



Appeal Decision

Site visit made on 6 September 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Appeal Ref: APP/Y2620/W/22/3310147

Church Barn, The Street, Sustead, Norfolk NR11 8RU

- 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 Adrian Sellex against the decision of North Norfolk District Council.
 - The application Ref PF/22/1738, dated 19 July 2022, was refused by notice dated 27 October 2022.
 - The development proposed is change of use of the first floor of an existing cart shed from annexe to holiday let.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The evidence indicates that the change of use to which this appeal relates occurred in May 2022. The appeal is therefore considered retrospectively.

Main Issue

3. The main issue is the effect of the appeal scheme on the integrity of the Broads Special Area of Conservation (SAC) and Ramsar site, with particular regard to issues pertaining to nutrient neutrality.

Reasons

4. Guidance was issued by Natural England (NE) on 16 March 2022 requiring competent authorities to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.
5. The appeal site is within the nutrient neutrality catchment of the Broads SAC and Ramsar site. As the competent authority, I must therefore have regard to The Conservation of Habitats and Species Regulations 2017 (as amended). These regulations require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives.
6. The SAC and Ramsar site contain several examples of naturally nutrient-rich lakes. Though artificial, having been created by peat digging in medieval times, these lakes, as well as the ditches in areas of fen and drained marshlands, support relict vegetation of the original Fenland flora. The site supports one of the richest assemblages of rare and local aquatic species in the UK.

7. The SAC and Ramsar site are designated for various features, including the following habitats: hard oligo-mesotrophic waters, natural eutrophic lakes, Molinia meadows on calcareous, peat or clay-silt soil, transition mires and quaking bogs, calcareous fens, alkaline fens and alluvial woods. They are also designated for the following species: Desmoulin's whorl snail, otter, fen orchid and little whirlpool ramshorn snail.
8. The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features.
9. NE has highlighted that the Broads SAC and Ramsar site are in unfavourable condition due to nutrients, where new development may have an adverse effect by contributing additional nutrients and therefore where nutrient neutrality is a potential solution to enable development to proceed.
10. NE's Nutrient Neutrality Methodology enables a nutrient budget to be calculated for all types of development that would result in a net increase in population served by a wastewater system. It covers all types of overnight accommodation, including self-service tourist accommodation. This is included as this land use attracts people into the catchment and generates additional wastewater and consequential nutrient loading on the designated sites.
11. The appeal scheme comprises change of use of the first floor of an existing cart shed from a residential annexe to a holiday let. This would create a separate residential planning unit that is no longer incidental to the use of the main dwelling, and that could be permanently occupied by a separate household. In turn, it would lead to an increase in nutrient loading from nitrates and phosphates.
12. Given the unfavourable status of the SAC and Ramsar, and the likely increases in nutrient loading, the appeal scheme is likely to have a significant effect on the aforementioned species and habitats (both alone, and in combination with other development). It is therefore necessary that I undertake an appropriate assessment in accordance with the requirements of the Habitat Regulations.
13. The appeal is supported by a completed nutrient calculator. Based on the national average occupancy rate of 2.4, this indicates that the total annual phosphorus load to mitigate is 1.46kg TP/year and the total annual nitrogen load to mitigate is 12.16kg TN/year.
14. Excessive levels of nutrients can cause the rapid growth of certain plants through the process of eutrophication, resulting in a loss of biodiversity and is one of the primary reasons for habitats sites being in unfavourable condition. Given the conservation objectives above, without adequate mitigation, the nutrient loads arising from the development would adversely affect the integrity of the SAC and Ramsar site.
15. The appeal is also accompanied by a Nutrient Neutrality Statement. This contends that, while the national average occupancy rate of 2.4 has been used in the nutrient calculation, this figure is inaccurate in this instance. Even if I were to accept that the average occupancy rate input into the calculator could be lowered in view of the circumstances of this case, no detailed information on actual or anticipated occupancy levels has been provided. While the appellant

- states that the average occupancy rate should be set at 0.5, to account for periods of vacancy, there is no compelling evidence to substantiate this figure.
16. I recognise that, as a holiday let, the unit may be vacant at times. It is the appellant's view that the average occupancy rate is therefore lower than that of the authorised use. However, it has the potential to be separately occupied all year round. This does not in itself therefore provide evidence for a lower occupancy rate.
 17. Moreover, the annexe would by its nature have had a functional relationship with the main dwelling. The evidence does not indicate that the same applies to its use as a holiday let. The nature of the use of the unit as a holiday let is therefore not directly comparable, and it has not been demonstrated that the nutrient loading from the appeal scheme would be lower than the authorised use.
 18. The appellant also contends that the existing site area should be set as the entire estate. However, the change of use applies to the existing annexe only. Furthermore, the area included in the calculation should remain consistent, so that a fair assessment can be made of the difference in nutrient loading between current and future land uses in the given area.
 19. Notwithstanding the above, the appellant maintains that the values that have been generated by the calculator can in any event be offset by the Church Barn estate. Planting trees and/or plants is suggested to provide an offsetting solution, the extent of which the appellant assumes would be highly limited. However, no further details of specific mitigation or offsetting measures have been provided. It is therefore not possible to assess the efficacy of such measures to determine whether the proposal would achieve nutrient neutrality.
 20. I recognise the appellant's frustration regarding the limited availability of public guidance in respect of nutrient mitigation or offsetting. However, this does not indicate that the proposal before me is acceptable in respect of this issue.
 21. The evidence before me is therefore not sufficiently precise, robust or conclusive on this matter. Consequently, I cannot conclude, beyond all reasonable scientific doubt, that the appeal scheme does not have an adverse effect on the integrity of the Broads SAC and Ramsar site, with particular regard to issues pertaining to nutrient neutrality.
 22. The appeal scheme is therefore contrary to Policies SS4 and EN9 of the North Norfolk Local Development Framework Core Strategy Incorporating Development Control Policies, September 2008. These policies, among other provisions, seek to protect areas of biodiversity interest from harm, ensure all development proposals protect and enhance natural environmental assets, and resist development that would cause direct or indirect adverse effect to nationally designated sites.
 23. It would also conflict with Paragraph 174a of the National Planning Policy Framework which, among other provisions, requires that planning decisions protect sites of biodiversity value in a manner commensurate with their statutory status (in this case, a site afforded statutory protection under the Habitat Regulations).

Other Matter

24. The appeal site also falls within the Zone of Influence for multiple European designated sites scoped into the Norfolk Green Infrastructure and Recreational Disturbance Avoidance and Mitigation Strategy. The alleged effects relate to increased recreational pressure on these sites as a result of the increased population associated with the proposed development. The evidence indicates that a financial contribution has been made to address this issue and mitigate any adverse effect on the integrity of these sites. However, given that I am dismissing this appeal on other grounds it is not necessary for me to consider this matter any further.

Conclusion

25. The proposed development conflicts with the development plan, taken as a whole, and I have found no material considerations that indicate the proposal should be determined other than in accordance with it. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR