
Appeal Decision

Site visit made on 17 April 2023

by C Harding BA(Hons) PGDipTRP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Appeal Ref: APP/V2635/W/22/3301677

Land Rear of 2 to 24 Vong Lane, Pott Row PE32 1BW

- 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 Mrs Claire Easom against the decision of the Borough Council of King's Lynn and West Norfolk.
 - The application Ref 21/02463/O, dated 16 December 2021, was refused by notice dated 16 March 2022.
 - The development proposed is described as "Proposed outline application for 1-3 dwellings".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline form, with all matters reserved and I have been provided with only a site location plan. I have therefore determined the appeal on this basis.
3. I have taken the description of development from the planning application, although I have omitted those parts that do not relate to acts of development.

Main Issues

4. The main issues are:
 - whether the appeal site is an appropriate location for the proposed development having regard to the settlement strategy of the development plan;
 - the effect of the proposed development upon the character and appearance of the area;
 - whether the proposed development would provide acceptable living conditions for future occupiers with regard to noise and odour, and;
 - the effect of the proposed development upon biodiversity and protected species.

Reasons

Settlement strategy

5. Policy CS01 of the King's Lynn and West Norfolk Core Strategy¹ ('CS') sets out the spatial strategy for the Borough. This policy seeks to direct development to the most sustainable locations in accordance with a settlement hierarchy which

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

is set out in CS Policy CS02. Pott Row, along with Grimston and Gayton are together classified within CS Policy CS02 as a Joint Key Rural Service Centre (JKSC) where limited growth of a scale and nature appropriate to secure the sustainability of each settlement will be accommodated within the development limits.

6. Due to the location of the appeal site outside of, albeit adjacent to, the settlement boundary of Pott Row as set out in the CS, it is located within the countryside for the purposes of the development plan. CS Policy CS06, along with King's Lynn and West Norfolk Borough Site Allocations and Development Management Policies Plan ('SADMP') Policy DM2 sets out a series of exception for development in the countryside. Together CS Policies CS01, CS02, CS Policy CS06 and SADMP Policy DM2 form a coherent settlement strategy.
7. It has not been put to me that the appeal proposal meets any of the exceptions set out in CS Policy CS06 or SADMP Policy DM2, and the evidence before me does not indicate otherwise.
8. Accordingly, and whilst acknowledging that the appeal site is located such the future occupiers would have reasonable access to services and facilities, and public transport within the JKSC, the proposed appeal site would not be an appropriate location for the proposed development having regard to the settlement strategy of the development plan. It would therefore conflict with CS Policies CS01, CS02, CS06 and SADMP Policy DM2, the requirements of which are outlined above.
9. In refusing permission, the Council has also referred to conflict with the National Planning Policy Framework ('the Framework') with regard to this main issue. However, my attention has not been drawn to any specific wording within the Framework, and I will return to whether the presumption in favour of sustainable development applies later in my decision.

Character and appearance

10. The appeal site currently largely comprises paddock land associated with an equestrian use located to the rear of properties on Vong Lane. The pattern of development in this location is linear in nature, with properties fronting the road, with gardens behind and open fields beyond. In this context, the existing equestrian facility is unusual in comprising further development beyond the otherwise clear and strong visual edge of the settlement.
11. The existing structures associated with the current equestrian use, include a static caravan, stables and storage buildings are relatively minor in scale and construction. These are generally located towards the rear edge of gardens of properties on Vong Lane. However, although no details of any potential layout are before me, the appeal proposal, even if designed in keeping with other, existing properties, would be likely to extend beyond the current limit of existing buildings, and lead to the expansion of the envelope of built development further into the open countryside.
12. Even if read against a backdrop of existing development and designed with a rural style as suggested, any dwellings and associated paraphernalia on the appeal site would appear as a clear encroachment of the countryside and expansion of the settlement. The proposed development would therefore appear as eroding the open nature of the character of the countryside in this

location. The existing equestrian use and associated paraphernalia do not lead me to a different conclusion.

13. Although all matters are reserved for future consideration, I nevertheless consider that the open character of the countryside, along with the general flat topography of the area would lead to the proposed development also being widely visible from properties on Vong Lane and Ashwicken Road.
14. The appeal proposal would therefore harm the character and appearance of the area. It would therefore conflict with CS Policies CS06, CS08 and CS12 as well as SADMP Policy DM15. Together, and amongst other criteria, these policies seek to maintain local character, protect the countryside for its intrinsic character and beauty and require new development to respond to its context. It would also conflict with the Framework in relation to achieving well-designed places.

Living conditions

15. The appeal proposal would introduce residential development within close proximity to the equestrian use and there is no indication within the evidence that this use would cease should the appeal proposal be carried out. Neither is it stated that the occupancy of the proposed development would be directly related to this existing use.
16. The existing use, including the stables and paddocks, at the time of my visit, appeared to provide accommodation to several animals. The continuation of this use would be likely to give rise to regular visits to the site in order to attend to or exercise animals.
17. Although there is no evidence before me that would indicate that the equestrian use is currently operating unacceptably, this level of activity, along with normal expected equestrian behaviour, would be likely to give rise to noise generation on a regular basis. Furthermore, and although at the time of my visit, the management of waste from the stables appeared to appropriate, the nature of the existing use would also give rise to the potential for odour to be generated, particularly as the future management and manner of operation of the equestrian facility would fall outside the scope of this appeal.
18. Accordingly, and given the proximity of the appeal site to the equestrian operation, I consider that there is a reasonable likelihood that future occupiers of the proposed development would experience regular noise disturbance, as well as odour issues.
19. Although the equestrian operation is located close to existing residential properties on Vong Lane, and no detailed layout is before me, it is nevertheless likely that dwellings within the appeal site would be located closer to the equestrian activity than those on Vong Lane, which are separated by intervening rear gardens. Furthermore, although there is a static caravan located within the equestrian operation at present, I have been provided with no evidence with regards to its planning history, or whether it is occupied for residential purposes. Accordingly, I consider that the appeal proposal would result in a materially different situation to that which exists at present.
20. The proposed development would fail to provide adequate living conditions for future occupiers with regard to noise and odour. It would therefore be contrary to SADMP Policy DM15 which, amongst other criteria, requires new

development to protect and enhance the amenity of the wider environment, including the amenity of any future occupiers with regards to noise and odour. It would also conflict with Paragraphs 130 and 174 which together advise that new development should have a high standard of amenity for future residents, and should not be adversely affected by air or noise pollution.

21. In refusing permission, the Council has also alleged a conflict with CS Policies CS01, CS08 and SADMP Policy DM1. However, my attention has not been drawn to any words in them that are relevant to this issue. The policies have therefore not been determinative in this main issue.

Biodiversity and protected species

22. The site lies within the Impact Risk Zone associated with the Leziate, Sugar and Derby Fens Site of Special Scientific Interest ('the SSSI'). I have therefore had regard to the duty imposed by Section 28G of the Wildlife and Countryside Act 1981 to take reasonable steps to further the conservation and enhancement of the features by which the site is of special scientific interest.
23. CS Policy CS01 states that in rural areas the development strategy will be to protect geodiversity and biodiversity. CS Policy CS12 states that designated wildlife sites will be protected and enhanced, with development which damages their interest or significance being resisted, unless the need for, and public benefits of the development outweigh the loss of interest or significance. It also states that development should seek to avoid, mitigate or compensate for any adverse impacts on biodiversity, and that development proposals should be accompanied by an ecological impact study and assessment proportionate to the degree of the impact and importance of the species affected.
24. Although the appellant considers that there is no reason to suspect any adverse ecological impact as a result of the proposed development, there is no substantive evidence before me with regard to the potential of the site to host protected or priority species, priority habitat or its current biodiversity value, which would support this assertion. Furthermore, I have been presented with no evidence in relation to the potential effect of the appeal proposal upon the SSSI. Conversely, on the basis that the site consists of unimproved grassland, it seems to me that it has the potential to support various forms of wildlife.
25. Accordingly, I am unable to conclude that the proposed development would not adversely affect protected or priority species and habitats, or that the special scientific interest of the SSSI would be conserved.
26. Additionally, without an understanding of the ecological baseline of the appeal site and having regard to the statutory duty set out above, it would not be appropriate to address this matter by means of a planning condition to secure a biodiversity enhancement scheme.
27. Therefore, the proposed development would be contrary to CS Policies CS01 and CS12, which I have summarised above. It would also conflict with Paragraph 180 of the Framework, which advises that significant harm to biodiversity should be avoided, and that development likely to have an adverse effect upon a SSSI should not normally be permitted.

Other Matters

28. I acknowledge that the Framework advocates the use of brownfield sites and efficient use of land. It is disputed between the main parties as to the whether

the appeal constitutes such a brownfield site. Even if I were to agree that the site constitutes a brownfield site, the Framework does not offer unqualified support to the development of such sites. Given the harm that I have identified, this matter therefore carries only very modest weight in my considerations.

29. Although not a matter of dispute between the main parties, even if I were to agree that the proposed development would be served by an adequate means of access, this would be only a neutral factor and would not weigh in favour of the proposal.

Planning Balance

30. Policies within the CS and the SADMP pre-date the publication of the Framework. Nevertheless, the Framework is clear in stating that existing policies should not be considered to be out-of-date simply because they were adopted or made prior to the Framework. Rather, weight should be attributed to them according to their level of consistency with the Framework.
31. Although CS Policy CS06 seeks to restrict development beyond settlement boundaries, it does so only subject to other considerations, including the intrinsic character and beauty of the countryside. In addition, CS Policies CS01 and CS02, when read with CS Policy CS06, and also SADMP Policy DM2 together form a settlement strategy that balances the objectives of providing a sufficient supply of housing which is supported by local services and facilities, against the need to consider environmental effects. This is broadly consistent with the approach advocated by the Framework, and accordingly, I conclude that these policies are not out-of-date for this reason and can be attributed full weight.
32. It is also not disputed between the parties that the Council can demonstrate a supply of new housing sites in excess of the five-year requirement. Accordingly, the Framework's presumption in favour of sustainable development does not apply in this instance.
33. The provision of up to three new dwellings with flexible and inclusive design would comprise a beneficial boost to housing supply. The proposal would also contribute towards the level of new housing distribution identified to be provided within or adjacent to JKSCs, as set out in CS Policy CS06. Being on a small site, the proposal could also be built out relatively quickly. However, having regard to the modest number of dwellings proposed, these benefits attract only moderate weight in my considerations.
34. The appeal site is located such that future occupiers would have reasonable access to services and facilities within the JKSC, and in using these facilities, would support the vitality of the JKSC as a whole. There would also be modest and short-term benefits to the economy during construction. Overall, I conclude that the benefits of the appeal proposal would be moderate.
35. The appeal proposal would conflict with the development plan as a whole. 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. Although the proposed development would result in some benefits, to which I have afforded moderate weight, they do not outweigh the harm and conflict with the development plan that I have identified.

Conclusion

36. For the reasons given above, I conclude that the appeal should be dismissed.

C Harding

INSPECTOR