



Appeal Decision

Site visit made on 23 February 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2024

Appeal Ref: APP/L2630/W/23/3326955

Land on Green Lane, Wicklewood, Norfolk, NR18 9ET

- 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 Mr Williams against the decision of South Norfolk District Council.
 - The application Ref is 2022/1367.
 - The development proposed is the change of use of land to a residential travellers site for one family involving the erection of one day room, the standing of 1 mobile home on a concrete pad, the installation of 2 outdoor security lights, a sewage treatment plant & close boarded fencing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. There were no substantive changes of relevance to this appeal proposal. A revised version of the Planning Policy for Traveller Sites (PPTS) was also published on 19 December 2023. The main change of relevance to this appeal is the definition of gypsies and travellers in Annex 1 which reinstates those who have ceased to travel permanently.

Main Issues

3. The main issues in this appeal are:
 - Whether or not the appeal site is a suitable location for the proposed pitch with reference to the highway network;
 - the effect of the development on protected species and biodiversity; and
 - whether or not the proposed use would adversely affect the integrity of European designated nature conservation sites.

Background

4. The appeal site is intended for occupation by the appellant, with his wife and grandchildren. There is no longer any dispute that the proposed occupiers would fall within the terms of Annex 1 of the PPTS and, accordingly, that policy provides a relevant context for this proposal. The Council have confirmed that on this basis the fourth reason for refusal has fallen away.

Reasons

Highway Network

5. Policy DM1.3(2) of the South Norfolk Local Plan Development Management Policies Document (October 2015) (the LP) permits development in the countryside outside of defined development boundaries for settlements where specific development management policies allow.
6. Policy DM3.3 of the LP deals with proposals for Gypsy and Traveller sites inside and outside of the development boundaries. It sets out a number of key considerations and, of these criteria the council cites conflict with part (h) which includes the need to consider whether the site has suitable routes of access for the occupiers.
7. The Council acknowledges that it cannot demonstrate a five year supply of deliverable sites for Gypsies and Travellers and on this basis policy DM3.3 (2) sets out that the key considerations in criteria a-h of the policy will be applied flexibly.
8. The nearest discernible village, to the appeal site, is Wicklewood which has a limited range of services and facilities, including a primary school. The Council has indicated that the appellant would need to travel to Wymondham, to access a wider range of facilities.
9. The Council have raised no concerns with regard to the wider accessibility of the site recognising that future occupiers of the proposed pitch would be predisposed to use private motorised transport when accessing everyday facilities and services, bearing in mind that accessibility needs to be considered in the context that members of the travelling community have a nomadic habit of life and are generally reliant on vehicles wherever they live given their lifestyle.
10. However, Green Lane is a rural lane, which is of limited width, insufficient for two vehicles to pass. It has only limited opportunities for vehicles to pass along the length of the lane, which is common of a number of the roads leading to the site. It is accepted by the County Council that its narrowness would deter high vehicle speeds and that Green Lane shares the characteristics of very many rural lanes in this district.
11. The access to the site already exists and currently provides access to the existing stables. The use of the site would be for residential purposes and the evidence indicates that the additional traffic generation arising from the occupation of the site would be 6 additional trips based on TRICS (Trip Rate Information Computer Services) data.
12. Paragraph 115 of the Framework advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.
13. The nature of the road would help to slow traffic entering and exiting the lane. Therefore, it is likely that the potential for conflicting movements could be anticipated well ahead by all parties and when vehicles are exiting the site. Furthermore, there is nothing in the evidence before me to indicate that there would be a significant increase in large vehicles entering and exiting the site on

a regular basis. Having regard to that which may currently occur from the use of the existing stables.

14. In addition, should I conclude that the appeal is to be allowed, it would be possible for the provision of a passing bay within the frontage of the site, as suggested by the appellant, to be secured by condition. This would be of benefit to all users of Green Lane.
15. Concerns have also been raised about the visibility splays at either end of the Lane onto the C166 Wymondham Road and U78067 Low Street. These visibility splays are part of the existing road network and are not within the control of the appellant. The evidence before me indicates that the visibility onto the C166 has been assessed against the DMRB standard.
16. Manual for Streets 2 (MFS2) is the starting point for the design of roads and streets that are not Trunk Roads, and a presumption in favour of applying the standards set out within that document would normally be appropriate unless local context demands otherwise. I would, therefore, consider that the design guidance contained within MFS2 would be appropriate for this instance. The guidance within MFS2 advises that unless there is local evidence to the contrary, a reduction in visibility below the recommended levels will not necessarily be a problem.
17. Therefore, in respect of visibility I am satisfied that having regard to the scale of development proposed and the negligible increase in the traffic movements generated, there will be no material change in risks to highway safety from vehicles exiting Green Lane.
18. In conclusion, I am satisfied that having regard to the scale of development proposed and the small increase in the traffic movements generated, would be sufficient to ensure the safety and convenience of highway users along Green Lane. As a result, it would adhere to Policies DM3.3(h) and DM3.10 of the LP which seek to ensure sites are suitably located and have a suitable means of access to transport networks. It would also accord with Policy 6 of the JCS which states that in the most rural areas the private car will remain an important means of travel.

Biodiversity

19. The Council's appeal statement notes that an acceptable Preliminary Ecological Appraisal was submitted with the revised planning application, 2023/1510 and that a reason for refusal pertaining to biodiversity was not part of the refusal of the revised application.
20. The Preliminary Ecological Appraisal, dated May 2023, was submitted with the appellant's final comments, and confirms that no further survey work is required and outlines suggested mitigation which can be secured by condition, should I decide to allow the appeal.
21. Paragraph 99 of Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

22. Paragraph 186 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
23. The evidence before me indicates that any potential harm from the proposed development on protected species can be adequately mitigated and therefore the proposal would accord with DM1.4 and DM4.4 of the LP which together seek to ensure that the development will not have an impact on protected species within the site.

The Broads Special Area of Conservation and Norfolk Valley Fens Special Area of Conservation

24. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Habitats site that requires mitigation. The Council have advised that the appeal site is in the identified catchment area of the Broads Special Area of Conservation (SAC).
25. The proposal for new residential accommodation has the potential to lead to an increase in additional nutrients reaching the SAC due to the implications of foul and surface water drainage systems and in the absence of mitigation measures, the proposal would likely have a significant adverse effect on the integrity of the SAC.
26. Given the lack of clarity as to what may be required and uncertainty on the time it may take to have a strategy in place with practical solutions to resolve this matter long term and for the lifetime of the development, I am not satisfied that it would be reasonable to impose a Grampian condition to resolve this matter.
27. 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, 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.
28. This is also not an incidental implication of the proposal but a matter of principle as to whether or not the scheme could proceed in an acceptable manner without causing harm to the integrity of the SAC and contrary to the statutory duty upon the competent authority which accompanies it.

29. Furthermore, the appeal site falls within an area where recreational impact mitigation measures for the Norfolk Valley Fens Special Area of Conservation as described in the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMs) are required. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on designated sites are compliant with the Habitats Regulations.
30. Whilst the effect of one additional pitch would be small, in combination with other development, based on a precautionary approach and the evidence before me, I conclude that the appeal scheme would be likely to have both a significant adverse effect on the integrity of the SAC due to the potential for an increase in nutrients entering the watercourse and in addition potential increased disturbance through recreational activity on the integrity of Norfolk Valley Fens SAC.
31. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the designated sites' conservation objectives. However, in the absence of an agreed mitigation strategy to overcome the effects that have been identified in respect of nutrients and the lack of a mechanism to secure the contribution to mitigate the impacts of recreational pressure, I cannot be satisfied that the appeal proposal would not result in significant adverse effect to the integrity of both The Broads SAC and the Norfolk Valley Fens SAC.
32. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraph 180(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused. As a result, it would not accord with Policy DM1.4 of the LP which seeks to protect environmental and water resources and Policy 1 of the JCS which seeks to ensure that environmental assets of the area will be protected, maintained, restored, and enhanced.

Other Considerations

33. The PPTS requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets and identify a supply of specific developable sites. The Council confirms that taking a precautionary approach based on the latest evidence from the Greater Norwich 5 Year Gypsy and Traveller Sites, March 2022 that it does not have a 5 year supply of pitches. However, no details of the scale of the deficit are before me. As such I consider that need for gypsy and traveller sites carries significant weight.
34. Article 3(1) of the United Nations Convention on the Rights of the Child states that the best interest of a child shall be a primary consideration. This means that no other consideration is more important. If I were to allow the appeal the appellant would be provided with facilities to enable his grandchildren to have a settled base.
35. I have given significant weight to the benefits a settled base would bring, enabling the children to ensure ongoing educational attainment. An enduring settled base would also support the children's welfare more generally by, for example, affording them a sense of security and continuity.

Planning Balance

36. In the overall planning balance, the benefits of the proposal, including that the development would contribute to the supply of gypsy and traveller pitches in the locality, and would provide a settled base for the appellant, are not sufficient in this case by virtue of the Habitat Regulations to outweigh the adverse effects on the integrity of the European designated nature conservation sites.
37. I attach substantial weight to my finding that mitigation cannot be assured to achieve nutrient neutrality or mitigate recreational disturbance. Consequently, there is no certainty that the proposal would not adversely affect the integrity of the European designated nature conservation sites. The proposal would be contrary to the development plan in these respects.
38. By virtue of the Habitats Regulations, agreement cannot be given to the project because the integrity of a European site would be adversely affected. Given the serious impacts upon the integrity of the designated sites and the accompanying conflict with the development plan as a whole, this is sufficient for me to conclude that the proposed development is unacceptable.
39. Dismissing the appeal would represent an interference with the potential home of the appellant such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
40. The proposal would meet the needs of those persons with a relevant protected characteristic, by reason of race, and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.
41. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with the appellant's rights. Therefore dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 8 would not occur.
42. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupier of the site as a person without a permanent home and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

Conclusion

43. The proposal would lead to significant adverse effect on the integrity of designated sites contrary to the requirements of the Habitat Regulations and in conflict with the development plan. There are no other considerations which are of greater significance which would outweigh this finding or the conflict with the development plan as a whole.

44. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR