



Appeal Decision

Site visit made on 7 March 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Appeal Ref: APP/Y2620/W/21/3282258

New Inn, Norwich Road, Roughton NR11 8SJ

- 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 Punch Partnerships (PML) Ltd against the decision of North Norfolk District Council.
 - The application Ref PF/20/1659, dated 11 September 2020, was refused by notice dated 13 July 2021.
 - The development proposed is relocation of public house car park and development of the existing car parking area for the erection of 2no. two-storey 3-bedroom detached dwellings, with new boundary treatment; installation of a patio area to rear beer garden, and associated minor alterations and landscaping - [Amended Plans- Revised Scheme].
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's decision notice as this more accurately describes the proposed development than that included on the planning application form.
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 Special Area of Conservation (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. 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 the Broads SAC is therefore a main issue in the consideration of this appeal.
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. The appellant has indicated that a financial contribution has been made to address this issue. However, given that I am dismissing the appeal on other grounds I have addressed this issue in 'other matters'.

Main Issues

6. The main issues are:

- Whether the future occupiers of the proposed dwellings would have an adequate standard of living accommodation, with particular regard to the effect of noise, disturbance and pollution.
- The effect of the proposed development on the Broads Special Area of Conservation, with particular regard to issues pertaining to nutrient neutrality.

Reasons

Standard of Accommodation

7. The Council's reason for refusal relates specifically to the impact of the noise associated with the proposed car park and access upon future occupiers of the two proposed dwellings. Concerns have also been raised with regard to pollution from car fumes and disturbance created by car headlights and more generally to the impact of noise arising from the beer garden and public house.
8. The Appellant submitted a noise assessment¹ with the planning application. The survey was undertaken in the summer over a 48 hour-period during a weekend when trade was buoyant. As such, I consider that it is likely to represent a peak scenario. In considering the impact associated with noise from the proposed car park and road traffic upon the proposed dwellings (taking into account mitigation measures) the noise assessment concludes that noise would fall between The NOEL value (No adverse effect level) and the LOAEL (Lowest observed adverse effect level). There is no substantive evidence before me to indicate that the noise assessment is flawed in its methodology or that these conclusions are incorrect.
9. The National Planning Practice Guidance (PPG) categorises observed effect levels into three groups. NOEL, LOAEL and Significant Observed Adverse Effect Level (SOAEL). The latter is defined as 'the level of noise exposure above which significant adverse effects on health and quality of life occur'. However, the noise assessment does not conclude that noise would exceed the SOAEL in relation to the impact of the car park on the proposed dwellings. The PPG defines the LOAEL as 'the level of noise exposure above which adverse effects on health and quality of life can be detected' and explains that at this level 'the noise may slightly affect the acoustic character of an area but not to the extent there is a change in quality of life.'
10. Taking the advice in the PPG into account, the results of the noise assessment indicate that there would be some change in the acoustic character of the area as a result of the proposed development. Whether that change means that the

¹ Produced by Airtight NoiseCheck (14th May 2021)

proposed dwellings would result in substandard living conditions for future occupiers requires further case-specific consideration.

11. Only a small number (approximately 12) parking spaces would be located in areas adjacent to the proposed dwellings and their outdoor areas. Various noise mitigation measures are proposed to mitigate the impact of noise associated with vehicular movements, including acoustic fencing, a robust glazing system and acoustic trickle vents.
12. In addition, the appellant proposes the use of compacted gravel. In comparison, the existing car park is a relatively large loose gravel area which is in very close proximity to the neighbouring dwelling immediately to the south. As such, it is very likely that there would be less noise disturbance to the occupiers of this existing dwelling as a result of the proposed development. Whilst this relates to existing occupiers as opposed to future occupiers of the proposed dwellings, it is nonetheless a benefit of the proposed development.
13. Whilst I note that the public house has a licence to operate until between 0000 and 0200, the appellant has indicated that they would be willing to end service in the beer garden from 2230. Again, this represents a potential improvement to the living conditions of existing occupiers given that the beer garden would likely be vacated earlier than it would typically be at present. It also reduces the likelihood of noise disturbance to future occupiers of the proposed dwellings.
14. Whilst there might be some occasional disturbance associated with the close proximity between the proposed dwellings and the public house (for example as a result of slamming car doors), the evidence demonstrates that such occurrences are likely to be infrequent and I do not consider that this would result in an unacceptable standard of living accommodation for occupiers of the new dwellings. In addition, in considering the impact on the future occupiers' enjoyment of the proposed outdoor areas, I find that the type of noise associated with the use of the beer garden and vehicles manoeuvring in and out of the car park would not be untypical of a residential area and as such, would be very unlikely to result in detrimental changes in the behaviour of future occupiers.
15. In terms of other potential sources of pollution, there is no substantive evidence to indicate there would be pollution from vehicle lights and fumes. To the contrary, given that only 12 parking spaces² are proposed in close proximity to the proposed dwellings it is likely that disturbances associated with vehicular traffic would be typical of a residential area. Further still, taking into account the small size of the car park and its relatively close proximity to the proposed boundary fence of plot 2, it is unlikely the vehicle lights would shine directly into the rear windows of the proposed dwellings.
16. In summary, the proposed development would provide an acceptable standard of living accommodation for future occupiers. It therefore accords with Core Strategy³ Policies EN4 and EN13 which require development to provide acceptable residential amenity to occupiers of new dwellings and minimise

² Those between the public house and the proposed dwellings

³ North Norfolk Local Development Framework – Core Strategy (September 2008)

noise pollution, respectively. The proposal also complies with the Design Guide⁴ insofar as it seeks to achieve the same aims.

17. The proposed development would also comply with National Planning Policy Framework (Framework) Paragraph 130, insofar as it requires that new development provides a high standard of amenity for 'future users'.

Nutrient Neutrality

18. 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.
19. 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.
20. Given that the proposed development includes two new dwellings it would likely lead to an increase in the local population. In turn, the evidence before me indicates that this 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 likely increases in loading of nitrate and phosphorus 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. It is therefore necessary that I undertake an appropriate assessment in accordance with the requirements of the Habitat Regulations.
21. No site or scheme-specific mitigation measures have been advanced by the appellant. The appellant has referred to the Council's intended joint venture (Norfolk Environmental Credits Limited) with other local authorities and Anglian Water. The appellant asserts that the Joint Venture is close to being in a position to issue 'credits'. However, no details of the specific mitigation measures have been advanced, nor the exact stage of preparation of any such measures. Whilst various references are made to timeframes for implementation of the measures (and associated issue of 'credits'), these are vague and do not provide any certainty that mitigation measures will be in place in the near future.
22. The appellant has made reference to the prospect of imposing a Grampian condition to allow for a mitigation scheme to be provided and implemented prior to occupation of the proposed development. The appellant has also referred to the advice contained in the National Planning Practice Guidance on the use of such conditions. However, this advice is general advice and is not specific to issues pertaining to the Habitat Regulations.

⁴ North Norfolk Local Development Framework – Design Guide SPD (December 2008)

23. The appellant has provided decision notices issued by various local planning authorities in the south of England where this approach was taken. Nonetheless, the case specific circumstances in those instances are by no means clear and the decisions all relate to application sites and European sites elsewhere in the country. As such, these decisions do not provide a justification for the use of a Grampian condition in this instance.
24. Indeed, in this case, there are no details of what the mitigation measures being prepared under the Joint Venture entail, nor an accurate and reliable timescale for these measures to come to fruition. Whilst I sympathise with the appellant, given that this is the only reason for dismissing this appeal, given these circumstances and the high level of statutory protection afforded to the Broads SAC, I am not satisfied that a condition would provide adequate certainty that adverse effects on the integrity of the Broads SAC could be avoided.
25. The Council has not provided me with a copy of any relevant development plan policy with regard to this main issue. Neither has it asserted any conflict with any particular development plan policy. I must consider this appeal on the basis of the evidence before me. Nonetheless, there would 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, a site afforded statutory protection under the Habitat Regulations).

Other Matters

26. The appeal site is within the Zone of Influence - for recreational impacts from residential development - of various European Sites. The alleged effects relate to increase recreational pressure on these sites as a result of the increased population associated with the proposed development. The appellant indicates that a financial contribution has been made to address this issue and mitigate the likely significant effects. However, given that I am dismissing this appeal on other grounds it is not necessary for me to consider this matter any further.
27. Various interested parties, including the Parish Council have objected to the proposed development. Nonetheless, given that I am dismissing this appeal on other grounds it is not necessary to consider these issues in further detail.

Planning Balance and Conclusion

28. The proposed development would result in an acceptable standard of accommodation for future occupiers. As such, on the basis of the evidence before me⁵, the proposed development would comply with the development plan taken as a whole. There would also be some economic and social benefits associated with the proposal, including the resultant addition of two dwellings to the housing stock⁶. However, I afford only limited weight to these benefits given that only two dwellings are proposed.

⁵ Noting the absence of any development plan policy relating to European Sites

⁶ Consistent with the Framework's emphasis on significantly boosting housing supply

29. Despite this, I cannot conclude that likely significant effects to the ecological integrity of the Broads SAC would not occur. The proposal would therefore directly conflict with Framework Paragraph 174a. This is a material consideration to which I afford substantial weight in determining this appeal. Not least because of the statutory importance of the Broads SAC. As such, this consideration indicates that a decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR