



Appeal Decision

Site visit made on 18 April 2023

by C Harding BA(Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th July 2023

Appeal Ref: APP/V2635/W/22/3303206

**Land North of Tower Road and East of River Burn, Burnham Norton,
Burnham Market, Kings Lynn PE31 8JA**

- 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 Nigel Marsh against the decision of the Borough Council of King's Lynn and West Norfolk.
 - The application Ref 22/00419/F, dated 9 March 2022, was refused by notice dated 20 June 2022.
 - The development proposed is described as "retrospective entry/egress-maintenance consisting of installing hardstanding for vehicles on agricultural land onto highway to ensure mud is removed from vehicle before entry onto highway".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although it is stated that the appeal is retrospective, it is unclear whether the work carried out in the form of the deposition of material on an area of the appeal site that I saw on my visit is consistent with the provided plans. Accordingly, I have considered the appeal on the basis of the plans provided.
3. A significant number of the representations received in relation to this appeal make reference to an alleged previous use of land adjacent to the appeal site for camping purposes. Furthermore, I understand that an injunction may exist to prevent such a use, or any development associated with it without the necessary permissions being place.
4. In the interests of clarity, the appeal now before me relates only to the provision of hardstanding and does not include any use of the appeal site or the wider land which it would serve. My considerations are accordingly restricted to those issues relating to the proposed hardstanding only, and do not include any consideration of the possible past or future use of the wider land. Furthermore, the presence of an injunction does not prevent my consideration of the appeal.

Main Issues

5. The main issues are:
 - the effect of the proposed development upon highway safety;
 - the effect of the proposed development upon biodiversity, and;
 - the effect of the proposed development upon the character and appearance of the area, including its effect upon the Norfolk Coast Area of Outstanding Natural Beauty ('the AONB').

Reasons

Highway safety

6. The appeal site relates to a field access situated on land adjacent to the A149. I understand, and it is not disputed between the main parties that the access is longstanding and has been used for a number of years as an unmade access to the grassland that it serves. The proposed development seeks to provide hardstanding on an area of the field itself.
7. Since the application was determined, the Local Highway Authority have removed their objection on the basis that, in the absence of any change of use, there would be limited traffic using the access. However, as noted in the representations, the provision of hardstanding would provide vehicles with an improved means to enter the wider field. Although the appellant has indicated that it wouldn't lead to the increased use of the field access, as it is also stated that at present some of the appellant's vehicles can only be parked on the A149, I consider that it would be likely to increase the use of the access, by providing an area to pull off the road for parking.
8. Whilst the topography of the area is largely flat, and the A149 relatively straight, the presence of trees, vegetation and road signage within the highway verge, means that visibility from the access when leaving the site is currently partially restricted, particularly when looking westwards. Although relatively narrow, and in a rural location, I saw on my site visit that the A149 is a moderately busy road, and the Highway Authority has confirmed that it is designated as a Category 3B3 Special Access Route linking the coastal towns of Cromer and Hunstanton. In the vicinity of the appeal site, it is subject to the national speed limit for single carriageway roads.
9. Whilst there is no evidence before me that would indicate that currently informal use of the access has resulted in accidents or incidents, I consider that any increased use of the access, in combination with restricted visibility when leaving the site and the speed and level of traffic using the road would increase the likelihood of conflict between vehicles occurring, to the detriment of highway safety.
10. Furthermore, the proposed area would be likely to be of insufficient size to allow a vehicle to turn in order to leave in a forward manner. Whilst a turning manoeuvre would be possible within the field itself, this would be required to be carried out on low-lying grassland, which the appellant has advised is often wet. Accordingly, dependent on the ground conditions at the time, and the vehicle used, this would not always represent a practical option.
11. As a result, the appeal proposal would also increase the likelihood that, if otherwise unable to turn around, any vehicle parked upon the proposed hardstanding would need to reverse on to the main road in order to leave the site, or alternatively reverse onto the appeal site. In either scenario, this would further increase the likelihood of accidents.
12. Whilst I acknowledge that the appeal proposal would potentially reduce the need to park on the A149, it would, in turn introduce other highway safety concerns, which would be exacerbated if a vehicle was unable to leave the site in a forward gear and was required to reverse on to the highway. Furthermore, there is no substantive evidence before me to suggest that parking on the

A149, where a shallow lay-by exists, has resulted in accidents or incidents. Accordingly, this is not a factor which weighs significantly in the favour of the proposal.

13. It has been put to me that suitable visibility splays for the access could be achieved and maintained, however I have not been provided with any specification for such splays and nor can I be certain that the appellant controls sufficient land in order to secure and maintain such visibility splays. Accordingly, I am not persuaded that the use of a planning condition to secure such splays would meet the relevant tests set out in the National Planning Policy Framework ('the Framework') and Planning Practice Guidance.
14. The appellant has also stated that the proposal would reduce the possibility of mud being deposited onto the A149 by vehicles leaving the site. Whilst I acknowledge that the deposition of material on the highway would potentially currently occur depending on the ground conditions within the field, there is no substantive evidence before me to indicate that this is currently a common occurrence which poses a highway safety risk in this location.
15. I acknowledge that there are numerous other examples of accesses onto the A149. However, several are unmade and, in any event, I am unaware as to the planning history or circumstances of these accesses. Given that levels of visibility and traffic speeds would vary between these locations, none would be directly comparable to the proposal before me, such that they would justify the appeal proposal.
16. It is also stated that the appeal proposal would allow an area to park and open and close a field gate. However, there was no gate present at the time of my visit, nor is one included within the appeal proposal. Accordingly, whilst the appeal proposal could facilitate a means of operating a field gate without requiring parking on the highway, I afford this only very limited weight in my considerations.
17. Therefore, I conclude that the appeal proposal would result in harm to highway safety. It would therefore be contrary to advice contained within Paragraph 111 of the Framework, which provides grounds for preventing development if there would be an unacceptable impact on highway safety.
18. In refusing permission, the Council referred to conflict with Policy CS12 of the King's Lynn and West Norfolk Core Strategy¹ ('CS'). However, this policy makes no specific reference to matters of highway safety, and accordingly, I find no conflict with it in relation to this issue.

Biodiversity

19. I understand that the appeal site lies within proximity to the North Norfolk Coast Special Protection Area, Ramsar site and Site of Special Scientific Interest ('the SPA'), although Natural England's ('NE') responses appear to confirm that, in the absence of any alternative wider use of the site, this proposal, alone, would not lead to adverse effects on those protected sites. The NE response, however, does not give certainty that no other effects on biodiversity, local to the site itself, would occur.

¹ King's Lynn and West Norfolk Borough Council Local Development Framework – Core Strategy adopted July 2011

20. The appellant asserts that due to the size of the appeal site itself and its longstanding use as an access, that it is unlikely that any wildlife habitats would be present. However, whilst acknowledging that the use of the appeal site as an access could reduce its potential to provide wildlife habitat, given the location and character of the field associated with the appeal site, I consider that, despite its size and established use, that there is reasonable potential for the appeal site to provide habitat for protected or priority species.
21. I understand that hardsurfacing has already been carried out. However, the suggestion that there would be greater effects from additional works to remove it is also unsupported by detailed evidence. Ultimately, with no substantive evidence before me with regard to the biodiversity interest of the site, I am unable to conclude that the proposed development would not adversely affect biodiversity interests.
22. Therefore, the proposed development would be contrary to CS Policy CS12, as well as Part 15 of the Framework, which together state that development should seek to avoid, mitigate or compensate for any adverse impacts on biodiversity, and that proposals should be accompanied by an ecological impact study and assessment proportionate to the degree of the impact and importance of the species affected.
23. In refusing permission, the Council also referred to conflict with King's Lynn and West Norfolk Borough Site Allocations and Development Management Policies Plan ('SADMP') Policy DM15. As this policy provides no specific guidance with regard to the effect of the appeal proposal upon biodiversity or protected species, I find no conflict with it in relation to this issue.

Character and appearance

24. I understand that the site lies within the AONB. As a result, Section 85 of the Countryside and Rights of Way Act 2000 requires me to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. In accordance with Paragraph 176 of the Framework, I have given great weight to the conservation of the landscape and scenic beauty of the AONB.
25. The appeal site is stated by the Council as being located within the 'Overy Creek' landscape character area within its Landscape Character Assessment. The sensitivities of this landscape are identified as being the wide-open panoramic views across salt marshes, an intricate network of inter-tidal habitats, a sense of openness with open views towards a generally undeveloped coastal skyline, a strong and recognisable sense of place, and a predominantly isolated and rural character. This is not disputed by the appellant.
26. The appeal site is limited in size, and the appeal proposal would amount to an area of hardstanding of around 35 square metres in area. The evidence indicates that the material to be used would be dark red hardcore. I consider that the area of hardstanding proposed would not be excessive for the purpose for which it would be required, and would objectively remain a development of a small scale.
27. Although when initially laid, the proposed area of hardcore would contrast with the surrounding grassland, it would, in the medium term, soften in appearance and assimilate into its surroundings to a reasonable extent. Furthermore, being a ground level development, the appeal proposal would not be likely to be

widely visible in medium or longer views, and in addition, areas of hardstanding adjacent to the carriageway such as the existing lay-by opposite the appeal site, and access further to the north-east also incorporate loose hardstanding. This means that the appeal proposal would not appear as starkly incongruous.

28. With regard to the effect of the appeal proposal upon the AONB, the scale and nature of the appeal proposal means that it would not undermine those features that characterise this part of the AONB. By remaining at ground level, it would not affect panoramic views, or views towards the coastal skyline. Furthermore, it would not have an urbanising effect such that it would erode the rural character or sense of place. Overall, I am satisfied that appeal proposal would conserve the natural beauty of the AONB.
29. The appeal proposal would not harm the character and appearance of the area and would conserve the natural beauty of the AONB. It would therefore be in accordance with CS Policies CS06 and CS08, and SADMP DM15 which together state that the countryside will be protected for its intrinsic character and beauty and the diversity of its landscapes, that new development should respond to its context, and protect the amenity of the wider environment including in terms of visual impact. It would also accord with Paragraph 176 of the Framework which states that the scale and extent of development within an AONB should be limited.

Other Matters

30. To the north-east of the appeal site lies Burnham Overy Mills Conservation Area ('the CA') and the Grade II listed watermill, bridge and parapet wall, and Mill House. There is no dispute between the main parties as to whether the proposed development would preserve or enhance the character or appearance of the CA or preserve the special interest of the listed buildings and their setting. Due to the distance between the appeal site and the CA and listed buildings, I have no reason to find that the appeal proposal would harm the special interest of these designated heritage assets, and as I am dismissing the appeal for other reasons, no harm in this regard could arise from my decision.

Conclusion

31. Although I have found that the appeal proposal would not harm the character and appearance of the area, and would conserve that natural beauty of the AONB, it would nevertheless result in harm to highway safety, and I am unable to conclude that it would not lead to harm to protected or priority species and habitats. It would conflict with the development plan as a whole.
32. Section 38(6) of the Planning and Compulsory Purchase Act states that a decision must be taken in accordance with the development plan, unless material considerations indicate otherwise. No considerations have been identified that would outweigh the harm and conflict with the development plan that I have identified.
33. For the reasons given above I conclude that the appeal should be dismissed.

C Harding

INSPECTOR