



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: 12th July 2024

Appeal Ref: APP/L2630/W/23/3332368

Ashdene, 9 Mill Corner, Hingham, Norfolk NR9 4LG

- 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 Davidge on behalf of Davidge Developments Ltd against the decision of South Norfolk District Council.
 - The application Ref is 2023/2339.
 - The development proposed is described as a garden plot bungalow for family member.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved for future consideration. I have dealt with the appeal on that basis, treating the proposed site block plan as being indicative of the reserved matters.
3. Following the Council's decision, the Greater Norwich Local Plan 2011-2033 (GNLP) has been adopted replacing the Joint Core Strategy for Broadland, Norwich, and South Norfolk (JCS). The JCS policies cited in the decision notice are superseded. I am required to consider the appeal in the context of current local policy, and in this regard, I have sought the views of the main parties.
4. 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.
5. A tree on the boundary of the appeal site is subject to a Tree Preservation Order¹ (the TPO tree) that was imposed after the Council made its decision on the development subject of this appeal.

Main Issues

6. The main issues of the appeal are:
 - the effect of the proposed development on the character and appearance of the area, including a protected tree;

¹ TPO Ref: SN0638 (Dated: 9 May 2024)

- whether the appeal site is a suitable location for housing having regard to the risk of surface water flooding;
- the effect of the proposed development on the integrity of European Sites, with particular regard to nutrient neutrality;
- the effect of the proposed development on the integrity of European Sites, with particular regard to recreational pressure;
- whether the appeal site is a suitable location for the proposed development with particular regard to the provisions of local and national policy and accessibility to services and facilities; and
- whether the proposal would harm the significance of a nearby listed building and the Hingham Conservation Area, by reason of its effects on their respective settings.

Reasons

Character and Appearance

7. The appeal site forms part of the large garden associated with the residential property, 9 Mill Corner (No.9). The site is mainly grass, with a large mature, Beech tree located along the boundary of the site.
8. The appeal is seeking outline planning approval for a single dwelling. The indicative plans indicate a self or custom build bungalow, with three bedrooms. The access to the site would be taken from Seamere Road, although access is a reserved matter.
9. Policy DM1.4 of the South Norfolk Local Plan – Development Management Policies Document, adopted 2015 (SNLP) states that all development should make a positive contribution to local character and distinctiveness.
10. The appeal site has a verdant character and appearance which would be diminished, through the removal of vegetation resulting in a more domestic character to the site and an urbanising impact on the rural lane and approach to Hingham. The land is visually read with the trees and meadow landscape to the south and west of the site.
11. The proposal would also extend the built form of the settlement, reducing the visual gap between Mill Corner and the outlying dwellings further south. Whilst some domestic outbuildings were visible in gardens of the properties on Mill Corner the introduction of a new dwelling, with associated access and parking areas, would be a prominent form of development.
12. It would therefore result in the erosion of the pleasant, verdant character of the site, which forms a clear transition between the built form of the village and the open countryside beyond. It would also erode some of the gap to the group of dwellings further along Seamere Road to the detriment of the character and appearance of the area.
13. As outlined above, the mature beech tree within the appeal site is the subject of a tree preservation order and contributes positively to the verdant character of the area. It is unclear from the proposal whether this tree would be retained. Due to the substantial size of the tree, it is likely to have an extensive root system. However, no arboricultural survey report or other appropriate form of

evidence has been submitted, to determine the root protection areas and any associated mitigation which may be required. Given the proximity of the tree to the proposed development, it is not possible for me to conclude that the proposal would not cause damage to the tree roots. Furthermore, the loss of, or work detrimental to, the appearance of this protected tree, which makes a substantial positive contribution, would, in my view, result in harm to the character and appearance of the area.

14. As there is a degree of uncertainty around the effects of the proposal on the protected tree, the use of conditions would not be appropriate in this case. I therefore conclude that insufficient information has been provided to demonstrate that the proposed development would not cause harm to the protected tree.
15. For the above reasons, I therefore find that the proposed development would cause harm to the character and appearance of the area, including a protected tree. It would therefore be contrary to Policies 2 and 3 of the GNLP and Policies DM1.4 and DM3.8 of the SNLP. These policies seek, amongst other things, create beautiful, well-designed places and buildings which respect the character of the local area and seek to enhance it through appropriate design. Policy DM3.8 of the SNLP also requires that landscaping of the development is designed to retain important existing natural features and reflect the surrounding landscape characteristics of the area.

Flood Risk - Surface Water Flooding

16. The Framework advises that development should be directed away from areas at highest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
17. Planning Practice Guidance (PPG) confirms that this means avoiding, so far as possible, development in high or medium flood risk areas, taking account of all sources of flooding, including surface water flooding. The requirement covers non-major development as well as larger proposals.
18. The appeal site is in Flood Zone 1, indicating low risk of fluvial flooding. However, it includes land, approximately 50% of the site, which the Environment Agency's Flood Map identifies as being at high risk of surface water flooding. Further parts of the site, approximately 90% are identified as being at a medium risk of surface water flooding.
19. I have had regard to the appellant's statement which states that the Lead Local Flood Authority did not object and that the finished floor levels of the dwelling could be raised. However, the appeal is not supported by a Flood Risk Assessment, Sequential Test, or any substantive evidence that the overall development would not be at risk from surface water flooding. Furthermore, the PPG states that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the PPG confirms that the sequential test still needs to be satisfied.
20. Consequently, I find that it has not been demonstrated that the proposed development will minimise the risk of flooding and those risks can be adequately mitigated both on and off site. It would therefore be contrary to Policy 2 of the GNLP and Policy DM4.2 of the SNLP, which require, amongst

other things, development to be designed to minimise the risk of flooding on the development site and in the surrounding area.

21. It would also fail to accord with Paragraphs 165 and 168 of the Framework which state that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of highest risk and that the sequential test should steer new development to areas with the lowest risk of flooding from any source.

European Sites – Recreational Pressure

22. The appeal site is located within the Zone of Influence of multiple European sites. 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.
23. Policy DM4.4 of the SNLP states that the highest status natural environmental assets are identified on the Policies Map and in supporting evidence and will be protected from any significant harmful impact arising from new development. New development impacting on these designated sites will be required to contribute positive improvement of these natural environmental assets where opportunities arise. International, National and County-wide level sites will be accorded the highest levels of priority.
24. 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.
25. 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.
26. Whilst the appellant has indicated that they would be willing to provide the necessary contribution, no Unilateral Undertaking has been provided. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further.
27. Therefore, whilst the effect of one dwelling 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 a significant adverse effect on the integrity of the SAC due to potential increased disturbance through recreational activity on the designated sites.
28. Consequently, I therefore find that the proposed development has not demonstrated that it will adequately mitigate the recreational impacts of the proposal on designated sites. It would therefore conflict with Policy 3 of the GNLPP and Policy 4.4 of the SNLP as well as the nature conservation requirements of the Framework and the Habitats Regulations. In these circumstances, the Habitat Regulations indicate permission must not be granted.

European Sites - Nutrient Neutrality

29. Guidance was issued by Natural England (NE) on 16 March 2022 requiring competent authorities to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.
30. The site would discharge to the Wymondham Wastewater Treatment Works which drains into the River Yare catchment area. The appeal site is located within the hydrological catchment of The Broads Special Area of Conservation (SAC) and Ramsar Site. These 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.
31. These 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. Given the appeal site falls within their associated catchment, any additional nutrient load attributed to the foul effluent from the residential building, risks exacerbating the unfavourable condition of these Protected Sites. In turn, the development, in combination with other projects, risks likely significant effects on the European Sites.
32. As the competent authority, I must therefore have regard to The Conservation of Habitats and Species Regulations 2017 (as amended). These regulations require that, where a project is likely to have a significant effect on a European Site (either alone or in combination with other plans or projects), the competent authority must make an Appropriate Assessment (AA) of the project's implications in view of the relevant site's conservation objectives.
33. However, I have not been provided with enough information to determine whether the proposal would likely have significant effects on the SAC in terms of nitrate and phosphate impacts to enable me to determine whether nutrient neutrality could be achieved as a potential solution. Therefore, and noting the need to take a precautionary approach, I cannot fulfil my statutory duty under the Habitats Regulations.
34. Consequently, and on the basis of the evidence before me, I cannot conclude that the proposed development would not have an adverse effect on the integrity of European Sites, with particular regard to nutrient neutrality. It would therefore be contrary to Policy 3 of the GNLP and Policy DM4.4 of the SNLP which requires, amongst other things, that proposals should avoid harm to designated and non-designated assets of natural environment.
35. It would also be contrary to Policy DM4.2 of the SNLP, which requires, amongst other things, that drainage features should make a positive contribution to amenity and biodiversity.

Suitable Location

36. For the purposes of the Development Management policies, the area outside of the defined development boundaries of the settlements is referred to as Countryside. Policy DM1.3(2) of the SNLP states that permission for

- development in the Countryside outside of the defined development boundaries of Settlements will only be granted where specific Development Management Policies allow for development outside of development boundaries or otherwise demonstrates overriding benefits in terms of economic, social and environment dimensions as addressed in Policy 1.1 of the SNLP.
37. The proposed development lies beyond the settlement boundary of Hingham, in open countryside. The village of Hingham is designated as a Key Service Centre in the GNLP. It contains a range of services meeting everyday needs and an employment area. A site for housing within the village was allocated within the Local Plan and has since been developed. However, the location of the appeal site on the edge of the village, means that it does not benefit from easy access to the services within the village. There is no footpath or street lighting around the site, and the immediate surroundings have a distinctly rural feel.
38. Whilst I acknowledge that the proposed dwelling would be located adjacent to the settlement boundary, it is nevertheless located in open countryside for the purposes of Policy DM1.3. There are no specific development plan policies which have been brought to my attention that support the development proposed, which is located outside of the defined settlement boundary. It therefore falls to consider whether it has been demonstrated that there are any overriding benefits in terms of economic, social and environment dimensions as addressed in Policy 1.1 of the SNLP.
39. In terms of benefits, the development proposed development would make a small contribution to housing supply. However, no specific environmental or economic benefits have been advanced by the appellant. I have had regard to the appellant's case that the development and built development area within the settlement boundary, this is allowed and has been seen elsewhere in the area, However, I have not been directed to any specific examples or cases. In any event, each case must be considered on its own merits.
40. Therefore, whilst I find that the appeal proposal would have some benefits in terms of housing supply, these would be limited due to the proposal being for a single dwelling. I do not consider them to be at a level sufficient to be considered as overriding in terms of its ordinary meaning as the policy requires. As a result, I consider the proposal would not comply with policy DM1.3 of the DMPD.
41. Policy 7.5 of the GNLP states that small scale residential development of up to three dwellings for self and custom build housing and for people who meet the eligibility criteria for part one of the relevant district self-build register will be permitted on sites that are within or adjacent to settlements with a designated settlement boundary and on sites within or adjacent to other settlements without a settlement boundary. This policy also states that all development covered by this policy will need to respect the former character of the settlement and result in no significant adverse impacts on the landscape and natural environment. The proposal will also need to accord with other relevant local plan policies.
42. Although the proposal is for a single dwelling, and the appeal site is within close proximity to an existing settlement, I have not been presented with any substantive evidence that the proposal is for a self or custom build dwelling. Furthermore, it has not been demonstrated that the proposed dwelling would be for a person or persons who meet the eligibility criteria for self or custom

build housing. Therefore, even if it could be demonstrated that the proposal is for self or custom build housing, Policy 7.5 of the GNLP also requires that development respects the character of the settlement and results in no adverse impacts on the landscape and natural environment. For the reasons set out above, in respect of the other main issues, the proposal would cause harm to the character and appearance of the area and to the natural environment.

43. Consequently, I find that the proposed development would not be within a suitable location with particular regard to the provisions of local and national policy and accessibility to services and facilities. It is therefore contrary to Policies 1,2 and 7 of the GNLP, Policy DM1.3 of the SNLP and the Framework which seek, amongst other things, to direct new development to the most sustainable locations, which minimise the need to travel. It would also be contrary to Policy 7.5 of the GNLP for the reasons set out above.

Historic Environment

44. Policy 3 of the GNLP, which replaces Policy 1 of the JCS states that proposals should avoid harm to designated and non-designated heritage assets, including their setting, having regard to their level of significance in accordance with the requirements of the Framework and relevant policies in other Development Plan Documents and Neighbourhood Plans.
45. Policy DM4.10 of the SNLP states that all development proposals must have regard to the historic environment and take account of the contribution which heritage assets make to the significance of an area and its sense of place, as defined by reference to the national and local evidence base relating to heritage. It also states that proposals must sustain, and where possible enhance and better reveal the significance of the asset and make a positive contribution to local distinctiveness.
46. The appeal site is located close to a Grade II Listed Building, known as The Mill House. It comprises an early 19th Century, two-storey house with an attached four-storey circular tower.
47. It is also located, outside of, but close to the boundary of the Hingham Conservation Area. The HCA comprises two separate parts, the main part of the village centred around the market squares and church and a smaller area to the south mainly comprising a group of dwellings on Mill Corner, Hall Moor Road and Pitt Square. Mill Corner, where the appeal site is located to the edge of, is noted as comprising mostly 19th Century houses pleasantly spread out, with a row of traditional, small cottages opposite The Mill House. This part of the HCA has a more spacious character to the main village. The HCA boundary extends along Mill Corner, but only as far as The Old Mill House and cottages opposite.
48. There are some, limited views of the listed building and HCA possible from within the site and from Seamere Road. However, the existing residential development located along Mill Corner, including which includes Nos.7 and 9 Mill Corner limit these views.
49. I therefore find that by virtue of the distance, intervening buildings, and limited views, I am satisfied that the proposed development would not be harmful to the setting of the nearby listed building and HCA. Consequently, it would preserve their setting and comply with Policy 3 of the GNLP and Policy DM4.10

of the SNLP, which require, amongst other things, proposals to avoid harm to designated heritage assets, including their setting.

Other Matters

50. Whilst I accept that the Council found no harm in relation to highway safety, or the living conditions of neighbouring occupiers, the absence of harm is a neutral factor which neither weighs for or against the proposal.

Planning Balance

51. It is not disputed that the Council cannot demonstrate a five-year supply of housing sites, which is influenced by the temporary impacts of Nutrient Neutrality.
52. Paragraph 11(d) of the Framework states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 provides a list of those policies, which includes habitat sites. Accordingly, in this particular case these provide a clear reason for refusal and therefore paragraph 11(d)(ii) and the presumption in favour of sustainable development does not apply.

Conclusion

53. For the above reasons, the proposed development would conflict with the development plan as a whole and there are no material considerations of sufficient weight which indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

K Lancaster

INSPECTOR