



---

# Appeal Decision

Site visit made on 21 February 2024

**by M Russell BA (Hons) DipTP MRTPI**

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

**Decision date: 13<sup>th</sup> March 2024**

---

**Appeal Ref: APP/Y2620/W/23/3327166**

**Land at Garden Court, Norwich Road, Fakenham, Norwich NR21 8LR  
Eastin (x) 593756 Northing (y) 330014**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by H C Moss against the decision of North Norfolk District Council.
  - The application Ref is PF/22/2647.
  - The development proposed is described as 'construction of 1No. 2 Bedroom house'.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. Consequently, this update to national policy does not fundamentally alter the main parties' cases or prejudice their position at appeal, and it is not necessary to seek further comments.

## Main Issues

3. The main issues are the effect of the proposal on:
  - (i) European designated habitats sites;
  - (ii) the character and appearance of the area; and
  - (iii) the living conditions of occupiers of No 2 Garden Court with particular regard to outlook and light.

## Reasons

### *European designated habitats sites*

4. Natural England (NE) updated its advice in relation to nutrient pollution in a number of river basin catchments<sup>1</sup>. The evidence before me indicates that the site lies within the catchment of the River Wensum Special Area of Conservation (SAC) which is in an unfavourable condition due to excessive

---

<sup>1</sup> Natural England - Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites – March 2022.

- nutrients. The site is also within the Zones of Influences (ZoIs) of a number of habitats<sup>2</sup> sites adversely affected by recreational disturbance.
5. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of protected habitats sites, either alone or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). This responsibility falls to me in the context of this appeal. An AA must contain complete, precise and definitive findings which are capable of removing all reasonable scientific doubt as to the absence of adverse effects on the integrity of a protected site.
  6. The proposal for new residential accommodation has the potential to lead to an increase in additional nutrients reaching the River Wensum SAC due to the implications of foul and surface water drainage systems. Therefore, there is a possibility that the proposal would have a significant adverse effect on the integrity of the SAC either alone or in combination with other plans and projects.
  7. The appellant has suggested that a Grampian condition requiring mitigation or demonstrating nutrient neutrality could be utilised. However, a Grampian condition would effectively defer the AA to the post-decision stage. This is in direct contravention with the requirements of the Habitats Regulations for me as the competent authority to undertake the AA before granting any planning permission.
  8. Moreover, without a proper calculation of the nutrient loading that would result from the development, I am unable to determine what mitigation would be appropriate to achieve nutrient neutrality. No on-site or off-site mitigation is proposed and, while I accept Natural England may be progressing a Nutrient Mitigation Scheme, I understand that at the current time there is no formally adopted mitigation scheme in the district. Therefore, even if a calculation of the nutrient loading resulting from the development was before me, I cannot be certain that this could be mitigated. This further indicates that a Grampian condition would not be appropriate.
  9. I have also had regard to The Levelling Up and Regeneration Act 2023 (LURA) which contains provisions which mandate decision makers as to how to treat named catchment areas which are not currently in compliance in respect of nutrient pollution, but which will be 'deemed' to be in compliance by 2030. Water Authorities are now required to upgrade their wastewater treatment works (WwTW) by 1 April 2030. However, the relevant schedule in the LURA contains a provision for a review of the list by 1 April 2024, when wastewater treatment works exemptions will be confirmed, which may affect the levels of nutrient mitigation that development must secure for specific wastewater treatment works in such catchments. As such, at this time, the planned upgrade to the WwTW in the catchment by 2030 does not alter my conclusions on the matter.
  10. Therefore, taking a precautionary approach, I can only conclude that the proposal has the potential to adversely affect the integrity of the River Wensum

---

<sup>2</sup> The Breckland Special Protection Area (SPA), The Wash and North Norfolk Coast Special Area of Conservation (SAC), The Wash Ramsar, The Wash SPA, The North Norfolk Coast SPA, North Norfolk Coast Ramsar, and the North Norfolk Coast SAC.

SAC as a result of nutrient pollution, either alone or in combination with other plans and projects.

11. Occupiers of the proposed dwelling would have the potential to add to the adverse effects resulting from recreational disturbance to the habitats sites identified above. The Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) (March 2021) sets out a per dwelling Recreational Avoidance Mitigation (RAM) tariff which should allow a conclusion through an AA that a development will not have any adverse impact on the integrity of the habitats site as a result of increased recreation usage. I understand that as of 1 April 2023 this equates to a RAM tariff of £210.84 per dwelling.
12. The appellant has indicated that they would be willing to pay the RAM tariff. A copy of the Council's relevant proforma has been provided but has not been completed and so as far as I am aware the payment has not been made. In the alternative, the appropriate mechanism to secure payment of the tariff would be a legal agreement, however no such planning obligation is before me. In the absence of certainty that the RAM tariff will be met, this further indicates that allowing the appeal would have the potential to result in significant adverse effects on the integrity of European designated sites.
13. It would typically be necessary for me to consult NE to undertake the AA and to assess the effectiveness of any mitigation put forward. However, a consultation with NE would not resolve the matters detailed above.
14. I conclude, the proposal has the potential to adversely affect the integrity of European designated habitats sites and I am not in a position to ensure that this would be suitably mitigated. In the circumstances, there is the potential that the proposal would conflict with the requirements to ensure protection and enhancement of natural environmental assets including designated sites in Policies SS 4 (Environment), EN 9 (Biodiversity & Geology) and EN 13 (Pollution and Hazard Prevention and Minimisation) of the North Norfolk Core Strategy (2008) (CS) as well as the nature conservation requirements of the Framework and the Habitats Regulations.

#### *Character and appearance*

15. Garden Court is a cul-de-sac with a mix of two-storey and single storey dwellings. The appeal site is a grassed parcel of land, set back from the main curb line of the street and between a two-storey, semi-detached dwelling at No 2 Garden Court and a bungalow at 1B Garden Court. These dwellings have a traditional aesthetic but reflect the varied design and layout on Garden Court. In some cases, the front elevations of dwellings on Garden Court are sited close to the boundary with the highway such as at Nos 1, 6 and 10. Even so, the frontages on the street generally contain grassed areas and are either open or have low hedgerow boundaries. Overall, these factors combine to give Garden Court a pleasant suburban character and appearance.
16. The width of the site's frontage and the maximum depth of the plot would be comparable to the neighbouring property at No 2. Although the front elevation of the dwelling would be set forward of the front elevation at No 2, it would allow for the provision of a small grassed area within the frontage. The access drive on Garden Court also opens up in the vicinity of the substation which sits in the foreground of the appeal site. Together with the position of the dwelling

set away from the boundary with No 1B Garden Court and the intervening driveway at No 2, the dwelling would not appear cramped within this context and would reflect the varied layout of dwellings in the street. A condition requiring facing materials to match those prevalent on other dwellings on Garden Court would further assist in assimilating the proposal into its immediate surroundings.

17. The plans indicate that two existing trees would be removed to facilitate the development. I am not aware that these trees are protected. Therefore, even if the site was not developed, their future retention would be at the discretion of the landowner. A condition requiring precise details of a soft landscaping scheme, including consideration of replacement tree planting within the rear garden of the proposal, would ensure a suitable level of greenery is incorporated within the scheme.
18. I conclude, the proposal would have an acceptable effect on the character and appearance of the area. In that regard, it would comply with the design, character and context requirements of Policy EN 4 (Design) of the CS.

*Living conditions of neighbouring occupiers at No 2 Garden Court*

19. The intervening driveway at No 2 and the alignment of the proposed dwelling means that the side windows at No 2 would have an acceptable appreciation of the space within their aspect. Consequently, there would be no material harm to levels of outlook for occupiers of No 2.
20. However, the mass of the dwelling and its close position to the boundary with No 2 has the potential to reduce levels of light received in the rooms served by the side windows serving this neighbouring dwelling. There is no detailed evidence before me, such as a sunlight/daylight survey, to demonstrate that the rooms served by those windows would receive acceptable levels of light.
21. I conclude, it has not been demonstrated that acceptable levels of light would be provided for occupiers of No 2. In that regard the proposal would conflict with the requirements for proposals not to have a significantly detrimental effect on the residential amenity of nearby occupiers. For the same reasons, the proposal would conflict with Paragraph 135 of the Framework which states that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

**Other Matter**

22. The Council's statement of case suggests that the proposed garden area would be substandard and that the upper floor windows would compromise the privacy of neighbours at Nos 67 and 69 Gwyn Crescent and No 2 Garden Court. The officer report also suggests that the solar panels on the outbuilding belonging to No 1B Garden Court may be negatively affected. The planning application was not refused on these grounds. In any case, given that I am dismissing the appeal for other reasons it has not been necessary to consider these matters in any further detail.

**Conclusion**

23. There is no dispute that the Council cannot currently demonstrate a five-year supply of deliverable housing land. In the circumstances, paragraph 11d of the Framework is engaged.

24. In the context of the Government's objective to significantly boost the delivery of housing, a two-bedroomed dwelling would make a modest but important contribution towards the provision and mix of housing in the area. I also attach positive weight to the potential for some modest social and economic benefits through the construction of the dwelling and its future occupation. I have also found that the development would have an acceptable effect on the character and appearance of the area, albeit this attracts neutral weight.
25. However, the proposal has the potential to have a significant adverse effect on the integrity of European designated habitats sites and I am not in a position to ensure that this would be suitably mitigated. Applying the policies of the Framework that protect areas or assets of particular importance, this provides a clear reason for refusing the development proposed.
26. I have also found that it has not been demonstrated that acceptable levels of light would be provided for occupiers of the neighbouring dwelling at No 2 Garden Court and this adds to the harm identified.
27. Therefore, the appeal is dismissed.

*M Russell*

INSPECTOR