

Appeal Decision

Site visit made on 11 September 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal Ref: APP/K2610/W/24/3338694

Land off Oakhill, Brundall, Norfolk NR13 5AQ

Easting (x) 632622 Northing (y) 308322

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Dass of Clere House Developments against the decision of Broadland District Council.
 - The application reference is 2023/0369.
 - The development proposed is the erection of 4 No. new dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Only the Easting and Northing co-ordinates and the postcode of the appeal site were used for the address on the planning application form. For clarity I have included the descriptive location also used on the application form. The appeal site is variously described as 'Land at Oakhill' and 'Land off Oakhill' in other documents submitted by both main parties. However, I am satisfied that that the description of the appeal site in the banner above accurately reflects the location of the proposed development.
3. The Greater Norwich Local Plan (GNLP) was adopted by the Council in March 2024. This supersedes the Joint Core Strategy for Broadland, Norwich and South Norfolk 2014 (JCS). Through final comments the appellant was given the opportunity to comment on the policy changes in relation to the appeal. I am therefore satisfied that no party has been prejudiced in the determination of the appeal in this respect.

Main Issues

4. The main issues are the effect of the development on:
 - The integrity of the Broads Special Area of Conservation (SAC) and other European protected sites;
 - Trees; and
 - The character and appearance of the site and its surroundings.

Reasons

Integrity of European Sites

5. The appeal site is located within the catchment of The Broads Special Area of Conservation (SAC) and Broadlands Ramsar site which are in an unfavourable condition due to excessive nutrients. It is also within the Zones of Influence (ZoI) of one or more habitats sites adversely affected by recreational disturbance.
6. Policy 3 of the GNLP requires that residential development that results in an increase in overnight stays within the catchments of the SAC must provide evidence that the proposal will not adversely affect its integrity. In that regard, the proposed development for 4 dwellings would provide 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.
7. GNLP Policy 3 also 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 of mitigation measures at the protected sites. The Council has a Green Infrastructure Recreational Avoidance Mitigation Strategy (GIRAMS) which sets out a Recreational Avoidance Mitigation (RAM) tariff which should allow a conclusion through an Appropriate Assessment (AA) under The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) that a development will not have any adverse impact on the integrity of the habitats sites as a result of increased recreational usage.
8. However, I have not been provided with enough information, including details of the qualifying features of the designated sites and their conservation objectives, to determine whether the proposal would likely have significant effects on the SAC in terms of nutrient impacts or on the ZoIs of European designated sites with regards to recreational disturbance. As a result, I am unable to reach complete, precise and definitive findings, and noting the need to take a precautionary approach, I therefore cannot fulfil my statutory duty under the Habitats Regulations.
9. The requirement for a tariff payment under the Council's Green Infrastructure Recreational Avoidance Mitigation Strategy (GIRAMS) is set out in the Council's Officer Report. A draft unilateral Undertaking is before me in relation to this. It is however undated. *The Procedural Guide – Planning appeals – England* sets out the expectations for appellants for the submission of planning obligations during the appeal process and is conveyed in correspondence at the start of the appeal process. Therefore, as it is not properly executed, I cannot take it into consideration.
10. Moreover, I have no information before me in relation to the effect of the development on nutrient neutrality, including nutrient budget calculations, a bespoke nutrient mitigation strategy with details that will be applied to secure phosphorus and/or nitrogen neutrality or details of a strategic mitigation solution that the scheme will secure mitigation credits from.

11. It has been suggested that a Grampian style condition requiring demonstration of nutrient neutrality prior to commencement, with consideration afforded to the availability of local mitigation schemes could be imposed on a planning permission for the development. However, this 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.
12. 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 as a result of nutrient pollution, either alone or in combination with other plans and projects.
13. Taking the above into account I cannot therefore 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 Framework and the Habitats Regulations.

Trees

14. The appeal site contains a number of substantial trees some which appear to be covered by a Tree Preservation Order¹. They combine to create a pleasingly verdant, sylvan setting making a positive contribution to the character and appearance to the site and the surrounding area and are likely to make a contribution in supporting biodiversity in the area.
15. An Arboricultural Impact Assessment² (AIA) states that some work proposed may affect the root protection areas (RPAs) of some of the trees, notably T3, T13-15 and T19-20. T3 and T13-15 have been assessed as trees of high quality, T19-20 being trees of moderate quality, all of which are recommended for retention.
16. The AIA contains a simplified Tree Shade Analysis Plan which demonstrates that Plots 03 and 04 would be subject to some overshadowing by T3 and T15. From the information before me, in the case of Plot 04 this would be confined to a car port and external path. Therefore, I am satisfied that the living conditions of future occupiers of Plot 04 would not be adversely affected as a result.
17. The effect on Plot 03 would, however, be more significant, affecting the car port and bedrooms of the dwelling. As a result, it is likely that the habitable rooms within the dwelling would be overshadowed by T3. I am of the view

¹ The Norfolk (Blofield and Flegg Rural District) (Brundall) Tree Preservation Order 1972 No. 7 dated 25 November 1972

² Arboricultural Impact Assessment Oakhill Parker Planning Services dated 8 February 2023

that the bedrooms would be gloomy for their occupiers as a result. Even though they are bedrooms, it is not unreasonable to expect that future occupiers would spend a significant amount of time during the day using these rooms.

18. It is therefore likely that future occupants would, understandably, wish to prune or even remove it to enable natural light to these rooms. This would result in a conflict between providing reasonable living conditions for the future occupants and requirements to retain the protected trees.
19. I acknowledge that the Framework promotes a flexible approach to daylight and sunlight where it would inhibit the efficient use of a site. However, in this case I have concluded that the proposal would not result in acceptable living conditions for future occupiers.
20. Work in the majority of the affected RPAs would be for access roads and parking spaces and would be suitable for a cellular confinement method of construction. Nevertheless, the corner support of the car port of Plot 04 appears to be within the RPA of T15. I have no evidence before me which would suggest that a cellular confinement system would be appropriate in this situation. Given that T15 is a tree of high quality I am not satisfied that it has been adequately demonstrated that development would not place undue pressure on the tree.
21. As such, the proposed development would be unreasonably impacted by the presence of the trees. It would therefore be likely to result in the heavy pruning or loss of them to the detriment of the character and appearance and biodiversity of the area. The proposed development therefore fails to comply with DMDPD Policies GC4, EN1 and EN2 and GNLP Policy 3 which, amongst other things, together seek to ensure that development is of a high quality which is designed to respect, conserve and enhance natural assets and meet the reasonable amenity needs of all potential future occupiers.

Character and Appearance

22. The appeal site is a parcel of land situated in a predominately residential area, bounded by vegetation and fencing on three sides. Development surrounding the appeal site is varied in style and appearance. Access to it would be through a modern housing estate containing numerous substantial trees on grassed areas within the estate.
23. As set out above trees on the site combine to create a pleasingly verdant, sylvan setting and make a positive contribution to the character and appearance to the site and the surrounding area. The proposed development would be set amongst the existing trees and would appear similar in density and layout to the existing dwellings on Oakhill and the streets surrounding it. Therefore, notwithstanding my findings on the main issue above, the spacing between the proposed dwellings would not appear unduly cramped and as a result the proposal would not appear as an overdevelopment of the site.
24. I therefore conclude that the proposal would not adversely harm the character and appearance of the site or the surrounding area in that respect. As such there would be no conflict with DMDPD Policies GC4, EN1 and EN2 and GNLP Policy 3 which, amongst other things, seek to ensure development

pays adequate regard to the character and appearance of an area, reinforcing local distinctiveness through careful consideration of the treatment of space throughout new development.

Other Matters

25. I note that at the application stage the appellant stated that the Council could not demonstrate an adequate five-year housing land supply. This was not challenged in the Council's Officer report and neither party has subsequently explored the matter at the appeal stage. As I have found that the proposal would harm the integrity of European Protected sites and trees, and therefore fails on other grounds, it has not been necessary to address the matter further.

Conclusion

26. As set out above, I have found that the proposal would harm the integrity of The Broads SAC and the Habitats Regulations provide a clear reason for refusing the development. I attach significant weight to this harm.
27. I have also found that the proposal would lead to undue pressure for the removal of trees due to the proximity of development and overshadowing of habitable rooms to which I attribute substantial weight. Although I have found no harm to the character and appearance of the site and the area, the absence of harm on this matter is outweighed by the harm that I have found on the other main issues.
28. Therefore, having had regard to the development plan taken as a whole, and having taken all other matters into consideration, the appeal should be dismissed.

K L Robbie

INSPECTOR