



Appeal Decision

Site visit made on 3 February 2023

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th March 2023

Appeal Ref: APP/L2630/W/21/3284964

Land between 8 & 10 Meadow Close, Hethersett NR9 3DZ

- 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 Spencer Lawrence against the decision of South Norfolk District Council.
 - The application Ref 2021/0533, dated 9 March 2021, was refused by notice dated 30 April 2021.
 - The development proposed is erection of a new single dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site address in the decision banner above is taken from the appellant's appeal form which I consider more accurately describes the location.
3. The application sought an outline planning permission with all matters reserved. As part of the application process plans were provided showing a proposed site layout, elevations and floorplans. Given that matters such as scale, layout and appearance would be reserved as part of any future determination I have treated these plans on an "indicative" basis only.
4. Since the Local Planning Authority (LPA) made its decision, it has advised¹ of material changes in circumstance relating to protected habitats that now affect decision-making, including planning appeals. The first matter relates to likely significant effects arising from new residential development in connection with recreational pressure and disturbance at various habitats across Norfolk. As such South Norfolk Council has adopted the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) which, as of 1 April 2022, seeks a per dwelling tariff payment as appropriate mitigation to avoid any adverse impacts. The second matter relates to nutrient neutrality and the Government's correspondence of 16 March 2022 which followed Natural England advice regarding nutrient pollution on the separately protected habitats of the Broads Special Area of Conservation (SAC) and the River Wensum (SAC). The appeal site is within the catchment of the Broads SAC where new residential development is likely to have a significant effect and thus require mitigation to avoid harm.

¹ Email dated 12 April 2022 to both the Planning Inspectorate and the appellant

5. The appellant has provided a copy of an appeal decision in South Norfolk issued on 26 October 2022² which allowed the appeal subject to negatively worded conditions that inhibited development until such time as mitigation was secured. I have invited the LPA to provide an update on the protected habitats identified and approaches to mitigation and to comment on the recent appeal decision provided by the appellant. No response was received from the LPA. I have subsequently given the appellant a further opportunity to respond on this matter. I deal with this as the second main issue for this appeal.

Main Issues

6. The main issues in this appeal are firstly whether the proposal represents an acceptable form of development having regard to flood risk and secondly, the effect of the development on designated nature conservation sites, with particular regard to recreational pressure and disturbance and wastewater discharges.

Reasons

Flood Risk

7. The appeal site is located within the built-up residential area of the large village of Hethersett, situated on garden land between existing dwellings on the north side of Meadow Close. The appeal site is part of the curtilage to the west of the host property at No.8 Meadow Close. The LPA has separately and recently granted planning permission³ for a single dwelling on curtilage land to the east of No.8, approximately 15 metres to from the appeal site.
8. The LPA has assessed the appeal site as being at a medium to low risk of flooding from surface water, with depths of inundation identified at below 0.3 metres (m). The LPA state that their data source is the Environment Agency's (EA) 'Flood Map for Planning'. Consequently, on the basis of this mapping the LPA consider the appeal site should be given the equivalence of a Flood Zone 2 on the basis that the EA mapping shows the majority of the appeal site being in a low risk of 1 in 1000 years and 1 in 100 years and parts of the appeal site closest to No.10 Meadow Close being at medium risk (up to 1 in 30 years). This is clearly identifiable in the EA mapping outputs at Figures 6 and 7 in the appellant's Flood Risk Assessment (FRA)⁴.
9. Third party representations also refer anecdotally to surface water flooding events in Meadow Close. On the other hand, the appellant states they carried out due diligence when acquiring site, with the previous owner stating that there had been no flood events at the property, going back to the 1950s. There is very little to corroborate any of this anecdotal evidence and so I give it all very limited weight.
10. Ultimately, the appellant's FRA takes the position that the risk of surface water flooding is low, even when accounting for the impacts of climate change and consequentially there is very low degree of flood hazard, most likely in the form of shallow pooling or flow of water. As such the FRA advises mitigation in the form that the finished ground floor level would be set 0.6m higher than the existing ground level, including through a void arrangement, to provide safe

² APP/L2630/W/21/3289198

³ LPA reference 2021/1586

⁴ Evans Rivers and Coastal, Report Ref 2694/RE/04-21/01 dated April 2021

refuge during the low risk surface water flood event. The FRA did not, however, contest or dispute that the appeal site is an area of medium to low risk to surface water flooding, albeit it towards the lower end of any spectrum of such risk, with the flood strategy being one of safe refuge and generally safe access.

11. The appellant's appeal submissions, however, seek to primarily contest the applicability of the government's 'Flood Map for Planning' as a reliable determinant at the single site level to conclude whether a site is at risk of flooding. In this regard the appellant draws my attention to DEFRA advice dated June 2021 which cautions against the use of EA flood risk mapping in terms of its robustness and reliability to conclude with confidence that an individual property is at risk of surface water flooding. The appellant also refers me to the government's surface water flood risk mapping data website which again cautions that the data is "extremely unlikely to be reliable for identifying individual properties at risk". As the appellant points out, there are fine margins in the mapping such that a dwelling was approved on garden land within the same curtilage of No.8 without surface water flood risk. That is not surprising, there will always be boundaries in flood risk mapping. More refined analysis may confirm (or increase) the risk or establish there could be no risk. That is echoed in the EA 'summary' of risk of Flooding from Surface Water Extent (14 May 2021)⁵ which states that the maps are not appropriate to act as the sole evidence for any specific planning decision or assessment of risk in relation to flooding at any scale without further supporting studies or evidence. The appellant has also provided evidence from DEFRA (dated July 2018) outlining various limitations with the EAs surface water flood risk maps.
12. Despite the various methodological limitations identified by the appellant with the EA mapping it is reasonably specific in terms of the scale of the mapping outputs and clearly identifies Meadow Close, especially to the west of the appeal site, as a particular point of risk for surface water flooding. As such, and on balance, I consider that the onus falls on the appellant to demonstrate beyond general methodological concerns that the EA mapping at the appeal location is site-specifically not to be relied on.
13. In this regard, the appellant has provided extracts of documents prepared by the LLFA which seek to show that the appeal location has not been affected by a notable recent storm event in June 2018 and that Hethersett more generally is not a priority settlement in Norfolk for risk from surface water flooding. This evidence is generally limited. The settlement priority evidence appears to be based as of 2011 and is now of some age. Although the mapping is at very broad scale, as the appellant surmises, one of the grid squares in Map 5 showing a degree of risk from surface water flooding appears to correlate with the position of Hethersett. Generally, I do not find the Norfolk Local Flood Risk Management Strategy extracts to assist the appellant's case.
14. In terms of the June 2018 storm event, the LPA dispute that Hethersett was in the catchments investigated as part of the report into the flood event on 2 June 2018. The absence of Hethersett, for whatever reason, is not clearly explained by the main parties. On the limited and mixed evidence before me I cannot come to a positive conclusion in the appellant's favour on this point. I am left in a position where, notwithstanding potential, general limitations with the EA mapping, it nonetheless remains that the appeal location is identified as being

⁵ Appellant Statement of Case, Appendix 5

susceptible to a moderate degree of surface water flood risk. The evidence, such as it is, generally reinforces that there is not a high risk of surface water flooding but does not discount a residual degree of hazard such that I cannot conclude there would be no risk from surface water flooding. The appellant invites that the “benefit of the doubt” be given to them as to effectively assign the appeal site into an equivalence of flood zone 1 for surface water flood risk. Given the need to carefully avoid placing more vulnerable uses in areas of potential flood risk, this would not be appropriate on the evidence before me.

15. It is now a well-established planning principle that more vulnerable development, which includes new homes, should be located in areas of lowest flood risk, unless it is demonstrated, including through the application of a sequential test approach, that there are overriding reasons to do so. No sequential test has been carried out in this case. The appellant states that there are no small or single building plots available in Hethersett but there is negligible evidence to support this. The recent grant of planning permission to the east of No.8 Meadow Close indicates that opportunities do exist for new single homes on individual sites in Hethersett where there is a lower flood risk in Hethersett. The LPA states that it has sufficient land supply to deliver its housing need for the required five-year period. There is no evidence before me to contradict this. As such the appeal proposal has not passed the sequential test. Therefore, I am not required to go further and consider the exceptions test and whether the development could be made safe.
16. I therefore conclude that the proposal would not represent an acceptable form of development having regard to surface water flood risk at the appeal location. It would be contrary to Policy 1 of the Joint Core Strategy for Broadland, Norwich and South Norfolk 2011 which seeks development to be located and designed to minimise flood risk in the context of a changing climate and more extreme weather. It would also fail to accord with national planning policy at paragraphs 159 and 162 of the NPPF which state that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of highest risk and that the sequential test should steer new development to areas with the lowest risk of flooding from any source (my emphasis).

Biodiversity

17. As set out above, circumstances have changed since the LPA made its decision, such that new housing development at the appeal location would give rise to likely significant effects in respect of recreational pressure and disturbance and water quality. As such the appeal proposal should be subject to a Habitats Regulations Assessment (HRA) by a decision maker to consider whether any likely significant adverse effects could be suitably mitigated. As stated above, I have approached both the LPA and the appellant on HRA matters given the length of time since the appeal was submitted and the LPAs email of 12 April 2022. I am satisfied from the evidence before me that the likely significant effect from the appeal proposal in relation to recreational disturbance could be mitigated by an appropriate GIRAMS payment. There is nothing before me, however, to state that matters have progressed in terms of water nutrient issues and that a form of mitigation has been established to enable a conclusion, as part of appropriate assessment, of no adverse effect on the integrity of the European site (in this case the Broads SAC).

18. I have considered the recent Bunwell appeal decision provided by the appellant and whether the use of negatively worded conditions would enable a positive HRA conclusion of no adverse effect on site integrity. With regard to the GIRAMs there is clearly an agreed tariff approach that would secure a proportionate contribution towards mitigation from a single dwelling. Exceptionally, and on this basis, I find that a condition preventing commencement until a payment had been made could be imposed in the absence of a planning obligation to secure the necessary, effective mitigation. On this basis I conclude that a likely significant effect arising from recreational disturbance could be suitably mitigated.
19. Turning to nutrient neutrality, a suitable form of mitigation does not appear to have been established since the Government's correspondence of 16 March 2022. As such there is significant uncertainty as to what mitigation would be secured by a negatively worded condition. The recently approved appeal decision is unclear on the full details of any agreed mitigation measures that exist to enable a negatively worded condition in relation to water neutrality to be satisfactorily discharged. In my view it is necessary for the decision-maker at the appeal stage to be assured, as the competent authority for HRA purposes, that effective mitigation can be secured and not to default that responsibility to the LPA through the discharge of condition process where uncertainty exists. Ultimately, based on the lack of evidence of an agreed approach with Natural England on what form nutrient neutrality mitigation might take for a single dwelling, I do not consider that a negatively worded condition on this matter would be sufficiently precise and reasonable in all other respects in terms of the tests at paragraph 56 of the NPPF. Moreover, it would not enable a robust, precautionary conclusion of no adverse effect on the integrity of the European site at this stage.
20. On this basis, in carrying out an appropriate assessment, I am unable to arrive a positive HRA conclusion in relation to water neutrality. As such the development would have an adverse effect on the integrity of the protected habitat, the Broads SAC, and therefore under the Habitats Regulations must not proceed.

Balance and Conclusion

21. The appeal proposal would be a type of land use in an area of surface water flood risk contrary to the development plan and national planning policy. The sequential test has not been satisfied and so there is a clear reason to refuse development in this case. Whilst the appeal proposal would provide an additional dwelling in a sustainable location providing limited economic and social benefits during its construction and subsequent occupation, these are not material considerations sufficient to outweigh the conflict with the development plan on the main issue in this appeal. Furthermore, as part of conducting an appropriate assessment under the Habitat Regulations, I have been unable to reach a positive HRA conclusion in relation to water quality, such that were I to have arrived at a different conclusion on flood risk, the adverse effect on the integrity of the Broads SAC means the proposal cannot proceed. I therefore conclude, for the reasons given that the appeal should be dismissed.

David Spencer

Inspector.