



Appeal Decision

Site visit made on 21 May 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/L2630/W/23/3331868

The Briars, Top Common, Spooner Row, Wymondham NR18 9JS

- 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 Mrs Alison Salmon against the decision of South Norfolk District Council.
 - The application reference is 2023/0403.
 - The development proposed is the retention of use of shepherd's hut for short stay holiday let.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. This does not materially change the planning policy context in respect of the main issues, and I have determined the appeal accordingly. For the avoidance of doubt, I shall refer to section and paragraph numbers in the updated Framework where necessary.
3. The Greater Norwich Local Plan (GNLP) was adopted by the Council in March 2024. This supersedes the Joint Core Strategy for Broadland, Norwich and South Norfolk 2014 (JCS). The relevant policies in the GNLP are Policy 2 and Policy 3 replacing Policies 1 and 2 of the JCS. Parties were given the opportunity to comment on the policy changes in relation to the appeal. I am therefore satisfied that no party has been unfairly prejudiced, and I make no further reference to the JCS.

Procedural Matter

4. At the time of my visit a shepherd's hut was located in the front garden of the appeal property, broadly consistent with the plans before me. However, 'retention' as referred to in the application form and decision notice does not constitute an act of development. I have therefore dealt with the appeal on the basis that planning permission is sought for the development in accordance with the drawings submitted.

Main Issues

5. The main issues are:
 - the effect of the development on the character and appearance of the appeal site and its surroundings; and

- the effect of the proposed development on the integrity of River Wensum and the Broads Special Areas of Conservation (SACs) and other European Sites.

Reasons

Character and appearance

6. The appeal site is a residential garden at the front of detached property situated in a short row of dwellings on Top Common. The properties here are mixed in style and size. They are, however, generally accommodated on generously sized plots, set back from the highway by front gardens and gravel driveways. Where there are boundary treatments to the frontage they are commonly hedges and fences with timber five-bar gates, typical to the semi-rural domestic setting of the appeal site.
7. The appeal property is a rendered single storey dwelling and is set further back from the highway than the majority of houses in the row. From my observations on site, front gardens in this row are free of built structures and maintain a generally open character and appearance albeit behind relatively high boundary hedges in some instances. The spacious front garden of the host dwelling contributes positively to the distinctiveness of the locality and the overall character and appearance of the area.
8. The driveway to the host dwelling is located approximately centrally in the frontage of the property. The left-hand side of the front garden is almost completely given over to the appeal development and its use as a commercial holiday let. It is separated from the host dwelling's rear garden by a high close boarded fence, and from the remainder of the front garden and driveway by a post and rail fence. The fenced-off area contains a shepherd's hut and associated paraphernalia, including a covered hot tub and a separate covered seating area and barbecue. Parking for the development is contained in a spur off the main driveway and access to the fenced off area is gained via a wooden five bar gate.
9. At the time of my site visit a 'lock box' typically used to provide secure access to keys was attached to the gatepost. Signage inside and outside the hut providing instructions to guests, tourist leaflets and a visitor book were evident inside the hut indicating that the hut was in use as a commercial holiday let rather than as visitor accommodation for friends and relatives. The hut contained a bathroom and kitchen facilities which from information before me are connected to a septic tank which drains into a nearby watercourse.
10. Whilst the front boundary hedge provides a degree of screening and I have no evidence before me to conclude that it is under threat meaning that the development would be more prominent, existing gaps in the vegetation are such that the development is clearly visible from the south on Top Common in any event. Moreover, given its height, size and siting the shepherd's hut and the surrounding paraphernalia appears cluttered and out of character with its semi-rural setting. Furthermore, its use as a commercial enterprise in this location is incongruous and out of keeping with the domestic setting of the appeal site, at odds with the prevailing character of the area.
11. The appellant has referred to a number of appeal cases and court cases which have concluded that the use of buildings or mobile homes within the curtilage

of dwellings are incidental to the main use. However, in each of the cases referred to, having regard to the information before me, the circumstances appear to be materially different to that of the case before me.

12. The appellant states that the shepherd's hut is a chattel and its use is ancillary to the use of the dwellinghouse and therefore does not require planning permission. There is no dispute the shepherd's hut is located within the garden of the appeal property, which has been fenced to create a self-contained area. The hut is connected to utilities and is used primarily as a commercial holiday let. From the evidence before me and from what I saw on site, its use did not appear to be connected with the running of the dwellinghouse or with the domestic or leisure activities of the occupiers of the host dwelling. Therefore *Uttlesford*¹ and other cases and appeals² referred to are not relevant in this instance. Furthermore, a planning application was made for the development, and it was not unreasonable for the Council to determine it as made to them. Given the commercial nature and set up, the fallback of retaining the development for visitor accommodation, presumably for family members and personal visitors seems unlikely. Therefore, I give limited weight to the fallback position put forward. Moreover, it is not ordinarily the role of appeals made under s78 of the Town and Country Planning Act 1990 (the Act) to examine matters of lawfulness. Indeed, it is open to the appellant to apply to have such matters determined under sections 191 or 192 of the Act for which there is also a right of appeal.
13. I therefore conclude for the reasons set out that the development adversely impacts on the character and appearance of the appeal site and the surrounding area. There would therefore be conflict with Policy DM3.8 of the South Norfolk Local Plan (SNLP) and Policies 2 and 3 of the GNLP which seek to achieve high quality development which protects and enhances the environment and local distinctiveness. There would also be conflict with section 12 of the Framework which has similar aims.

Integrity of European sites

14. The appeal site lies within the catchment of the River Wensum and is therefore functionally linked to the Broads SAC, a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations), and in the Zone of Influence (ZoI) of The Broads, Valley Fens and East Coast as set out in the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy 2021 (GIRAMS).
15. The ZoI encompass numerous SPAs, SACs and Ramsar Sites, with varied qualifying features which can be summarised as including a variety of designated land, aquatic, coastal and other habitats that host a rich array of flora and fauna, including protected and important flora, invertebrates, mammals and amphibians, and over-wintering, migratory, breeding rare or vulnerable birds and internationally important assemblages.
16. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Protected

¹ *Uttlesford DC v SSE & White* [1992] JPL 171

² As set out in the appellant's Statement of Case paragraphs 4.3 – 4.11

Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Protected Habitats site that requires mitigation.

17. The proposal for new visitor 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. Furthermore, recreational impact mitigation measures as set out in the GIRAMS is also required.
18. Whilst the effect of the proposal may be small, in combination with other development, based on the precautionary principle 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. This is due to both the potential increase in nutrients entering the watercourse and potential additional increased disturbance through recreational activity on the integrity of The Broads SAC.
19. 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 therefore cannot be satisfied that the appeal proposal would not result in significant adverse effect to the integrity of identified protected sites.
20. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraphs 180 and 185 - 187 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 DM4.4 of the LP which seeks to protect environmental and water resources and Policy 3 of the GNLP which seeks to ensure that environmental assets of the area will be protected, maintained, restored, and enhanced.

Other Matters

21. I note that there is no objection to a holiday let in the general location of the host property and no concerns have been raised to the living conditions of the occupiers of neighbouring dwellings as a result of the development. These are neutral factors which weigh neither in favour nor against allowing the appeal and do not diminish the harm that I have found on the main issues.

Conclusion

22. For the reasons given above, having considered the development plan as a whole and all relevant material considerations, I conclude that the appeal is dismissed.

KL Robbie

INSPECTOR