



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/23/3326512

The Laurels, The Street, Tharston, Norfolk NR15 2YP

- 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 & Mrs Ben McGuire against the decision of South Norfolk District Council.
 - The application Ref is 2023/0456.
 - The development proposed is a single dwelling to the garden area of the application property with independent access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters except access 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 The JCS policies cited in the decision notice are superseded.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.

Main Issues

5. The main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - 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; and

- 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;

Reasons

Character and Appearance

6. The appeal site forms part of a large field located to the rear of a predominantly linear pattern of dwellings which front onto The Street, Tharston. It is a relatively flat site, which benefits from an existing access.
7. The garden associated with 'The Laurels'¹¹, which is a Grade II Listed building, dating most probably, from the 17th Century abuts the appeal site. It is a timber-framed house, with a steep pantile roof with gabled ends. The Council has not raised any specific concerns in relation to the setting of the listed building and based on the evidence before me, I see no reason to disagree with this assessment.
8. The site is located within the Tas Tributary Farmland Type B1 character area which includes small blocks of deciduous woodland, large open arable fields and settlements characterised by a small number of large villages. The principal sensitivities and vulnerabilities of the landscape to change include the small-scale dispersed pattern and potential for incremental development and infill.
9. The appearance of the appeal site and immediate surroundings is a more open, rural landscape rather than appearing part of the built development form of the settlement. There no dwellings or other substantial buildings visible to either side of the appeal site, only rear gardens. The proposed development would be located in a corner of a large, open field and therefore it is not located in a clearly identifiable gap. Therefore, by virtue of its siting, I find that the proposed development would not reflect the linear form and character of the settlement.
10. I accept that the wider field is surrounded by mature vegetation and the position of the site to the rear of existing development means that there are limited views into the site from The Street. Nevertheless, the introduction of a new dwelling in this location would erode some of the rural character of the site and contribute towards extending the built form of the settlement into open countryside. This would cause harm to the landscape character of the area.
11. The appellants have drawn my attention to the comments of the Council's Heritage and Design Officer. Whilst I accept that these comments state that a single storey or one and a half storey dwelling would have a lesser impact on the setting of the listed building, they conclude that the proposed development would break quite significantly from the historic building line. I note that their comments also include a direct quotation from the appellants' Planning Statement. However, it is unclear as to the reason for this and I have had regard to their conclusions which clearly identify harm to the character and appearance of the area.
12. Consequently, I therefore find that the proposed development would cause harm to the character and appearance of the area, contrary to Policy 2 of the

¹¹ List Entry Number: 1050026

GNLP and Policy DM4.5 of the South Norfolk Local Plan – Development Management Policies Document, adopted 2015 (SNLP). These policies require, amongst other things, that development should create beautiful, well-designed places and buildings which respect, conserve and where possible enhance the landscape character of its immediate and wider environment.

European Sites - Nutrient Neutrality

13. Guidance was issued by Natural England 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.
14. The site falls within the River Yare Surface Water Nutrient Neutrality Catchment Area, which has a functional relationship with the Broads Special Area of Conservation (SAC) and Ramsar site. The SAC contains several examples of naturally nutrient-rich lakes. Although artificial, having been created by peat digging in medieval times, these lakes, and the ditches in areas of fen and drained marshlands support relict vegetation of the original Fenland flora, and collectively this site contains one of the richest assemblages of rare and local aquatic species in the UK. The Broads is the richest area for stoneworts (charophytes) in Britain.
15. Natural England has highlighted that the SAC is in unfavourable condition due to nutrients where new development may have an adverse effect by contributing additional nutrients and therefore where nutrient neutrality is a potential solution to enable development to proceed.
16. 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.
17. 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.
18. The appellants have indicated that there is sufficient land to secure a package of mitigation and suggested that a pre-commencement condition could be attached requiring the details of the strategy for nutrient neutrality to be agreed before development takes place. However, such a condition would effectively defer the AA to the post-decision stage. This is in direct contravention with the requirements of the Habitats Regulations for me as the competent authority to undertake the AA before granting any planning permission.
19. Furthermore, I cannot be certain that it would be possible for the appellants to address all of the additional nutrient load imposed on the Broads SAC by the development and therefore there is the possibility that such a condition could

not be discharged. Such a condition would therefore not be reasonable and would not meet the six tests for conditions set out in the Planning Practice Guidance.

20. The appellants refer to an appeal decision² in the Council's area at the village of Bunwell where a pre-commencement condition requiring mitigation to address nutrient neutrality was initially applied. However, that decision has since been redetermined³ and concluded that such a condition would be in contravention of the requirements of the Habitats Regulations, as it would effectively defer the Appropriate Assessment to the post-decision stage.
21. 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.
22. 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.

European Sites – Recreational Pressure

23. The site is located within the Zone of Influence of a number of designated sites including, The Broads Special Area of Conservation (SAC) and Ramsar Site, The Breckland SAC, Norfolk Valley Fens SAC, and East Coast.
24. I have not been provided with detailed information on the potential recreational impacts of residential development on protected habitats in the district to reach an informed judgement. However, I understand that the South Norfolk has introduced the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) and that its Recreational Avoidance Mitigation tariff requires a financial contribution per dwelling.
25. The submission of a executed Unilateral Undertaking (UU) should allow a conclusion through an Habitat Regulations Appropriate Assessment (AA) that a development will not have any adverse impact on the integrity of the habitats site as a result of increased recreation usage. However, no UU has been submitted, the appellants have instead suggested that a Grampian condition be used, requiring the completion of a legal agreement to secure the necessary financial contribution.
26. The Planning Practice Guidance states that negatively worded conditions requiring a planning obligation to be entered into should only be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk. There is no clear evidence to suggest this would be the case in this instance.
27. For these reasons, I conclude, I cannot be certain that the proposal would not adversely affect the integrity of the European Sites and, in the event that it would, I am not in a position to ensure that this would be suitably mitigated. It would therefore conflict with Policy 3 of the GNLP and Policy 1.4 of the SNLP as

² Appeal Ref: APP/L2630/W/21/3289198 (Dated: 26 October 2022)

³ Appeal Ref: APP/L2630/W/21/3289198 (Dated: 6 July 2023)

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.

Suitable Location for Development

28. The appeal site is located to the rear of a linear pattern of development to the edge of the settlement of Tharston. The SNLP seeks to direct new development to the most sustainable locations and to reduce the need to travel to access service and facilities. Tharston has very few facilities to support day-to-day requirements and as a result any future occupants would need to travel to a larger settlement to access these facilities.
29. In respect of access to services and facilities, development plan policies and the Framework encourage new homes to be located with good access to services, facilities, and employment. Access to everyday facilities would require future occupiers to travel to the nearby settlement of Long Stratton approximately 1.6km away or further afield to the larger settlement of Wymondham, approximately 7km away.
30. Although the distance to Long Stratton is considered to be walkable, access to the appeal site would be via narrow, unlit country road, which have not footpaths. As such, it would be likely that the majority of journeys to and from the site, particularly in the winter months, would be on foot or bicycle. Therefore, the proposed development is likely to be reliant upon journeys made by private car, rather than sustainable modes of transport.
31. The appeal site is not therefore located where it would minimise the need to travel or provide opportunities to utilise sustainable modes of transport as is required by Paragraph 110 of the Framework and Policy DM3.10 of the SNLP.
32. The closest settlement with a defined settlement boundary is the town of Long Stratton⁴. For the purposes of the Development Management policies, the area outside of the defined development boundaries of the settlements is referred to as Countryside.
33. 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.
34. 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.
35. In terms of the benefits, the proposed development would contribute an additional dwelling, which would be a social benefit, and there would be some economic benefits from increased household expenditure in the area, short-

⁴ A Main Town as identified in the Greater Norwich Local Plan, previously identified as a Key Service Centre in the Joint Core Strategy.

term benefits during construction and CIL contributions. There would also be some environmental benefits arising from landscape enhancements, biodiversity net gain proposals and sustainable design including, renewable technologies,

36. However, these benefits would be limited given the scale of development proposed. Furthermore, for the same reason, any support from it towards the vitality of the rural community or support for services in nearby villages as detailed in Paragraph 83 of the Framework would also be very limited.
37. My attention has been drawn to an appeal decision in Long Stratton⁵ which found that in the context of Policy DM1.3 of the SNLP, 'overriding benefits' should be 'more important than anything else and as a result the development would have to be exceptional'.
38. Therefore, whilst the benefits carry moderate weight in favour of the proposal, collectively these do not amount to the overriding benefits required to be in accordance with the development plan. Consequently, the benefits of the scheme do not clearly outweigh its harm, and the overriding benefits described by Policy DM1.3 of the SNLP do not exist.
39. 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.
40. 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.
41. 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.
42. For the above reasons, I conclude that the appeal site would not be a suitable location for the proposed development, with particular regard to the provisions of local and national policy and accessibility to services and facilities. It would therefore be contrary to Policies 1, 2 and 7 of the GNLP, Policies DM1.3 and DM3.10 of the SNLP and the Framework which seek, amongst other things, to direct new development to the most sustainable locations, which minimise the

⁵ Appeal Ref: APP/L2630/W/18/3215019

need to travel. It would also be contrary to Policy 7.5 of the GNLP for the reasons set out above.

Other Matters

43. Whilst I accept that the Council found no harm in relation to highway safety, living conditions or design, the absence of harm on these matters is a neutral factor which neither weighs for or against the proposal.
44. My attention has been drawn to an appeal decision in Poringland⁶ which concluded that the harm to the character and appearance of the area would be limited and would not outweigh the benefits of the proposal. However, the Poringland site was located outside of the nutrient neutrality catchment area and adjacent to the recently completed housing development. The scheme also made provision for six affordable homes. I therefore find that this is not directly comparable to the appeal proposal, which is for a single dwelling and is within the nutrient neutrality catchment area.
45. My attention has also been drawn to the Frettenham⁷ decision, which established the absence of a five-year supply of housing sites for the JCS area, which includes the appeal site. A further decision in Barford⁸, also found that the Council was unable to demonstrate a five-year supply of housing sites. I have had regard to these decisions in so far as they relate to the appeal proposal.
46. However, as outlined above the GNLP, which makes provision for the delivery of new homes across the combined area has subsequently been adopted since these decisions were issued. Notwithstanding this, I have not been provided with any updated evidence with regards to the housing supply position. I have therefore determined the appeal on the basis of the evidence before me, which indicates, particularly when taking into account the impact of nutrient neutrality on housing delivery, that the Council is unable to demonstrate five-year supply of housing sites.

Planning Balance

47. 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

48. 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

⁶ Appeal Ref: APP/L2630/W/22/3296988

⁷ Appeal Ref: APP/K2610/W/21/3285244

⁸ Appeal Ref: APP/L2630/W/20/3261262

INSPECTOR