



Appeal Decision

Site visit made on 12 March 2024

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2024

Appeal Ref: APP/L2630/W/23/3318141

Land West of the Old Hall, Watton Road, Colney, Norfolk NR4 7TX

- 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 N Wilgrass against the decision of South Norfolk District Council.
 - The application Ref is 2022/2188.
 - The development proposed is the erection of 1 no. self-build dwelling and access.
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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. I allowed both parties to comment on the relevance of this to the appeal. In the interests of fairness, I also accepted additional comments relating to the issue of nutrient neutrality and mitigation. I have regard to these in my decision.
3. The Greater Norwich Local Plan (GNLP) was adopted on 25 March 2024. This replaces the Joint Core Strategy (JCS). I accepted any comments the main parties had on the implications of this for the appeal. I must consider the appeal against the most up-to-date development plan and thus I have had regard to both the GNLP, and any comments made. The Council confirmed, however, that this had not altered their concerns or reasons for refusal.

Main Issues

4. The main issues are:
 - the effect of the development on the integrity of the Broads Special Area of Conservation (SAC), and;
 - whether the site is in a suitable location for residential development, with particular regard to the spatial strategy.

Reasons

Broads SAC

5. On March 16 2022 Natural England issued advice detailing the adverse effect of nutrient pollution on Habitat Sites within South Norfolk, including the Broads SAC. The catchment area for the Broads and River Wensum have been identified as areas that are already in an unfavourable condition due to nitrates

and phosphates. Under the Habitats Regulations, the issue of nutrient neutrality requires competent authorities to carefully consider whether development may have an adverse effect on the integrity of protected Habitats and any mitigation that might be proposed.

6. The appellant has submitted a Nutrient Budget calculator which confirms there is potential for the development to result in additional nutrients reaching the SAC. This also confirms that mitigation would be needed. The appellant's preferred approach to this would be the purchase of credits from the Norfolk Environmental Credits scheme. This scheme may be operational now or in the near future. The Council have indicated that, in the first instance, credits would be released gradually from a shortlist of sites, based on factors such as their scale and strategic importance. From this it remains unclear whether the development would be added to the shortlist. This is a small scheme with little strategic importance. As such, it does not appear it would be considered a priority and so there is no certainty about when, or if, mitigation would be achieved.
7. The appellant has suggested that a condition could be used which would require the purchase of credits prior to commencement. No suggested wording has been provided which would indicate how such a condition would secure a necessary contribution. In addition, there is a considerable lack of certainty about if, or when, the mitigation scheme would be available for this development, or what it would entail in terms of the scale or nature of any contribution. As such, I am not persuaded that a condition would be appropriate, reasonable or effective in these circumstances.
8. The Levelling Up and Regeneration Act 2023 (LURA) 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. 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. However, as far as I am aware, this list has not yet been published. As such, any planned upgrade to the WwTW in the catchment by 2030 does not alter my conclusions on the matter.
9. Without appropriate mitigation, I am therefore unable to rule out the possibility that the development would result in significant adverse impacts on the integrity of the SAC. The development would therefore conflict with the Habitats Regulations. It would also conflict with GNLP Policy 3 which seeks, amongst other things, to ensure residential development within the Broads SAC will not adversely affect the integrity of protected sites in an unfavourable condition. Although not referred to on the decision notice, it would also conflict with South Norfolk Local Plan Development Management Policies (SNLP) Policy DM4.4 which seeks to protect designated natural environmental assets. There would also be conflict with paragraphs 186 and 187 of the Framework, which seeks to protect biodiversity assets.
10. SNLP Policy DM1.1 is referred to on the decision notice, but this is a general policy on sustainability that has no direct relevance to this issue.

Location

11. The appeal site is located outside any defined settlement boundary but is on the periphery of Colney. Colney is a small village that is classed as a part of the Urban Fringe of Norwich in Part 2 of the GNLP. The GNLP identifies the area primarily for strategic employment, including the Norwich Research Park, Norfolk and Norwich Hospital and Spire Hospital. There are allocations within the defined settlement boundary for additional employment uses. The only housing allocation is for the delivery of specialist older person's accommodation.
12. GNLP Policy 7.1 identifies a role for the Urban Fringe areas in meeting housing need. Colney itself is expected to deliver 115 dwellings, predominantly from the allocation referred to above. However, the site is outside the settlement boundary and no part of this policy suggests development here would be acceptable in principle.
13. Although not part of the reason for refusal, my attention has been drawn to GNLP Policy 7.5. This specifically allows for self-build dwellings within or adjacent to settlements with a defined settlement boundary. The description of development is for a self-build dwelling. However, the reference to self-build in a description would not be enforceable by itself. There is no mechanism before me, such as a planning obligation, to ensure the development would be delivered in this way. This is particularly important in relation to meeting the eligibility criteria for Policy 7.5 and for other matters that are necessary to ensure the development meets the criteria for self-build, such as having an input into the design, any occupancy restrictions and/or binding any successor in title. I have noted the Community Infrastructure Levy exemption claim made by the appellant, but this does not ensure the *delivery* of a self-build unit.
14. With no mechanism to ensure delivery, I cannot consider the dwelling as a self-build property. It would therefore not meet the first requirement of GNLP Policy 7.5. As such, it is not necessary for me to consider whether or not it would meet the other requirements of the policy, including whether it would be in a suitable location.
15. On this basis, the development falls to be considered against the general policies on housing in the countryside. My understanding is that SNLP Policy DM1.3 has not been superseded by the GNLP. As the site is outside any defined settlement boundary, it is considered a countryside location for this policy. Part 2 of the policy states that development in the countryside is limited to where other development management policies deem it acceptable or there are overriding social, economic or environmental benefits. The policy does not therefore represent a blanket restriction on development in the countryside.
16. The development would deliver a single dwelling on a small site which could theoretically be delivered quickly. The Framework recognises the contribution small and medium sized sites can make to the supply. I have already addressed issues relating to self-build above. The GNLP expects a substantial number of dwellings to be delivered through Policy 7.5. However, based on what is before me, I cannot give weight to any benefits that would be associated with the delivery of self-build dwellings. The development would still provide some limited economic benefits through construction in the short-term and supporting local services in the longer-term. The effect on the vitality of nearby settlements from a single dwelling would likely be negligible.

17. In terms of the environment, the development would make use of a small area of previously developed land. The appellant's ecology report also notes the potential for some limited biodiversity enhancements relating to necessary mitigation measures. Again, the benefits would not be substantial in scale.
18. Although in the countryside, the site is relatively near Hospitals, the Research Park and University of Norwich. The majority of day-to-day facilities would however require some degree of travel. The site is within walking distance of bus stops which provide opportunities to reach education, employment, retail and leisure facilities. I have, however, noted the decision of my colleague who considered the last appeal on this site. He concluded that, even with the proximity of services and provision of bus stops, most trips would still be likely to be made by car. This was due to the nature of the pedestrian routes to the services and the distance needed to walk to reach the stops. He concluded that this was likely to discourage walking and/or public transport usage. I have seen nothing to suggest the situation would have changed significantly since this decision was made.
19. Nevertheless, there would still be limited benefits associated with this location in terms of access to services and public transport. The small scale of the development also means that it would not necessarily lead to many additional trips by car. In coming to my decision, I have also had regard to GNLP Policy 2 which seeks, amongst other things, to ensure development provides safe and convenient access to facilities and promotes walking, cycling and public transport. As the site is relatively close to some employment and services, and there are bus stops in the vicinity of the site, then there is a degree of consistency with this policy. Nevertheless, the site is not so accessible or sustainable that it would provide significant benefits in this regard.
20. I also acknowledge that the development would not constitute "isolated development in the countryside" in the context of paragraph 84 of the Framework. However, this is not the only means by which development in the countryside can be controlled, nor does this paragraph suggest that non-isolated dwellings in the countryside are automatically acceptable in principle. This does not negate the need to consider the development against relevant development plan policies.
21. There is no definition of what constitutes an 'overriding' benefit in either the policy or supporting text. Given the policy's context, it would be logical to expect these to represent a high bar and something which is out of the ordinary. In this case, the social, economic and environment benefits of a single dwelling would not be significant. They could also be replicated by many proposals outside defined settlement boundaries. As such, I do not consider they rise to level of an overriding benefit that would satisfy the requirements of Policy DM1.3.
22. In conclusion on this matter, the development would not be in a suitable location with regard to the spatial strategy. It would conflict with SNLP Policy DM1.3 which seeks to guide development to defined settlements and allocations. As there is no mechanism to ensure delivery of a self-build dwelling, it also falls outside the scope of GNLP Policy 7.5 which is specific to self-build and custom-build dwellings.

Other Matters and Planning Balance

23. Prior to the adoption of the GNLP, the Council could not identify a 5-year supply of deliverable housing land as required by the Framework. The appellant's evidence was therefore predicated on what this meant in terms of paragraph 11d of the Framework. The Council have indicated that the Local Plan Inspector's report confirms a 5-year supply now exists. However, even if paragraph 11d were activated in this case, the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal, as set out in footnote 7. In this case, the unmitigated effect on the Broads SAC would be in breach of the policies for the protection of habitats. The presumption in favour of sustainable development would not apply in this case in any event and would not be a material consideration in favour of the proposal. Conflict with the development plan in this regard also carries substantial weight.
24. The development would conflict with the policies for development in the countryside. In considering the weight given to this conflict, I have had regard to the small scale of development, the relative proximity of the site to the settlement boundary and the opportunities that do exist to use alternatives to the car. I have therefore given moderate weight to the conflict with the Plan in this respect.
25. The dwelling would be within the setting of The Old Hall, which is a Grade II listed building. The Council raised no concerns about the effect on the significance of this, or any other heritage asset in the area. I have seen nothing that would lead me to a different conclusion. In addition, no harm has been identified in relation to any other planning issues, including in terms of design, living conditions, highways or drainage. Even if the dwelling were considered to be of a high quality of design and would provide necessary energy and water efficiency measures, these are no more than what is required by policy and thus do not constitute benefits of the development. A lack of harm in these respects is neutral in the planning balance.
26. The appellant has drawn my attention to others appeal elsewhere where development outside settlement boundaries has been deemed acceptable. However, I am also conscious of two appeal decisions on this site, where Inspectors concluded the development would conflict with policy and that material considerations would not justify a departure from the development plan. These are significant material considerations. It is also important to note that in the Chedgrove example provided, no other harm was identified and thus the planning balance was different. This is not the case here and so that decision does not weigh substantially in favour of the proposal.
27. The officer report refers to the development being liable for the "Green Infrastructure Recreational Avoidance Mitigation Strategy". Neither parties' evidence expands on this issue, nor has any related mitigation been identified. As I am dismissing the appeal for other reasons, I do not need to consider this matter further.
28. I have set out the benefits above and there is no need to repeat them here. The scale of such benefits would not be sufficient to outweigh the conflict with the development plan or national policy, particularly regarding nutrient neutrality and the effect on the Broads SAC. It should also be noted that, even if I had been able to consider the proposal against GNLP Policy 7.5, any

conclusion I had would not have resolved the issues and my concerns about nutrient neutrality or thus my overall decision.

Conclusion

29. The proposed development conflicts with the development plan as a whole and there are no other considerations, as set out above, that outweigh this conflict. The appeal should therefore be dismissed.

S J Lee

INSPECTOR