

Appeal Decision

Hearing Held on 27 September 2022

Site visit made on 29 September 2022

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2022

Appeal Ref: APP/K2610/W/22/3296253

Land off Wood Dalling Road, Reepham NR10 4RZ

- 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 R Williams against the decision of Broadland District Council.
 - The application Ref 20211745, dated 14 September 2021, was refused by notice dated 17 November 2021.
 - The development proposed is an "outline application for the erection of 7no. single storey dwellings with site access."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. This outline application has access to be determined at this stage, and all other matters reserved for future consideration. Access has been treated as directly into/from Wood Dalling Road and not the shown internal site access arrangements. A site plan showing a layout of the development, including dwellings, internal access and hard surfaced areas, and landscaping has been treated as illustrative. Separate Unilateral Undertakings (UU) dated 24 October 2022 relate to the payment of Norfolk Green Infrastructure and Recreational Avoidance and Mitigation Strategy (GIRAMS) and Open Space and Recreation contributions respectively. These will be commented upon later within the decision.

Main Issues

3. The main issues are the effects of the proposal on (a) the integrity of the Broads Special Area of Conservation (BSAC) and River Wensum Special Area of Conservation (RWSAC) and (b) the recreational needs for residents of the proposed development, (c) whether the location of the housing beyond defined settlement limits would be suitable for housing, having regard to local and national planning policies, (d) the character and appearance of the area and (e) the living conditions of future residents of the housing, having regard to noise and disturbance.

Reasons

Broads SAC and River Wensum SAC

4. The development would be within the watercourse catchment areas of the BSAC and the RWSAC. In distance terms, it would be about 25km from the BSAC and about 5 km from the RWSAC when measured at their nearest point. The internationally important interest features derive from specific water, lakes, meadows, mires, bog, fen and alluvial forestry habitats for the BSAC and specific water course habitat for the RWSAC. Both SACs have been identified as being in unfavourable conservation status.
5. The National Site Network objectives require maintaining or where appropriate the restoration of species and habitats listed in Annex I and II of the Conservation of Species and Habitats Regulations 2017 to a Favourable Conservation Status.

Nutrients

6. Wastewater from the development would be dealt with by septic tank or discharge via the mains. Either way, there are no guarantees to prevent wastewater entering a watercourse or other pathway, such as the ground, to the protected sites. There would also be water runoff from the development. Taking the precautionary approach, the proposal would be likely to have a significant effect on the internationally important interest features of each protected site, alone or in combination with other plans and projects.
7. Based on a recent appeal decision¹ in the New Forest, the appellant has put forward a Grampian style planning condition to ensure the implementation of approved SAC mitigation measures before the development commences or in accordance with an approved timetable. In a recent appeal decision² relating to an outline proposal, an Inspector agreed a planning condition requiring details (highways) to be submitted at the reserved matters stage and it has been suggested that a similar alternative mitigation condition could be imposed here. More recently, an allowed appeal decision³ for one dwelling in South Norfolk was permitted, subject to a condition requiring approved mitigation, prior to the occupation of the development, relating to the same SACs as those considered here.
8. The Council's appointed consultants are developing a nutrient mitigation strategy for Norfolk, but such strategy would not be published until spring 2023. There is little detail currently available on any mitigation measures, their feasibility and timetable of implementation because the strategy is at such an early stage of progression. At this particular stage, it is far from certain that mitigation would be available before the occupation of the development or during the lifetime of any permission. In contrast, in the New Forest decision, there was a specific off-setting scheme involving taking nitrate generating land out of use, which Natural England (NE) supported.

¹ Appeal Ref: APP/B1740/W/20/3265937, Site of The Rise and Three Neighbouring Properties, Stanford Hill, Lymington SO41 8DE.

² Appeal Ref: APP/L2630/W/22/3296988, Land North of Heath Loke, Poringland, Norwich, NR14 7JU.

³ Appeal Ref: APP/L2630/W/21/3289198, Land to the rear of 75 Bunwell Street, Bunwell, Norwich, NR16 1AB.

9. The appeal suggested condition would also require off-site mitigation measures carried out by another body or persons and a legal agreement/undertaking. Under Planning Practice Guidance (PPG)⁴, such an approach requires exceptional circumstances to be justified which is indicated by the New Forest decision Inspector. In this decision, there was an existing UU and additionally a better and almost complete over-arching s106 agreement securing off-site mitigation. To avoid the delay of a much needed housing scheme, the Inspector considered that the imposition of a Grampian style condition, requiring the entering into and execution of a planning obligation, would meet the PPG exceptional circumstances test because of these factors. This situation does not exist with this appeal before me.
10. In the South Norfolk decision, there was a lack of information on SAC mitigation, but every proposal has to be considered on its particular planning merits. Of great importance, as a decision-maker, is a duty placed on me as a competent authority to ensure an Appropriate Assessment has been carried out under the habitat regulations. In the absence of details of the nature and timescale of any mitigation for this appeal proposal, I cannot be satisfied that the relevant regulations have been acceptably complied with. Furthermore, the PPG exceptional circumstances test cannot be met, nor a condition reasonably imposed at the reserved matter stage of this outline proposal, requiring the implementation of mitigation measures, for the similar reasons.
11. There could be opportunities for mitigation on adjacent land controlled by the appellant and there is a recent committee resolution to approve, subject to nutrient neutrality issues being agreed, a housing proposal at land off Broomhill Lane in Reepham. The appellant wishes to pursue a combined mitigation package for the Broomhill Lane and appeal developments. However, such considerations have limited weight in the absence of any evidence on SAC mitigation as set out previously.
12. On this basis, there would not be compliance with conditions, or other restrictions, such as a planning obligation, that enable it to be ascertained that the proposal would not adversely affect the integrity of the SACs. There are no alternative solutions that would have a lesser effect, or avoid an adverse effect, on the integrity. Development would adversely affect the integrity of each SAC alone or in combination with other projects coming forward. Priority habitats would be adversely affected and there are no imperative reasons of overriding public interest. Accordingly, there would be conflict with Policies EN1 and EN2 of the Broadland Development Management Development Plan Document (DPD) 2015.

Recreation pressure

13. Due to proximity, residents would be able to make use of the BSAC and RWSAC for recreation, such as dog walking and fishing. Urbanisation, especially recreational disturbance, can have a significant effect on the internationally important interest features of the site, alone or in combination with other plans and projects.
14. The GIRAMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by

⁴ PPG paragraph 10 Reference ID 21a-005-20190723.

financial contributions at a specified tariff per dwelling. The submitted GIRAMS UU details differing level of contributions according to the size of the new dwellings on the site. Under the Council's approach, the contributions would be used for habitat-based measures, education, communication and monitoring, and this has been endorsed by NE. There is a requirement under the habitat regulations to consult with NE on the acceptability of the arrangements for mitigation within the UU. As there is a substantive reason for objection, based on the nutrient enrichment effects on the integrity of the SACs, there is no requirement to do so, to progress this matter.

Public Open Space

15. DPD Policy RL1 requires residential development consisting of five or more dwellings to make adequate provision and subsequent management measures for recreation, specifically formal recreation and children's play space. DPD Policy EN3 requires the provision of green infrastructure, informal open space and allotments. The Council's Recreational Provision in Residential Development Supplementary Planning Document (SPD) 2016 provides detailed justification for the required open space contributions.
16. The Open Space and Recreation contribution UU details that development shall not commence until appropriate contributions for off-site provision have been provided prior to the occupation of any dwellings. Such wording makes it unclear whether the contributions should be provided prior to the commencement of development or the occupation of the development. Development is also defined as the erection of houses when the proposal is for the erection of bungalows. The provision within this UU to pay Green Infrastructure contributions would result in overpayment given existence of this provision in the other UU and compound this UU's lack of clarity. The UU is based on that used at another appeal but nevertheless, the irregularities result in a flawed obligation affecting its workings, its credibility and capability in providing the contributions.
17. On this basis, the development would fail to provide acceptable public open space and recreation to meet the needs of future residents of the development. Accordingly, the proposal would conflict with Policies EN3 and RL1 of the DPD. Had there not been the SACs objection to the proposal, there would have been an opportunity given to remedy these defects in the UU.

Location of the housing

18. DPD Policy GC2 requires development to be accommodated within defined settlement limits. Outside of these limits, development that does not result in any significant adverse impact and accords with a specific allocation and /or policy of the plan will be permitted. The proposal would have an adverse impact through harm to the integrity of the SACs and would not accord with any specific policy detailing acceptable developments in principle outside settlement limits. As such, there would be conflict with Policy GC2 of the DPD.

Character and appearance

19. The site comprises an open field which has hedgerows along its rear and side boundaries. To the north, there is Worlds End Lane and beyond this, agricultural land. It fronts onto Wood Dalling Road and there is an opposing row of bungalows sited in modest sized plots with frontage gardens, parking

areas and hedge boundaries. The remaining side boundary adjoins open paddock land and beyond this, industrial units at Collers Way. On Worlds End Lane, there is a nearby large detached dwelling set in spacious grounds.

20. The indicative layout plan shows a residential estate of seven dwellings, with those within the site served by an internal access road. There would be three dwellings facing onto Worlds End Lane with frontage drive and turning areas. The plan shows the tight relationship of a dwelling relative to the corner of Worlds End Lane and Wood Dalling Road, and another dwelling at the end of the row of the dwellings facing onto the lane close to neighbouring land. However, the plans represent only one way of developing the site and there would be scope to re-position the dwellings, change the siting and the size of the dwellings to accommodate soft landscaping both within and along the perimeters of the site. In this regard, the individual plots show modestly spacious individual plots sufficient to achieve this.
21. The site lies outside the designated settlement limits under the DPD, but it would be on the edge of Reepham, with industrial development to the side and residential development opposite. The development would be bungalows and there would be opportunities to retain and augment hedgerow boundaries. On this basis, the development would be an acceptable transition between settlement and countryside, and would be of a high quality reinforcing local distinctiveness.
22. For all these reasons, the development would not harm the character and appearance of the area. According, the proposal would comply with Policies 1 and 2 of the Joint Common Strategy (JCS); Broadland, Norwich and South Norfolk: Broadland Part of the Norwich Policy Area Local Plan 2014 and Policy GC4 of the DPD.

Living conditions

23. Collers Way industrial Estate comprises small industrial/office units in a building adjacent to the appeal site. To the front of these units, there is vehicle parking and turning areas off the internal access road from Wood Dalling Road. There are also industrial buildings with associated parking adjacent to this main road. An agreed planning history of the estate, together with my own site observations, indicate a variety of industrial uses, including General Industrial B2 uses such as car repairs. Based on the evidence before me, there are little restrictions on the B2 General industrial uses.
24. There has been no noise assessment, including survey, and any proposed acoustic mitigation. However, the industrial estate would be separated by the intervening parcel of land and the general industrial uses are not located on the parts of industrial estate located closest to the appeal site. There is also background noise of traffic generation along surrounding roads, and it would be unlikely that these uses present on the estate would operate on a frequent basis during the sensitive night time period. Planning conditions could be imposed requiring details of acoustic fencing along the boundary of the site facing onto the industrial estate.
25. On this basis, the living conditions of future occupants of the housing would not be compromised and the proposal would comply with Policies GC4 and EN4 of the DPD.

Other matters

26. The Council has conceded a deficit 5YHLS due to the current uncertainty on delivery created by nutrient neutrality in relation to habitat sites. The development would make an important but modest contribution to housing supply. The appellant's family owns the site and want to deliver housing quickly on the site. Delivery of this site would help contribute to the local economy through the construction process. Paragraph 79 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities. Economic benefits would arise from the residents of this development using local services and facilities. Residents' participation in social and community clubs and events in Reepham would add vibrancy to the community.
27. Paragraph 84 of the National Planning Policy Framework (the Framework) states that to support a prosperous rural economy, planning decisions should enable the retention and development of accessible local services and community facilities. Sites to meet these needs may be found beyond existing settlements and in locations not well served by public transport. Under the DPD, Reepham is a Key Service Centre and has a good range of facilities and services, and walking, cycling and public transport that are realistic and viable options for residents. By making effective use of land, the development would contribute to protecting the natural, built and historic environment elsewhere.

Development Plan Balance

28. The proposal would result in the creation of much needed housing. The Council does not have a 5YHLS. There would be economic, social and environmental benefits arising from the development for the reasons indicated above. However, the proposal would harm the integrity of BSAC and RWSAC, and there is a failure to secure acceptable public open space to serve the needs of residents of the development, in conflict with DPD policies. The harm to the integrity of the BSAC and RWSAC, and conflict with environmental policies of the DPD would be overriding due to its internationally important interest features. There would be conflict with the development plan taken as a whole. The application of habitat site Framework policies would provide a clear reason for refusing the proposal. There are no material considerations of sufficient weight or importance that determine that the decision should be taken other than in accordance with the development plan and therefore, planning permission should be refused.

Conclusion

29. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR

APPEARANCES

FOR THE APPELLANT

J Parker	Parker Planning Services
T Wheatley	Parker Planning Services
S Henry	Parker Planning Services
R Williams	Appellant

FOR THE LOCAL PLANNING AUTHORITY

G Beaumont	Broadland District Council
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DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Agenda papers for the September 2022 meeting of Broadland District Council's Planning Committee. This includes the reports for land off Broomhill Lane in Reepham where Committee resolved to approve application for 141 dwellings, a sports centre and highway works, local authority email dated 28 September 2022.
2. Policy 3 of the JCS, local authority email dated 28 September 2022.
3. Block plan for the following development at The Old Station Yard, Stony Lane, Reepham: Erection of Food Retail Store (A1 Use), Offices (B1a Use), 60 No Bedroom Care Home (C2 Use), 20 No Assisted Flats (C2 Use), 15 No Assisted Bungalows (C2 Use) Assembly Room/Club House (C2 Use) & Associated Car Parking, Service Yards, Access Roads, Drainage Works & Landscaping, local authority email dated 28 September 2022.
4. Block plan for above development, agent email dated 28 September 2022
5. Suggested conditions relating to ecology, local authority email dated 30 September 2022.
6. Copies of previous planning permissions relating to the adjacent industrial estate, local authority email dated 30 September 2022.
7. Current occupants of the adjacent industrial estate, local authority email dated 30 September 2022.
8. Statement Of Common Ground, appellant submitted dated 7 October 2022.
9. Appeal Ref: APP/L2630/W/22/3296988 Land North of Heath Loke, Poringland, Norwich, NR14 7J, submitted 8 October 2022.
10. Email explaining the actions and reasons for lack of progress on UU, local authority, dated 18 October 2022.
11. Email explaining the actions reasons for lack of progress on UU, agent dated 18 October 2022.
12. Copies of the Horsford planning appeal UU, submitted by appellant 18 October 2022.
13. Council Template for Broadland/South Norfolk GIRAMS agreement, submitted by appellant 18 October 2022.
14. UUs dated 24 October 2022 relating to (1) Open Space and Recreation contributions and (2) GIRAMS contributions.
15. Comments on the UUs, local planning authority dated 28 October 2022.
16. Comments on the UUs, together with recent appeal decision, Appeal decision APP/L2530/W/21/3289198, and associated SAC mitigation comments, appellant dated 1 November 2022.

17. Comments on the above, together with appeal decisions APP/K2610/W/22/3300076 and APP/L2630/W/21/3282733, and associated SAC mitigation comments, local authority dated 4 November 2022.
18. Final comments on correspondence on recent appeal decisions, appellant dated 4 November 2022.