



Appeal Decision

Site visit made on 21 March 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th June 2023

Appeal Ref: APP/L2630/W/22/3301102

Merrylees, 15 Norwich Road, Ditchingham NR35 2JL

- 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 Mills against the decision of South Norfolk Council.
 - The application Ref 2021/2659, dated 30 November 2021, was refused by notice dated 31 January 2022.
 - The development proposed is describes as the "erection of 3 bungalows, construction of new vehicular access".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Outline planning permission is sought, with all matters reserved except access. A drawing has been submitted that includes details of layout, a matter that is reserved for future consideration. It is titled 'Indicative Layout Plan Drawing' and therefore I have treated it as illustrative in this regard. I have determined the appeal on this basis.
3. Following the determination of the planning application, the Council adopted the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy¹ (GIRAMS). The appellant has had the opportunity to comment upon this document and therefore has not been prejudiced.
4. Also following the determination of the planning application, due to the implications of nutrient neutrality, the Council has confirmed that they are taking a precautionary approach regarding housing land supply and therefore they cannot currently demonstrate a 5-year supply of deliverable housing sites. The appellant has had the opportunity to comment upon this matter. I have considered the appeal accordingly.

Main Issues

5. The Council, in its appeal statement, has indicated that the appeal site falls within the Zone of Influence (ZoI) of a number of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs). I have clarified with the Council that these are Breydon Water SPA, Broadland SPA and Ramsar, The Broads SAC, Great Yarmouth North Denes SPA and Winterton-Horsey Dunes SAC. Therefore, it is incumbent on me as the competent authority, to consider whether the proposal would be likely to have a significant effect on the

¹ Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy, Habitats Regulations Assessment Strategy Document, March 2021

integrity of these sites and it is necessary for me to consider this matter as a main issue.

6. Therefore, the main issues are:

- i. the effect of the proposed development on the character and appearance of the surrounding area;
- ii. the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with particular reference to noise and disturbance;
- iii. the effect of the proposed development on the integrity of the SPAs/SACs;
- iv. whether the site is in a suitable location for housing development, with particular reference to Policy DM1.3 of the South Norfolk Local Plan Development Management Policies Document, adopted 2015 (LP); and
- v. whether the site is in a suitable location for housing development, with particular reference to whether future occupiers would be reliant on the private car.

Reasons

Character and Appearance

7. The host dwelling comprises a detached bungalow with a detached garage to one side that fronts Norwich Road (the B1332). The dwelling forms part of a small ribbon of development along this side of Norwich Road that predominantly comprises detached bungalows and two-storey houses of mixed appearance. These bungalows together with the properties on the opposite side of the road, form the edge of the village. Other than the small ribbon of development, this side of Norwich Road predominantly comprises undeveloped fields with the river valley beyond that creates a rural setting to the village.
8. To the rear of the host dwelling is a large rectangular-shaped piece of land that extends to the same depth as 13 Norwich Road's rear garden and behind 17 Norwich Road. The appellant asserts that this land comprises part of the host dwelling's garden, although this is disputed by third parties. The land is not demarcated from the agricultural field beyond by any form of boundary treatment and is open in character. The appeal site falls within the Waveney River Valley landscape area which is a large-scale open valley landscape that follows the course of the river. It comprises a flat, wide floodplain with gently sloping valley sides that are arable and pastoral in character.
9. It is proposed to demolish the host dwelling's detached garage and erect three bungalows on the rectangular parcel of land to the rear of the host dwelling, accessed by a driveway from Norwich Road, adjacent to the southern boundary of the host dwelling.
10. The proposal would significantly extend the built development beyond the existing ribbon of development into an area that is currently devoid of buildings and structures. It would create backland development, which would conflict with the predominant character along this side of Norwich Road. The siting of the dwellings beyond the ribbon of development would be particularly prominent and conspicuous when travelling along Norwich Road and from a

Public Right of Way to the southwest, which would detract from the rural character of this side of the road. It would also extend the built development further west beyond the development boundary of the village into the countryside and towards the river valley, eroding the rural character of the area and the rural setting of the village. It would also result in an urbanising effect that would not assimilate into its surroundings. Consequently, the proposal would detract from the local character and distinctiveness of the surrounding area.

11. I acknowledge that the appeal proposal is in outline with all matters reserved except access and that the proposed bungalows could have a modern contemporary design and incorporate the use of sustainable construction techniques. However, this would not overcome the harm I have identified above.
12. The appellant has directed me to 1 Norwich Road and 14 Norwich Road as examples of existing backland development in the surrounding area. I have been provided with limited information in respect of these properties. However, I note that these are single dwellings, No 1 appears to be of some age, No 14 is located on the opposite side of Norwich Road where the predominant character is not a ribbon of development, and both are located within the development boundary of the village. Therefore, they are not directly comparable to the proposed development. In any event, each development must be determined on its own merits.
13. The Council's reason for refusal raises concern regarding the arrangement of the proposed dwellings and the size of the site resulting in a cramped form of development and concern regarding the proposed boundary treatments. However, the proposal is in outline with all matters reserved except access. Layout, scale and landscaping are reserved for subsequent approval therefore, it is not known at this stage whether the proposal would result in a cramped form of development, or whether the type of boundary treatments would be acceptable.
14. Policy DM3.8 of the LP deals with design principles applying to all developments. While parts of the policy cover aspects of the proposed development that are reserved for subsequent approval, the policy also requires developments to protect and enhance the environment and existing locally distinctive character and is therefore relevant to the appeal proposal.
15. Consequently, in reference to the first main issue, the proposed development would harm the character and appearance of the surrounding area. It would therefore conflict with Policies 1 and 2 of the Joint Core Strategy², adopted 2011 (JCS) and Policies DM1.4(d)(i), DM3.8 and DM4.5 of the LP which, amongst other things, seek to ensure that developments make a positive contribution to local character and distinctiveness, and should respect, conserve and where possible, enhance the landscape character of its immediate and wider environment. These policies are broadly consistent with paragraph 130 of the National Planning Policy Framework ('the Framework') that seeks to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting.

² Joint Core Strategy for Broadland, Norwich and South Norfolk, adopted March 2011, amendments adopted January 2014

Living Conditions

16. The proposed access would extend between 13 Norwich Road and the host dwelling. It would be single width with a passing place adjacent to the boundary shared with No 13. Both dwellings have windows in their side elevations that would face towards the access and appear to serve rooms that are more frequently used. No 13 is sited within a substantial plot and the dwelling is separated from the appeal site by a wide side garden and a hedge forms the boundary. The proposed access would be in close proximity of the host dwelling and would wrap around its resulting southern and western boundaries.
17. The appellant asserts that an average dwelling generates 6-8 vehicle movements per day, which would equate to two vehicular movements per hour (assuming that most vehicular movements would take place between the hours of 8am and 8pm). However, this has not been substantiated with evidence, does not take account of the peak timings of trips such as when people travel to and from work and school, and it is not clear whether this figure includes such trips as deliveries. Even if these figures could be relied upon, it would equate to 18-24 vehicle movements per day for the whole development, in an area that is currently subject to the limited comings and goings of the occupiers of the host dwelling.
18. The proximity of the access to the host dwelling, some of its windows and its private garden, together with the limited size of the resultant plot, would cause significant disturbance to the occupants of this dwelling from the noise of vehicles travelling along the access and those waiting to pass. This would be particularly intrusive given the side garden is currently subject to limited vehicle movements. The proposed development would cause some noise and disturbance to the occupiers of No 13. However, due to the gap between this dwelling and the proposed access road, and the substantial plot that the dwelling is sited within, I am not persuaded that such noise and disturbance would be unacceptably harmful to the living conditions of these occupiers.
19. The appellant claims that the noise and disturbance from vehicle movements would not be significant having regard to the background noise levels created by traffic along Norwich Road. However, this has not been substantiated with evidence. Furthermore, the proposed access road would be significantly closer to the host dwelling and its windows than Norwich Road.
20. In respect of the second main issue, the proposed development would unacceptably harm the living conditions of the occupiers of the host dwelling, with particular reference to noise and disturbance. It would be contrary to Policy DM3.13 of the LP which, amongst other things, seeks to not permit development where it would generate noise which would be significantly detrimental to the amenity of nearby residents. This policy is broadly in line with paragraph 130 of the Framework that seeks to create places with a high standard of amenity for existing users.

Integrity of the SPAs/SACs

21. The appeal site lies within the ZoI of a number of SPAs and SACs. These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the

competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPAs and SACs, either alone or in combination with other plans and projects. In 2018, the Court of Justice of the European Union held 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, rather than at the screening stage³. This responsibility now falls to me as the competent authority.

22. Evidence shows that the SPAs and SACs are under significant pressure from an increase in the level of public access for recreation, and disturbance of bird species, as a result of urban development. The proposed development has the potential to impact on the integrity of the SPAs and SACs, through increased recreational disturbance. The increase in recreational pressure can lead to an increase in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion. Accordingly, disturbance by humans and their pets, amongst other factors, can have an adverse effect on the SPAs and SACs.
23. There would be a likelihood of future occupiers visiting the SPAs and SACs. Natural England has advised that new residential development within ZoI would constitute a likely significant effect to bird populations through increased recreational pressure. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
24. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPAs and SACs. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council has been operating a strategy for the protection of the SPAs and SACs, which is set out in the GIRAMS and was adopted by the Council on 1 April 2022. Natural England has stated that mitigation could be suitable and such measures could contribute towards the large-scale strategic mitigation project. The GIRAMS identifies that mitigation could take the form of such things as the management of recreational activities, securing the provision of a Ranger team to provide a presence at the habitats sites, access/visitor management, and habitat management.
25. The evidence before me suggests that the appellant has not paid a financial contribution to the Council towards the GIRAMS to mitigate any adverse impacts of the development on the SPAs and SACs and has not been secured by a unilateral undertaking or a section 111 agreement⁴, as required by the GIRAMS. The appellant considers that the matter could be conditioned.
26. The Planning Practice Guidance states that, "a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases". And the exceptional circumstances of doing so are "where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes)", which is not applicable to the appeal proposal. Therefore, the

³ People Over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁴ Section 111 of the Local Government Act 1972

financial payment could not be secured via condition. Without a unilateral undertaking or a section 111 agreement, the payment would not be properly secured.

27. In respect of the third main issue, insufficient information has been submitted to verify that the proposal would not harm the integrity of the SPAs and SACs. The proposal is therefore contrary to Policy 1 of the JCS and Policy DM4.4 of the LP, which together, amongst other things, seek to ensure the integrity of the SPAs and SACs are protected.

Suitable Location - Policy

28. The proposed dwellings would be located in the countryside. Policy DM1.3 of the LP states that development in the countryside will only be granted where it complies with specific development management policies, or it demonstrates overriding benefits in terms of economic, social and environmental dimensions.
29. Policies contained within the LP identify certain types of housing that would be acceptable in the countryside and therefore the LP does not prevent development in the countryside as a matter of principle. However, none of the types of development covered by these policies are applicable to the proposal. Therefore, the proposed development does not comply with any specific development management policies.
30. As previously discussed, the Council cannot demonstrate a five-year housing land supply of deliverable sites. No information has been provided with regard to the scale of the shortfall, however the Council indicate that steps are being taken to provide a mitigation strategy in respect of nutrient neutrality to unlock a number of permitted and allocated sites. Nevertheless, the provision of three additional dwellings weighs in favour of the proposal and would make a contribution to the Government's objective of significantly boosting the supply of new homes. I attach moderate weight to this matter. In addition, there would be some modest economic and social benefits associated with jobs during the construction period and benefits from the additional support to the local community and its services and facilities from future occupiers. Further, as I have set out below, future occupiers of the proposed dwellings would not be reliant on the private car to access services and facilities, and this would be a minor environmental benefit. Collectively, these benefits carry moderate weight in favour of the scheme.
31. However, the moderate benefits associated with the proposed development do not demonstrate overriding benefits in terms of economic, social and environmental dimensions as required by Policy DM1.3 of the LP.
32. Consequently, in reference to the fourth main issue, the proposed development would not be in a suitable location for housing development with respect to Policy DM1.3 of the LP, which sets out the spatial strategy for the location of new development and seeks to protect the surrounding open countryside from inappropriate development.

Suitable Location - Reliance on the Private Car

33. Ditchingham is defined as a Service Village and contains a range of services and facilities that would support the day-to-day needs of future occupiers, including a primary school, a convenience shop, a village hall and a restaurant. Bus stops are located within Ditchingham which are served by a regular bus

service and provide access to such places as Norwich city centre, Beccles and Bungay, which have a greater range of services and facilities.

34. The route from the appeal site to the facilities and services in Ditchingham is relatively short, is well lit and is served by pavements. Future occupiers would have to cross Norwich Road (the B1332) to access these services and facilities and there is no pedestrian crossing. Norwich Road has pavements on either side and street lighting. At the time of my site visit, I noted that it was a busy road with a 40mph speed limit. However, the flow of traffic was not constant, and the speed of vehicles was not excessive as vehicles were either exiting or approaching a roundabout to the south. Furthermore, the section of road to the front of the host dwelling is relatively straight with good visibility. Therefore, I was able to safely cross the road on numerous occasions. Whilst I accept that this was a snapshot in time, the evidence before me does not suggest that crossing the road would be unsafe at any other time. As such, future occupiers would be able to access the services and facilities in Ditchingham on foot and would not be reliant on the private car to support their day-to-day needs.
35. In regard to the fifth main issue, the proposed development would be in a suitable location for housing development with reference to reliance on the private car. The proposal would therefore comply with Policies 1 and 6 of the JCS and Policy DM3.10 of the LP which together, amongst other things, seek to reduce the need to travel and to maximise the use of sustainable forms of transport appropriate to the location. These policies are largely in agreement with paragraph 105 of the Framework that requires plan-making and development proposals to take opportunities to promote walking, cycling and public transport use.

Other Matters

36. The suggestion that there is significant demand for bungalows in the local area, and that the proposed bungalows would be priced at the lower end of the housing market have not been substantiated with evidence. Paragraph 80 of the Framework deals with isolated homes within the countryside. 'Isolated' simply connotes a dwelling that is physically separate or remote from a settlement.⁵ The appeal site lies partly within the garden of the host dwelling and the host dwelling forms a cluster of dwellings that are within the development boundary of Ditchingham. The appeal site is therefore not 'isolated' for the purposes of paragraph 80.

Planning Balance

37. As the Council has stated that it is unable to demonstrate a five-year housing land supply of deliverable housing sites, the relevant policies for the supply of housing cannot be considered up to date and paragraph 11(d) of the Framework is engaged which states, "where the policies which are the most important for determining the application are out-of-date, granting planning permission unless:
- (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

⁵ *Braintree District Council v Secretary of State for Communities and Local Government & Ors* [2018] EWCA Civ 610

- (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole”.

38. The appeal site is located within the ZoI of specific sites afforded protection under the Habitats Regulations. This is a protected area by definition of Footnote 7 of paragraph 11(d)(i). As previously stated, I cannot rule out that the proposal would not harm the integrity of the SPAs and SACs. Consequently, the application of policies in the Framework that protect habitats and biodiversity provide a clear reason for refusing the development proposed and the proposal would not benefit from the presumption in favour of sustainable development detailed in paragraph 11 of the Framework.
39. Even if I had concluded that the harm to the integrity of the SPA was not a clear reason for refusal, the harm I have identified would significantly and demonstrably outweigh the benefits I have set out in my reasoning above when assessed against the policies in the Framework taken as a whole.

Conclusion

40. I conclude that the proposal would conflict with the development plan as a whole and there are no material considerations, including the Framework, that indicate that the development should be determined otherwise than in accordance with it. Therefore, the appeal should be dismissed.

A Berry

INSPECTOR