The Planning Inspectorate

Appeal Decision

Site visit made on 7 March 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2023

Appeal Ref: APP/F2605/W/22/3301381
123 Brandon Road, Watton IP25 6LN

- 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 Darren Crowe against the decision of Breckland Council.
- The application Ref 3PL/2020/1236/O, dated 26 October 2020, was refused by notice dated 3 February 2022.
- The development proposed is outline application for 8 dwellings.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline permission with all matters reserved except access. The description of the development limits its scale to 8 dwellings. A site plan, 1335/2, has been submitted with the application. For the purpose of this appeal I have taken the internal appearance, landscaping, and layout shown as illustrative only. I have determined the appeal on this basis.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on: -

   - Whether the proposed development would provide satisfactory living conditions for future occupiers, with particular reference to odour and noise;
   - The effect of the proposal on biodiversity of the site and the surrounding area; and -
   - The effect of the proposed development on Breckland Special Protection Area, a European Designated Site.

Reasons

Background

4. The appeal site (the site) fronts onto Brandon Road and contains a dilapidated building of industrial appearance which benefits from an approval of a prior notification for the change of use of the existing building to 4no. dwellings[1] (the prior approval permission). To the rear of the building lies an area of overgrown land. To either side and opposite, facing onto Brandon Road, lie dwellings. Further west the development fronting Brandon Road transitions from residential to employment and to the rear and west of the site lies a

[1] Council Ref 3PN/2020/0024/UC

group of industrial buildings, occupied by Cranswick Country Foods (CCF). This group includes an abattoir.

5. The site lies within the Settlement Boundary of Watton, which is a market town as designated by Policy GEN03 of the Breckland Local Plan -2019- (the Local Plan). The site is also designated as being within a General Employment Area.

Living conditions of future occupiers

6. The appellant has provided an odour assessment to accompany the proposal. This assessment concluded that odours from CCF would not have potential to significantly impact the amenity of the occupiers of the proposed development. The Council's Environmental Protection Officer identifies in correspondence that a proposal for a treatment plant within the CCF site would comply with the current Environment Agency (EA) benchmark of 3 odour units (Ou).

7. However, I note that the results of the odour survey identified intensities of odours on the boundary of the site with CCF of up to 2 Ou during their survey. Further, the survey was carried out during a mid-May morning with a light southerly wind "from rural fields across part of CCF's premises" and a temperature of 16°C.

8. During the summer month temperatures are likely to be higher. The bulk of CCF's site lies to the south-west of the site, the prevailing wind direction in England.

9. At the time of my site visit, albeit that this only represents a snapshot in time, I noticed a strong smell of pig manure towards the rear of the site, near the boundary with CCF. At the time of my site visit the weather was cold, and winds were light. Local residents have also identified that unpleasant odours can be smelt in the vicinity.

10. It is therefore likely that, during periods of hotter weather, and with the wind blowing directly across the bulk of the CCF site, odours emanating from animal waste would be stronger and more noticeable within the site. During the summer future occupiers would be more likely to seek to enjoy their outdoor amenity space.

11. Although the proposal is in outline form, and layout is reserved for determination at a later date, the site is of limited area and the scope for the location of outdoor amenity space is thus constrained. It is likely that some outdoor amenity areas for the dwellings would be affected by odour and, given the nature of the odours residents may be dissuaded from spending time outdoors enjoying normal residential activities such as relaxing in the garden or socialising.

12. Whilst the technical evidence does not identify a problem, in view of my observations on site and the evidence provided by local residents, it has not been demonstrated to me that future occupiers of the proposed dwellings would be able to make full use of their outdoor amenity space.

13. During my site visit I was conscious of a pervading background hum of machinery emanating from CCF. The appellant provided a Noise Impact Assessment, carried out in accordance with BS 8233:2014, to accompany their proposal.

14. This found that, due to the background noise levels with windows partially open, internal LA_{eq} and LA_{max} noise levels may, at times, exceed the recommended target levels. It concluded that openable windows cannot therefore be relied upon for ventilation for an extended period during the daytime and night-time within habitable rooms.

15. However, the report found that, through the use of an appropriate glazing and mechanical ventilation strategy, internal noise levels within proposed habitable rooms could be made consistent with the guide values outlined in BS 8233:2014 and by the World Health Organization, both during the day and at night. It proposed that this could provide a means of ventilation to provide occupants with the ability to maintain adequate background ventilation rates for heating and cooling without having to rely entirely on openable windows.

16. The report further identifies that noise levels in external amenity areas would frequently exceed the recommended level of 50dB, recognised as being the noise level for reasonable enjoyment of those areas.

17. Whilst my attention has been drawn to provisions within BS8233:2014 for higher noise levels in city centres and other urban areas adjoining the strategic transport network, the site lies towards the edge of a small market town, albeit in proximity to an employment area. In such a location it would be reasonable to expect a greater degree of peaceful enjoyment of a home.

18. The use of mechanical ventilation for the dwellings could be secured by an appropriately worded planning condition. It would, by the incorporation of suitable filtering to air, reduce the effects of unpleasant odour entering from outside. However, the reliance of the proposal on mechanical ventilation would leave the future occupants living in a sealed space without access to natural ventilation, creating an oppressive environment. In this case, given the location in a small town, I consider that such a measure would be an excessive way to address the location of the proposal adjacent to an existing employment area. Such a condition would, therefore, not be reasonable.

19. The appellant has proposed that noise could be limited within the amenity areas to a degree that would make it acceptable through the provision of an acoustic fence. Such a condition would be likely to be effective in reducing noise intrusion into the amenity areas. However, it is likely that, given the peaks in noise levels identified, some disturbance would be likely to remain and it has not been demonstrated to me that such mitigation would be effective.

20. The odour levels emitted by CCF are subject to the requirements of Integrated Pollution Prevention Controls and are therefore regulated by the EA. There is evidence of complaints to the EA regarding odour from the CCF site.

21. It is noted that the CCF site is a lawful use. I am mindful of the advice contained in paragraph 187 of the National Planning Policy Framework (the Framework), which states that "Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses", and that "Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established".

22. Complaints against CCF for statutory nuisance would still need to be resolved, even though the residential development would be a subsequent change to the area. And this may result in additional, possibly significant, expenditure.

23. I am aware that the site has received an approval for a prior notification for the change of use of the existing building to 4no. dwellings. Similarly I am aware of a permission[2] (the 2019 permission) for 9 dwellings to the rear of 121A Brandon Road, which borders the site to the east. Whilst I do not have full details of these proposals, in the case of the prior approval permission the dwellings would re-use an existing building located between existing dwellings, and so would not introduce new households closer to the sources of odour or noise. In regard to the 2019 permission the site is located further to the east, and would be less likely to experience odours carried on winds from across the CCF site in the same way. I have, in any case, determined this appeal on its own merits.

24. Bringing these matters together, I conclude that the proposed development would have not provide satisfactory living conditions for future occupiers, with particular reference to odour and noise. It would, therefore, be contrary to the aims of Policy COM3 of the Local Plan which seeks to prevent development that does not provide for adequate levels of amenity for future occupants, having regard to, amongst other things, odour and noise.

25. The proposed development would also be contrary to those parts of the Framework which seek to create places which promote health and well-being, with a high standard of amenity for existing and future users, with which Policy COM3 closely accords.

Biodiversity

26. The proposal was accompanied by a Preliminary Ecological Appraisal (PEA) and a Shadow Habitats Regulations Assessment (SHRA). The PEA identified that there would be a low scale loss of nesting habitat for hedgerow, scrub and tree nesting birds through clearance of the site and a low-level loss of foraging and commuting habitats for bats. The PEA suggests that this could be addressed by provision of mitigation, secured by suitable worded planning conditions.

27. However, the PEA also identified that the site has potential for reptile habitats and that there is suitable habitat for badgers nearby. In regard to these, the PEA suggests further surveys in advance of development to determine appropriate mitigation strategies. No further information has been provided, nor any detailed mitigation strategy.

28. Were I minded to grant planning permission the majority of concerns could be dealt with by the inclusion of suitably worded planning conditions requiring the provision of alternative roosting sites and controlling the method of construction of the works. However, bats and reptiles are European Protected Species, whilst badgers and their setts are protected under the Protection of Badgers Act 1992 and I must be satisfied that the impact upon them is suitably addressed before permission is granted.

29. I therefore find that the proposal would result in harm to the biodiversity of the area. This would be contrary to the aims of Policy ENV02 of the Local Plan, which seeks to safeguard protected species and habitat, and those parts of the

[2] Council Ref: 3PL/2017/1087/F

Framework that seek to protect habitats and biodiversity, with whose aims Policy ENV02 is closely compliant.

Effect on the European Designated Site

30. The site is located within the zone of influence of the Breckland Special Protection Area (SPA) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations) and the Breckland Farmland SSSI, a component part of the Breckland SPA. Policy ENV02 of the Local Plan seeks to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Since March 2022 local planning authorities in Norfolk have worked collaboratively to deliver a Green Infrastructure and Recreational Impact Avoidance Strategy (Norfolk GIRAMS). There is no evidence before me to demonstrate that the appellant has provided a financial contribution towards mitigating the effects of the proposal on the SPA.

31. This notwithstanding, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA). This responsibility now falls to me within this appeal.

32. In March 2022 Natural England advised Breckland Council that new development comprising overnight accommodation within the catchment of the River Wensum SPA or the Broads Special Area of Conservation and Ramsar site, which are European Designated Sites, has potential to cause adverse impacts with regard to nutrient pollution. The proposed development would provide such accommodation.

33. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information, including the potential for the development to discharge nutrients into the catchments, from the parties and consult Natural England in order to undertake an AA. The AA is required on a case-by-case basis to determine whether the project would adversely affect the integrity of the European Site. It would also have required a consideration of whether any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Planning Balance

34. The development would provide public benefits in terms of provision of an additional eight dwellings, on a brownfield site in an accessible location within an established settlement. Whilst the Council is able to demonstrate in excess of a five year supply of housing land, this is not a maximum figure and there is no evidence to suggest that a small development of eight dwellings would result in a significant oversupply of housing in the area. The Framework recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly.

35. There would be likely minor benefits to the local economy in terms of short term employment in the construction industry and longer term support of local

businesses. There would be social benefits in terms of the support that the proposal would provide to the community. However, benefits would be limited by the scale of the development and I have given them limited weight overall in my considerations.

36. The proposal would have a harmful effect on the living conditions of future occupiers and the biodiversity of the site and the surrounding area.

37. The Local Plan was adopted prior to the publication of the current Framework. Nonetheless, the policies concerned are closely consistent with the aims and provisions of the Framework in regard to providing adequate living conditions of future occupiers and conserving the natural environment and so I attribute them very significant weight.

38. Whilst the matters of the effect of the proposal on the European Designated Sites, including nutrient neutrality, remains unresolved, these could only have, at best, a neutral effect on my considerations.

39. Given the scale of the development, the benefits of the proposal would be of limited weight overall. The proposal would not provide satisfactory living conditions for future occupiers and result in harm to the biodiversity of the site and the surrounding area. These are significant matters weighing against the scheme and overall they outweigh the benefits in this instance.

Conclusion

40. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I A Dyer

INSPECTOR