



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: 22nd March 2024

Appeal Ref: APP/F2605/W/23/3326947

Land off Elmham Road, Beetley NR20 4BP

Easting (x) 598151 Northing (y) 317947

- 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 A Barnham against the decision of Breckland Council.
 - The application Ref 3PL/2023/0367/F, dated 3 April 2023, was refused by notice dated 23 May 2023.
 - The development proposed is erection of 10 no. holiday cabins with associated facilities.
-

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.
3. My assessment under the first main issue engages with the requirements of The Conservation of Habitats and Species Regulations 2017. Had I been minded to allow this appeal, I would also have sought a screening direction from the Secretary of State in accordance with Regulation 14(2) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. However, this has not been necessary as it would not alter my overall conclusions.
4. Following an examination into the Partial Update of the Breckland Local Plan (2019), the Council adopted the updated Breckland Local Plan on 21 September 2023 (the LP). The update related to a single policy (Policy INF 3) and not those referenced in the Council's decision notice. The Council has confirmed that the policies provided with the appeal from the 2019 version of the Local Plan are unchanged in the updated LP. I have therefore assessed the appeal on that basis.

Main Issues

5. The main issues are:
 - (a) the effect of the proposal on European designated habitats sites;

- (b) whether the proposal would be a suitably located having regard to the development plan and the Framework; and
- (c) the effect of the proposal on trees and hedgerows.

Reasons

European designated habitats sites

6. Natural England (NE) updated its advice in relation to nutrient pollution in a number of river basin catchments¹. The evidence before me indicates that the site lies within the catchment of one or both of the River Wensum Special Area of Conservation (SAC) and the Broads SAC/RAMSAR sites which are in an unfavourable condition due to excessive nutrients. The site is also within the Zones of Influences (ZoIs) of one or more of a number of habitats sites² adversely affected by recreational disturbance.
7. 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.
8. The proposal for new overnight tourist accommodation has the potential to lead to an increase in additional nutrients reaching the River Wensum SAC and/or the Broads SAC/RAMSAR site 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.
9. I have not been provided with a calculation of the nutrient loading that would result from the development. Therefore, I am unable to determine what mitigation would be appropriate to achieve nutrient neutrality.
10. The appellant has referred me to an appeal³ in New Forest District (the New Forest appeal) where a condition was used to secure mitigation. However, in that particular case, the appellant had put forward an offsite mitigation package based at a specified site. NE provided a site-specific response in that instance which confirmed that the scheme put forward would be an appropriate location to provide mitigation in respect of the proposed development in that case. Furthermore, the Inspector concurred that there would be advantages in securing the mitigation via an overarching agreement which the LPA was in the process of securing. Given the specific circumstances of that case, the Inspector found that exceptional circumstances existed to justify the imposition of a condition requiring the appellant to enter into a planning obligation.

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

² The Breckland Special Protection Area (SPA), The Breckland Special Area of Conservation (SAC), The Wash and North Norfolk Coast SAC, The Wash Ramsar, The Wash SPA, The North Norfolk Coast SPA, North Norfolk Coast Ramsar, the North Norfolk Coast SAC, the North Norfolk Coast Ramsar, The Norfolk Valley Fens SAC, the Broadland SPA, the Broadland Ramsar, Breydon Water SPA and the Broads SAC.

³ Appeal Ref APP/B1740/W/20/3265937

11. However, no bespoke mitigation has been put forward in this instance. I also understand that, while a Norfolk-wide nutrient credit scheme is under development, there is no formally adopted mitigation scheme for the catchment that the appeal site sits within at the present time. Therefore, the circumstances in the case before me are not comparable to the New Forest appeal. In this instance, a condition would not provide sufficient certainty that nutrient neutrality would be secured and that the integrity of European sites would be preserved.
12. 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.
13. Therefore, taking a precautionary approach, I can only conclude that the proposal has the potential to adversely affect the integrity of the River Wensum SAC and/or the Broads SAC/RAMSAR sites as a result of nutrient pollution, either alone or in combination with other plans and projects.
14. Occupiers of the tourist accommodation 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 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 unit of accommodation.
15. The appellant has provided a Unilateral Undertaking (UU) which includes a provision for the RAM tariff to be paid. However, the UU has not been dated. In the absence of a fully executed agreement, I cannot be certain that recreational impacts on the European sites would be mitigated. This adds to my overall concerns that the development has the potential to have significant adverse impacts on the integrity of designated habitats sites.
16. I conclude, the proposal has the potential to adversely affect the integrity of European designated sites and I am not in a position to ensure this would be suitably mitigated. In the circumstances, there is the potential that the proposal would conflict with the requirements to give the highest level of protection to European sites and to mitigate potential impacts in Policies ENV 02 (Biodiversity protection and enhancement) and ENV 03 (The Brecks Protected Habitats Sites) of the LP which also confirms that development will only be permitted where the proposal is in accordance with the requirements of the Habitats Regulations.

Location

17. Paragraph 88 of the Framework confirms that planning policies and decisions should enable sustainable tourism and leisure developments which respect the character of the countryside.
18. Policy EC 07 of the LP supports proposals for new tourism related development subject to an assessment against the extent to which they meet certain criteria. The supporting text to this policy recognises that whilst some tourism development will seek to locate in the countryside, it is important that tourist related development takes place in a sustainable manner. It confirms that such development will be supported where it respects the character of the countryside and in appropriate locations where identified needs are not met by existing facilities in rural service centres.
19. The Council's delegated report and appeal case do not identify specific harm to character. Nevertheless, the following assessment of the proposal against the specified criteria in Policy EC 07 is necessary in respect of whether the site is an appropriate location including but not limited to whether there is identified need for a rural location.
20. The proposal is not related to regeneration or redevelopment of brownfield land. The appeal site is set away from the settlement boundary of Beetley. From what I have seen Beetley only has limited services and facilities. There is no public footpath or public rights of way connecting the appeal site to Beetley or to the nearest bus stop. The Highway Authority has confirmed that there is only a limited bus service from the nearest stop. Therefore, the immediate area does not have attributes which suggest the location of the site would be easily accessible by sustainable modes of transport. It is likely that there would be a heavy reliance on the private motor vehicle to meet the day-to-day needs of visitors.
21. Furthermore, it has not been demonstrated that the proposal relies on a specific geographical resource or that contributions would be made to improve accessibility between the site and the surrounding area. The proposal does not offer the potential to improve access to rights of way, and/or green infrastructure.
22. I have seen that Gressenhall Farm and Workhouse and the restaurant at The New Inn are both located close by at Beetley. The Council has confirmed that the County wildlife site at Hoe Common is a small local destination with no on-site facilities. There is nothing before me which indicates that this limited local offer or other potential attractions in the wider area are a significant draw for visitors to a rural location near Beetley.
23. Moreover, there is no substantive evidence to suggest that existing accommodation, such as on the neighbouring site at Otter's Mead, cannot meet visitor demand in the local area. The national and regional tourist evidence provided by the appellant also does not demonstrate that there is a current unmet need which requires this rural location for the proposed development.
24. The appellant suggests the proposal would be focus on a different target of client, namely that it would be specifically for couples visiting the area. Notwithstanding that no suitable mechanism such as a legal agreement has been provided to restrict occupation of the holiday cabins. In any case, I have

not been provided with any detailed information to suggest there is an unmet demand for couples only visitor accommodation near Beetley.

25. Overall, having regard to the above factors, the proposal does not respond well to any of the criteria set out under Policy EC 07. I therefore conclude that the appeal site would not be an appropriate location having regard to the sustainable tourism objectives of development plan and the Framework.

Trees and Hedgerows

26. Policy ENV 06 (Trees, Hedgerows and Development) of the LP confirms that where a proposed development retains existing trees and hedgerows on-site, or where a development occurs within a tree root protection area, provision must be made for their care and protection throughout the duration of the development with mitigation measures being put in place to ensure that development works do not have a harmful impact on existing trees. It also states, to ensure that tree cover and habitat is retained, it is important that the short term and long term impacts that a development may have on trees is evaluated at the earliest opportunity.
27. The 'View Splay Plan' provided is annotated to indicate that a 2.4 metre (m) x 70m visibility splays would be provided to the north and south of the proposed vehicular access point. This would be in line with the requirements of the Highway Authority. However, the splay line on the drawings suggests that it cuts through or sits close to the centre of several trees indicated on these drawings. The 'View Splay Plan' and 'Block Site Plan' also include an annotation just to the south of the access point which states 'Trees to be removed'.
28. On my site visit, I saw that there was already a gap in the roadside vegetation in the vicinity of the proposed access point. It is possible that no further significant clearing of vegetation would be required to achieve the necessary visibility splays. However, a tree survey including a tree constraints plan which clearly denotes individual trees and hedgerows is not before me. Therefore, I cannot be certain as to the extent to which vegetation will or won't be retained. In the circumstances, the short term and long terms impacts on tree cover and habitat to the site frontage are uncertain.
29. Even, if I were to reach an alternative conclusion on this particular matter, this would not in any case overcome my overriding concerns in respect of the first two main issues.
30. I conclude, it has not been clearly demonstrated that tree and hedgerow removal will not be required. In that regard, the proposal has the potential to conflict with the requirements for tree protection and for landscaping associated with development proposals to respond to trees on and close to the site in Policies ENV 06 (Trees, Hedgerows and Development) and COM 01 (Design) of the LP.

Other matter

31. The appellant suggests that if the appeal site was under the same ownership as the existing tourism facility on the neighbouring site, that it would be considered an extension of existing facilities and would be acceptable in planning terms. However, in such instances, Policy EC 07 requires an assessment of whether such proposals would be of a suitable scale and type for

their location. In any case, the proposal is for a new independent tourism site. I have therefore, assessed the appeal on that basis.

Conclusion

32. The proposal has the potential to adversely affect the integrity of European designated sites and I am not in a position to ensure this would be suitably mitigated. I have also found that the appeal site is not an appropriate location for the development having regard to the sustainable tourism objectives of development plan and the Framework. In addition, the extent to which the proposal could affect trees and hedgerows has not been clearly demonstrated.
33. The other material considerations that have been advanced do not justify a decision other than in accordance with the development plan which, in terms of my conclusions under the main issues, the appeal scheme would clearly conflict. Therefore, for the reasons set out, I conclude that this appeal should be dismissed.

M Russell

INSPECTOR