



Appeal Decision

Site visit made on 7 June 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2023

Appeal Ref: APP/L2630/W/21/3289198

75 Bunwell Street, Bunwell NR16 1AB

- 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 Ms S Dinneen against the decision of South Norfolk District Council.
 - The application Ref 2021/1846, dated 12 August 2021, was refused by notice dated 9 November 2021.
 - The development proposed is the erection of dwelling with associated works, including provision of access, parking and landscaping.
 - This decision supersedes that issued on 26 October 2022. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The previous decision relating to this appeal was quashed as it was found that the Inspector had erred in their approach to determining the appeal. More specifically, the Inspector failed to conduct an appropriate assessment (AA) in accordance with the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and therefore failed to clearly ascertain whether the proposed development would not have an adverse impact on the integrity of the Broads Special Area of Conservation (SAC) and the River Wensum SAC. I have considered this matter under the first main issue.

Main Issues

3. The main issues are the effect of the proposal on:
 - (i) the Broads SAC and the River Wensum SAC; and
 - (ii) the character and appearance of the area.

Reasons

The Broads SAC and the River Wensum SAC

4. Natural England (NE) has advised the Council that nutrient pollution is having an adverse effect on habitats sites within the district, namely the Broads SAC and the River Wensum SAC which are protected European designated sites. The Habitats Regulations require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of a protected site, either alone or in combination with other plans and projects. This responsibility

falls to me in the context of this appeal. An AA must contain complete, precise and definitive findings which are capable of removing all reasonable scientific doubt as to the absence of adverse effects on the integrity of a protected site.

5. The Council has advised that the site is within the catchment of the Broads SAC. Table 2 appended to NE's 'Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites' (16 March 2022) (NE's advice) confirms the Broads SAC is in unfavourable condition due to excessive nutrients, namely Nitrogen and Phosphorus.
6. NE's advice also confirms, *'In freshwater habitats and estuaries, poor water quality due to nutrient enrichment from elevated nitrogen and phosphorus levels is one of the primary reasons for habitats sites being in unfavourable condition. Excessive levels of nutrients can cause the rapid growth of certain plants through the process of eutrophication. The effects of this look different depending on the habitat, however in each case, there is a loss of biodiversity, leading to sites being in 'unfavourable condition'. To achieve the necessary improvements in water quality, it is becoming increasingly evident that in many cases substantial reductions in nutrients are needed. In addition, for habitats sites that are unfavourable due to nutrients, and where there is considerable development pressure, mitigation solutions are likely to be needed to enable new development to proceed without causing further harm'*.
7. The government's Chief Planner has also advised that where habitats sites are in an unfavourable conservation status and additional nutrient loads, such as from development, may have an adverse effect, proposals affecting such sites should be carefully considered and mitigation should be used to ensure that there are no adverse effects.
8. However, I have not been provided with enough information to determine whether the proposal would likely have significant effects on the SAC in terms of nitrate and phosphate impacts to enable me to determine whether nutrient neutrality could be achieved as a potential solution. Therefore, and noting the need to take a precautionary approach, I cannot fulfil my statutory duty under the Habitats Regulations.
9. In addition to the above, the evidence provided indicates that new overnight accommodation has the potential to have an adverse impact on nutrient levels. I understand that the Council has not secured appropriate mitigation at this time to address the impact of nutrient loading in the district. Therefore, even if I were in a position to carry out an AA, there is no evidence to suggest that any identified harm, should it exist, could be mitigated. In those circumstances, I could only conclude that the proposal would adversely affect the integrity of the European protected site, either alone or in combination with other plans and projects.
10. The appellant has suggested that a pre-commencement condition could be attached requiring a water efficiency calculation to be carried out and for any necessary measures to be installed as part of the development. The suggested condition also sets out a requirement for a mitigation package to address additional nutrient input arising from the development.
11. However, such a condition would effectively defer the AA to the post-decision stage. This is in direct contravention with the requirements of the Habitats

Regulations for me as the competent authority to undertake the AA before granting any planning permission. Moreover, I cannot be certain that it would be possible for the appellant to address all of the additional nutrient load imposed on the Broads SAC by the development and therefore there is the possibility that such a condition could not be discharged. Such a condition would therefore not be reasonable and would not meet the 6 tests for conditions set out in the Planning Practice Guidance.

12. Furthermore, Policy 1 (Addressing climate change and protecting environmental assets) of the Joint Core Strategy for Broadland, Norwich and South Norfolk (2014) (JCS) confirms that all new developments will ensure that there will be no adverse impacts on European and Ramsar designated sites and no adverse impacts on European protected species in the area and will provide for sufficient and appropriate local green infrastructure to minimise visitor pressures.
13. Again, I have not been provided with detailed information on the potential recreational impacts of residential development on protected habitats in the district to reach an informed judgement. However, I understand that the South Norfolk and Broadlands Councils have now resolved to adopt the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) and that its Recreational Avoidance Mitigation tariff requires a contribution of £185.93 per dwelling which should allow a conclusion through an AA that a development will not have any adverse impact on the integrity of the habitats site as a result of increased recreation usage.
14. The appellant has again suggested that a condition be used, this time requiring the completion of a legal agreement to secure the Recreational Avoidance Mitigation contribution. In this regard, I have been referred to another appeal decision¹ which included such a condition. However, negatively worded conditions requiring a planning obligation to be entered into should only be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk. There is no clear evidence to suggest this would be the case in this instance.
15. It would typically be necessary for me to consult NE to undertake the AA and to assess the effectiveness of any mitigation put forward. However, a consultation with NE would not resolve the matters detailed above.
16. I conclude, I cannot be certain that the proposal would not adversely effect the integrity of the Broads SAC and, in the event that it would, I am not in a position to ensure that this would be suitably mitigated. In the circumstances, there is the potential that the proposal would conflict with the requirements to ensure that there will be no adverse impacts on European protected habitats sites in Policy 1 of the JCS as well as the nature conservation requirements of the National Planning Policy Framework (the Framework) and the Habitats Regulations.

Character and appearance

17. No 75 Bunwell Street is one of a pair of two-storey, semi-detached dwellings which are set towards the front of their plots. On my site visit, I noted that the land proposed for development is currently overgrown and has already been

¹ Appeal ref APP/X3540/W/19/3238214

segregated from the remainder of the rear garden serving No 75. There is variation to the scale and layout of dwellings in the area. For example, Nos 73 and 79 Bunwell Street are bungalows which sit to either side and are set behind the rear elevations of the semi-detached pair at Nos 75 and 77. There is also further variation to the position of dwellings and the shape and depth of their plots in the wider street scene. This mixed pattern of development makes for a varied village character.

18. Due to the close alignment of the proposal's rear elevation with the rear elevation of the dwelling at No 73 and its single storey height, the dwelling would reflect the scale and proximity of neighbouring bungalows to the road frontage. The position of the dwelling set back from the road frontage and behind the dwelling at No 75 would also ensure the dwelling would have a discreet presence in the street scene. The modest footprint of the dwelling, combined with the relative angle of the dwelling at No 75, would provide for adequate spacing between the respective dwellings and would ensure that they would not appear cramped within their plots. As a result, the proposal would sit comfortably within the varied pattern of its surroundings in this instance.
19. I conclude, the proposal would have an acceptable effect on the character and appearance of the area. In that regard, it would comply with the design, local character and context requirements of Policies DM1.4 (Environmental quality and local distinctiveness), DM3.5 (Replacement dwellings and additional dwellings on sub-divided plots within development boundaries) and DM3.8 (Design Principles Applying to all Development) of the DMPD.

Other Matters

20. Given the scale and layout of the proposal, the likely levels of activity on the access drive and the opportunities for boundary treatments to be put in place, I am satisfied that there would be no material harm to neighbouring living conditions. I also note that the Council did not refuse planning permission on the grounds of any impact in these respects.
21. There is no objective evidence before me to suggest that vehicular activity associated with the dwelling would have an unacceptable impact on highway safety. Furthermore, the Highway Authority did not raise any highway safety concerns.
22. With regards to the concern raised by a commercial operator located beyond the rear boundary of the site, the proposed dwelling and its curtilage would be no closer to this business than some of the other residential properties in the area. Therefore, I consider it unlikely that the proposal would raise any additional conflict between uses.

Conclusion

23. The appellant contends that the Council cannot demonstrate a five-year housing land supply and there is no contrary evidence before me to suggest otherwise. While I have no comments from the LPA in respect of this matter, I have applied a worst-case scenario for the purposes of my decision. Therefore, paragraph 11d of the Framework is engaged.
24. In the context of the Government's objective to significantly boost the delivery of housing, a two-bedroomed dwelling would make a modest but important contribution towards the provision and mix of housing in the area. I also attach

positive weight to the potential for some modest social and economic benefits through the construction of the dwelling and its future occupation. I have also found that the development would have an acceptable effect on the character and appearance of the area, albeit this attracts neutral weight.

25. However, insufficient information has been provided to determine the effect of the proposal on the Broads SAC and in the event that there would be any likely significant adverse effects on the integrity of the SAC, there is no certainty that appropriate mitigation could be secured. Applying the policies of the Framework that protect areas or assets of particular importance, this provides a clear reason for refusing the development proposed.

26. Therefore, the appeal is dismissed.

M Russell

INSPECTOR