



Appeal Decision

Site visit made on 17 December 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2025

Appeal Ref: APP/V2635/W/24/3344096

Land adjacent to Skye Gardens, Feltwell IP26 4EY

- 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 J Simmons (Dunroamin Developments Ltd) against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 23/00895/F.
 - The development proposed is erection of four houses and garages.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 12 December 2024, a revised version of the National Planning Policy Framework (the Framework) was published. On the same day the Government also published the 2023 Housing Delivery Test (HDT) results. The Council and the appellant have been given the opportunity to comment on these publications. In making my decision I have had regard to the revised Framework, the HDT results and any comments in respect to them submitted by the appeal parties. I return to these matters later in my decision.
3. The Local Plan Review is an emerging development plan document. The evidence before me indicates to me that the examination hearing sessions in respect of the Emerging Plan have concluded with consultation having taken place on proposed main modifications. Although the Emerging Plan is at a relatively advanced stage its content could still be subject to change. Furthermore, neither of the appeal parties have drawn to my attention any policies within the Emerging Plan of particular relevance to the proposal, and I have no substantive reasons to disagree. In such circumstances, in this particular case, the Emerging Plan is a matter of limited weight in my decision.
4. A screening direction was issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulations 14(1) and 7(5) of the EIA Regulations, the Secretary of State directed that the development is not EIA development.

Background and Main Issues

5. The Council's decision notice includes 3 reasons for refusal. The matters which those reasons for refusal concern form the basis for most of my main issues. Evidence before me also indicates to me that the proposal may result in effects upon the integrity of Habitats Sites. Having regard to The Conservation of Habitats

and Species Regulations 2017 (the Habitats Regulations), should there be a credible risk that the conservation objectives of any Habitats Sites would be undermined by a development, I must, as the competent authority, undertake a Habitats Regulations Assessment (HRA). Furthermore, the effect of a development upon the integrity of Habitats Sites has implications upon the application of the presumption in favour of sustainable development contained within the Framework. Consequently, the effect of the proposal upon the integrity of Habitats Sites is also a matter of considerable importance.

6. For these reasons the main issues are:

- Whether the appeal site provides a suitable location for the development proposed having particular regard to the development plan's spatial strategy and policies on housing within rural areas;
- Whether appropriate living conditions would be provided for the occupiers of neighbouring properties on Skye Gardens and for the future occupiers of the proposed development;
- Whether the proposed development should make a contribution towards the provision of affordable housing and, if so, whether appropriate arrangements have been made; and
- The effects of the proposed development upon the integrity of Habitats Sites.

Reasons

Location

7. The appeal site is located on the fringes of Feltwell, but it is outside of the settlement's development boundary. Feltwell is located within a rural area.
8. Policy CS01 of the King's Lynn and West Norfolk Borough Council Local Development Framework Core Strategy (CS) establishes a spatial strategy and Policy CS02 a settlement hierarchy. Together these policies direct that most development should take place within settlements, especially the larger ones with the most services, and they seek to protect the countryside. Feltwell with Huckwold cum Wilton is identified as a Key Rural Service Centre and therefore within the fourth tier of the settlement hierarchy.
9. Within rural areas CS Policies CS02 and CS06 collectively set out that the focus of most new development, and the provision of new homes, will be within or adjacent to Key Rural Service Centres, as defined by the Site Allocations and Development Management Policies Plan (SADMPP). The appeal site is not allocated for housing development under the provisions of the SADMPP. Given this, and given the site is also outside of Feltwell's development boundary and thereby in the countryside, Policy DM2 of the SADMPP restricts development to that which is for specific purposes, identified as being suitable in rural areas by other policies within the development plan. These specific developments include the likes of rural exception affordable housing developments and housing for rural workers.
10. However, the appeal scheme does not comprise of such development and, in proposing the erection of 4 houses outside of Feltwell's development boundary, it

would constitute a form of development that would be contrary to the planned distribution of development advocated by the development plan. The proposal therefore conflicts with Policies CS01, CS02 and CS06 of the CS together with DM2 of the SADMPP.

11. In coming to these views, I acknowledge that the site's location on Feltwell's fringes means that it is not isolated within the countryside. Consequently, the proposed dwellings would not be isolated homes of the type which paragraph 84 of the Framework relates. Furthermore, with buildings so closely beside it on several sides, the appeal site does not strongly exhibit the character or appearance of the countryside and, consequently, a harmful erosion of such character would not result.
12. Despite this, and for the reasons I have set out, the proposal would nevertheless conflict with the pattern of housing growth advocated by the development plan. Such a spatial strategy, and the utilising of settlement boundaries, is not inconsistent with the Framework. The proposition of housing at the appeal site, in a location which is contrary to the approach to housing growth and distribution set out within the development plan is, by itself, harmful.
13. Therefore, the appeal site does not provide a suitable location for the development having regard to the development plan's spatial strategy.
14. Finally, within its first reason for refusal, the Council cite conflict with Policy CS08 of the CS and DM1 of the SADMPP. Policy CS08 is principally concerned with matters of detailed design, the environmental impact of development, including its energy efficiency credentials, and development density. Policy DM1 relates to the presumption in favour of sustainable development contained within the Framework. As such, neither policy is very relevant to my first main issue, and I find no conflict with them. I return to the presumption in favour of sustainable development later in my decision.

Living conditions

15. The appeal site is located adjacent to a number of existing residential properties and the plots served by them. This includes the recently developed estate at Skye Gardens.
16. The rear elevations and the back gardens of Nos 5 and 7 Skye Gardens (Nos 5 and 7) back onto the appeal site. Neither of these back gardens are very deep and, consequently, adjacent land within the appeal site is positioned quite close to each of these houses. As the appeal site is mainly undeveloped, containing grassland and other plantings, the backs of Nos 5 and 7 will feel private, and they benefit from an outlook over open land on this side.
17. To the rear of No 7 the proposed Plot 3 dwelling would be erected. Although there would be a driveway between it and No 7's garden it would, nevertheless, be positioned close-by to both this garden and the windows within the rear elevation of No 7. The elevation which would flank No 7 would be a predominately brickwork two storey gable end which would reach a height of almost 8 metres. At such proximity and, running along almost the full width of No 7's plot, the Plot 3 flanking elevation would form a harmfully imposing feature, and it would significantly infringe upon the outlook available to the occupiers of No 7.

18. Plot 3's proposed detached garage would be positioned very near to the rear garden boundary of No 5. The proposed garage would run alongside a considerable proportion of this neighbouring garden and, with a total height of 3.7 metres, its roof would project well above the existing boundary fence. No 5's back garden already has garage/outbuildings which enclose it on its northern and southern sides. Upon completion of the proposed development, Plot 3's garage would create a further strong sense of enclosure on the eastern side of No 5's garden. I find that this would result in No 5's garden being unacceptably encompassed by buildings. This would adversely infringe upon the degree to which the occupiers of No 5 would enjoy their garden.
19. The main gardens of both Plot 1 and Plot 3 would be on the northern side of the dwellings they would serve. Consequently, each dwelling would be likely to cast shadows over much of these gardens and for considerable durations. The proximity of other buildings, such as the existing Skye Gardens properties and the proposed garage to serve Plot 3, would also likely result in overshadowing of the Plot 1 and Plot 3 back gardens. I have no substantive evidence before me which demonstrates to me that the effects of such overshadowing would not be significant. I find that this aspect of the development amounts to poor design, and it would result in the provision of highly compromised private amenity spaces for some of the development's future occupiers.
20. The proposed development would be served by two independent accesses from Skye Gardens. Plots 1 and 2 would be served by the more northern access and Plots 3 and 4 by the southernmost access. As only 2 additional dwellings would be served by each access point, the number of additional vehicular movements along each of them would be quite low. Consequently, any noise or disturbances arising from the vehicle movements, would only be infrequently experienced by the occupiers of the existing Skye Gardens properties. For this reason, I find that the effects of passing vehicles would not cause unduly harmful effects upon the occupiers of Skye Gardens.
21. In addition, in some instances, the relationships between the proposed properties and neighbouring properties would be acceptable owing to factors such as window placement and the orientation of main elevations relative to one another.
22. Despite this, I have identified that the proposed development would result in a harmful infringement upon the outlook of the occupiers of 5 and 7 Skye Gardens. The layout and design of the proposed development would also fail to provide high quality private amenity spaces for the prospective occupiers of Plots 1 and 3. For these reasons, and as a whole, the proposal would fail to provide appropriate living conditions for some neighbouring occupiers within Skye Gardens and for some of the future occupiers of the development. As a result, the proposed development conflicts with Policy DM15 of the SADMPP which, in summary, and amongst other matters, sets out that development will be assessed against its impacts upon existing and future occupiers and that development that would result in significant adverse impacts upon amenity, or which would be of poor design, should be refused.

Affordable housing

23. Policy CS09 of the CS partly concerns the provision of affordable housing. It sets out that the Council will seek to maximise the delivery of affordable housing to

respond to identified housing needs. It further sets out that in rural areas affordable housing will be sought on sites of 0.165 hectares or more or that propose 5 or more dwellings.

24. However, and in addition, Policy DM8 of the SADMPP sets out that Policy CS09's requirement for residential developments to contribute toward affordable housing provision also applies where the proposed development forms a part of a larger site. Policy DM8 is clear that the purpose of such an approach is to ensure that affordable housing provision is not avoided or reduced through the submission of separate, smaller scale planning applications on sites which should be considered as a whole.
25. The Council has set out its view that, in respect of affordable housing, the appeal site is linked to the adjacent Skye Gardens residential development and that this proposal for 4 dwellings should be considered in conjunction with it not separately in isolation. I have no firm grounds on which to disagree with the Council's position. Indeed, I have no substantive submissions from the appellant which indicate to me that they dispute the need for the proposed development to contribute towards affordable housing provision.
26. Although the appellant has indicated their willingness to enter into a Section 106 legal agreement for the purposes of securing affordable housing, no such agreement is before me. In its absence, there is no means to secure the proposal's contribution toward the delivery of affordable housing. Furthermore, no alternative mechanism to secure the affordable housing is before me either.
27. As a result, I find that the proposal is required to contribute toward the provision of affordable housing and the proposal provides no appropriate arrangements to secure its delivery. The proposal therefore conflicts with CS Policy CS09 and SADMPP Policy DM8.

Habitats Sites

28. The coasts, heaths, fens and estuaries of Norfolk are internationally recognised wildlife assets and include Habitats Sites which are afforded protection under the Habitats Regulations. Various bird species are qualifying species of these Habitats Sites, and the Habitats Sites contain sensitive habitats important to sustaining them.
29. In summary, the first stage of the HRA requires a determination as to whether likely significant effects upon the qualifying features of the Habitats Sites can be ruled out. This is undertaken on a precautionary principle basis, applying an assumption that an effect would be significant, even where this is unclear, unless there is objective evidence to the contrary. If likely significant effects cannot be ruled out then the next stage of the HRA must be undertaken: an Appropriate Assessment (AA). Under the AA, the implications of the proposal upon the integrity of the Habitats Sites must be established having regard to any measures which could be put in place to avoid or mitigate impacts. The AA is used to determine whether an adverse effect on integrity can be ruled out beyond all reasonable scientific doubt. In order to avoid an adverse effect on the integrity of a Habitat Site, the favourable conservation status of the site's qualifying features must either be maintained or not further degraded or impeded from achieving a favourable conservation status.

30. If, under the AA, adverse effects cannot be mitigated then planning permission should only be granted when no alternative solutions exist and when the carrying out of the proposal is for imperative reasons of overriding public interest.
31. Evidence before me indicates to me that the appeal site is within the zone of influence of Habitats Sites. Recreational activities undertaken by residents and visitors in the area can cause adverse effects upon bird populations. Such effects can include causing displacement and avoidance of habitat suitable to support them.
32. The proposed development would deliver 4 additional dwellings and would contribute to the recreational activities and consequential effects. This contribution would be limited by itself, however, in combination with other development in the area, there is a clear risk that it would lead to significant effects by contributing to the overall level of recreational activity which takes place within Habitats Sites. Such activities would impede upon the favourable conservation status of the qualifying features of Habitats Sites being achieved and adversely affect the integrity of the sites.
33. I have no substantive evidence before me which demonstrates to me that these significant effects would not take place within Habitats Sites. Applying the precautionary principle, I cannot therefore rule out likely significant effects upon the qualifying features of Habitats Sites. As a result, I must carry out an AA.
34. I have no substantive evidence before me of any particular recreational disturbance mitigation or avoidance measures which the proposed development would deliver or contribute towards. An option would be a financial contribution towards a package of established disturbance mitigation or avoidance measures already devised in the area. However, no mechanism is before me to secure any financial contribution towards such established measures such as via a Section 106 legal agreement. Furthermore, no alternative means of mitigation or avoidance measures are before me either.
35. Therefore, and in the absence of any form of adequate mitigation, I have no sound basis on which to conclude that the proposal's contribution towards recreational activities would not result in adverse effects upon the integrity of one or more Habitats Sites.
36. Some evidence before me indicates that in specific regard to the Breckland Special Protection Area, and the particular qualifying species of the stone curlew, likely significant effects would not result from the proposed development. Even if this was the case, this does not mean that the proposal's aforementioned contribution towards recreational activities would not result in effects upon other Habitats Sites and their qualifying features.

Other Matters

37. At the time that it made its decision, the Council asserted that it could demonstrate in excess of 5 years' worth of deliverable housing supply. In their Statement of Case, the appellant did not dispute this nor was it submitted that paragraph 11(d) of the Framework in force at that time applied to the case. Since that time the revised December 2024 version of the Framework is now in force, and the 2023 HDT results have been published.

38. The Council has not provided an up-to-date 5 year housing land supply position. The appellant has also not provided their view on the current housing supply other than asserting that the Council can no longer demonstrate 5 years' worth of it. Although the latest published HDT results indicate that the delivery of housing was substantially below the housing requirement over the previous three years (at 60%) the Council has submitted to me plausible evidence that the published HDT results are incorrect and that the delivery position is actually a far healthier 88%.
39. The proposal would make a contribution to housing supply, and it would increase the choice of housing in the area. The proposed dwellings would be delivered within a reasonably accessible location and provide support for the services and facilities within the Key Rural Service Centre nearby. As a quite small development, it is likely that it could be delivered quickly too. These factors are clear benefits of the proposal. I return to them in my planning balance below.
40. The appellant submits that the proposal would achieve a biodiversity gain. However, the evidence before me does not compellingly indicate to me that this would be the case. The prospect of the proposal achieving a biodiversity gain is, therefore, a matter to which I attribute only very limited weight.

Planning Balance

41. In my first three main issues I have identified harmful effects and conflict with development plan policies. In my fourth main issue, I have been unable to conclude that the proposal would not result in adverse effects upon the integrity of Habitats Sites. Importantly, because of my conclusions in respect of Habitats Sites, and having regard to paragraph 195 of the Framework, even in the scenarios that the Council cannot demonstrate 5 years' worth supply of deliverable housing sites, or its housing delivery has fallen substantially below the housing requirement, the presumption in favour of sustainable development set out within paragraph 11 of the Framework does not apply in this case.
42. Irrespective, the contribution to housing supply and choice in the area, coupled with the proposal's support for local services would collectively be benefits of the proposal. That said, with only 4 dwellings proposed, the contribution that would be made to housing supply overall would be quite modest as would the economic and social support to local services. These benefits constitute a material consideration in favour of the proposal. The potential but unsubstantiated biodiversity gain is a further factor which weighs in favour of the proposal but only very slightly.
43. However, the harm that would arise from the development being at odds with the development plan's approach to housing growth and distribution, from its failure to deliver required affordable housing and from its failure to provide appropriate living conditions for existing and prospective occupiers means that the proposal conflicts with several development plan policies. Overall, it conflicts with the development plan taken as a whole.
44. Moreover, that I cannot rule out adverse effects upon the integrity of Habitats Sites weighs very heavily against the proposal as, in such circumstances, planning permission should only be granted when no alternative solutions exist and when the carrying out of the proposal is for imperative reasons of overriding public interest. The collective weight of the proposal's benefits is not such that it amounts to imperative reasons of overriding public interest.

Conclusion

45. The proposal conflicts with the development plan as a whole and my conclusion in respect of Habitats Sites weighs very heavily against the proposal. In the light of this, there are no material considerations of sufficient weight to indicate that planning permission should be granted. Therefore, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR