



Appeal Decision

Site visit made on 2 April 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 9 May 2024

Appeal Ref: APP/E9505/W/23/3321331

Blackwater Carr, Land off Ferry Lane, Postwick, Norwich, Norfolk NR13 5HL

- 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 Steve Hooper and Mrs Mary Alexander against the decision of Broads Authority.
 - The application Ref is BA/2022/0416/FUL.
 - The development sought is retrospective consent for the use of a yurt on a small, raised platform, securing a table and bench to the ground, the installation of a small staked and woven willow windbreak.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development comprises a yurt, together with a secure wooden table and bench, and a small staked and woven windbreak. All these elements are already in situ, which means the development is wholly retrospective in nature. References to the development should therefore be construed accordingly.
3. I have used the Council's description of development in the banner heading above, as this more comprehensively describes the proposal. The amended description does not appear to be contested by the appellants (noting that this is also the description used in the appeal form).
4. I have determined these appeals with regard to the latest version of the National Planning Policy Framework, published in December 2023 (Framework). I am satisfied that the updates do not materially affect its content insofar as it is relevant to the main issues of this appeal.

Main Issues

5. The main issues, informed by the Council's reasons for refusal, are:
 - the acceptability of the development with regard to flood risk;
 - the effect of the development on the character and appearance of the area;
 - whether the development is acceptable with regard to Policy DM50; and

- the effect of the development on the Broads Special Area of Conservation, the Broadland Special Protection Area and the Broadland Ramsar Site.

Reasons

Flood Risk

6. The Environment Agency (EA) says that the appeal site lies within flood zone 3b, which is confirmed by the EA's Flood Zone Map. Such areas comprise functional floodplain, and have a high risk of flooding.
7. Notwithstanding the EA's position, the appellants' Flood Risk Assessment (FRA) contends that the appeal site is located within flood zone 3a, not 3b. This is on the basis that flood defences around the appeal site would protect the site from flooding during a 5% annual exceedance probability (AEP) event. However, as highlighted in the EA's first objection (dated 19 December 2022), the closest flood defences would be overtopped in a 5% AEP event, which means the site would not be protected. The appellants do not appear to dispute the EA's comments on this.
8. The FRA also contends that the development should be classified as a brownfield site, on the basis that it already contains a yurt. As per the Council's Flood Risk SPD¹, the floodplain is considered less relevant on brownfield sites, as existing infrastructure and buildings may prevent flooding during a 5% AEP, even where they would otherwise be susceptible to flooding. However, as the yurt is not consented, and the very purpose of this appeal is to determine its acceptability, the appellants' assumption in this regard is inherently flawed. Moreover, a yurt is unlikely to provide the same protections from flooding as a structural building. Consequently, its unapproved existence should not affect the flood zone categorisation of the site.
9. On the information before me, and reflecting the position of the EA, I therefore consider the appeal site to be within flood zone 3b, and it should therefore be treated as functional floodplain. This seems rational, as recent flood events attest to the high level of flood risk in and around the appeal site, which amplifies the need to ensure the safety and flood resilience of any associated development.
10. In areas known to be at risk from flooding, the Framework requires a sequential, risk-based approach to be taken to development. The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. This is to avoid, where possible, flood risk to people and property. Where development is necessary in such areas, the Framework says it should be made safe for its lifetime without increasing flood risk elsewhere.
11. In this instance, the appellants do not appear to have carried out a Sequential Test, nor have they explained why there are no alternative sites which could accommodate the development, where there is a lower risk of flooding. The Sequential Test has therefore not been passed, which is a notable gap in appellants' evidence.

¹ Supplementary Planning Document on Development and Flood Risk (2020)

12. The lack of a Sequential Test is important in this case, as it is also relevant to the flood risk vulnerability category of the development. The wider use of the site for nature conservation and biodiversity is clearly a water-compatible use. However, for any ancillary sleeping or residential accommodation to be a water compatible use, it must be “essential” to that associated use.
13. Without proper application of the Sequential Test, it has not been demonstrated that the facilities sought could not be accommodated elsewhere, in an area with a lower flood risk. Given the former owner of the site managed the site’s conservation without any onsite overnight accommodation, this is a legitimate possibility. Notwithstanding that the yurt provides valuable facilities associated with the appellants’ conservation work, on the information before me, I am therefore unable to conclude that the development is “essential” with regard to the site’s conservation and biodiversity use.
14. Consequently, the yurt is most closely aligned with short-term camping, which is classed as a more vulnerable category of development. Planning Practice Guidance (PPG) is clear that “*more vulnerable*” development, such as this, should not be permitted in flood zone 3b.
15. Notwithstanding this position, even if the development were a water-compatible use, the PPG says that any such development in flood zone 3b should be designed and constructed to remain operational and safe for users in times of flood.
16. In this instance, the FRA and Flood Evacuation and Warning Plan both say that safe access/egress across the site and along Ferry Lane can only be achieved during present day fluvial and tidal events “*providing that the defences do not breach*”. However, as highlighted, the EA say that the flood defences around the site would be breached in a 5% AEP event, which the appellants do not appear to dispute. This suggests safe access/egress to the site would not be achieved during such an event.
17. Moreover, if the flood defences are breached during a present day 1 in 100-year event, the FRA says the flood hazard would be *Dangerous for Most* for the first 229m of egress, and then *Very Low*. In the event of a breach occurring during the climate change tidal 1 in 200-year event, the flood hazard would be *Dangerous for All* for 120m, *Dangerous for Most* for 281m and then *Very Low*. Even if the development was a water compatible use, these factors are indicative of the site not being safe for users in times of flood, as required by the PPG. This would be just as much a concern, even if the development was only consented on a temporary basis. Reflecting this position, in its second objection (dated 27 November 2023), the EA says: “*we would have significant concerns on the suitability and safety of sleeping accommodation at risk of flooding to these depths in a frequent flood event*”.
18. In summary, the Sequential Test required by the Framework has not been carried out, and the development is a more vulnerable use, which should not be permitted in flood zone 3b. Even if the development were a water-compatible use, it has not been demonstrated that it would be safe for users in times of flood. The development is therefore unacceptable in terms of flood risk, and conflicts with the flood risk provisions of the Framework and Planning Practice Guidance. In turn, it also conflicts with Policy DM5 of the Local Plan for the Broads (2019) (Local Plan), which says development within the EA’s flood

risk zones will only be acceptable when it is compatible with national policy and when the sequential test and the exception test have been satisfied.

Character and Appearance

19. The appeal site is an area of peat fen located just to the west of the River Yare and is situated within the Broads Authority Executive Area. This area is noted for its natural beauty, wildlife and cultural heritage. The site is accessed from Ferry Lane to the north, and a public footpath runs along its eastern boundary, adjacent to the river. The site, which is approximately 2.2ha in size, comprises a mix of grassland, wildflowers, reedbeds, scrubland and pockets of trees, all of which reflect the special qualities of the Broads. Most of the boundary to the site is also densely tree-lined, which gives it an enclosed and secluded character.
20. The yurt, which sits on a low-raised platform, is mostly covered in matt white canvass. It also incorporates a timber entrance door and a narrow chimney flue. The canvass is discoloured in places, with signs of algae/moss on its outer exterior. These factors, together with its muted matt finish, give the structure a rustic appearance which is sympathetic to the surrounding natural landscape. Even where glimpsed views of the site are possible through the surrounding treeline, this ensures the yurt does not undermine its natural landscape character.
21. In terms of size, the yurt appears relatively modest in the context of the extensive wider appeal site. It is also seen in the context of other built structures within the site, which include a shed used for storage and a small compost toilet. This means the yurt is not a unique feature, which allows it to integrate within the site without appearing unduly stark or incongruous.
22. The table, bench and windbreak which sit adjacent to the yurt are made of timber and willow, materials which also reflect the natural and rural character of the land. These are modest and discreet structures, and again do not detract from the underlying character of the site.
23. For these reasons, I am satisfied that the development does not harm the character and appearance of the area. In this regard, the development is consistent with Policies DM16 and DM43 of the Local Plan, which promote development which integrates effectively with its surroundings, and which conserves and enhances the key landscape characteristics of the Broads.

Policy DM50

24. Policy DM50 of the Local Plan relates to development within "*leisure plots and mooring plots*". In this instance, the appeal site is used for scientific ecological research comprising species surveys and monitoring, the maintenance and creation of habitats, and the teaching of others about biodiversity and the creation of healthy ecosystems. Irrespective of whether the appellants spend their free time at the site, it seems clear that its overarching use is primarily nature conservation and environmental enhancement. Such use does not align with the typical characteristics of a "leisure plot", and in turn, I do not consider Policy DM50 to be relevant to the development. I therefore find no conflict in this regard.
25. Even if Policy DM50 were relevant, the reasoned justification for this policy does highlight that new leisure and mooring development could be permitted

“where the degree of change would not have an adverse effect on the existing landscape character and visual appearance of the area”. Notwithstanding that this is not a new “leisure plot”, given I have found that the development does not harm the landscape character of the area, any harm deriving from a technical conflict with Policy DM50, would be very limited in any event.

Protected Sites

26. The appeal site is located within the hydrological catchment of The Broads Special Area of Conservation, the Broadland Special Protection Area and the Broadland Ramsar (Protected Sites). These Protected Sites comprise a series of naturally nutrient-rich lakes, which support relict vegetation of the original Fenland flora. These sites are afforded special protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations), as collectively, they contain one of the richest assemblages of rare and local aquatic species in the UK.
27. The Protected Sites are deemed to be in an unfavourable condition by Natural England (NE), due to the risks of eutrophication caused by excessive levels of phosphorus and nitrogen. Notwithstanding that the toilet is already consented, given the appeal site falls within their associated catchment, any additional nutrient load attributed to foul effluent from the development, which in this case includes overnight accommodation, risks exacerbating the unfavourable condition of these Protected Sites.
28. The appellants’ Nutrient Neutrality Statement concludes that the development leads to minor increases in both phosphorus and nitrogen load. Even though the anticipated increases are only considered minor, this means the development, in combination with other projects, risks likely significant effects on the Protected Sites.
29. In such circumstances, Natural England says mitigation must be secured to achieve nutrient neutrality, to ensure adverse effects of a development on the integrity of protected sites can be ruled out. Whilst the Council does not currently have a strategic mitigation scheme in place, the appellants have suggested implementation of a reedbed system to enable on-site treatment of liquid waste. They say that solid matter could also be routinely emptied and disposed of off-site. It is contended that these measures would ensure the development does not impact on nutrient levels within the Protected Sites.
30. However, very limited details of these mitigation proposals have been provided. For example, no calculations have been provided to demonstrate how effectively such measures would reduce any nutrient load from the development; no details been given in terms of where solid waste would be disposed of off-site; and there is little detail of how such measures would be secured, monitored, or enforced. Without sufficient detail, I am unable to conclude that the development would be nutrient neutral.
31. Whilst I could have sought more details from the appellants in this regard, as I am dismissing the appeal on other grounds, further consideration of this factor, including an appropriate assessment under Regulation 63 of the Habitat Regulations, is not required.
32. In terms of recreational impact, the Council is satisfied that payment of a financial contribution towards its Recreational Impact Avoidance and Mitigation

Strategy would ensure the development does not adversely affect the integrity of these Protected Sites. Whilst no payment appears to have been secured, as I am dismissing the appeal on other grounds, further consideration of this factor, including an appropriate assessment, is again not required.

33. For completeness, had I been minded to allow the appeal, I would 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.

Other Matters

34. There are undoubtedly material benefits which arise from the appellants work within the site, particularly in terms of nature conservation, ecology and biodiversity. The site also offers educational benefits and potential training opportunities for workers in the ecological sector. Whilst the yurt improves site security and helps facilitate management of the site, even without it, several of these benefits could potentially still be achieved.
35. Whilst these benefits do attract weight, they are not sufficient to outweigh the potential flood risk harm which arises from the development. They also do not negate the statutory regime which must be applied strictly to the Protected Sites with regard to nutrient neutrality.
36. Even if the scheme was approved on a temporary or restricted basis, this would still not overcome the potential flood risk harm arising from the scheme.

Conclusion

37. For the reasons given, the development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. The appeal should therefore be dismissed.

James Blackwell

INSPECTOR