



Appeal Decision

Site visit made on 21 September 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/L2630/W/21/3282733

Land East of The Bungalow, Loddon Road, Yelverton, NORWICH, NR14 7PJ

- 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 Alex McAllister against the decision of South Norfolk District Council.
 - The application Ref 2020/2335, dated 3 December 2020, was refused by notice dated 10 March 2021.
 - The development proposed is erection of dayroom, store/workshop building, formation of hard standings for mobile home and touring caravan. Application includes change of use of domestic amenity land.
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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. However, in Part E of the appeal form the description has been changed to the one that the Council used to deal with the proposal which is change of use of amenity land to residential Romany Gypsy site. Erection of dayroom, store/workshop building and hard standing for mobile home and touring caravan. This was agreed with the appellant, and I have therefore used this in coming to my formal decision.
3. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised on 20 July 2021. The Council and appellant have had an opportunity to comment on the implications of this as part of their submissions.
4. Following the appeal submissions, a Written Ministerial Statement (WMS) on river basin catchments and relevant watercourses beyond those previously identified as being in 'unfavourable' condition due to high nutrient levels, and protected sites under the Habitat Regulations was issued on 16 March 2022. As a result of the WMS, Natural England updated the conservation status of The Broads Special Area of Conservation (SAC), in regard to unfavourable nutrient levels. In the interests of natural justice, both main parties have had the opportunity to make representation. In coming to my conclusion, I have had regard to those.

Main Issues

5. The main issues in this appeal are:

- Whether or not the appeal site is a suitable location for the proposed pitch with reference to the spatial strategy in the development plan;
- the effect of the development on the character and appearance of the area; and
- whether or not the proposed use would adversely affect the integrity of European designated nature conservation sites.

Background

6. The appeal site is intended for occupation by the appellant, who previously resided at Harford Park traveller site with his wife and children. Due to a change in personal circumstances he no longer lives there.
7. Evidence has been supplied by the appellant to demonstrate a nomadic habit of life and the Council has not taken an alternative view or suggested the submissions are inconsistent or inaccurate. Accordingly, the future occupant of the proposed pitch would travel for economic purposes and thus follow a nomadic habit of life.
8. There is no dispute that the proposed occupiers would fall within the terms of Annex 1 of the Planning Policy for Traveller Sites (PPTS) and, accordingly, that policy provides a relevant context for this proposal.

Reasons

Spatial Strategy

9. Paragraph 25 of the PPTS seeks to strictly limit new traveller site development in the open countryside that is away from existing settlements. Consequently, the appeal site, which is located within the countryside, is in a location where new Gypsy and Traveller development should be strictly controlled.
10. Policy DM1.3(2) of the South Norfolk Local Plan Development Management Policies Document (October 2015) (the LP) permits development in the countryside outside of defined development boundaries for settlements where specific development management policies allow.
11. Policy DM3.3 of the LP deals with proposals for Gypsy and Traveller sites inside and outside of the development boundaries. It sets out a number of key considerations and, of these, (f) includes the need to consider whether the site is isolated from settlements so that the occupiers cannot gain convenient access to schools and facilities to meet their daily needs is a matter of dispute.
12. The nearest discernible village, to the appeal site, is Yelverton which is defined as a Service village within the Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS), but despite having a primary school has a limited range of services and facilities. The Council has indicated that the appellant would need to travel to Poringland, to access a wider range of facilities, such as health care provision or secondary education.
13. Due to the intervening distance, it is highly unlikely future residents would regularly walk to either Yelverton or Poringland. The nearest bus stop, is

approximately a 12 minute walk from the site and whilst this would be an available alternative to the private car, I have not been provided with any details of the frequency of the bus service and the Council's evidence indicates that the service is irregular. Therefore, this leads to uncertainty that it would be a realistic alternative to the convenience of a private car.

14. Cycling is unlikely to be an option due to the distance and the need to negotiate the busy A146. Therefore, I am not persuaded that there is sufficient evidence that cycling would be a realistic mode of transport to access the day to day services and facilities having regard to the distance to the nearest larger village.
15. Thus, future occupiers of the proposed pitch would be predisposed to use private motorised transport when accessing everyday facilities and services. This would result in negative impacts on carbon emissions and from disincentivising healthy travel options such as walking.
16. However, the appeal site is only around three miles from the centre of Poringland and 6 miles to the centre of Norwich and the railway station. The A146 is a classified road that provides good access into the national road network. This road can be easily accessed from the appeal site via a junction directly onto it. The easy access to the national road network would facilitate travel and the nomadic habit of life the occupant engages in.
17. Therefore, the journeys would be reasonably short when bearing in mind that accessibility needs to be considered in the context that members of the travelling community are generally reliant on vehicles wherever they live given their lifestyle.
18. Moreover, for parts of the year the appellant would be away travelling and therefore the number of journeys would be reduced. Thus, the appeal site's position only a couple of miles from both Poringland and Norwich could be considered as not being isolated from settlements and that it provides convenient access to existing services and facilities.
19. In conclusion, the proposal would provide the future occupants, who have a nomadic habit of life, with reasonable access to services and facilities, given the sites proximity to a sustainable settlement and a classified road, when future occupants are generally reliant on the private car.
20. As a result, it would adhere to Policies DM3.3(f) and DM3.10 of the LP which seek to ensure sites are suitably located and integrated with local sustainable transport networks. It would also accord with Policy 6 of the JCS which states that in the most rural areas the private car will remain an important means of travel.

Character and appearance

21. The site is located within an existing cluster of mixed development, comprising a commercial vehicle sales yard and MOT station and a number of residential dwellings, accessed off the A146.
22. The appeal site is enclosed by this existing development and views of the site are restricted to those looking into the site from the private track, with some limited views of the site possible from across the neighbouring fields which comprise a solar farm. Nevertheless, where views can be afforded, the site appears part of the small cluster of development off the A146, rather than as part of the open countryside beyond the appeal site. As a result, the site does not contribute to the open rural nature which is experienced beyond the appeal site, with both open fields interspersed with native hedging and those of the solar farm.
23. Whilst the site is technically open land in the countryside, it is tucked away within an immediate complex of various buildings and other ad hoc parcels. Consequently, in terms of public exposure, the site is rendered relatively indistinct and makes little contribution in itself to the open rural character of its wider surroundings.
24. Thus, the adverse impacts on the character and appearance of the area would be limited. The introduction of further development into the site would not be unduly harmful, having regard to the enclosed nature of the existing site. The development would protect the character of this part of the countryside and result in a small infill between the existing built development.
25. It would be in accordance with Policy 2 of the JCS in particular in its aim to respect local distinctiveness. Furthermore, it would also accord with policies DM3.3 and DM4.5 of the LP which requires development to respect, conserve and where possible, enhance the landscape character of its immediate and wider environment and in particular that sites for Gypsies and Travellers should be sited and designed to integrate in to the local landscape.

The Broads Special Area of Conservation

26. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Habitats site that requires mitigation. The Council have advised that the appeal site is just outside of the identified catchment area of the Broads Special Area of Conservation (SAC). However, as no evidence has been submitted to demonstrate that foul and surface water arising from the development does not drain into the catchment area, the possibility of additional nutrient loading from the proposed development must be considered along with any necessary mitigations to ensure nutrient neutrality.
27. The proposal for new residential accommodation has the potential to lead to an increase in additional nutrients reaching the SAC due to the implications of foul and surface water drainage systems. Consequently, based on the lack of evidence before me as to whether the site would drain into the catchment area and in the absence of mitigation measures, the proposal would likely have a significant adverse effect on the integrity of the SAC.

28. Given the lack of clarity as to what may be required and uncertainty on the time it may take to have a strategy in place with practical solutions to resolve this matter long term and for the lifetime of the development, I am not satisfied that it would be reasonable to impose a Grampian condition to resolve this matter.
29. This is also not an incidental implication of the proposal but a matter of principle as to whether or not the scheme could proceed in an acceptable manner without causing harm to the integrity of the SAC and contrary to the statutory duty upon the competent authority which accompanies it.
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. Whilst the effect of one additional pitch would be small, in combination with other development, based on a precautionary approach and the evidence before me, I conclude that the appeal scheme would be likely to have both a significant adverse effect on the integrity of the SAC due to the potential for an increase in nutrients entering the watercourse and in addition potential increased disturbance through recreational activity on the integrity of The Brecks, North Norfolk Coast and The Broads.
32. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the designated sites' conservation objectives. However, in the absence of an agreed mitigation strategy to overcome the effects that have been identified in respect of nutrients and the lack of a mechanism to secure the contribution to mitigate the impacts of recreational pressure, I cannot be satisfied that the appeal proposal would not result in significant adverse effect to the integrity of the SAC.
33. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraph 180(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused. As a result, it would not accord with Policy 18 of the JCS which seeks to ensure no detriment to the Broadland SPA, Broadland Ramsar and Broads SAC.

Other Matters

34. I have also taken into account the matters raised in the representations received including issues such as highway safety, noise and disturbance, loss of amenity, air pollution and loss of landscaping. Concern has also been raised relating to the impact on wildlife, local fauna and flora. However, there is no evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council or statutory consultees in regard to these matters. Therefore, none of the matters raised provide a compelling reason why planning permission should not be granted.

Other Considerations

35. The PPTS requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets and identify a supply of specific developable sites. The Council confirms that it does not have a 5 year supply of pitches, with the evidence provided within the Greater Norwich 5 Year Gypsy and Traveller Sites, March 2022 putting the supply at 3.05 years, with a shortfall of 16 pitches. As such I consider that need for gypsy and traveller sites carries significant weight.
36. Article 3(1) of the United Nations Convention on the Rights of the Child states that the best interest of a child shall be a primary consideration. This means that no other consideration is more important. If I were to allow the appeal the appellant would be able to provide facilities to enable his children to spend quality time or stay overnight with him and to participate fully in their upbringing.
37. I have given significant weight to the benefits a settled base would bring, enabling the children to be supported by both parents to ensure ongoing educational attainment. An enduring settled base for their father would also support the children's welfare more generally by, for example, affording them a sense of security and continuity.

Planning Balance

38. In the overall planning balance, the benefits of the proposal, including that the development would contribute to the supply of gypsy and traveller pitches in the locality, and would provide a settled base for the appellant, are not sufficient in this case by virtue of the Habitat Regulations to outweigh the adverse effects on the integrity of the European designated nature conservation sites.
39. I attach substantial weight to my finding that mitigation cannot be assured to achieve nutrient neutrality or mitigate recreational disturbance. Consequently, there is no certainty that the proposal would not adversely affect the integrity of the European designated nature conservation sites. The proposal would be contrary to the development plan in these respects.
40. By virtue of the Habitats Regulations, agreement cannot be given to the project because the integrity of a European site would be adversely affected. Given the serious impacts upon the integrity of the designated sites and the accompanying conflict with the development plan as a whole, this is sufficient for me to conclude that the proposed development is unacceptable.
41. Dismissing the appeal would represent an interference with the potential home of the appellant such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
42. The proposal would meet the needs of those persons with a relevant protected characteristic, by reason of race, and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.

43. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with the appellant's rights. Therefore dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 8 would not occur.
44. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupier of the site as a person without a permanent home and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

Conclusion

45. The proposal would lead to significant adverse effect on the integrity of designated sites contrary to the requirements of the Habitat Regulations and in conflict with Policy 18 of the JCS. There are no other considerations which are of greater significance which would outweigh this finding or the conflict with the development plan as a whole.
46. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR