



Appeal Decision

Site visit made on 14 May 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2024

Appeal Ref: APP/F2605/W/24/3337242

Land east of Draytonhall Lane, Dereham, Norfolk NR19 2PY

- 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 TILCo. against the decision of Breckland Council.
 - The application Ref is 3PL/2022/1220/O.
 - The development proposed is outline planning application for erection of a care home (Use Class C2) with all matters reserved apart from access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal, the Council undertook a single policy partial update of the Breckland Local Plan 2019. Whilst there has been no change to the policies relevant to the determination of this appeal, in my decision I have referred to the policies of the Breckland Local Plan 2023 (LP).

Main Issue

3. The main issues in this appeal are:
 - The effects of the proposed development on the integrity of European sites, with particular regard to nutrient pollution and recreational pressure; and
 - whether the proposed development would be in a suitable location, having regard to the local development strategy.

Reasons

Integrity of European Sites

Nutrient Neutrality

4. The site is within the catchment of the River Wensum Special Area of Conservation (SAC), The Broads SAC, and The Broads Ramsar. Such European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (Habitat Regulations).
5. The qualifying features of the River Wensum SAC are: rivers with floating vegetation often dominated by water-crowfoot; Desmoulin's whorl snail; white-clawed (or Atlantic stream) crayfish; brook lamprey; and bullhead.
6. The qualifying features of the Broads SAC are hard oligo-mesotrophic waters with benthic veg of chara spp.; natural eutrophic lakes with magnopotamion or

hydrocharition; molinia meadows on calcareous, peat or clay-silt soil; transition mires and quaking bogs; calcareous fens with *c. mariscus* and species of *c. davallianae*; alkaline fens; alluvial woods with *a. glutinosa*, *f. excelsior*; Desmoulins's whorl snail, *vertigo moulinsiana*; otter; fen orchid; and little ramshorn whirlpool snail.

7. The qualifying features of the Broadland Ramsar are Bewick's swan, floodplain alder woodland, floodplain fen, gadwall, shoveler, wigeon, and wetland invertebrate and wetland plant assemblage.
8. The conservation objectives for the River Wensum SAC and The Broads SAC are to ensure that the integrity of the sites is maintained or restored as appropriate and contributes to achieving the favourable conservation status of their qualifying features.
9. Natural England advises that all types of overnight accommodation within the Council's area can cause excessive levels of nutrients resulting in eutrophication at European sites in an unfavourable conservation status, including the aforementioned European sites.
10. The appeal site is presently undeveloped. The proposed development would provide a 60-bed care home and would therefore provide additional overnight accommodation with an associated increase in population within the catchment.
11. The Shadow Habitats Regulation Assessment (SHRA) includes a nutrient budget assessment based on the Norfolk Nutrient Budget Calculator v1.1, which was prepared on behalf of Natural England and tailored to local conditions. The output of the nutrient budget calculation shows the annual nutrient burden of the proposed development, and therefore the amount of nutrient mitigation in kilograms per year that would be required to achieve nutrient neutrality. However, Natural England has advised the SHRA did not follow Natural England's Nutrient Neutrality Methodology and did not include sufficient relevant calculations. Schedule 2 of the Unilateral Undertaking (UU) requires submission of an updated Nutrient Neutrality Assessment prior to commencement of the proposed development.
12. The SHRA calculation of the proposed development's nutrient budget indicates the proposed development would increase discharge of phosphorus and nitrogen. Based on the SHRA and advice from Natural England, I consider the proposed development would raise nutrient levels and would therefore have likely significant effects on the integrity of the River Wensum SAC and The Broads SAC/Ramsar, alone or in combination with other similar development.
13. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect the integrity of European sites. In identifying potential mitigation measures to remove additional nutrient input, the SHRA rules out on-site treatment of wastewater due to insufficient space, and off-setting through converting land to woodland or wetland due to lack of land ownership.
14. The SHRA identifies a potential opportunity to provide financial contributions toward strategic mitigation and monitoring, noting the need to ensure adequate technical certainty through partnership with stakeholders so that mitigation can be secured and become functional prior to occupation, and

advises the benefits of mitigation be quantified to demonstrate nutrient neutrality through an updated budget calculation.

15. Natural England's Nutrient Neutrality Principles Technical Information Note TIN186 provides information on the level of certainty required for mitigation measures to be considered effective when assessed as part of a Habitats Regulation Assessment (HRA). Natural England's advice is that any nutrient neutrality measures relied on in an HRA should have scientific certainty that the measures at the time of the HRA will deliver the required reduction to make the plan or project 'neutral'; have practical certainty that the measures will be implemented and in place at the relevant time when the HRA is undertaken, e.g. secured and funded for the lifetime of the development's effects; and are carefully justified together with calculations of the change in the nutrient contribution before and after the development taking account of any mitigation on land outside the development.
16. Prior to occupation, the UU requires the appellant provide evidence of purchase of nutrient neutrality credits through the Norfolk Environmental Credits joint venture scheme, or such other broker as approved by the Council. I note the Council had previously been optimistic regarding the use of planning obligations to secure purchase of credits via the Norfolk Environmental Credits scheme. However, it is my understanding that Norfolk Environmental Credits currently offers no operational credit scheme or mitigation measures within the relevant catchment, and I have been provided no evidence that such measures would be available prior to occupation of the development. Consequently, the proposed development would not achieve nutrient neutrality through purchase of Norfolk Environmental Credits.
17. The appellant is in discussion with a private scheme for habitat creation, nature restoration and regenerative farming in the local area, as a potential alternative broker of Nutrient Neutrality credits to fund off-site mitigation of the full nutrient burden of the development. Correspondence from the private broker indicates two projects have been developed for the purpose of nutrient credit generation. However, whilst the broker asserts it is working closely with Natural England and local authorities, I have no evidence to confirm the projects have or will be approved by the relevant statutory bodies.
18. I have been provided no evidence of the purchase of credits from the alternative broker and have no evidence that such credits will be available prior to occupation of the development. Even if credits were available for purchase, it is unclear if mitigation would be implemented prior to occupation. Furthermore, the amount of nutrient credit mitigation that would be available is not quantified. Therefore, even if credits were available, it is unclear if mitigation would be secured for the lifetime of the development.
19. As set out above, no operational mitigation scheme is available at present and there is insufficient practical certainty that the mitigation would be in place at the relevant time and secured for the lifetime of the development. In addition, the proposal fails to provide scientific certainty that the proposed mitigation measures would deliver the required reduction in nutrient levels to make the proposed development nutrient neutral. The proposal does not comply with Natural England's nutrient neutrality advice and fails to demonstrate the proposed development will not have significant effects on the integrity of European sites.

20. The appellant refers to appeal decisions relating to an outline scheme for 133 dwellings at land at Lower Broadbridge Farm, A281, Broadbridge Heath, West Sussex¹ and an outline proposal for 135 dwellings at Rectory Farm, Kings Langley, Hertfordshire². Both schemes are similar to the appeal proposal in so far as the mitigation of the development's effects on European sites used Grampian conditions to restrict development and planning obligations requiring the purchase of credits from off-site mitigation schemes which were not in operation at the time of the decision.
21. However, the impact pathway of the development on European sites in the Lower Broadbridge Farm case relates to water abstraction, and in the Rectory Farm case effects were identified in respect of recreational pressure. Therefore, the impact pathways differ materially from the appeal proposal and Natural England's advice on nutrient neutrality is of limited relevance.
22. In the Rectory Farm case, planning obligations require the appellant secure Suitable Alternative Natural Greenspace (SANG) through an emerging private scheme mitigation within 12 months. However, were this to fail, the obligation requires the appellant make a financial contribution toward an operational Council-led strategic SANG mitigation scheme. Therefore, there was practical certainty that mitigation measures would be implemented. As discussed above, this certainty does not exist in the case of the appeal proposal.
23. The Lower Broadbridge Farm case confirms that a staged approach to the consideration of individual projects which ensures at each stage that the protected site is not subject to a detrimental impact, would be compliant with the Habitat Regulations. The appellant advocates a staged approach and proposes use of a negatively worded Grampian condition to prevent development until submission of an updated Nutrient Neutrality Assessment and confirmation of purchase of Nutrient Neutrality Credits.
24. Following the comments received by Natural England, in relation to this appeal, the appellant has submitted further evidence in relation to the proposed mitigation. Whilst this has not been subject to further consultation with Natural England and this evidence has been submitted beyond the timescales of the appeal process, it sets out that the proposed mitigation scheme still remains to be signed off by a number of bodies, including the Council. Therefore it does not lead me to come to any different conclusion, having regard to the precautionary principle in such matters.
25. The Habitat Regulations require application of a precautionary principle. The appeal proposal fails to provide adequate information at this outline stage to demonstrate with practical and scientific certainty there would be no likely significant effects on European sites, even if further assessment were deferred to a future stage. In this circumstance, there is insufficient certainty that the development could be made acceptable through use of conditions or planning obligations.

Recreational pressure

26. The appeal site is located within the zone of influence (ZOI) of The Wash Special Protection Area (SPA); The Wash and North Norfolk Coast SAC; The Wash Ramsar; North Norfolk Coast SAC; North Norfolk Coast SPA; North

¹ APP/Z3825/W/23/3321658

² APP/A1910/W/23/3333545

Norfolk Coast Ramsar; Norfolk Valley Fens SAC; Winterton-Horsey Dunes SAC; Great Yarmouth North Denes SPA; Broadland SPA; Broadland Ramsar; Breydon Water SPA; and The Broads SAC.

27. The qualifying features of The Wash SPA are bar-tailed godwit, Bewick's swan, black-tailed godwit, common scoter, common tern, curlew, dark-bellied brent goose, dunlin, gadwall, goldeneye, grey plover, knot, little tern, oystercatcher, pink-footed goose, pintail, redshank, sanderling, shelduck, turnstone, wigeon, and waterbird assemblage.
28. The qualifying features of The Wash and North Norfolk Coast SAC are: sandbanks which are slightly covered by sea water all the time; mudflats and sandflats not covered by seawater at low tide; coastal lagoons; large shallow inlets and bays; reefs; salicornia and other annuals colonising mud and sand; Atlantic salt meadows; mediterranean and thermo-Atlantic halophilous scrubs; otter; and harbour (common) seal.
29. The qualifying features of The Wash Ramsar are bar-tailed godwit, curlew, dark-bellied brent goose, dunlin, estuary, grey plover, harbour (common) seal, knot, oystercatcher, pink-footed goose, pintail, redshank, sanderling, shelduck, turnstone, and waterbird and wetland invertebrate assemblage.
30. The qualifying features of the North Norfolk Coast SAC are: coastal lagoons; perennial vegetation of stony banks; mediterranean and thermo-atlantic halophilous scrubs; embryonic shifting dunes; shifting dunes along the shoreline with *ammophila arenaria* ('white dunes'); fixed dunes with herbaceous vegetation ('grey dunes'); humid dune slacks; otter; and petalwort.
31. The qualifying features of the North Norfolk Coast SPA are avocet, bittern, common tern, dark-bellied brent goose, knot, little tern, marsh harrier, Montagu's harrier, pink-footed goose, sandwich tern, wigeon, and waterbird assemblage.
32. The qualifying features of the North Norfolk Coast Ramsar are dark-bellied brent goose, knot, pink-footed goose, wigeon, marshland coastal habitats, and waterbird and wetland plant assemblage.
33. The qualifying features of the Norfolk Valley Fens SAC are: wet heathland with cross-leaved heath; European dry heaths; dry grasslands and scrublands on chalk or limestone; purple moor-grass meadows; calcium-rich fen dominated by great fen sedge; calcium-rich springwater-fed fens; alder woodland on floodplains; narrow-mouthed whorl snail; and Desmoulin's whorl snail.
34. The qualifying features of the Winterton-Horsey Dunes SAC are: embryonic shifting dunes; shifting dunes along the shoreline with *Ammophila arenaria* ('White dunes'); Atlantic decalcified fixed dunes (*Calluno-Ulicetea*); and humid dune slacks. The qualifying feature of the Great Yarmouth North Denes SPA is populations of little tern.
35. The qualifying features of the Broadland SPA are Bewick's swan, bittern, gadwall, hen harrier, marsh harrier, ruff, shoveler, whooper swan, and wigeon.
36. The conservation objectives for The Wash and North Norfolk Coast SAC, North Norfolk Coast SAC, Norfolk Valley Fens SAC, Winterton-Horsey Dunes SAC, and The Broads SAC, are to ensure the integrity of the sites are maintained or

restored as appropriate and ensures that the sites contribute to achieving the favourable conservation status of their qualifying features.

37. The conservation objectives for The Wash SPA, North Norfolk Coast SPA, Great Yarmouth North Denes SPA, Broadland SPA, and Breydon Water SPA are to ensure that the integrity of the sites are maintained or restored and ensure that the sites contribute to achieving the aims of the Wild Birds Directive.
38. The Norfolk Green Infrastructure Recreation Avoidance Mitigation Strategy (GIRAMS) identifies that population increase associated with residential development within the ZOI of those European sites is likely to have significant effects on the integrity of sites through recreation impacts. The GIRAMS provides examples of harms to habitats from recreation including, trampling of vegetation, disturbance of bird populations, and eutrophication from dog-fouling, fire, and soil disturbance.
39. The proposed development is described as a 'care home'. The GIRAMS identifies that care homes in the ZOI would have the potential to give rise to recreational pressure to European sites. Were the proposed development occupied as a 'nursing home', it would not be of a development type expected to increase recreational pressure by the GIRAMS.
40. Therefore, the proposed care home development would provide additional overnight accommodation with the potential to increase recreational pressure on those European sites. The proposal would have likely significant effects on European sites, alone or in combination with other similar development.
41. Whilst I have found the UU to be flawed, at schedule 3 it secures a financial contribution toward the GIRAMS. The GIRAMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures and have been endorsed by NE, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on relevant designated habitats.
42. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that as a responsible public body it would transfer funds to the organisation responsible for administering the mitigation strategy and that the contribution would be used for its intended purpose. I therefore consider that appropriate mitigation is capable of being secured and the financial contribution would be necessary to make the development acceptable in planning terms.

Integrity of European Sites - Conclusion

43. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of European sites. I have found the recreation impacts of the development could be suitably mitigated through a planning obligation to secure a financial contribution to the Council's GIRAMS scheme.
44. However, as set out above, the proposal fails to comply with Natural England's nutrient neutrality advice and the proposed mitigation does not provide sufficient practical and scientific certainty that the development would be nutrient neutral at the relevant time and for the duration of the development.

No other solutions have been put to me and I have found none myself. Therefore, the proposal fails to demonstrate the development would not have likely significant effects on the integrity of the River Wensum SAC and The Broads SAC and Ramsar.

45. In reaching this conclusion, I have afforded significant weight to the advice provided by Natural England who were consulted during the appeal and advised the proposed mitigation measures do not provide sufficient certainty to conclude no adverse impact on the integrity of European sites.
46. I must also consider whether there are any imperative reasons of overriding public interest. The proposal would provide a 60-bed care home which would meet the housing needs of older residents or persons in need of care. Paragraph 60 of the National Planning Policy Framework (the Framework) supports the objective to significantly boost the supply of homes and requires that the needs of groups with specific housing requirements are addressed. As discussed below, there is a significant unmet need for accommodation of this type within the Council's area. However, such public benefit would not amount to imperative reasons of overriding public interest and thus would not justify the identified harm to the integrity of European sites.
47. Therefore, the proposed development fails to demonstrate there would not be unjustified harm to the integrity of European sites. Having regard to the Habitat Regulations, permission must not be granted.
48. The proposal would conflict with paragraph 185 of the Framework which requires the protection and enhancement of biodiversity through safeguarding internationally designated sites.

Whether in a suitable location

49. The site is an overgrown area with a mix of young and mature trees enclosing its boundaries. The majority of the site lies outside the settlement boundary for Dereham defined by LP Policy GEN05, where development is restricted to recognise the intrinsic character and beauty of the countryside.
50. The site is on the eastern side of Draytonhall Lane and its northern boundary abuts a modern housing estate with a suburban character. The site adjoins the built area of the town of Dereham.
51. To the west of the site are arable fields. Draytonhall Lane therefore defines the settlement edge providing distinct separation between the built area and the open countryside. The site is separated from open countryside to the south by the A47 trunk road. Whilst open grassland and meadows lie beyond a watercourse to the east of the site, this large area of undeveloped land is contained by Dereham's built area and the trunk road and is therefore isolated from the wider open countryside landscape.
52. Policy GEN05 indicates development outside settlement boundaries will only be acceptable where it is compliant with all relevant policies set out in the development plan. LP Policy HOU09 seeks to meet the needs of an ageing population including through supporting developments that provide housing solutions for older residents or anyone in need of care or health or support and applies to a broad spectrum of specialist housing including care homes.

53. Notably, Policy HOU09 supports proposals which provide additional C2 bed spaces to meet needs identified by the Central Norfolk Strategic Housing Market Assessment (CNSHMA). The CNSHMA identifies a need for 1,277 additional C2 bed spaces for older people within the district over the plan period. Taking account of the number of C2 bed spaces granted planning permission since the LP's adoption, there remains a shortfall of approximately 1,107 bed spaces, which the delegated report describes as a critical need for bed spaces. In addition, Norfolk County Council, which has statutory duties for social care, indicates there is a need to replace existing old and inadequate care home stock. Through the delivery of a 60-bed care home, the proposed development would make a substantial contribution toward this unmet need.
54. Criterion (b) of Policy HOU09 requires specialist housing be located within a higher order settlement for the purpose of providing residents with good accessibility to services and facilities. The policy does not explicitly require specialist housing be within a settlement boundary which, as set out above, exists for the separate purpose of conserving the intrinsic character and beauty of the countryside.
55. The settlement hierarchy at LP Policy GEN03 defines Dereham as a market town within the second tier of the hierarchy, below only the Key Settlements of Attleborough and Thetford. Therefore, for the purposes of Policy HOU09, I consider Dereham to be a higher order settlement.
56. As part of the construction of the new access, it is proposed that the existing 30mph speed limit be extended to the south of the site. The carriageway is illuminated by streetlights and has a pedestrian footway. The site would therefore be served by infrastructure suitable for pedestrians and cyclists. Dereham's town centre offers a variety of facilities and services. However, the town centre is relatively distant, at around a 25-minute walk from the site.
57. The Care Home statement suggests future residents would be very frail and may need help with walking, be no-ambulatory, or experience health issues that impair mobility. The accommodation would comprise bedrooms accessed from internal hallways, with staff facilities, and communal dayrooms and gardens. The Council suggest it is very likely that the indicative proposals represent a real interpretation of any care home that could feasibly come forward on the site. Therefore, the proposed building would not support independent living, and as indicated by the Care Home statement, future residents would have limited mobility and independence and would not be able to access local services and facilities other than in organised group trips, irrespective of the walking distance from the town centre.
58. The Transport Statement (TS) indicates the site is not anticipated to generate many resident trips, other than escorted trips to medical appointments via minibus. Furthermore, the facilities offered on-site, including communal lounges and dayrooms, a family dining area, a kitchen to provide daily meals, and secure, landscaped gardens, would minimise the need for residents to travel. Consequently, the residents would not be disadvantaged by the proximity of the site to the town centre.
59. Most trips to and from the site would be from staff and visitors. The TS indicates a 2km walking distance would encompass much of the built area of Dereham. A 5km cycling radius would include the whole of Dereham's built area and the nearby village of Toftwood. Therefore, the site would be within

walking and cycling distance of staff or visitors living in the local area. In addition, within walking distance are bus stops served by regional bus services to major centres including Peterborough, Wisbech, Kings Lynn, and Norwich. Therefore, the site would be accessible via walking, cycling and public transport, and staff and visitors would not be reliant on private motor vehicles. I am therefore satisfied the site is located within a higher order settlement with an adequate standard of accessibility.

60. Criterion (c) of Policy HOU09 requires the design and scale of schemes be appropriate to the setting and surroundings with no adverse impact on local character and amenity. The site is situated at the edge of the settlement but experiences a high degree of containment by prominent road infrastructure which distinguishes the site from the surrounding countryside. The site's character is that of undeveloped land within the town. In its assessment, the Council notes the site is not of high landscape value, and the proposed development would continue the existing built form along Drayton Hall Lane and would not appear discordant with the settlement form of Dereham.
61. In addition, the site layout provides acceptable levels of outdoor amenity space and circulation space, and would include landscaping and planting schemes, and therefore I am satisfied the building would not appear cramped and a suitable design and layout can be achieved. The Environmental Health officer suggests external lighting could be controlled through a condition to ensure the character of the area would not be adversely affected by artificial light.
62. Therefore, whilst the proposal would introduce built form to an undeveloped site, it would not result in encroachment into the countryside and would have no significant adverse effect on local character.
63. The proposed development would be located in a higher order settlement and would achieve a suitable standard of accessibility. The development would not adversely impact local character and amenity. Furthermore, the proposal would contribute to the unmet for C2 bed spaces in the area. The proposal would therefore comply with LP Policy HOU09. Having regard to the local development strategy, the proposed development would be in a suitable location.

Other Matters

64. Concerns were raised by local residents regarding the effects of traffic associated with the development, and highway safety at the junction of Draytonhall Lane and the A47. The TS predicts the development would generate less than the minimum threshold where the traffic impact could be considered significant during any one hour, and the TS concludes the proposed development would not have a significant negative impact on the capacity of the local highway network. National Highways has completed an upgrade scheme to the A47 junction which has been successful in reducing incidents. No objection was raised by National Highways or the local highway authority. Therefore, the evidence before me does not suggest the proposed development would harm highway safety or result in unacceptable traffic volumes.
65. The proposed development would be close to the A47 trunk road but would be separated by a wide highway verge with dense vegetation including mature trees, which serves to screen the site from traffic. The Council's Environmental Health officer raised no objection to the proposal, subject to the imposition of a planning conditions requiring submission of a noise impact assessment. Some

respondents raised concerns for the safety of vulnerable residents due to the proximity to the trunk road. As discussed above future residents would be expected to be supervised through frequent care, and their safety is a matter for the management of the facility.

66. Some respondents queried the parking provision and delivery space. Car and cycle parking provision would satisfy local parking standards and the indicative site layout allows service, delivery, and emergency vehicles to enter and exit the site in a forward gear. The TS includes a swept path analysis to demonstrate a minibus could manoeuvre into the allocated space. Therefore, I am satisfied the layout and provision of parking would be suitable.
67. Concerns were raised regarding the impact of the development on local infrastructure including health. The provision of health services is a matter for health authorities.
68. A flood risk assessment and drainage strategy has been submitted by the appellant, and the lead local flood authority raised no objection to the proposal subject to the imposition of planning conditions relating to drainage. Therefore, the proposed development is not expected to increase flood risk.
69. Some residents raised concerns the proposal would result in a loss of ecology. The Biodiversity Net Gain Design Stage Report advises that a net gain in biodiversity can be achieved through off-site habitat creation.

Conclusion

70. I have found that the proposed development would be in a suitable location and its siting would not conflict with the local development strategy. Furthermore, the proposed development would contribute to the unmet need for specialist housing.
71. However, the proposal fails to demonstrate that it will not affect the integrity of European sites, and therefore the Habitats Regulations indicate planning permission must not be granted. This conflict with the Habitats Regulations carries significant weight against the proposal.
72. Therefore, having regard to the development plan taken as a whole, and all other relevant material considerations, I conclude the appeal should be dismissed.

E Dade

INSPECTOR