



Appeal Decision

Site visit made on 11 July 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Appeal Ref: APP/L2630/W/22/3301856

Timber Yard, The Street, Ashwellthorpe, Norwich NR16 1AA

- 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 and Mrs Reeder against the decision of South Norfolk District Council.
 - The application Ref 2021/2321, dated 18 October 2021, was refused by notice dated 10 March 2022.
 - The development proposed is demolition of existing buildings used in association with timber yard, erection of five dwellings comprising two 4-bedroomed (one being self-build), and three 3-bedroomed (one being a First Home), new internal private driveway onto existing highway access, car parking spaces, gardens, and biodiversity/landscaping enhancements.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 16 March 2022, the government's Chief Planner wrote to local planning authorities affected by nutrient pollution, including South Norfolk District Council. This followed advice from Natural England about the adverse effect of nutrient pollution on European sites in an unfavourable conservation status, including The Broads Special Area of Conservation (SAC). In addition, since its decision on the proposed scheme, the Council introduced the Norfolk Green Infrastructure and Recreational impact Avoidance and Mitigation Strategy (GIRAMS). Consequently, in my decision I have considered the effects of the proposal on the integrity of European sites. Since both parties made comments in this regard, neither party would be prejudiced by my consideration of this matter.

Main Issues

3. The main issues in this appeal are:
 - the effects of the proposal on the integrity of the Broads SAC, and other European sites within the scope of the Norfolk Green Infrastructure and Recreational impact Avoidance and Mitigation Strategy 2021 (GIRAMS);
 - whether the proposed development would be in a suitable location having regard to the local development strategy;
 - the effects of the proposal on the supply of employment land; and
 - the effects of the proposal on the character and appearance of the area.

Reasons

Integrity of European sites

4. The appeal site is within the catchment area of and is thus functionally related to the Broads SAC, a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). In addition, the appellant's Shadow Habitats Regulation Assessment (HRA) identifies the site as falling within zones of influence of many European sites within the scope of the GIRAMS. The Habitats Regulations therefore require that an Appropriate Assessment is carried out, and Natural England were consulted during the course of the appeal.
5. The conservation objectives for the Broads SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features.
6. The Broads SAC's qualifying features include habitats, such as calcium-rich nutrient-poor lakes, lochs and pools; naturally nutrient-rich lakes or lochs which are often dominated by pondweed; purple moor-grass meadows; very wet mires often identified by an unstable surface; calcium-rich fen dominated by great fen sedge; calcium-rich springwater-fed fens; alder woodland on floodplains; and species such as Desmoulin's whorl snail, otter, fen orchid, and little whorlpool ram's-horn snail. The qualifying features within the Broads SAC are vulnerable to the effects of development, including through harm to water quality through nutrient pollution, and recreational disturbance.
7. The proposal would result in a net increase in residential accommodation which would generate additional nutrient loads, such as nitrates and phosphates, within the catchment of the Broads SAC. The proposal is therefore likely to harm water quality in the Broads SAC through nutrient pollution which causes adverse effects on habitats through eutrophication and algal blooms. Since the proposal would lead to an uplift in the local population, as indicated in the Shadow HRA, the proposal would increase recreational pressure on European sites in the area. The scheme is therefore likely to have a significant effect on the integrity of European sites in isolation and in association with other similar development.
8. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of a European site. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect the integrity of European sites.
9. In light of Natural England's advice on nutrient neutrality, the Chief Planner's letter requires confidence that the development either does not require nutrient neutrality to be acceptable under the regulations or that nutrient neutrality is secured as part of the proposal, before granting planning permission.
10. Having considered Natural England's nutrient neutrality methodology, the appellant concludes that the site cannot accommodate on-site nutrient mitigation measures and suggests a pre-commencement condition be applied to secure off-site mitigation. The appellant refers to an appeal decision¹ in the Council's area at the village of Bunwell where a pre-commencement condition

¹ APP/L2630/W/21/3289198

requiring mitigation to address nutrient pollution was initially applied. However, that decision has since been redetermined and concluded that such a condition would be in contravention of the requirements of the Habitats Regulations, as it would effectively defer the Appropriate Assessment to the post-decision stage.

11. In addition, the pre-commencement would not provide sufficient certainty that the additional nutrient load imposed on the Broads SAC by the development could be addressed and therefore that the condition could be discharged. Such a condition would therefore not be reasonable and would not meet the tests set out by the National Planning Policy Framework (the Framework).
12. The appellant has expressed willingness to contribute to tariff-based schemes for off-site mitigation which were expected to be operational from February 2023. However, the Council has confirmed that, whilst a scheme is being prepared, no such tariff scheme is in place at the time of my decision. Since I have no details before me of any future mitigation or mechanism to secure it, I cannot be certain that the adverse effects of the proposal on the Broads SAC, in respect of nutrient load, would be adequately mitigated.
13. The appellant has submitted an agreement pursuant to Section 106 of the Town and Country Planning Act (as amended) and Section 111 of the Local Government Act 1972 to secure a payment towards measures to mitigate the impacts of the proposed development, as set out in GIRAMS. On this basis, I have confidence that recreational disturbance on European sites would be adequately mitigated.
14. I must also consider whether there are any imperative reasons of overriding public interest. The provision of five dwellings, taking into account the merits of the case and the modest scale of the development, is not sufficient to amount to such overriding public interest.
15. The Habitat Regulations indicate that permission may be granted only where the competent authority is convinced the proposed development will not adversely affect the integrity of the European site concerned. In this instance, I do not have sufficient confidence that the integrity of The Broads SAC would not be adversely affected. I must therefore conclude the proposed development would result in unjustified harm to the integrity of The Broads SAC. In this circumstance, the Habitat Regulations indicate permission must not be granted.

Suitability of location

16. The appeal site is presently in use as a wood storage yard situated to the rear of existing development at The Street, set back by a private access road. To protect the surrounding open countryside, Policy DM1.3 of the South Norfolk Local Plan Development Management Policies Document 2015 (LP) directs new development to land within development boundaries, except where the development is of a type supported by the development plan or where the proposal demonstrates overriding benefits. The site adjoins the built area of the village but is located outside the development boundary.
17. LP Policy DM3.2 supports the provision of affordable housing in the countryside. However, only one of the five proposed dwellings would be an affordable housing unit. Therefore, there are no policies which expressly support the proposal in this location.

18. The appellant has presented other appeal cases in which 'overriding benefits' have been considered with some variation in approach, including that the proposal is particularly special or that the accumulation of benefits outweighs the harm. However, Policy DM1.3 makes clear that overriding benefits should be demonstrated in terms of economic, social and environment dimensions as addressed in LP Policy DM1.1 which includes, where relevant policies are out of date, granting permission unless adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework.
19. The Council cannot currently demonstrate a five-year supply of deliverable housing sites. In this circumstance, paragraph 11.d) of the Framework states that the policies which are most important for determining the application are out-of-date and permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development. Such policies include those relating to designated habitats. As set out above, the proposed development would harm the integrity of The Broads SAC. Paragraph 174 of the Framework requires the protection of sites of biodiversity value in a manner commensurate with their statutory status.
20. Balanced against this harm, the proposal would contribute to the supply of housing through the delivery of five dwellings. Of those five dwellings proposed, one dwelling would be affordable housing and one dwelling would be a self-build dwelling. In addition, the proposal would deliver an on-site net gain in biodiversity through a scheme of biodiversity enhancements. Such benefits would be secured through planning obligations. In addition, the proposal would enable the redevelopment and remediation of previously developed land.
21. Whilst such benefits carry moderate weight in favour of the proposal, the adverse impacts of the proposal on the integrity of the Broads SAC amounts to significant harm. Reflecting the particular importance of the Broads SAC, the Framework provides a clear reason for refusing the development and the proposal does not therefore benefit from the Framework's presumption in favour of sustainable development. Consequently, the benefits of the scheme do not clearly outweigh its harm, and the overriding benefits described by Policy DM1.3 do not exist.
22. Having regard to the local development strategy, the proposed development would not be in a suitable location and would therefore conflict with Policy DM1.3.

Supply of employment land

23. LP Policy DM2.2 seeks to protect employment sites, unless it can be demonstrated that a) the site or premises is no longer economically viable or practical to retain for employment uses, or b) there would be overriding benefits from the site's redevelopment or change to another use.
24. The site is predominantly an open area surfaced with hardstanding and aggregate. Use of the site for commercial purposes appears to be of a low intensity. To one side of the site is a half-cylindrical workshop of blockwork and corrugated metal and an informal open-fronted cart-shed structure constructed from timber with a metal sheet roof. The existing buildings appear to be in a poor condition and of limited suitability for occupation by another employment

use. Therefore, the site makes only a modest contribution to the supply of employment land.

25. The site is positioned close to existing dwellings and vehicles accessing the site via the private access road would pass close by the frontages of existing dwellings. The proximity to sensitive uses would limit the site's suitability for alternative employment uses.
26. As set out above, the benefits associated with the proposal, notably the contribution to the supply of dwellings, would be negated by the harm to the Broads SAC. Consequently, the benefits associated with the site's redevelopment would not amount to overriding benefits.
27. The site was unsuccessfully marketed for sale from June 2015 to August 2016. The marketing exercise significantly pre-dates the application and is therefore outdated and the present economic viability of the site is unclear. In the absence of a recent marketing exercise or similar assessment, the economic viability and practical retention of the site is unclear.
28. On this basis, the proposal would harm the supply of employment land, and would not comply with Policy DM2.2. However, due to the scale of employment land which would be lost and the site's proximity to sensitive uses, I attach modest weight to this harm.

Character and appearance

29. The site is located behind existing dwellings and the village hall. Development within the village generally follows a linear pattern with dwellings oriented to front onto the highway. However, existing buildings on the site are positioned along the site's angular side boundary. In addition, neighbouring dwellings at the site's access road are oriented perpendicular to The Street, with a pair of semi-detached dwellings situated behind the village hall. Since the site's existing buildings, along with development within the site's immediate context do not follow the village's prevailing layout, the proposal would not appear to erode the established form and character of the village.
30. The site is set back from The Street by a narrow private access road, and therefore would be of limited visibility from the public highway. The access road is flanked by development on each side and therefore, since the development would be viewed in this context, it would not harm the appearance of the street scene.
31. The site has established boundaries of trees and tall hedges, which clearly separates the site from arable farmland to the west, and therefore the development would not appear to encroach into the countryside. This boundary treatment, along with dense woodland to the north, prevents views of the site from the surrounding rural landscape.
32. For these reasons, the proposal would not harm the character and appearance of the area. The proposal would therefore maintain the area's existing locally distinctive character in accordance with LP Policy DM3.8.

Other Matters

33. I note that Norfolk Wildlife Trust has raised concerns regarding the effects of the proposal on the Ashwellthorpe Lower Woods Site of Special Scientific

Interest and the habitats and species within it. I understand the appellant has submitted an Ecological Impact Assessment which recommends mitigation and biodiversity enhancement measures. Since I am dismissing the appeal for other reasons, I need not consider this matter further.

Planning Balance and Conclusion

34. The proposal would adversely affect the integrity of The Broads SAC and the Habitats Regulations provide a clear reason for refusing the development. I attach significant weight to this harm. The proposal would also result in modest harm through the loss of employment land.
35. The proposal would not harm the character and appearance of the area. The absence of harm weighs neither in favour nor against the proposal.
36. There are no policies which support the proposed development in this location which is outside the development boundary. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
37. There is a current shortfall against the five-year housing land supply in the Council's area. The proposal would provide five dwellings thus contributing positively to the area's housing supply. However, the Framework's policies which protect areas of particular importance provide a clear reason for refusing the development. Consequently, there are no material considerations which indicate a decision other than in accordance with the development plan. I therefore attach substantial weight to the proposal's conflict with Policy DM1.3, regarding the location of development.
38. Having regard to the development plan taken as a whole, and all other relevant material considerations, I conclude the appeal should be dismissed.

E Dade

INSPECTOR