage and orientation of the residential development on the opposite side of Devlin Drive.
 13. The block of flats proposed to the east of the site would wrap around the corner of Devlin Drive and The Street. The proposed building would be prominent but the scale would largely reflect that of the residential development on the opposite side of Devlin Drive. The eastern wing of the block of flats has been reduced in height, such that it is more sympathetic to the single storey development to the east and also provides visual interest with a graduation in scale towards the apex of the corner. These factors would ensure that the building would be in keeping with local character, despite the proposed location in close proximity to the footway.
 14. The parking layout has been revised in comparison to that proposed under the Previous Appeal. In particular, the Council has highlighted concerns in relation to the manoeuvring requirements for the car parking spaces proposed at plots one, two and three. This arrangement would not be harmful to the character and appearance of the area, not least because it would not be widely visible. In addition, whilst I recognise that vehicles may need to reverse up to 13 metres in order to leave the site in forward gear, this would be a minor inconvenience to occupiers and there is no substantive evidence to indicate any adverse impact on highway safety.
 15. The density of the proposed development would be similar to that of the Previous Appeal proposal, albeit an additional residential unit and

retail/commercial unit are proposed. Nonetheless, even taking into account these additions, the density reflects the relatively high-density residential areas to the west and south of the appeal site. Furthermore, whilst a block of flats is proposed, the appearance of this building would reflect the scale of development already existing on Devlin Drive.

16. The submitted plans indicate that the existing hedgerow to the north of the site would be removed. However, this hedgerow is not particularly mature or prominent and it does not contribute significantly to the character and appearance of the surrounding area. More effective soft landscaping measures could be incorporated as part of the proposed development, required by planning condition.
17. More generally, the appearance, layout and scale of the proposed development would be in keeping with the existing character of the surrounding area, which is varied. The design of the development strikes a balance between the surrounding residential development and the commercial units (and flats) to the north of the site. Whilst fairly prominent, the development responds well to the orientation of the site in relation to the adjacent roundabout. Indeed, it would be sympathetically designed such that it would assimilate well with existing development when viewed within the street scene.
18. The proposed development would therefore comply with Joint Core Strategy³ Policy 2 and Local Plan⁴ Policies DM1.4 and DM3.8 as well as PDNP Policy 14, which together broadly require that new development is of a high-quality design which respects local character and distinctiveness.
19. The proposed development would also comply with the design guidance contained within the National Design Guide⁵ and specifically, paragraphs 42 and 43, which require that well designed proposals are shaped by their context and integrate with their surroundings. It would also be consistent with Framework Paragraph 130, which requires in part that development is sympathetic to local character.

European Sites and Planning Obligation

20. The evidence before me indicates that the appeal site is located within the zone of influence (ZoI) of the Valley Fens SAC, Broads SAC and Breckland SPA/SAC. These are European Sites which are protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
21. These sites provide habitats which support breeding and wintering birds. Their conservation objectives generally seek to maintain and restore the distribution and function of the habitats upon which the qualifying features rely, thereby increasing the populations and distributions of breeding and wintering birds.
22. Given its limited scale, the development 'alone' would not result in significant effects on these sites. However, there would be likely significant effects on these sites as a result of the proposed development in combination with other planned and approved residential development within the ZoIs. This is because these sites are within areas where people may undertake a range of

³ Greater Norwich Development Partnership – Joint Core Strategy for Broadland, Norwich and South Norfolk (2011/amended 2014)

⁴ South Norfolk Local Plan – Development Management Policies Document Adopted October 2015

⁵ National Design Guide - Planning practice guidance for beautiful, enduring and successful places – Jan 2021

recreational activities including (but not limited to) picnics, hiking, walking their dogs, swimming and sailing. The evidence⁶ before me indicates that combined housing and consequent population growth on sites within reach (ZoI) of these areas is likely to result in an increase in the number of visitors to them, creating the potential for impacts from increased recreational disturbance of the birds and their habitats.

23. Given my findings, the Habitats Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the sites' conservation objectives.
24. The appellant has submitted a UU with this appeal which includes a financial contribution aimed at mitigating these effects. This payment - known as a RAMS payment - would be utilised to contribute towards the mitigation measures set out within the GIRAMS. These measures include (but are not limited to) visitor engagement, management of access, working with landowners, land monitoring, route diversions, car park rationalisation and visitor monitoring. These measures are all aimed at mitigating increased recreational disturbance on the European Sites set out within the GIRAMS and they are fully costed. For development in South Norfolk district the GIRAMS sets out a contribution of £185.93 per residential unit.
25. The UU includes provision for this sum (index linked) to be paid prior to commencement of development. I am satisfied that this obligation will ensure that the proposed development would make the required contribution to the mitigation measures outlined within the GIRAMS.
26. The contributions would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. They therefore meet the tests set out under Framework Paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).
27. I conclude that the required mitigation would be properly secured and that the proposals would not have an adverse effect on the integrity of the identified European Sites either alone or in combination with other projects. The proposed development would therefore comply with Local Plan Policy DM1.4, which outlines in part that designated sites will be protected in accordance with their natural significance.
28. The UU also includes provision for a 'Green Infrastructure Contribution'. The GIRAMS sets out guidance in relation to provision of Green Infrastructure in addition to RAMS payments. However, it outlines (Page 3) that RAMS measures are designed to mitigate 'in combination' effects and that mitigation impacts arising from a development 'alone' will need to be provided, on or near the site, in the form of Green Infrastructure provision. Given my conclusion that the modest scale of the development would mean that significant effects would not be likely when considering the development 'alone', the provision of Green Infrastructure is not necessary in this instance.
29. Incidentally, the sums identified in the UU have been derived from the Guidelines for Recreation Provision in New Residential Developments SPD

⁶ The Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy 2021 (GIRAMS)

(2018), which only applies to developments comprising 15 residential units or more.

30. The provision of a Green Infrastructure Contribution would not therefore meet the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) given that it would not fairly and reasonably relate in scale and kind to the development. As such, I have not taken this contribution into account in considering this appeal. Nonetheless, it matters not, as I have concluded that sufficient provision has been made within the UU to ensure that the development would not have an adverse effect on the integrity of the identified European Sites.

Other Matters

31. Poringland Parish Council has made various representations in relation to this appeal including with regard to the weight to be afforded to the PNDP. Since the planning application was refused, the PNDP has been 'made' and is now part of the development plan.
32. The appeal site is located within the 'village centre' as defined on Map Four of the PNDP. PNDP Policy 21 states that development in the village centre will be supported if it comprises small scale commercial development or community facilities. It lists the types of development supported, none of which include residential development of the type proposed. However, the wording of this policy does not preclude other types of development in the village centre.
33. In any case, the appellant submitted an appraisal produced by Lambert Livesley King Chartered Surveyors as part of the planning application. This appraisal takes into consideration a variety of factors, including the existing nearby commercial units with flats above, the wider market within the local area and the uncertainty in the market created by Brexit and the COVID-19 pandemic. It concludes that, taking these factors into account, the site has little merit for employment purposes. There is no substantive evidence before me to the contrary of these findings. As such, even if there were a conflict with PNDP Policy 21, the submitted appraisal is a material consideration which would outweigh any such conflict when combined with the social and economic benefits associated with the provision of nine dwellings and a retail unit.
34. The site, which comprises an area of mown grassland adjacent to the highway, is likely to have limited ecological value. There would be a small hedgerow removed but given the urban location of the hedgerow and its proximity to the adjacent car park to the north, I am satisfied that the loss of the hedgerow (and any other biodiversity within the site) could be offset through the provision of measures to secure an overall biodiversity net gain, in accordance with PNDP Policy 6. This could be controlled by an appropriately worded planning condition. For the same reasons the development would comply with PNDP Policy 7, which requires that proposals include high quality landscaping and that where hedgerows are lost they are replaced. A planning condition requiring submission and approval of hard and soft landscaping would ensure that sufficient soft landscaping measures are implemented in this regard.
35. PNDP Policy 13, on Flood Risk, amongst other things, requires applicants to demonstrate that proposed development does not lead to an increase in flood risk elsewhere. The appellant submitted a Flood Risk Assessment as part of the planning application which demonstrates that the flood resistant measures

proposed (including ground floor levels 300mm above existing ground levels for plots 4-6 and provision of voids beneath this level) would be sufficient to ensure that there would not be an increase in flood risk elsewhere. These measures could be controlled by condition and the development would therefore comply with Policy 13.

36. PNDP Policy 14 requires in part that refuse bins are located as close to properties' rear doors as possible. The proposed development includes bin locations to the front of Plots 1 and 2. This is considered acceptable given the likely excessive bin-drag distance required in order to facilitate access to the rear. The remaining units would have access to shared bin storage adjacent to the site access, which is an acceptable location, given that it would be to the rear of these properties. As such, the proposed development would comply with PNDP Policy 14.
37. PNDP Policy 19 sets out the residential parking standards which apply in the neighbourhood plan area. These standards require a higher level of car parking provision than is set out within the Local Plan. However, given that they were more recently adopted than the Local Plan they take precedence, as is consistent with the approach advocated at Framework Paragraph 30.
38. As such, the development would require at least 19 car parking spaces for the proposed residential units. The development, which would provide a total of 16 (and an additional three for the retail unit) would fall short of this requirement. As such, there would be a conflict with Policy 19. However, there would only be a small shortfall of three spaces for the residential component of the development. Furthermore, the site is in the village centre which has good access to services and facilities as well as public transport. The PDNP does not differentiate between more accessible locations. For these reasons, whilst there would be a conflict with Policy 19, this conflict is outweighed by other material considerations, including the accessibility of the site and the social and economic benefits which would be associated with the provision of housing and retail development.

Conditions

39. I have considered the Council's suggested conditions in light of advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other respects. With regard to Section 100ZA of the Town and Country Planning Act 1990 (as amended), the appellant has given written agreement to the pre-commencement conditions recommended by the Council. The effect of these conditions has not been altered by my revisions and therefore the appellant has not been prejudiced in this regard.
40. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty.
41. Conditions requiring the submission and approval of details pertaining to surface water drainage [3], biodiversity net gain [4], building materials [5] and landscaping [7 and 8] are necessary in the interests of reducing flood risk, enhancing biodiversity and preserving the character and appearance of the area, respectively.

42. Given that there is evidence suggesting the potential for archaeological remains to be present, a condition requiring submission of a Written Scheme of Investigation (WSI), including a programme for the site investigation and post investigation assessment is necessary. The County Archaeologist suggested three separate conditions but I am satisfied that the function of those recommended conditions can be controlled through a single condition [6].
43. A condition requiring submission and approval of details relating to construction parking is necessary [9] in the interest of highway safety. For the same reason a condition requiring parking to be laid out prior to occupation is necessary [10].
44. A condition requiring that the flood resistant measures are implemented prior to occupation [11] is also necessary in order to reduce the risk of flooding to future occupiers of the proposed development.
45. I have also imposed a condition restricting the use of the proposed retail unit to uses within Class E [12] other than those likely to give rise to potential harm to the living conditions of surrounding neighbours, in the interests of the living conditions of nearby residents. For the same reasons, conditions specifying the opening hours [13] and requiring details of certain types of machinery (should they be proposed at a later date) are required [14].
46. A condition which removes certain permitted development rights [15] (for example - extensions, roof additions and incidental buildings) is necessary because the site is relatively compact and sits within a prominent location such that there could potentially be an unacceptable harmful impact on local character in instances where these PD rights are utilised.
47. Water consumption is restricted [16] in the interest of using water efficiently and to assist in reduced energy consumption. A condition to address the implications of unidentified contamination is also required in the interest of environmental health [17].
48. The Council has suggested a condition requiring that the proposed garages are solely used for the purposes of parking vehicles. However, I do not consider that such a condition would be reasonable in this instance, given that future occupiers might not own vehicles and this would mean that the garage space would be largely redundant.

Conclusion

49. The proposed development would not be harmful to the character and appearance of the area and it accords with the development plan in this regard. There would be a conflict with the development plan in terms of the level of car parking provision proposed, which falls marginally short of the requirements of the PNDP. However, the site's good accessibility to services and facilities, along with the significant social and economic benefits associated with provision of housing and a retail/commercial unit, are material considerations which outweigh this conflict. As such, the appeal is allowed.

Luke Simpson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing number 0001 Rev. D – Location Plan, Drawing number 0002 Rev. J - Proposed Site Plan, Drawing number 0200 Rev. F – Proposed Plots 1 – 3 GF/FF Plans, Drawing number 0270 Rev. I - Proposed Elevations, Drawing number 0271 Rev. A – Primary Elevation, Drawing number 0275 Rev. A – Proposed Elevations, Drawing number 0300 Rev. E – Proposed Plots 4 – 6 Floor Plans, Drawing number 0350 Rev. E – Proposed Plots 7 – 8 Floor Plans, Drawing number 0400 Rev. A – Proposed Plots 9 – 10 Floor Plans.
- 3) No development shall take place until full details of the means of surface water drainage have been submitted to and agreed in writing with the local planning authority. The details should include the results from percolation tests if appropriate and incorporate installation of water efficiency and water saving devices such as rain saver systems. The development shall be carried out in accordance with the agreed details prior to its first occupation and shall be retained as such thereafter.
- 4) No development shall take place until a scheme demonstrating how net gains for biodiversity will be secured and maintained as part of the development, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of any dwelling hereby approved and shall thereafter be retained in accordance with the approved details.
- 5) No development shall take place above slab level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out and thereafter retained in accordance with the approved details.
- 6) No development shall take place until an archaeological written scheme of investigation has been submitted to and approved by the local planning authority in writing and the development shall thereafter be carried out in accordance with the approved details. The scheme shall include an assessment of significance and research questions; and
 - a) The programme and methodology of site investigation and recording
 - b) The programme for post investigation assessment
 - c) Provision to be made for analysis of the site investigation and recording,
 - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation,
 - e) Provision to be made for archive deposition of the analysis and records of the site investigation,
 - f) Nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation and

- g) any further project designs as addenda to the approved WSI covering subsequent phases of mitigation as required.
- 7) No development shall take place above slab level until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved and thereafter retained in accordance with the approved details.
- 8) If within a period of five years from the date of planting, any tree or plant (or any tree or plant planted in replacement for it) is removed, uprooted or is destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place no later than the end of the first available planting season and shall thereafter be retained.
- 9) No development shall take place, other than site clearance works, until a scheme detailing provision for on-site parking for construction workers for the duration of the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented throughout the construction period.
- 10) Prior to the first occupation of the development hereby approved the access and on-site car parking and turning areas shall be laid out and demarcated in accordance with the 0002 Rev. J and shall be retained thereafter in accordance with those details and available for that specific use.
- 11) The development hereby approved shall be carried out in accordance with the recommendations of the Flood Risk Assessment (FRA) by Evans, Rivers and Coastal, November 2020 as amended by the email from the agent dated 29 March 2021, and flood resistant measures as set out in the approved FRA shall be implemented prior to occupation of any of the dwellings hereby approved. Finished ground floor levels shall be 300mm above existing ground levels and the voids beneath the buildings shall thereafter be retained and maintained in accordance with the approved FRA.
- 12) The ground floor unit hereby approved at Plot 10 (as shown on approved plan reference 0002 Rev. J) shall only be used for the display or retail sale of goods, financial and professional services or an office to carry out any operational or administrative functions under Classes E(a), E(c) and E(g, i) and for no other use (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 13) The use of the ground floor unit at Plot 10 (As shown on approved plan reference 0002 Rev. J) hereby permitted shall only take place between the following hours:

0800 - 1800 Monday to Saturday inclusive

1000 - 1600 Sundays and Bank Holidays.

- 14) No generator, compressor, chilling unit or cooling fan shall be installed to serve the approved ground floor unit at Plot 10 (As shown on plan reference 0002 Rev. J) without first being granted planning permission by the local planning authority.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no enlargement, improvement or other alteration permitted by Class A, B or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be carried out or made to the dwellings hereby approved unless granted separate planning permission by the local planning authority.
- 16) The development hereby approved shall be designed and built to achieve a water consumption rate of no more than 105 litres/person/day. All required water conservation measures installed to achieve this rate shall be retained/upgraded to ensure the required water consumption rate is not exceeded for the lifetime of the development.
- 17) If, during development, contamination not previously identified is found to be present, then no further development shall be carried out in pursuance of this permission until a remediation scheme to deal with such contamination has been submitted to and approved by the Council as Local Planning Authority detailing how this contamination shall be dealt with in accordance with the agreed remediation scheme. Development shall only continue when evidence is provided to the Local Planning Authority and approved, to confirm that the contamination no longer presents an unacceptable risk.