



Appeal Decision

Site visit made on 2 April 2024

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2024

Appeal Ref: APP/K2610/W/23/3324445

Land off Shorthorn Road, Shorthorn Road, Stratton Strawless, Norwich NR10 5NU

Eastin (x) 619070 Northing (y) 319415

- 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 Byrne - GB Digger Hire against the decision of Broadland District Council.
 - The application Ref is 20212025.
 - The development proposed is erection of 6 residential dwellings with associated access and parking.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is in outline form with all detailed matters reserved for subsequent approval. Therefore, I have considered the details on the 'Site Development Plan' (Drawing no P01 rev A) on the basis that they are indicative only.
3. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. Consequently, this update to national policy does not fundamentally alter the main parties' cases or prejudice their position at appeal, and it is not necessary to seek further comments in this regard.
4. The Greater Norwich Local Plan Document 1 – The Strategy was adopted in March 2024 (GNLP) and now forms part of Broadland District Council's development plan. The GNLP supersedes the Joint Core Strategy for Broadland, Norwich and South Norfolk (2011, amended 2014) the policies of which are referred to in the Council's decision notice. The Council has confirmed the policies of the GNLP that it considers to be most relevant to the proposal and has also provided comments on its housing land supply position. The appellant has been provided with an opportunity to comment on these matters. I have taken their response into consideration as part of my assessment which is made on the basis of the up-to-date policies of the development plan, including the GNLP.

5. The evidence before me indicates that planning permission has previously been granted at the site for two bungalows¹. There is no dispute between the parties that these permissions are extant given that works on the foundations for these properties were carried out in 2006 and I saw on my site visit that they remain in place. I have had regard to these 'extant planning permissions' as part of my considerations.

Main Issues

6. The main issues are:

- (i) the effect of the proposal on European designated habitats sites;
- (ii) whether the appeal site is suitably located having regard to the requirements of the development plan and national policy; and
- (iii) the effect of the proposal on the character and appearance of the area.

Reasons

European designated habitats sites

7. Natural England (NE) updated its advice in relation to nutrient pollution in a number of river basin catchments². The evidence before me indicates that appeal site sits within the catchment for the Broads Special Area of Conservation (SAC) which is in an unfavourable condition due to excessive nutrients. I also understand that the site is within the Zones of Influence (ZoI) of one or more habitats sites adversely affected by recreational disturbance.
8. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of protected habitats sites, either alone or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). This responsibility falls to me in the context of this appeal. An AA must contain complete, precise and definitive findings which are capable of removing all reasonable scientific doubt as to the absence of adverse effects on the integrity of a protected site.
9. However, I have not been provided with enough information, including in terms of the qualifying features of the designated sites and the conservation objectives, to determine whether the proposal would likely have significant effects on the SAC in terms of nutrient impacts and/or on the ZoIs of European designated sites with regards to recreational disturbance. Therefore, I am unable to reach complete, precise and definitive findings, and noting the need to take a precautionary approach, I cannot fulfil my statutory duty under the Habitats Regulations.
10. Notwithstanding the above, Policy 3 (Environmental Protection and Enhancement) of the GNLPP confirms that all residential development will address the potential visitor pressure caused by residents of the development that would detrimentally impact on sites protected under the Habitats Regulations, including through the payment of a contribution towards the cost

¹ LPA Refs 20040822 and 20040823

² Natural England - Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites – March 2022.

of mitigation measures at the protected sites. In this regard, I understand that the Council has a Green Infrastructure Recreational Avoidance Mitigation Strategy (GIRAMS) (which came into effect on 1 April 2022) which sets out a Recreational Avoidance Mitigation (RAM) tariff which should allow a conclusion through an AA that a development will not have any adverse impact on the integrity of the habitats site(s) as a result of increased recreational usage.

11. The requirement for payment of the RAM is set out in the Council's officer report and its appeal statement, yet this has not to my knowledge been addressed by the appellant. The appropriate mechanism to secure payment of the RAM tariff would be through a legal obligation and no such obligation is before me. Therefore, even if I had been in a position to carry out an AA, in the absence of the required RAM tariff payment, it is likely that I could only have concluded that the development would have the potential to have significant adverse impacts on the integrity of designated habitats sites as a result of recreational disturbance.
12. Policy 3 of the GNLP also requires that residential development that results in an increase in overnight stays within the catchments of the SAC must provide evidence to enable a conclusion that the proposal will not adversely affect its integrity. In that regard, the 6 dwellings proposed would provide for new overnight accommodation. This has the potential to have an adverse impact in terms of nutrients reaching the SAC due to the implications of foul and surface water drainage systems.
13. I understand that while preparation of a mitigation scheme (Norfolk Environmental Credits) is at an advanced stage, I am unaware as to if/when credits for the 'Bure catchment' that I understand the site sits within will be available. In the alternative, precise details of a bespoke mitigation scheme for the proposal are not before me. Therefore, even if I were in a position to carry out an AA, there is no evidence to suggest that any identified harm, should it exist, could be mitigated.
14. A Grampian condition requiring demonstration of nutrient neutrality prior to commencement, with consideration afforded to the availability of local mitigation schemes 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 and to reach definitive conclusions before granting any planning permission.
15. I have also had regard to The Levelling Up and Regeneration Act 2023 (LURA) which contains provisions which mandate decision makers as to how to treat named catchment areas which are not currently in compliance in respect of nutrient pollution, but which will be 'deemed' to be in compliance by 2030. Water Authorities are now required to upgrade their wastewater treatment works (WwTW) by 1 April 2030. Even if this was the only matter of concern, I would have needed Natural England input as to whether upgrades to the WwTW would have been sufficient to pass the AA in this particular instance. However, as the potential for recreational disturbance has also not been addressed, it has not been necessary to go back to the parties to seek further information.
16. In the circumstances, and taking a precautionary approach, I can only conclude that the proposal also has the potential to adversely affect the integrity of the

Broads SAC as a result of nutrient pollution, either alone or in combination with other plans and projects.

17. I conclude, I cannot be certain that the proposal would not have significant adverse effects on the integrity of European designated habitats sites. In the event that it would, I am not in a position to ensure that the effects could be suitably mitigated. Consequently, the proposal would conflict with Policy 3 (Environmental Protection and Enhancement) of the GNLP and Policy EN1 (Biodiversity and Habitats) of the Broadland District Council Development Management DPD (2015) (DMDPD) which seek to protect and enhance the biodiversity of the district and confirm that if it cannot be ascertained that there would be no adverse effects on a European site that planning permission will be refused. It would also conflict with the nature conservation requirements of the National Planning Policy Framework (the Framework) and the Habitats Regulations.

Location

18. Policy GC1 of the DMDPD and the Framework set out a presumption in favour of sustainable development. In this regard, Policy 1 of the GNLP sets out its 'Sustainable Growth Strategy' which confirms that growth is to be distributed in line with the settlement hierarchy to provide good access to services, employment, and infrastructure. The Norwich urban area is placed at the top of the hierarchy followed by 'main towns', then 'key service centres' and at the fourth level of the hierarchy 'village clusters'. The GNLP defines 'village clusters' as a group of villages that share services and facilities, for example a primary school. From the evidence before me and my observations on site, the appeal site is not located within a village or any of the areas identified under the settlement hierarchy.
19. Policy GC2 (Location of new development) of the DMDPD confirms that new development will be accommodated within the settlement limits defined on the policies map. Outside of these limits development which does not result in any significant adverse impact will be permitted where it accords with a specific allocation and/or policy in the development plan.
20. The appellant does not dispute that the site sits outside any defined settlement limits and is therefore in the countryside for planning purposes. However, my attention has been drawn to another appeal within the district at Horsford³ where the Inspector in that case observed that the Framework is less restrictive in its approach to development in the countryside than Policy GC2 as it sets out that housing should be located where it will enhance or maintain the vitality of rural communities and that planning policies should identify opportunities for villages to grow and thrive.
21. Whilst I agree that Policy GC2 is not wholly consistent with the Framework, those specified provisions of the Framework were more applicable to the Horsford appeal where the Inspector noted the good level of services and facilities there and that occupiers of that proposal would have pedestrian access into the village. By contrast, the appeal site on Shorthorn Road is not located close to any village extents or local facilities. Therefore, in this particular case the appeal site does not have attributes which align with the sustainable objectives of the Framework.

³ Appeal Ref APP/K2610/W/20/ 3255135

22. Moreover, the Framework endorses a plan-led system. There is nothing to suggest that settlement hierarchies and settlement limits are no longer an appropriate approach to defining the most suitable locations for development. Therefore, I find no reason why the development plan, including the primary aim in Policy GC2 to direct new development within the settlement limits, is not appropriate given the general thrust of the Framework to achieve sustainable development, including by actively managing patterns of growth.
23. I accept that the site is not physically isolated given its location next to other residential properties. However, the nearest settlements, and more particularly services and facilities, are not within close walking distance. Shorthorn Road is a well-trafficked through road without any footway or street lighting connecting the site to the nearest settlements. From what I have seen, there are no bus stops close by and only a limited bus service operates along Shorthorn Road. These factors do not indicate that the proposal would provide good access to services, employment, and infrastructure in line with the growth strategy under Policy 1 of the GNLP.
24. Therefore, it is likely that occupiers of the proposed dwelling would have a heavy reliance on the private motor vehicle to travel to areas with a range of services and facilities to meet their day-to-day needs. While I acknowledge that the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, in this instance the site's poor accessibility credentials further indicate that the site is not a sustainable location for new residential development.
25. The appellant suggests that Policy 7.5 of the GNLP is reflective of a more balanced approach to housing outside of defined settlement boundaries. However, the policy is clear that this relates to development of up to three homes for self and custom build housing. It does not advocate that a proposal for 6 market houses, located away from any village extents and local services and facilities would promote sustainable patterns of growth having regard to the overall requirements of the development plan and the Framework.
26. I acknowledge that the extant planning permissions already allow for two dwellings to be erected at the site and that there is a realistic prospect of these permissions being fully implemented. Even accounting for this fallback position, two dwellings and their occupiers would be less harmful than the greater number of dwellings and occupiers proposed in terms of the extent to which this would undermine the Council's growth strategy and the Framework's objective to achieve sustainable development.
27. I conclude, the appeal site is not a suitable location for the proposed development having regard to the requirements of the development plan and national policy. In particular, it would conflict with the growth strategy for the area defined in Policy 1 of the GNLP as well as the sustainability and locational requirements of Policies GC1 and GC2 of the DMDPD. For the same reasons, it would also be contrary to the sustainability objectives in the Framework.

Character and appearance

28. The evidence before me indicates that the site is located within the 'Woodland Heath Mosaic Landscape Character Type Area B1 – Horsford' (LCT) as identified in The Broadland District Council Landscape Character Assessment Supplementary Planning Document (2013) (SPD). The key characteristics of

this LCT include that views are generally strongly contained by dense blocks of woodland. This is consistent with my own observations of Shorthorn Road which is predominantly flanked by grass verges, mature planting including areas of woodland, and fields.

29. Another key characteristic of the LCT is that there is a general absence of settlements, other than sporadic 20th century settlements that line straight roads, which cut across the landscape. There are pockets of development along Shorthorn Road and the site is flanked by the rear boundaries of residential properties on Bracken Close to one side. To the other side of the site, the access at 'Wilderness' serves several dwellings which have a prevailing wooded setting. Also close by are 'Woodland Park Industrial Estate' and 'Johnson's Caravans', both of which extend significantly back from the roadside with woodland providing them with a degree of enclosure from other developments on Shorthorn Road.
30. Therefore, the site and its immediate surrounds reflect the scattered development pattern identified within the LCT. Given its width, considerable depth and open character, together with the woodland beyond, the site positively contributes to this character and reflects the overriding rurality of Shorthorn Road.
31. The indicative layout suggests that the dwellings would likely be laid out around a central access road. While matters of design, scale and layout have been reserved, the parameters of the plot and access requirements indicate that the proposal would likely be laid out in a similar way. Given the largely open views through the site frontage, the proposal would undoubtedly alter the character and appearance of the site to a more developed residential nature. Together with the dwellings at Bracken Close and the timber fencing which lines the road as one approaches 'The Wilderness', the proposal would form part of a more consolidated pattern of development which would erode the rurality of this section of Shorthorn Road.
32. Notwithstanding the above, the indicative drawings suggest that two of the proposed dwellings would be similarly positioned to the extant permissions for 2 bungalows at the site. To that extent there would be comparable effects on the roadside, particularly if the design of the dwellings at the reserved matters stage were of a similar scale to the extant permissions.
33. However, the extant permissions would have more of a ribbon form as is more commonly found in rural locations, with their rear gardens and the trees beyond the rear boundary displaying a more natural character beyond. In contrast, the proposals would extend development further into the site which as indicated would likely necessitate a more substantial access drive than the extant development. This together with the additional dwellings, parking areas and any other curtilage structures including boundary treatments, would likely exhibit a more overtly urban character. The greater depth of built form into the site would also be very discernible to those familiar to the area including users of the adjacent Public Right of Way (Stratton Strawless FP1). Therefore, the proposal would have a more harmful effect on the intrinsic character of the countryside than the fallback position.
34. I conclude, the proposal would have a harmful effect on the character and appearance of the area. In that regard, it would conflict with the character and appearance requirements, including to enhance local character taking account

of local guidance such as landscape character assessments, in Policies 2 (Sustainable Communities) and 3 (Environmental Protection and Enhancement) of the GNLP and Policies GC4 (Design) and EN2 (Landscape) of the DMDPD.

Planning Balance and Conclusion

35. Paragraph 76 of the Framework confirms that local planning authorities are not required to identify a five-year supply of deliverable sites if the adopted plan is less than five years old and identifies at least a five-year supply. However, having regard to footnote 79 of the Framework, this does not apply to the appeal proposal as the application was made before publication of the provisions at Paragraph 76. Therefore, notwithstanding the Inspector's report relating to the GNLP confirming a 5.77 year supply of deliverable housing land, and given that for 'nutrient neutrality reasons' there remains a degree of uncertainty about the progress of a number of permitted and allocated development sites, I have applied the worst-case scenario that the Council cannot demonstrate a five-year supply of deliverable housing land. In the circumstances, paragraph 11d of the Framework is engaged.
36. In the context of the Government's objective to significantly boost the delivery of housing, 6 dwellings would make a modest but important contribution towards the provision of housing in the district. I also attach positive weight to the potential for some limited social and economic benefits through the construction of the dwellings and factoring in that their future occupation would provide poor accessibility to services and facilities.
37. However, the proposal has the potential to have a significant adverse effect on the integrity of European designated habitats sites and, in the event that it would, I am not in a position to ensure that this would be suitably mitigated. Applying the policies of the Framework that protect areas or assets of particular importance, this provides a clear reason for refusing the development proposed.
38. Furthermore, there would be harm through the provision of dwellings in a location which does not accord with the growth strategy for the district. I have also found that the development would have a harmful effect on the character and appearance of the area. The harms in both of these respects conflict with the development plan and the harm identified would be more significant than the effects of the fallback position on the site. These factors further indicate that the proposal is unacceptable.
39. Therefore, the appeal is dismissed.

M Russell

INSPECTOR