



Appeal Decision

Site visit made on 3 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/L2630/W/23/3324744

Fairacre, Rode Lane, Carleton Rode, Norfolk NR16 1NW

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr Tim Davidge – Davidge Developments against the decision of South Norfolk District Council.
 - The application Ref is 2022/2388.
 - The development proposed is described as '3 family dwellings for existing family to relocate to on a garden plot including moving their existing businesses'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 respect of the Framework.
3. More recently, the Greater Norwich Local Plan (GNLP) was adopted in March 2024. This supersedes the Joint Core Strategy for Broadland, Norwich and South Norfolk (adopted 2011 and amended in 2014) the policies of which are referred to in the Council's decision notice. The main parties have been provided with an opportunity to comment on this matter and I have considered the appeal against the up-to-date development plan including the policies of the GNLP.

Main Issues

4. The main issues are:
 - (i) the effect of the proposal on European designated habitats sites; and
 - (ii) whether the appeal site is a suitable location for the development having regard to the development plan and national policy.

Reasons

European designated habitats sites

5. The evidence before me indicates that the site is located within the Zones of Influences (ZoIs) of The Broads, Valley Fens and East Coast European designated habitats sites which are adversely affected by recreational disturbance. Furthermore, Natural England (NE) have confirmed that the site lies within the catchment of European designated habitats sites which are in an unfavourable condition due to excessive nutrients, namely the Broads Special Area of Conservation (SAC)/Broadland RAMSAR sites.
6. 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.
7. 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 reach definitive conclusions on whether the proposal would likely have significant effects in terms of recreational disturbance and/or nutrient impacts. The Council's decision also refers to the River Wensum SAC, although this is not specifically mentioned within NE's comments on the proposal. Without more detailed information, I am unable to reach complete, precise and definitive findings. Therefore, and noting the need to take a precautionary approach, I cannot fulfil my statutory duty under the Habitats Regulations.
8. Notwithstanding the above, occupiers of the proposed dwellings would have the potential to add to adverse effects on the identified designated sites resulting from recreational disturbance. In this regard, NE confirmed during the application process that confirmation is required that a financial contribution of £185.93 per dwelling has been secured towards the Norfolk Green Infrastructure Impact Avoidance Mitigation Strategy (GIRAMS), to mitigate for increased recreational disturbance. As confirmed in the Council's committee report this would need to be addressed through a Unilateral Undertaking (UU).
9. However, while the appellant has indicated that they would make the financial contribution towards GIRAMS, I am not aware this has been addressed and secured through a legal agreement. There is no alternative mechanism by which I could secure payment of the contribution with precision and certainty. In the circumstances, even if I could complete an AA, it is likely that I could only conclude that recreational impacts on European designated sites would not be mitigated.
10. The proposal for three dwellings also has the potential to lead to an increase in nutrients reaching the Broads SAC/Broadland RAMSAR sites due to the implications of foul and surface water drainage systems. The appellant has indicated that all foul water from each dwelling would be treated in individual treatment plants. Furthermore, in response to the Council's concerns relating to the Package Treatment Plan and soil drainage type applied within the appellant's 'Nutrient Budget Calculations', the appellant suggests that the soil

drainage parameters are insignificant as the treatment plants would discharge to a water feature in a ditch and drained through a seasonal soakaway. They suggest that this would far exceed the requirements of the Norfolk Environmental Credit scheme.

11. However, the 'Graf Wastewater Treatment Solutions 2023' brochure detail and the performance results provided in respect of the 'Small wastewater treatment system one2clean' are general and a detailed design of the indicated reedbed filtration system has not been provided. Without a detailed site-specific drainage scheme showing how such mitigation would be implemented, maintained, managed and monitored for the lifetime of the development I cannot be certain as to the reliability of the proposed measures in the long term. Such requirements were also made clear by NE during the application process.
12. In the alternative, the Council has confirmed that if the appellant wanted to pursue credits through the Norfolk Environmental Credits as their mitigation method, this would need securing prior to any planning permission being granted. However, I am not aware that any such credits have been secured. Allowing the appeal prior to such mitigation being secured would be in direct contravention with the requirements of the Habitats Regulations for me as the competent authority to undertake the AA and to reach definitive findings before granting any planning permission.
13. 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.
14. Even if this was the only matter of concern, I would have needed NE input as to whether the suggested drainage proposals and/or upgrades to the WwTW would have been sufficient to pass the AA in this particular instance. However, given my concerns in respect of recreational disturbance and that I am also dismissing for other reasons, it has not been necessary to explore this matter any further.
15. Therefore, taking a precautionary approach, I can only conclude that the proposal also has the potential to adversely affect the integrity of the Broads SAC/Broadland RAMSAR sites as a result of nutrient pollution, either alone or in combination with other plans and projects.
16. I conclude, the proposal has the potential to have a significantly adverse effect on the integrity of European designated sites and, in the event that it would, I am not in a position to ensure this would be suitably mitigated. In the circumstances, the proposal conflicts with Policy 3 (Environmental Protection and Enhancement) of the GNLP and Policies DM1.4 (Environmental quality and local distinctiveness) and DM4.4 of the South Norfolk Local Plan Development Management Policies Document (2015) (DMPD) which amongst other things seek to protect and enhance natural environmental resources 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.

17. For the same reasons, the proposal would also conflict with the nature conservation requirements of the Framework and the Habitats Regulations.

Location

18. Policy 1 (The Sustainable Growth Strategy) of the GNLP 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. There is no dispute that the appeal site is not located within an identified settlement boundary. It is therefore in the countryside for decision making purposes. Policy DM 1.3 (The sustainable location of new development) of the DMPD confirms that permission for development in the countryside will only be granted where specific development management policies allow for development outside of development boundaries or there are overriding economic, social and environmental benefits.
20. In this regard Policy 7.5 of the GNLP allows for development outside development boundaries and states that 'Small-scale residential development of up to 3 dwellings for self-build and custom build homes for people who meet the eligibility criteria for Part 1 of the relevant district's self-build register will be permitted' including 'On sites within or adjacent to other settlements without a defined settlement boundary'. This policy is reflective of the Framework which recognises the need to provide housing for different groups including for people wishing to commission or build their own homes.
21. However, no evidence is before me to demonstrate that the 'existing family' referred to in the description of the proposal, meet the eligibility criteria for Part 1 of South Norfolk District Council's self-build register. Therefore, I cannot be certain that the proposal would meet this key criteria of Policy 7.5. Furthermore, no legal agreement is before me by which to secure the precise terms of any dwellings for self-build purposes to ensure that they would meet the provisions within the Self-Build and Custom Housebuilding Act 2015 (as amended). These factors significantly undermine any potential for the proposal to deliver self-build housing.
22. In addition, the Council has confirmed that it is meeting its obligations in respect of the provision of self and custom build housing and there is no contrary evidence before me to suggest otherwise. This further indicates that the proposal would not meet demand on the self and custom build housing register.
23. I understand that members of the appellant's family have established 'drum teacher' and 'beauty therapy' businesses which operate at 'Fairacre'. The appellant suggests that the proposals would support their tight-knit family bonds and that the proposed dwellings have been designed around these business uses. However, there is no detailed evidence to suggest that the businesses could not continue to function without the development. Moreover, a personal desire for the family to give general support to each other and to

continue to live and work on the site does not indicate that there are extenuating personal circumstances in this instance. Therefore, there does not appear to be overriding economic, social and environmental benefits to justify dwellings in the countryside which do not accord with the growth strategy for the area.

24. Furthermore, the growth strategy at Policy 1 of the GNLP seeks to provide good access to services, employment and infrastructure and Policy 2 (Sustainable Communities of the GNLP seeks to ensure safe and convenient access for all. However, the evidence before me suggests that the nearest settlements offer only a very limited level of services and facilities and that they are not conveniently located to the appeal site. This is particularly the case given that there are no footpaths or street lighting linking the appeal site to those settlements or the nearest bus stops. It is therefore likely that occupiers of the proposed dwellings would have a heavy reliance on the private motor vehicle.
25. If the new dwellings are occupied by those already residing and working at 'Fairacre', there is the possibility that traffic movements would be similar to the existing situation. However, a condition requiring only specified family members to reside within the proposed dwellings would not be reasonable or enforceable. Without a mechanism to control the future occupation the existing and proposed dwellings they could be occupied by independent families in the longer term on a site which has poor accessibility credentials.
26. I conclude, the appeal site is not a suitable location for the proposal having regard to the development plan and national policy. More specifically, it would conflict with the growth strategy for the area as well as the convenient access and sustainability requirements in Policies 1 and 2 of the GNLP and Policies DM 1.1 (Ensuring Development Management Contributes to Achieving Sustainable Development in South Norfolk), DM 1.3 (The sustainable location of new development) and DM 3.10 (Promotion of Sustainable Transport) of the DMPD. For the same reasons, it would also be contrary to the Framework which endorses sustainable development and a plan-led system.

Other Matters

27. The Council's planning committee protocols are not a matter within my jurisdiction for an appeal made under s78 of the Act. A council is also not bound by any officer advice that a proposal may or may not be supported. In any case, the officer comment referenced in the appellant's statement of case includes that nutrient neutrality matters required resolution. My own assessment has found this is yet to be satisfactorily resolved. Accordingly, I have assessed the appeal on its merits against the development plan and the Framework.
28. With regards to there being other dwellings of similar scale on Rode Lane, the Council did not refuse the proposal on design grounds. I find no reason to conclude differently on that particular matter. Similarly, the resolution of other planning requirements including for example highway matters, ecology matters outside the scope of an AA and the protection of neighbouring living conditions are usually expected development management requirements and not benefits of the proposal. In terms of the development granted planning permission at 'White House Farm'¹, the Council has confirmed that related to a householder

¹ LPA Ref 2021/1805

application for a domestic outbuilding. It is therefore not comparable to the proposal for three dwellings.

29. The provision of gypsy and traveller sites is a separate requirement for the Council to address through the development plan. It is not the same as the specific locational and sustainability requirements of the development plan and the Framework relating to the provision of housing.
30. There is some third-party support for the proposal including anecdotal evidence that young people have difficulty in purchasing housing and staying in the area. Whether or not that be the case, the provision of housing including that for young people should accord with the sustainable patterns of growth promoted by the development plan and the Framework.

Planning Balance and Conclusion

31. 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 identified 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. Even though the Inspector's report relating to the GNLP confirmed a 5.77 year supply of deliverable housing land, when the application was determined 'nutrient neutrality' issues meant that the Council had less than five-years of deliverable housing sites. No substantive evidence has been provided to indicate that, when regard is had to the 'nutrient neutrality' situation, there is now absolute certainty that the Council can demonstrate a five-year supply.
32. Therefore, I will apply a worst-case scenario that the Council does not currently have a five-year supply of deliverable housing sites. In the circumstances, paragraph 11d of the Framework is engaged.
33. In the context of the Government's objective to significantly boost the delivery of housing, 3 dwellings would make a modest but important contribution towards the provision and mix of housing in the area. There would also be some limited social and economic benefits both through the construction of the dwellings, and in terms of the potential for the 'existing family' to continue to live and work at the site.
34. 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.
35. Furthermore, there would be harm through the provision of dwellings in a location which does not accord with the growth strategy for the district and this further indicates that the proposal is unacceptable.
36. Therefore, the appeal is dismissed.

M Russell

INSPECTOR