



Appeal Decision

Site visit made on 12 June 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2024

Appeal Ref: APP/F2605/W/23/3332575

Kingsmere, Carvers Lane, Attleborough, Norfolk NR17 1AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr T Crouch against the decision of Breckland Council.
 - The application Ref is 3PL/2022/0742/O.
 - The development proposed is residential development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, the Council have undertaken a partial review of the Breckland Local Plan 2019. This was adopted in September 2023 and now forms the adopted local plan. The update related to a single policy (Policy INF03) and not those referenced in the Council's decision notice. The policies relevant to the determination of the application remain unchanged from the 2019 version of the BLP. However, in my decision I have referred to the policies of the Breckland Local Plan 2023 (BLP).
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated it on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
4. The appeal is seeking outline planning permission for residential development, for an unspecified number of dwellings. The application was submitted with all matters reserved, and I have determined the appeal on that basis.
5. As part of the appeal submission, the appellant has submitted a Noise Assessment. The Procedural Guide advises that the appeal process should not be used to evolve a scheme. The parties have had the opportunity to comment on this information through the appeal process. Furthermore, as this assessment does not fundamentally alter the scheme, I am satisfied that no party would be prejudiced by my taking this report into consideration in the determination of the appeal. I have, therefore, dealt with the appeal on this basis.

Main Issues

6. The main issues are:

- The effect of the proposed development on highway safety;
- Whether the proposed development would provide adequate living condition for future occupiers, with particular regard to noise; and
- The effect of the proposed development on designated habitat sites.

Reasons

7. The appeal site comprises a detached residential dwelling, known as Kingsmere, which is situated in a large rectangular plot that extends towards the A11. The site is located on the edge of the 'Key Settlement' of Attleborough, fronting onto Carvers Lane, where there is an existing access point. The surrounding area is predominantly residential and there is a housing development¹, providing approximately 90 new homes currently under construction immediately adjacent to the appeal site.

Highway Safety

8. The access lane, Carvers Lane, is a narrow, single vehicle width lane, which has very limited passing places. It also has poor visibility and no street lighting. During my site visit I observed that it is used by pedestrians and cyclists as well as vehicular traffic. It is not disputed by the main parties that the existing access to the appeal site is inadequate to serve the development proposed.
9. Paragraph 115 of the Framework states that development should only be prevented or refused on highway grounds if there would be unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
10. Policy TR02 of the Breckland Local Plan states that proposals will be permitted that provide safe, suitable, and convenient access for all users and avoid inappropriate traffic generation and do not compromise highway safety.
11. As outlined above, the appeal site is located adjacent to a housing development, which once completed, will provide localised highway improvements, including the diversion of the existing route along Carvers Lane. Based on the evidence before me, these improvement works would involve the closure of a section of Carvers Lane to vehicular traffic, with traffic instead travelling through the completed housing development before rejoining Carvers Lane, where access to the site could be provided. Nevertheless, I have not been provided with any compelling evidence to demonstrate that this would provide an acceptable means of access to the appeal site.
12. I have been provided with a plan which sets out the highway improvement works that are due to take place, and some evidence of potential phasing and completion dates for these works. I also accept that the works on site have progressed since the determination of the application.

¹ Planning Application Ref: 3PL/2014/1264/F and 3PL/2022/0812/VAR

13. The appellant has suggested the imposition of a negatively worded (Grampian) condition to ensure that development of the appeal site could not commence until the highway works have been implemented in full.
14. The Planning Practice Guidance (PPG) states that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It also states that it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) that would prohibit the development authorised by the planning permission or other aspects linked to the planning permission (e.g., occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). However, the PPG advises that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
15. In this particular case, the necessary highway improvement works are not only on third party land, but to be undertaken by a third-party developer. As such, the appellant has little to no control over the timing of these works, or indeed whether they are capable of completion to the satisfaction of the Highway Authority prior to the expiration of any permission which may be granted because of this appeal.
16. I was able to observe that the development is progressing, and some of the highway improvement works have been undertaken or are in the process of being undertaken. Nevertheless, there remains outstanding works to complete, and the evidence submitted by the Council indicates that further S278² agreements may still be required before the second phase of highway improvement works can commence.
17. Furthermore, whilst I understand the development being built is to provide a mix of affordable rent and shared ownership housing, rather than open market housing, this doesn't guarantee completion of the required highway works to the satisfaction of the Highway Authority within the necessary timescales.
18. Therefore, whilst I attach some moderate weight to the evidence provided by the appellant detailing the expected programme of works, there is still uncertainty as to whether they would be completed within the appropriate timescales. For these reasons, given the uncertainties described above and based on the evidence before me, I do not consider that the imposition of a negatively worded (Grampian) condition would be capable of overcoming my concerns.
19. Consequently, I am unable to conclude that the proposed development would not give rise to conditions detrimental to highway safety. It would therefore be contrary to Policies TR01 and TR02 of the BLP, which require, amongst other things, development to provide safe and convenient access for all users.

Living Conditions (Future Occupiers)

20. The Council's second reason for refusal refers to the submission of insufficient information to assess the potential noise impacts on the living conditions of future occupiers of the proposed development. However, as outlined above, a

² The Highways Act 1980

Noise Assessment³ has been provided and submitted alongside the appeal. The assessment has been reviewed by the Council's Environmental Health Officer and they have provided comments.

21. Policy COM03 of the BLP states that development will not be permitted which causes unacceptable effects on the residential amenity of neighbouring occupants or does not provide adequate levels of amenity for future occupants.
22. The Noise Assessment concludes that subject to mitigation that suitable protection from unacceptable noise impacts can be provided. This includes measures such as glazing, acoustic barriers and ventilation. However, in respect of the garden areas, particularly the parts of the site closest to the A11, the report accepts that even if suitable barriers were installed, that the noise levels experienced may exceed the upper limit of 55dB Laeq,16hour.
23. Both BS8233:2014⁴ and the World Health Organisation (WHO), recommend levels not exceeding 50dB for outdoor garden areas, with the WHO stating levels of between 50dB and 55dB would be likely to cause moderate to serious annoyance. Therefore, whilst I accept that it may be possible to include further mitigation as part of a detailed design, I have not been presented with any substantive evidence that this could achieve the necessary reduction in noise levels within the site.
24. I have had regard to the case made in the Noise Assessment that proximity to major transport networks can be a benefit that outweighs potentially harmful noise levels in outdoor amenity areas. However, this is not an urban location, nor a location where the need for housing, or the need to provide outdoor amenity areas would outweigh the harm I have identified. Furthermore, the location of the site is such that although it is adjacent to the A11, it is not immediately accessible.
25. Consequently, I find that it has not been demonstrated that the proposed development would provide adequate living conditions for future occupiers, with particular regard to noise. It would therefore be contrary to Policy COM03 of the BLP which states that development will not be permitted if it does not provide adequate levels of amenity for future occupiers.

Designated Habitat Sites

26. The appeal site is located within the Zone of Influence of multiple designated sites, namely the Norfolk Valley Fens Special Area of Conservation (SAC), the Breckland Special Protection Area (SPA) and SAC, and The Wash SPA; Ramsar; and The Wash and North Norfolk Coast SAC. These sites have been designated for their international importance for including, but not limited to, wetland habitats, the type of bird species present including breeding and non-breeding birds and one of Europe's largest populations of common seal.
27. Policy ENV02 of the BLP states that the highest level of protection will be given to European Sites, with development only permitted where the proposal is in accordance with the requirements of the Conservation and Habitats and Species Regulations 2027.

³ Prepared by Loven Acoustics and dated 26 July 2023

⁴ British Standards: Guidance on Sound Insulation and Noise Reduction for Buildings

28. The proposed development is for residential development, which could lead to increased recreational pressure, therefore in combination with other developments, likely significant effects cannot be ruled out.
29. The affected sites are covered by the Norfolk Green Infrastructure and Recreational Impact Avoidance Mitigation Strategy (GIRAMS) which ensures that the cumulative impacts of additional visitors, arising from new developments of housing and tourism, such as this development, to European sites, will not result in any likely significant effects which cannot be mitigated. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling.
30. A Unilateral Undertaking has been provided which would provide the required contribution towards established mitigation measures. However, whilst this has been signed, it is not dated.
31. As I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further. As finding that the proposal would not have an adverse effect on the integrity of European protected sites, with or without mitigation, would be a neutral factor in the overall planning balance.

Conclusion

32. For the reasons given, the development does not accord with the development plan when taken as a whole. There are no material considerations of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. The appeal is therefore dismissed.

K Lancaster

INSPECTOR