



Appeal Decision

Site visit made on 26 August 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/L2630/W/21/3279337

Land to the north of School Lane, Little Melton NR9 3NL

- 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 and Mrs Sue and Steve Cole against the decision of South Norfolk District Council.
 - The application Ref 2021/0029, dated 4 January 2021, was refused by notice dated 12 March 2021.
 - The development proposed is outline application for 6 no. dwellings with all matters reserved other than access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal has been made in outline with all matters reserved except for access. I have considered the appeal on this basis and, with the exception of the access details, I have regarded other details shown on plans as being for illustrative purposes only.
3. Since the Council issued its decision, Natural England (NE) has updated its advice in relation to nutrient level pollution in a number of existing and new river basin catchments, which includes the Broads Special Area of Conservation (SAC), in the catchment area of which the appeal site is located. I have sought comments from the main parties in this matter and have considered it as an additional main issue of the appeal.

Main Issues

4. The main issues are:
 - Whether the proposal represents a suitable location for development, having regard to relevant development plan policy;
 - The effect of the proposal on the character and appearance of the area;
 - The effect on the living conditions of neighbouring occupants, with particular reference to noise and disturbance, and
 - The effect of the proposal on the integrity of designated habitats sites.

Reasons

Location for development

5. The appeal site is an undeveloped field located to the rear of dwellings on School Lane in the village of Little Melton. Part of the site, mainly comprising

the access route from the highway, lies within the settlement boundary of the village. The majority of the site, where the dwellings would be located, lies beyond the settlement boundary and in the countryside for planning purposes.

6. Policy DM1.3 of the South Norfolk Local Plan Development Management Policies Document 2015 (the DMPD) sets out that all new development should be located so that it positively contributes to the sustainable development of South Norfolk. Part 2 of the policy sets out that permission for development in the countryside outside of the defined development boundaries of settlements will only be granted where specific policies allow for such development, or where the proposal otherwise demonstrates overriding benefits in terms of economic, social and environmental dimensions.
7. I am not referred to any other development plan policies which would permit development in this particular location under the first criterion of Policy DM1.3(2). In respect of the second criterion, the Council points to an appeal decision from 2020¹ wherein the Inspector considered that 'overriding benefits' should be on a par with being exceptional or much greater than usual. The appellant argues that the requirement to provide overriding benefits is not consistent with the more balanced approach of the National Planning Policy Framework (the Framework) to development in the countryside. Other appeal decisions affirming the approach of the policy and its consistency with the Framework have been put forward by the Council.
8. Having regard to this evidence, including the various appeal decisions, I consider that Policy DM1.3 does not set out a blanket approach, as it clearly enables development in the countryside where a certain level of benefit can be demonstrated to justify it. On my reading, the overall settlement strategy aligns with the aims of the Framework to direct development to the most sustainable locations in the first instance, whilst also protecting the natural environment. Therefore, I do not agree that the policy is out-of-date on the basis of inconsistency with the Framework.
9. However, during the course of the appeal, the Council accepted that it was unable to demonstrate a five year supply of deliverable housing sites for the purposes of this appeal, due to uncertainty as to the deliverability of various sites arising from matters raised in April 2022 by Natural England in relation to nutrient neutrality. The scale of the shortfall is unknown, though the appellant had argued at the outset of the appeal that the Council could only demonstrate a deliverable supply of 4.06 years. In the circumstances, the Council's acceptance of its housing position means that, per Footnote 8 of the Framework, policies which are most important for determining the application are out-of-date. This would include Policy DM1.3. I consider the implications of this and potential benefits of the proposal later in this decision.

Effect on Character and Appearance

10. The immediate surroundings of the site include a strong pattern of linear development to the northern side of School Lane which continues for some distance. The dwellings immediately to the west of the site are set at an angle and step in gradually from the road, No 7 being set furthest into its site. However, this does not fundamentally alter the linear pattern, as none of these dwellings is a backland form of development standing behind another.

¹ APP/L2630/W/20/3258218

11. The proposal, indicatively shown in a clustered layout, would represent an uncharacteristic incursion beyond the established line of development on this side of School Lane. The outlook towards undeveloped countryside for residents in front of the site would be replaced by a small housing estate, significantly altering the character of the site and its existing contribution to the rural setting of the village.
12. I acknowledge that there has been a number of recent housing developments in the immediate area. The most notable is that still under construction to the southern side of School Lane for some 30 dwellings. However, development on this side already extends some distance back from the road along Braymeadow Lane and Greenacres, which provides context for this development. I saw other developments at All Saints Close and Ringwood Close which have extended housing into previously undeveloped land, though these are located within a more clustered part of the village to the west of the appeal site around Mill Lane. None of these other developments has eroded the strong linear pattern which prevails along the northern side of School Lane, and as such do not represent a change in character that would lend support to the appeal scheme.
13. I accept that, in terms of the wider landscape, the proposal would have limited effect, as the development would be adjacent to the existing built form, and the site is well screened by mature trees and hedgerows on its outer boundaries. Nevertheless, in localised views from neighbouring properties, the dwellings would be prominent and intrusive and would have a detrimental impact on the existing open and undeveloped character of the site.
14. For these reasons, I conclude that the proposal would harm the character and appearance of the area, in conflict with Policy 2 of the Joint Core Strategy (March 2011, Amendments January 2014) (the JCS) and Policies DM1.4 and DM3.8 of the DMPD, which together require development to achieve the highest standard of design and to respect local character and distinctiveness. There would also be conflict with the aims of the Framework to create the high quality, beautiful and sustainable buildings and places that are fundamental to what the planning and development process should achieve.

Living Conditions

15. The proposed access to the development would effectively incorporate the existing drive to 7 School Lane, albeit with a slight realignment to meet the highway further to the west. The principal concern of the Council is the effects of the use of this access on occupants of the dwelling at No 7, in terms of noise and disturbance from vehicle movements.
16. The appellant indicates that the drive is already regularly used by agricultural traffic accessing the field, but the owner of No 7 disputes this, indicating that the field is used sparingly for storage of vehicles and hay cutting twice a year, with little disturbance. I have no evidence to verify either position, but given the size of the field and the absence of any working farmyard on site, I find it more likely that farm traffic is not a regular occurrence.
17. Moreover, a residential development is likely to generate a greater volume and frequency of traffic from residents, visitors and deliveries to the dwellings. Having observed the site, I share the concerns of the Council and the neighbour that vehicles accessing and leaving the development would pass very close to the front of No 7, causing noise and disturbance to neighbouring

occupants. The likelihood of vehicular movements at unsociable hours, either early in the morning or late at night, would also increase, and with it the degree of disturbance such movements would cause.

18. The submitted plans indicate that acoustic fencing and hedging would be installed to the front of No 7 to mitigate noise impacts. Full details of this are not before me at outline stage, but it is reasonable to consider that the fencing would need to be of a certain height, in the order of 2 metres or more, to be effective. This would have the countervailing effect of blocking a significant amount of the outlook to the front for occupants of No 7. Moreover, there would have to be a gap in the fencing for access to the parking area of the dwelling, which would significantly undermine any potential benefit of the fencing in dampening noise from passing vehicles. As such, I do not consider acoustic fencing to be a suitable form of mitigation in this case.
19. In addition, were the fence not installed, there would be added disturbance from headlight glare as vehicles enter the site directly facing No 7. I appreciate that the Council did not raise this as a significant issue, but it is not reasonable to expect neighbouring occupants to always keep curtains or blinds drawn to avoid headlight glare. The fact that such action would be necessary is in itself a form of disturbance to neighbours that adds to my concerns with the proposal.
20. For these reasons, I conclude that the proposal would adversely affect the living conditions of neighbouring occupants, contrary to Policy DM3.13 of the DMPD, which requires development ensures a reasonable standard of amenity reflecting the character of the area, avoiding the introduction of incompatible neighbouring uses which would generate noise, artificial light and other nuisances that would be significantly detrimental to the amenity of nearby residents. There would also be conflict with the Framework which seeks development with a high standard of amenity for existing and future users.

Effects on Habitats Sites

21. The appeal site lies within the catchment area of the Broads SAC. NE advice finds that an increasing number of waterbodies, in or linked with European Sites, are now deemed to be in 'unfavourable' conservation status for the purposes of the Conservation of Habitats and Species Regulations 2017 (the Regulations) due to the levels of nitrates and/or phosphates present. Proposed development could further increase nutrient levels and adversely affect the integrity of the protected sites. The Regulations prevent the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of this appeal.
22. The Council has indicated that, following NE's announcement and up to the time of this decision, it has not published any strategy or guidance for developers to assist them in addressing matters relating to nutrient neutrality. However, NE has published guidance, including a calculator, which enables developers to establish the potential level of impact on the integrity of the European sites as part of an appropriate assessment. This in turn would inform any potential mitigation that may be offered, should it be found to be required.
23. However, no evidence has been forthcoming from the appellant in this respect. The appellant has instead sought to defer responsibility to the Council to guide them in the matter. Whilst I recognise that the production of guidance would

provide greater certainty for developers, it has been open to the appellant to liaise directly with NE to obtain any relevant information or evidence to support their case at appeal. No such information or evidence has been provided. Consequently, I am unable to determine the extent to which the integrity of the European site would be affected or what form and extent of mitigation would be required to address it.

24. In addition, the Council advises that, from 1 April 2022, the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) has been introduced, requiring developments which would create additional residential impacts on the SAC to pay a one-off tariff of £185.93 per unit. The Council indicates that these tariffs would be used to fund mitigation measures which would enable a conclusion that there would be no adverse impact on the integrity of the protected sites as a result of the proposal. On the evidence before me, the development is likely to generate additional recreational pressure on the SAC, and I am satisfied that this contribution accords with the Framework tests for planning obligations. However, no mechanism has been provided by the appellants to secure this contribution.
25. Latterly in the appeal process, the appellant has requested that a condition be attached to address matters relating to nutrient neutrality and GIRAMS. The Planning Practice Guidance (PPG) is clear that conditions cannot positively require the payment of monies, but that it may be possible to use a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence. However the PPG makes clear that this is unlikely to be appropriate in the majority of cases, an exceptional circumstance being where the delivery of a particularly complex scheme may be otherwise at serious risk. I do not regard a proposal for 6 dwellings as constituting such a scheme. No other exceptional circumstances have been put to me. Therefore, I am not satisfied that a negatively-worded condition requiring a planning obligation to be entered into would be appropriate in this case.
26. Overall, there is insufficient evidence before me to demonstrate that the proposed development would achieve nutrient neutrality and mitigate for additional recreational pressure on the Broads SAC. Consequently, I cannot rule out that the proposal would adversely affect the integrity of the protected sites. Therefore, the proposal would be contrary to Policy DM1.4 of the DMPD in terms of its requirements that development should avoid environmental harm or, where this is not possible, adequately mitigate and compensate for the adverse environmental effects of development.
27. There would also be conflict with the Framework, which states that where significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other Matters

Affordable housing

28. Though not forming a reason for refusal, the Council has advised that the development would trigger a requirement for delivery of two affordable housing units under Policy 4 of the JCS, which seeks 20% on-site provision on schemes of 5-9 dwellings. The appellant does not dispute this requirement. However,

the Framework sets out that 'provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)'. On my reading of Policy 4, no designated rural areas are identified and, in this respect, the policy is not consistent with the Framework.

29. I have not been provided with any evidence to demonstrate why I should not afford the Framework policy relating to affordable housing more weight, in decision-making terms, than Policy 4 of the JCS, though I appreciate this has not been a point of dispute between the main parties and therefore not a matter of focus in their respective submissions. However, even if I were to find the requirements of the policy not to be necessary, this would amount to a neutral factor in the planning balance.
30. In the alternative, were I to find that the affordable housing requirements of Policy 4 were justified, there is no planning obligation before me which would secure its provision, or a contribution in lieu as was suggested in a draft heads of terms provided in evidence. Mindful of the PPG guidance already referred to, I am not persuaded that a condition would be appropriate in place of a planning obligation, particularly as there is little evidence before me of the parties having discussed and agreed the heads of terms, as advocated by the PPG.
31. Therefore, in either scenario, there would be no benefit arising from the provision of affordable housing. Consequently, I have not addressed this matter further with the parties as it would not alter the overall balance of considerations in this case.

Fall-back position

32. The appellant identifies a potential fall-back position through the use of the land for the siting of up to five caravans or camping pitches under permitted development. However, such a use of the land would involve little to no permanent structures and would largely retain the open, undeveloped character of the site. Nor would it be likely that any caravans or tents on site would be occupied on a permanent basis. Therefore, such an alternative use of the site would not be comparable to the construction of six large dwelling houses in terms of the effects on either the character and appearance of the area or neighbours' living conditions. Consequently, I place limited weight on this as a potential fall-back position for the appellant.

Other Appeal Decisions

33. I have referred to various appeal decisions put to me by both main parties, in support of their respective positions in a number of matters. These decisions relate to sites in different locations with their own specific site circumstances, material considerations and policy contexts. Many also predate the emergence of the nutrient neutrality matter discussed above. Therefore, whilst I have considered these decisions in terms of their relevance to the arguments made in evidence, I have ultimately reached my own view on the appeal based on its planning merits and the specific evidence before me.

Highway Safety

34. The Council did not refuse the application in respect of highway safety. No objection was raised by the local highway authority, subject to conditions to secure construction of the access road and adequate visibility splays. I am

aware of concerns raised by interested parties in relation to increased traffic flows, on-street parking and poor visibility on School Lane. My observations on site did not indicate that School Lane was subject to heavy volumes of traffic, though I accept my visit was a snapshot in time and not during peak travel times. Nonetheless, I noted a relatively straight road with little on-street parking. On this basis, I have no firm reasons to doubt that a suitable and safe access could not be created. The scale of the development would also not generate significant levels of traffic. Having regard to the Framework, I am satisfied that the proposal would not have an unacceptable impact on highway safety or result in severe cumulative impacts on the road network.

Flood Risk

35. The Council identified that parts of the site are at risk from surface water flooding. The appellant's Flood Risk and Drainage Assessment sets out measures to address this, including re-grading of the land to direct flows to an existing drainage ditch on the north-west boundary and raising finished floor levels. Despite some local concern over the capacity of existing drainage infrastructure, particularly in light of new developments under construction, the Council concluded that there was sufficient scope to manage flood risk on site, with measures to be secured via condition. I have no substantive evidence before me to contradict these conclusions and therefore this is not a matter weighing against the proposal.

Ecology

36. The appellant's Preliminary Ecological Appraisal assessed the site as of importance at site level only. No objection has been forthcoming from the Council, having regard to the comments of the County Ecologist, subject to certain conditions to secure biodiversity mitigation, enhancement and management as part of the development. I am satisfied that this would suitably address matters of on-site ecology.

Other Issues Raised

37. I have had regard to other matters raised beyond those already addressed. None of these issues are underpinned by substantive additional evidence and as a result they would not attract further material weight either for or against the proposal in the planning balance. Therefore, it is not necessary to consider them in further detail as they would not affect the outcome of the appeal.

Planning Balance

38. As already referred to, the Council indicates that, in the context of this appeal, it is not attempting to demonstrate that it has a five year supply of deliverable housing sites. In this scenario, Footnote 8 of the Framework indicates that policies which are most important for determining the application should be regarded as out-of-date. This includes Policy DM1.3, although as I have found the policy otherwise consistent with the aims of the Framework, I consider it should still be afforded moderate weight in the planning balance. The other policies identified, including Policies DM1.4, DM3.8 and DM3.13, are consistent with the Framework and conflict with them still merits significant weight.
39. However, although certain policies are regarded as out-of-date, the 'tilted balance' of Paragraph 11 of the Framework is not engaged where the application of policies in the Framework that protect areas or assets of

particular importance provides a clear reason for refusing the development proposed. Habitats sites are one such area or asset, as made clear by Footnote 7. In view of the harm identified to the integrity of the Broads SAC, Paragraph 11 does not indicate a presumption in favour of development, but rather points to the refusal of permission.

40. In terms of benefits, the proposal would deliver an additional six dwellings to the housing stock within the Council's area. Given the uncertainty with respect to the exact housing position of the Council, I have considered the proposal on the basis of the worst position put to me, that set out by the appellant. Having regard to this, and to the Framework aim of boosting the supply of housing, the dwellings that would be provided merits significant weight in favour of the proposal.
41. There would be economic benefits arising from the construction of the dwellings, and subsequently from engagement by future residents in the local economy. However, given the scale of the proposal, such benefits would attract only limited weight. In environmental terms, the location of the site would allow some local facilities to be reached by means other than the private car, but any benefits in this respect would be very limited in scope.
42. Set against these benefits, I have found that the proposal would cause harm to the character and appearance of the area; to neighbours' living conditions and to protected habitats. I am satisfied that the totality of harm identified outweighs the cumulative benefits of the proposed new residential development. Therefore, I find that the proposal would not deliver 'overriding benefits' as required by Policy DM1.3 and so would not represent an appropriate location for housing.
43. Consequently, I conclude that the harms arising from the proposal result in overall conflict with the development plan that is not outweighed by the other material considerations in this case, including the contribution to housing supply and the associated benefits previously identified. Moreover, even if the tilted balance were applied, the harms would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole.

Conclusion

44. For these reasons, and having regard to all relevant matters raised, the appeal should be dismissed.

K. Savage

INSPECTOR