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# Appeal Decision

Site visit made on 10 July 2023

**by C Harding BA(Hons) PGCert PGDip MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> January 2024**

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## **Appeal A Ref: APP/F2605/W/22/3299887**

### **West End House, 135 Dereham Road, Mattishall NR20 3NU**

- 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 William Smith against the decision of Breckland Council.
  - The application Ref 3PL/2022/0234/F, dated 20 January 2022, was refused by notice dated 22 April 2022.
  - The development proposed is erection of garage with store within the garden and new access.
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### **Decision**

1. The appeal is allowed and planning permission is granted for erection of garage with store within the garden and new access at West End House, 135 Dereham Road, Mattishall NR20 3NU in accordance with the terms of the application, Ref 3PL/2022/0234/F, dated 20 January 2022, and the plans submitted with it, subject to the conditions set out at Schedule A.

### **Preliminary Matters**

2. The Council included a reason for refusal in relation to the effect of the proposal upon the integrity of the River Wensum and The Broads Special Areas of Conservation ('SAC'), but has now advised that this reason for refusal is no longer being pursued. Although this issue is no longer in dispute, I have a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitat Regulations') to ensure that new development does not adversely affect the integrity of such sites. I have therefore considered this matter as a main issue.
3. In reaching my decision I have had regard to a previous appeal decision (APP/F2605/W/22/3299886) ('the previous appeal') in relation to a similar development at this site.
4. I have been made aware that the Partial Update to Breckland Local Plan ('BLP') was adopted in September 2023. I understand that the update does not change the status of those policies within the BLP that are relevant to this proposal. I have therefore not sought the parties' comments upon the update.
5. In reaching this decision, I have had regard to the revised version of the National Planning Policy Framework ('the Framework') that was published on 20 December 2023 but as it does not involve changes to national policy affecting the proposal, I have not sought the parties' comments upon it.

## **Applications for costs**

6. An application for costs has been made by Mr William Smith against Breckland Council. This application is subject to a separate decision.

## **Main Issues**

7. The main issues are:

- the effect of the proposal upon the living conditions of existing occupiers of nearby properties, with particular regard to noise and disturbance,
- the effect of the proposal upon the character and appearance of the area and;
- the effect of the proposal upon the River Wensum and The Broads SPAs.

## **Reasons**

### *Living conditions*

8. The appellant operates a plumbing and heating business that has separate premises in Norwich. Due to 24-hour call-out requirements, the appellant states that there is a need to store vehicles at the appeal site, which currently occurs informally within the garden area and to the front of the appeal property.
9. The evidence indicates that the proposal would provide secure storage for two commercial vans, as well as a general storage area, and that at present two such vehicles are stored within the site on an informal basis. The evidence also clarifies that both vehicles are operated by the occupants of the appeal property.
10. At present, it is to be expected that a certain level of noise and disturbance is currently generated at the property by the occasions on which the occupants of the property are required to attend call-outs. The appellant has advised that the number of vehicles stored at the site would not increase, and although the proposed building would formalise the existing activity, the evidence indicates that it would remain ancillary to the use of the dwelling.
11. The proposed building would be located further from the closest neighbouring property than the closest existing external parking locations. The proposal would mean that the opening and closing of the doors to the storage building would generate additional noise in comparison to any activity that may currently take place at the appeal site. However, as it has been confirmed that the proposed building would only be used to accommodate vehicles that are currently stored at the site, and that it would be used in a manner that would be ancillary to the dwelling, I am satisfied that the use of the site would not otherwise intensify.
12. Furthermore, vehicles returning to the site would use a revised access to the south of the appeal site, further from the neighbouring property than at present, and the access road to the proposed garage would be set away from the shared boundary with the neighbouring property to a limited extent. The appellant has clarified that no external lighting would be proposed.

13. In considering this main issue, I have had regard to my findings in the previous appeal. However, in relation to this appeal, the appellant has provided additional clarity in relation to the nature of the use of the site which was not before me previously. Furthermore, both the proposed building and the proposed access road would be located in a different position within the garden, further from the neighbouring property. These factors mean that the proposal and evidence now before me, are materially different to the circumstances of my previous decision.
14. I therefore conclude that the proposals would not lead to harm to the living conditions of occupiers of the neighbouring property with particular regard to noise and disturbance. The proposal would therefore be in accordance with BLP Policy COM03 and MNP Policies ECON1 which together, and amongst other factors state that new development should not cause unacceptable effects on the residential amenity of neighbouring occupants.
15. The Council also consider that the proposal would fail to comply with MNP Policy ECON3, however although this policy relates to home-based and small businesses, it makes no reference to potential effects upon the living conditions of the occupiers of nearby properties. Accordingly, I also do not find conflict with it, insofar as this main issue is concerned.

#### *Character and appearance*

16. Like the previous appeal, the proposal would involve a large building. However, the appeal site is a generously sized rear garden, and as a result such a building could be accommodated without appearing as an overdevelopment of the site. By being located within the existing garden, the proposal would not comprise an extension into open countryside.
17. Furthermore, the appeal site boundaries, except where shared with the neighbouring property, are generally formed by mature planting and trees which currently provide a significant level of screening. As a result, and regardless of the success or otherwise of any additional planting, the appeal proposal would not be widely prominent when seen from public vantage points, including in the gateway view into the village.
18. Whilst it is possible that a new structure could be visible above vegetation to some extent, the proposal would be seen as a building of agricultural proportions, appearance and materials in the context of agricultural fields. Accordingly, the proposal would not appear incongruous within this context.
19. I therefore conclude that the proposal would not harm the character and appearance of the area. It would therefore be in accordance with BLP Policies COM01, ENV05 and GEN02, as well as MNP Policies ENV02, ECON1 and ECON3, which together, and amongst other criteria, require new development to be designed to the highest possible standard, integrate well with the surrounding area, be of materials that respect local character, and take account of the relationship between Mattishall and its hinterland.

#### *The SPAs*

20. The SPAs are European Designated Sites afforded protection under the Habitats Regulations. In relation to the River Wensum SPA phosphate is a nutrient of concern, and in relation to The Broads SPA both phosphate and nitrogen are nutrients of concern. Both SPAs are currently in unfavourable condition. In

considering this matter I have had regard to the standing advice issued by Natural England in its letter of 16 March 2022.

21. The evidence indicates that the proposal would not generate additional sewage. It does, however, identify leaching to groundwater as a potential pathway for nitrates, and soil run-off as a potential pathway for phosphate.
22. Given the scale and nature of the proposed development, along with the stated distance of 1.3km from the appeal site to the nearest watercourse, I am satisfied that it is unlikely that phosphate from soil run-off would constitute a pathway to harm in relation to the SPAs.
23. Furthermore, although ground disturbance associated with the construction of the development could lead to a temporary increase in nitrate leaching, the scale of the proposal and the temporary nature of these increases means that they would be insignificant and would also not, therefore, comprise a pathway to harm. Accordingly, the proposal would not have likely significant effects on SPAs either individually, or in combination with other projects.
24. I am therefore satisfied that the proposal would not adversely affect the integrity of the SPAs.

### **Other Matters**

25. Mattishall Parish Council has raised concern that the proposal would lead to a commercial business being operated from the appeal site, and that BLP Policy EC04 is relevant.
26. As I have set out above, the evidence before me indicates that the building would be used in a manner ancillary to the occupation of the dwellinghouse. It is stated that the appellant's business would continue to operate from a site in Norwich, and that the only vehicles stored at the site would be those operated by the occupiers of the appeal property. In this context, I conclude that proposal does not relate to an employment use and therefore, BLP Policy EC04 is not relevant to this particular proposal.

### **Conditions**

27. I have had regard to the various planning conditions that have been suggested by the Council. Where necessary, I have amended the conditions in order to ensure that they meet the relevant tests as set out at Paragraph 56 of the Framework and within Planning Practice Guidance. Where necessary, I have received agreement from the appellant with regard to pre-commencement conditions in accordance with Section 100ZA(5) of the Town and Country Planning Act 1990.
28. In addition to the standard time limit condition, I have attached a condition requiring adherence with the submitted plans in order to secure a satisfactory form of development in the interests of the character and appearance of the area, and the living conditions of occupiers of nearby residential properties.
29. The Council suggested a condition requiring materials to be used as stipulated on the application form, however the appellant has advised that the Council has previously indicated that the use of such materials would be harmful to the character and appearance of the area. On this basis, I have amended the condition to require materials to be agreed between the parties.

30. A condition relating to restricting the use of the building to occupants of the appeal property is necessary in order to ensure that the use of the building remains ancillary to the occupation of the dwelling.
31. As the proposal would involve works within the root protection area of a number of trees where a no-dig construction method is proposed, I have attached a condition in order to secure further details of methodology and adherence with such methodology. This is required in the interests of the character and appearance of the area. A condition requiring biodiversity net gain measures is required in the interests of enhancing the natural environment.
32. I have also attached a condition relating to surface water drainage in order to ensure that the proposal does not increase flood risk at the site, or elsewhere. The condition is required to be pre-commencement in order to ensure that such details are agreed and can be incorporated at the outset of construction.
33. Conditions relating to the construction detail of the access, the location of access gates, the provision of a visibility splay and demarcated parking and turning areas are all required in the interests of highway safety.
34. I have not attached the condition suggested by the Council in relation to requiring signage to be provided at the access and egress. This condition does not specify the function of the signage so is imprecise. Furthermore, it has not been shown that such a signage would be necessary to serve a garage operating in a manner ancillary to the dwellinghouse, and the condition would therefore be unreasonable.

## **Conclusion**

35. The proposed development would be in accordance with the development plan as a whole, and there are no material considerations that would lead me to reach a conclusion other than in accordance with it.
36. For the reasons set out above, I conclude that the appeal should be allowed.

*C Harding*

INSPECTOR

## **\*\*SCHEDULE A – CONDITIONS\*\***

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - A4 - WD2 - Location Plan
  - A2 - WD4 Rev B – Proposed Block Plan
  - A1 - WD1 Rev C – Proposals
  - WAR/MATT/AIA/01 210921/01 Rev A - Arboricultural Impact Assessment
  - WAR/MATT/AIA/01 210921/02 Rev A - Arboricultural Method Statement

- 3) Notwithstanding the submitted plans and planning application form, no above ground development shall take place until details of the materials to be used in the construction of the building have been submitted to and agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the agreed details.
- 4) The use of the building hereby permitted shall be restricted to the occupants of the dwellinghouse within the application site edged red (West End House, 135 Dereham Road, Mattishall) and no other person(s).
- 5) Prior to commencement of development, precise details of the means of surface water disposal, including details of the construction and details of measures to be implemented to sustainably manage surface water resulting from the building hereby permitted, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved drainage scheme shall be fully implemented prior to the first use of the development hereby permitted and permanently maintained, as approved.
- 6) No construction shall take place within those areas indicated on drawings "WAR/MATT/A/A/01 – Arboricultural Method Statement and WAR/MATT/A/A/01 Rev A – Arboricultural Impact Assessment" as being subject to no-dig construction, until details of the no-dig construction as well as of an auditable system of arboricultural site supervision and inspection for the duration of the no dig construction works associated with the site entrance have been submitted to and approved in writing with the Local Planning Authority. Thereafter, the development shall only be carried out in accordance with the approved details.
- 7) Prior to first use of the building hereby approved, a scheme to secure measures that would deliver net gains for biodiversity and a timetable for providing such measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable for implementation.
- 8) Prior to the first use of the development hereby permitted the vehicular access shall be constructed in accordance with a detailed scheme previously submitted to and agreed in writing by the Local Planning Authority. Thereafter, the access shall be retained in accordance with the approved details.
- 9) Any access gates/bollard/chain/other means of obstruction shall be hung to open inwards, set back, and thereafter retained a minimum distance of 8 metres from the near channel edge of the adjacent carriageway. Any sidewalls/fences/hedges adjacent to the access shall be splayed at an angle of 45 degrees from each of the outside gateposts to the front boundary of the site.
- 10) Prior to the first use of the development hereby permitted a 2 metre wide parallel visibility splay (as measured back from the near edge of the adjacent highway carriageway) shall be provided across the whole of the site's roadside frontage. The splay shall thereafter be maintained at all times free from any obstruction exceeding 1.05 metres above the level of the adjacent highway carriageway.

- 11) Prior to the first use of the development hereby permitted, the proposed access/onsite parking and turning area shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plans and retained thereafter available for that specific use.

**\*\*END OF SCHEDULE A\*\***