



Appeal Decision

Site visit made on 11 October 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/L2630/W/21/3276411

Eastwood Lodge, Townhouse Road, Costessey NR8 5BX

- 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 Eric Pooley against the decision of South Norfolk District Council.
 - The application Ref 2020/0785, dated 28 April 2020, was refused by notice dated 3 December 2020.
 - The development proposed is House on plot adjacent to Eastwood Lodge.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The appeal process has allowed the main parties sufficient opportunity to comment on the revised Framework and I have had regard to it in considering this appeal.
3. Since the Council refused planning permission, Natural England (NE) has updated its advice in relation to nutrient level pollution in a number of existing and new river basin catchments including the catchment of the Broads SAC, within which the appeal site is located. The advice finds that an increasing number of waterbodies, in or linked with European Sites (such as the Broads SAC), are now deemed to be in 'unfavourable' conservation status for the purposes of the Conservation of Species and Habitats Regulations 2017 (as amended) ('the Habitat Regulations').
4. NE has advised that planning applications and plans affecting such sites, such as those which may lead to additional nutrient loads, should be carefully considered and mitigation should be used where necessary to ensure that there are no adverse effects. Such an approach is necessary in order to meet the requirements of the Habitat Regulations.
5. Furthermore, since the Council refused planning permission, the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy 2021 (GIRAMS) has been published. This has implications for the proposed development, which is located within the Zone of Influence (ZoI) of several European Sites.
6. As such, I have provided the main parties with further opportunity to make representations in relation to these matters and I have consulted NE. I have taken all representations into account. The effect of the proposed development

on the integrity of European Sites is therefore a main issue in this appeal despite the fact that the Council did not refuse planning permission on this ground.

Main Issues

7. The main issues are:

- The effect of the proposed development on the character and appearance of the surrounding area (including the effect on protected trees).
- The effect of the proposed development on the integrity of European Sites.

Reasons

Character and Appearance

8. The appeal site is located to the west of Eastwood Lodge in part of a wider area of woodland. The woodland is subject to a blanket tree preservation order and is an important characteristic of the area, partially separating the settlements of Old Costessey and New Costessey. Indeed, this woodland character is described as of 'immense scenic importance' within the Development Management Policies¹ Document (paragraph 4.37) and for this reason the woodland is designated as an important local open space under Development Management Policy 4.4.
9. As a point of clarification, despite the designation as 'important local open space, during my site visit I noted that the character of the appeal site and surrounding area is not open. Indeed, the area of woodland is by definition, wooded.
10. Whilst the wider area of woodland has a decidedly verdant character, it is nonetheless punctuated by linear residential development where it borders Townhouse Road. These dwellings are typically detached, set within spacious grounds and of varying architectural style. The appeal site itself is located between two existing dwellings such that its development would partially infill the gap between the neighbouring plots. In this regard, the proposed development would not extend the existing row of linear development any further to the west and it would not result in creeping suburbanisation sense.
11. The design of the proposed dwelling is fairly modern. It would comprise of largely flat and mono-pitched green roofs with different modules set within the slope of the appeal site. Given these design features, the proposed dwelling, whilst architecturally bold, would sit sympathetically within the appeal site and wider area of woodland. Given the varied design of neighbouring dwellings, the modern design of the proposal would not be out of character.
12. The proposals include the replacement of several large conifers to the front of the appeal site with native species. This would allow limited views into the appeal site from the highway. However, this would not result in a detrimental impact given that the proposal would assimilate well with the existing linear residential development to each side of the appeal site, effectively infilling a gap between existing dwellings. Furthermore, the replacement of the conifers with native species would have a positive aesthetic impact as it would open up views to the more impressive woodland to the north. More generally, the

¹ South Norfolk Local Plan Development Management Policies Document (October 2015)

limited scale of the proposal combined with the screening which would be afforded by existing and proposed planting means that the visual impact of the development, including the use of external areas for residential paraphernalia, would be extremely limited.

13. As already mentioned, the woodland is covered by a blanket TPO. The Arboricultural Impact Assessment (AIA) submitted as part of the planning application indicates that eight trees would be removed as a result of the development. However, these would be replaced by a vastly greater number of native species and the woodland within the appeal site would be managed in accordance with a management plan.
14. The trees to be removed are of a relatively low quality according to the AIA. Indeed, during my site visit I noted that whilst the broader woodland makes a very positive contribution to local character, the individual trees to be removed contribute very little, given their low quality. As such, their replacement with a greater number of native species and the management of the woodland would both result in an improvement in local character which would far outweigh any negative effects of removing the trees.
15. The Appellant and the Council have both indicated that a certificate for lawful existing use of the appeal site as a builder's yard has been granted under council reference 2021/1906. This is a material consideration of significant weight. The appellant has also cited case law in relation to consistency in decision making and fallback considerations. However, regardless of these considerations, I have found that the proposal would not have a harmful effect on the character and appearance of the surrounding area for the reasons outlined above. As such, the weight to be afforded to the fallback position only re-affirms the conclusions I have already reached.
16. For the reasons outlined, the proposed development complies with Joint Core Strategy² Policies 1 and 2 and Development Management Policies DM1.4, DM3.5, DM3.8, DM4.4, DM4.5 and DM4.8 which collectively seek to protect environmental assets (including trees), conserve settlement/landscape character (including Important Local Open Spaces) and ensure development of a high-quality design.

European Sites

17. The appeal site is within the Nutrient Neutrality catchment of the Broads Special Area of Conservation (SAC). The Broads SAC contains several examples of naturally nutrient-rich lakes. Although artificial, having been created by peat digging in medieval times, these lakes, as well as the ditches in areas of fen and drained marshlands, support relict vegetation of the original Fenland flora, and the SAC contains one of the richest assemblages of rare and local aquatic species in the UK.
18. The Broads SAC is designated for the following features: Hard oligo-mesotrophic waters, Natural eutrophic, Molinia meadows on calcareous, peat or clay-silt soil, Transition mires and quaking bogs, Calcareous fens, Alkaline fens, Alluvial woods, Desmoulin's whorl snail, Otter, Fen orchid and Little ram's-horn whirlpool snail.

² Greater Norwich Development Partnership – Joint Core Strategy for Broadland Norwich and South Norfolk (Adopted March 2011, amended January 2014)

19. The evidence before me³ indicates that the proposed development would lead to an increase in nutrient loading (nitrates and phosphates) as a result of foul and surface water drainage. NE has highlighted that the Broads SAC is in unfavourable conservation status for nitrogen and phosphorus. Given the unfavourable status of the SAC and the evidence of likely increases in loading of nitrate and phosphorus (the latter to a lesser extent) as a result of the development, the aforementioned species and habitats would likely be adversely affected without mitigation measures. As such, the proposal would (both alone, and in combination with other development) be likely to lead to significant effects on the Broads SAC.
20. In response, in order to mitigate likely significant effects, the appellant has proposed a package treatment plant, wetland and soakaway. This is all outlined within a report entitled Nutrient Neutrality Assessment and Mitigation Strategy (NNAMS) produced by Richard Jackson Engineering Consultants. These on-site measures have been proposed in the absence of any available off-site strategic measures.
21. The report explains that, utilising the Norfolk Nutrient Budget Calculator and taking into account the proposed package treatment plant, additional Nitrate loading resulting from the development would be 1.6Kg/year which would be increased to 1.9kg/year taking into account the 20% buffer in the Norfolk Budget Calculator.
22. The appellant's calculations indicate that the proposed wetland would remove 5.3kg of nitrates per year. However, the report outlines that the specification of the wetland is yet to be determined. The figures provided for nitrate reduction are based on a wetland with an area of 30sqm and the report indicates that 5.3kg is 'only 66% of the values Natural England use'. As a result, the assertion is that the proposal would be nutrient neutral if taking into account the proposed package treatment plan, wetland and soakaway.
23. In response to representations from NE and in order to demonstrate that the calculation of nutrient loading is robust, the appellant has also used the calculator provided by NE. However, the appellant points out that the NE calculator has no facility to introduce mitigation. As such, in providing calculations using the NE calculator, the appellant indicates that if the wetland is increased to 50sqm then the NE nutrient neutrality requirements can be met (this method apparently excludes the use of the Package Treatment Plant).
24. There are two fundamental problems with this approach which create too much uncertainty. The first is that the specification of the wetland has not been finalised. Indeed, all that is known is that a wetland of at least 30sqm would be proposed. In the absence of more detailed information on the precise or even general specification of the wetland it is not possible to ascertain whether or not it would be capable of mitigating likely significant effects.
25. Indeed, the appellant has also made various assertions with regard to the level of nitrate removal provided by wetlands, with figures provided which are said to be based on Natural England calculations. Despite this assertion, the evidential basis for these figures has not been provided to me as part of this appeal. The assumptions which underpin these data (for example, presumably

³ Nutrient Neutrality Assessment And Mitigation Strategy (NNAMS) produced by Richard Jackson Engineering Consultants 21 October 2022

there is an assumption that a wetland would comprise a certain amount of and type of planting) are particularly important in the absence of a precise wetland specification.

26. Secondly, there is not even sufficient certainty as to the overall scale of the proposed wetland. I have sympathy with the appellant given that he has sought to provide more certainty through use of both calculators (that provided by NE and the Norfolk LPA calculator). However, in doing so the appellant has indicated that in order to reach nutrient neutrality under the NE calculator, a larger wetland of 50sqm would likely be required. Again, this creates uncertainty as to the scale of the mitigation proposed.
27. Furthermore, even if considering that a 30sqm wetland is proposed, this is an extensive area when considering the relatively small scale of the proposed development. Indeed, in the absence of information pertaining to the precise or even broad extent of the engineering operations and or building operations required to facilitate the wetland, I cannot be certain that to secure the wetland by planning condition would not deprive those consulted on the planning application as originally proposed of the opportunity to comment on what may effectively be revised proposals.
28. The appellant has suggested that the proposed mitigation measures could be controlled and refined through imposition of a suitably worded planning condition. Indeed, reference has been made to an appeal decision issued in 2022 where inspector concluded that a pre-commencement condition could be imposed to ensure that a mitigation package could be put forwards, approved and implemented to address issues pertaining to nutrient neutrality. In reaching this decision however, the Inspector concluded that 'it would be for the Council as the appropriate authority to determine whether or not the mitigation package would meet the requirements of the regulations'.
29. However, in determining this appeal I am the competent authority and given the aforementioned lack of information with regard to the proposed wetland, there is no certainty that its specification, implementation and management could be addressed by condition.
30. There is more certainty that a proposed package treatment plant (PTP) could be delivered. Indeed, a specification and details of maintenance and management of the proposed PTP have been included within the submitted NNAMS. The Council and NE have both raised concerns in relation to the need to obtain approval from the Environment Agency (EA) and both have noted that a mains sewer connection is feasible. However, it seems entirely logical that the appellant has sought to establish an alternative means of foul water disposal in order to seek to address issues pertaining to nutrient neutrality. Having said that, the uncertainty as to whether EA approval is required, and indeed whether such approval would even be forthcoming, is yet another reason that such matters cannot reasonably be left to be addressed through planning condition.
31. I am very sympathetic to the appellant given that these issues have arisen during the course of the determination of this appeal. I also commend the detailed level of information that the appellant has provided to seek to address these issues. Within this context, I would like to make it clear that I am not asserting that significant effects on the European Site cannot be avoided, only that I cannot be certain that they can, based on the evidence before me.

Furthermore, in the wider context of this appeal, this issue is the only issue raised which necessitates its dismissal.

32. For the avoidance of doubt, there is no substantive evidence before me to indicate that the fallback use of the site would have any bearing on matters pertaining to nutrient neutrality.
33. In summary, I cannot conclude that likely significant effects to the ecological integrity of the Broads SAC would not occur. Therefore, the proposed development would conflict with Joint Core Strategy Policies 1 and 2 which collectively seek to ensure that development does not result in adverse impacts on European Sites.
34. There would also be a conflict with Framework Paragraph 174a, which requires in part that planning decisions should protect sites of biodiversity value in a manner commensurate with their statutory status (in this case, sites afforded statutory protection under the Habitat Regulations).

Other Matters

35. The appeal site is within the ZOI of various European Sites and as explained under 'preliminary matters' the GIRAMS was published in 2021 which sets out measures to mitigate the likely significant effects resulting from increased recreational pressure associated with residential development. The appellant submitted a Unilateral Undertaking with the appeal which would secure contributions to the measures outlined in the GIRAMS. However, given that I am dismissing this appeal on other grounds it is not necessary to consider this matter further.

Planning Balance

36. I have been made aware of an appeal decision⁴, made in August 2022, in which the Inspector alluded to a shortfall in housing land supply existing. Indeed, the Inspector determined the appeal on the basis that Framework Paragraph 11d was engaged for that very reason. In relation to this current appeal, the Council also accepts that there is a HLS shortfall. However, neither party has advanced any substantive evidence to indicate what the extent of the shortfall is. The previously mentioned appeal decision alludes to the current issues pertaining to nutrient neutrality as being the underlying cause for the change in the Council's HLS position. Nonetheless, there is very little certainty as to why a shortfall exists and what the extent is.
37. Despite this, the Framework provides a clear reason for refusing the proposed development given the conflict with Framework Paragraph 174a. As such, in accordance with Framework Paragraph 11di, the presumption in favour of granting planning permission under Paragraph 11d does not apply.
38. There would be social and economic benefits resulting from the increase in the housing stock and the use of a previously developed windfall site. There would also be environmental benefits including enhancement of the woodland, biodiversity gain and carbon capture. However, given the limited scale and scope of the benefits (with only one dwelling proposed) I only afford them moderate weight, even in the context of a HLS shortfall. Furthermore, regardless of the extent of the shortfall, given the statutory protection afforded

⁴ PINS Ref: APP/L2630/W/22/3296988

to European Sites the adverse effect of the proposal in this regard would not be outweighed by the benefits.

Conclusion

39. The proposed development would not harm the character and appearance of the area and in coming to that conclusion I have had regard to its effect on protected trees. Nonetheless, I cannot conclude that likely significant effects to the ecological integrity of the Broads SAC would not occur. As such, the proposed development conflicts with the development plan taken as a whole.
40. There are no material considerations of sufficient weight to indicate that a decision should be made other than in accordance with the development plan. As such, the appeal is dismissed.

Luke Simpson

INSPECTOR