



Appeal Decision

Site visit made on 24 September 2024

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22 October 2024

Appeal Ref: APP/V2635/W/24/3341844

Land East of Furlong Road, Stoke Ferry, King's Lynn, Norfolk PE33 9SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Paul Bishopp, Norton Hill Ltd against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 23/00605/O, dated 11 May 2023, was refused by notice dated 10 January 2024.
 - The development proposed is the construction of 2 no. retail units (and storage) plus associated parking and access and 2 no. flats to be held in association with the retail units.
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Decision

1. The appeal is allowed and permission is granted for the construction of 2 no. retail units (and storage) plus associated parking and access and 2 no. flats to be held in association with the retail units at Land East of Furlong Road, Stoke Ferry, King's Lynn, Norfolk PE33 9SU, in accordance with the terms of the application, Ref 23/00605/O, dated 11 May 2023, subject to the attached schedule of conditions.

Preliminary Matters

2. Originally the application was for the construction of 3 no. bungalows, 5 no. flats and 1 no. retail unit plus associated parking and access. Following comments from the Council's Conservation Officer this was amended to 4 no. dwellings (two pairs of semi-detached cottages on the Furlong Road frontage), 2 no. retail units and 2 no. associated flats. Finally, the frontage cottages were omitted from the scheme and the application was amended to the description set out in the banner heading above.
3. The application is in outline but includes the consideration of access, layout and scale. Appearance and landscape are reserved matters. The appeal has been considered on this basis.

Application for costs

4. An application for costs was made by Mr Paul Bishopp, Norton Hill Ltd against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether there is sufficient justification for the proposal outside the development boundary of the village.

Reasons

6. The proposal is for a two-unit retail development, one 200 sq m in size plus storage and the other 30 sq m, together with two associated flats at first floor level, on an elongated site between Indigo Road and the 2Agriculture Grain Store on the northern side of the village. The Furlong Drove frontage would be retained undeveloped.
7. The appeal site is disused and largely overgrown. It forms part of a larger site granted planning permission in 2011 for 13 social houses, a new village hall with parking and a landscaped area on the Furlong Drove frontage. Whilst the social houses were built (now Indigo Road) the village hall and landscaping were never implemented and following a Council decision not to pursue enforcement action will not now be delivered.
8. Stoke Ferry is classified as a Key Rural Service Centre by Policy CS02 of the Core Strategy 2011 (the CS) where limited growth of an appropriate scale and nature will be supported within the settlement limits. These are defined by the Site Allocations and Development Management Policies Plan 2016 (the SADMPP). Although the appeal site lies immediately outside the settlement limits which include the housing on Indigo Road, it lies between the boundary and the 2Agriculture Grain Store which runs along the northeastern side of the site. This large-scale building not only screens the appeal site from the open countryside but planning permission has been granted for the building to be redeveloped as a housing estate of 30 dwellings which would itself lie outside the settlement limits.
9. With existing or permitted housing on either side and the principle of a building established by the earlier permission there is no arguable basis for resisting development of the site. The conflict with SADMPP Policy DM2, which restricts development outside settlement limits, should therefore be given minimal weight. The Council claim that the proposal would cause harm, but other than the conflict with this policy, none is identified. No harm to the character or appearance of the area is suggested, nor any technical objections such as highway safety, nature conservation or flooding. The boundary of the Stoke Ferry Conservation Area (CA) runs along Furlong Road to the west but the retail/flat building would be set well back into the site, potentially in due course behind frontage development. The character and appearance of the CA would therefore be preserved.
10. The proposal is for two retail units with ancillary flats for staff accommodation. Policy SF1 of the Stoke Ferry Neighbourhood Plan 2023 (the NP) supports new community facilities in principle and the NP specifically identifies the site for visual enhancement and renewal, stating that it is a large, underused area in a prominent location which would benefit from a sensitive redevelopment¹. In addition, CS Policy CS10 allows employment generating uses on rural exception sites adjacent to a settlement.
11. The proposed location for the retail units is perhaps unusual, fronting onto a side residential road rather than a main village street with greater visibility. The scheme appears to be speculative, although the appellant states in their final comments that there is market interest from OneStop, part of Tesco. In any event, there is no requirement for an end user to be known at this stage.

¹ NP Page 50

Should the scheme not go ahead, a fresh application for a new use would be necessary and would be judged on its individual merits.

12. For these reasons, in the absence of any identified harm, the proposal for a community facility outside the defined development boundary of the village is sufficiently justified and can be allowed to go ahead. The proposal is contrary to SADMP Policy DM2 but is supported by CS Policy CS10 and the NP as set out above. There is no significant conflict with CS Policy CS06 or NP Policy SF9 which relate to employment development in the countryside and the village settlement boundary respectively. In any event the physical setting and planning history of the site and its surroundings constitute significant material considerations that outweigh any conflict with the development plan.
13. The Council propose several conditions should the appeal be allowed and these have been assessed against the relevant tests, making changes as necessary for precision and clarity and to remove duplication. The appellant does not dispute any of these conditions.
14. In addition to the standard time limits for submission of reserved matters and commencement, a condition is necessary to define the approved plans in the interests of certainty. Further conditions are necessary to require the approval and implementation of roads, footways, drainage, parking and turning facilities to ensure a satisfactory development and the provision of visibility splays in the interests of highway safety. Electric vehicle charging facilities are necessary to promote sustainable travel. Conditions to control external lighting and ensure the flats/nearby dwellings are protected from excessive noise from the retail units/nearby commercial use are necessary to secure satisfactory living conditions for the occupiers. A construction management scheme is necessary to protect the amenity of nearby residents during building works.
15. Further conditions are necessary to control foul and surface water drainage to prevent flooding and pollution, to remediate any contamination to prevent pollution and ill health, to control waste management arrangements to prevent nuisance and to protect existing trees on the site in the interests of visual amenity. Finally, conditions are necessary to control the use of the retail units and to limit occupation of the flats to ensure the implications of any changes to the scheme are assessed through further planning applications.

Conclusion

16. As explained above there is no reason to withhold permission. The appeal should therefore be allowed.

David Reed

INSPECTOR

Schedule of Conditions

- 1) Approval of the details of the appearance and landscaping of the scheme (hereinafter called the reserved matters) shall be obtained from the local planning authority before any development is commenced.

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- 2) Plans and particulars of the reserved matters shall be submitted to and approved in writing by the local planning authority and shall be carried out as approved.
- 3) Application for the approval of reserved matters shall be made to the local planning authority before the expiration of three years from the date of this decision.
- 4) The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the latest such matter to be approved.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans as far as access, layout and scale only are concerned:
230953/10/100I Proposed Block Plan and Location Plan 29 Nov 2023
230953/10/103C Proposed Site Plan showing Vehicle Tracking and Visibility Splay 5 Oct 2023 in relation to vehicle tracking only
230953/10/102A Proposed Floor Plans and Elevations of Flats and Retail Units 25 July 2023 in relation to scale only
- 6) No works shall commence on the site until such time as detailed plans of the roads, footways, foul and surface water drainage, private accesses have been submitted to and approved in writing by the local planning authority. All construction works shall be carried out in accordance with the approved plans.
- 7) Prior to the first occupation or use of the first retail unit all works shall be carried out on roads, footways and surface water sewers in accordance with the approved specification to the satisfaction of the local planning authority.
- 8) Prior to first occupation of the development hereby permitted a 2.4 metre wide parallel visibility splay (as measured back from the near edge of the adjacent highway carriageway) shall be provided across the whole of the site's roadside frontage on Indigo Rd. The splay(s) shall thereafter be maintained at all times free from any obstruction exceeding 1.05 metres above the level of the adjacent highway carriageway.
- 9) Prior to the first occupation of the development hereby permitted the proposed access/on-site parking/servicing/loading/unloading/turning area shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plans and retained thereafter for that specific use.
- 10) Prior to the first occupation of the development hereby permitted an electric vehicle charging scheme shall be implemented in accordance with details to be submitted to and approved in writing by the local planning authority.
- 11) Prior to the commencement of development a Noise Impact Assessment shall be submitted to and approved in writing by the local planning authority. The assessment shall consider all noise impacts arising from the existing commercial use to the northeast of the site and include the necessary mitigation methods to address the impacts on the residents of the flats. The scheme shall be implemented as approved and retained at all times thereafter.

- 12) No development above slab level shall take place until a scheme to protect the neighbouring residential dwellings and the flats from noise has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before the development is first brought into use. The noise protection scheme shall include details of the hours of opening, hours of delivery, door openings and any ventilation, cooling or extraction equipment required.
- 13) Prior to the commencement of development a detailed construction management scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include proposed timescales and hours of construction, deliveries/collections and any piling. The scheme shall also provide the location of any fixed machinery, their sound power levels, the location and layout of the contractor compound, the location of contractor parking, the location and layout of the materials storage area, machinery storage area and waste & recycling storage area, proposed attenuation and mitigation methods to protect residents from noise, dust and litter, details of the storage of fuels, fluids and lubricants, and a communication plan to advise nearby residents and the wider community regarding the construction phase and any likely disruption. The scheme shall then be implemented as approved.
- 14) No development shall commence until full details of the foul and surface water drainage arrangements for the site including percolation test results have been submitted to and approved in writing by the local planning authority. The drainage details shall then be constructed as approved before any part of the development hereby permitted is brought into use.
- 15) Prior to the first occupation or use of the development hereby permitted a waste management plan shall be submitted to and approved in writing by the local planning authority. The waste management plan shall include arrangements for the storage and removal of all types of commercial waste. The development shall then be implemented and operated in accordance with the approved waste management plan at all times.
- 16) Prior to the first occupation or use of the development hereby permitted a lighting scheme for the site shall be submitted to and approved in writing by the local planning authority. This scheme shall include all forms of external lighting proposed and also detail any light spill from the retail units. The development shall then be implemented in accordance with the approved scheme.
- 17) The buildings hereby permitted shall be used for the purposes of Class E(a) only (ie excluding Class E(b)-(g) inclusive) as defined within the Town and Country Planning (Use Classes) (Amendment) Order 2020, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, and shall not be used for any other purpose, including any use permitted under Schedule 2 Part 3 'Changes of Use' of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any Order revoking and re-enacting that Order with or without modification.
- 18) No development or other operations shall commence on site until the existing Oak trees to be retained have been protected in accordance with a scheme (Section 5.5 of BS 5837:2012, the Tree Protection Plan) to be

submitted to and approved in writing by the local planning authority. The scheme shall include:

- a) a site layout plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and root protection area (Section 4.6 of BS5837:2012) of every retained tree on site superimposed on the layout plan. The positions of all trees to be removed shall be indicated on this plan.
- b) a schedule of tree works for all the retained trees specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All tree works shall be carried out in accordance with BS3998:2010 Recommendations for Tree Work.
- c) the details and positions of the tree protection barriers (Section 6.2 of BS5837:2012) to form a construction exclusion zone and the type and extent of ground protection (Section 6.2.3 of BS5837:2012) or any other physical tree protection measures such as tree boxes. These details are to be identified separately where required for different phases of construction work (eg construction, hard landscaping). Barrier and ground protection offsets must be dimensioned from the existing fixed points on the site to enable accurate setting out. The position of barriers and any ground protection should be shown as a polygon representing the actual alignment of the protection. The tree protection barriers must be erected prior to each construction phase commencing and remain in place and undamaged for the duration of that phase. No work shall take place on the next phase until the tree protection barriers are repositioned for that phase.
- d) a detailed construction specification/method statement for the design and installation of a no-dig access driveway and hard surfacing within the root protection area of the Oak tree T1. The ground shall not be lowered within the root protection areas of any protected trees.
- e) the details and positions of the underground service runs (Section 7.7 of BS5837:2012), the details of the working methods to be employed with regard to site logistics including the proposed access and delivery of materials to the site, space for storing materials spoil and fuel and the mixing of cement, contractor car parking, site huts, temporary latrines (including their drainage) and any other temporary structures.

- 19) Prior to the commencement of groundworks an investigation and risk assessment (in addition to any assessment provided with the planning application) shall be completed to assess the nature and extent of any contamination on the site. The investigation and risk assessment must be undertaken by competent persons and the report submitted to and approved in writing by the local planning authority. The report shall include (i) a survey of the extent, scale and nature of contamination (ii) an assessment of the potential risks to human health, existing or proposed property including buildings, crops, livestock, pets, woodland, service lines and pipes, adjoining land, groundwater and surface waters, ecological systems, archaeological sites and ancient monuments (iii) an appraisal of remedial options and the preferred option(s). The assessment shall be conducted in accordance with the Environment Agency's Land Contamination Risk Management.
- 20) The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of groundworks, other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority shall be given two

weeks written notification of commencement of the remediation scheme. Following completion of the measures identified in the approved remediation scheme a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.

- 21) In the event that contamination is found when carrying out the development that was not previously identified it shall be immediately reported in writing to the local planning authority and work on site shall cease. An investigation and risk assessment shall then be undertaken in accordance with the requirements of condition 19 for submission to and approval in writing by the local planning authority and implementation prior to work recommencing on site. Following completion of the measures identified in the approved remediation scheme a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.
- 22) The two residential flats hereby permitted shall be held and occupied in connection with the retail units at all times and shall at no time be used as independent units of residential accommodation. Furthermore the residential flats hereby permitted shall at no time be used as business or commercial premises.