



Appeal Decision

Site visit made on 28 January 2025

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/V2635/W/24/3350161

40 Small Lode, Upwell PE14 9BE

- 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 Mr R Starr against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 23/01626/O.
 - The development proposed was described as 'planning permission for residential development. The application is submitted in outline with only matters of access committed'.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr R Starr against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal was lodged against the non-determination of an application. However, the Council issued a decision notice prior to the appeal being valid. The appeal has therefore been dealt with as an appeal against the refusal of planning permission rather than against non-determination.
4. The appellant submitted an outline application to the Council with only access to be considered. Under Part 3 Section 5(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015, the Council notified the appellant that it was unable to determine the application without scale, appearance, layout and landscaping details being submitted. The appellant submitted the full details requested by the Council and did not appeal this notification. Despite the wording provided on the Council's decision notice, referring to the 'refusal of outline planning permission', it has been confirmed that the application was considered by the Council as a full application. Consequently, I must also consider the application as a full application, rather than an outline application with some matters reserved.
5. The Government published a revised version of the National Planning Policy Framework (the Framework) in December 2024. The main parties have had the opportunity to comment on the effect of the updated Framework on the appeal, including in relation to housing land supply matters, and I have had regard to any comments received in my decision.

Main Issues

6. The main issues are the effect of the proposal on:
- the character and appearance of the area including the Upwell Conservation Area (CA);
 - the risk of surface water flooding in the local area; and
 - the living conditions of existing occupants of the adjacent dwelling 40 Small Lode, in terms of outlook, daylight and sunlight.

Reasons

7. The appeal site comprises an area of land laid to grass and a gravelled driveway that is located adjacent to 40 Small Lode, a modern detached two storey dwelling that is set back from the road. A close boarded fence runs along the boundary with Small Lode and a substantial hedgerow separates the appeal site from existing residential development to the east. To the front of No 40, directly adjacent Small Lode, is a traditional range of agricultural brick buildings. On the opposite side of the road are a row of four detached two storey dwellings that are set behind front gardens and driveways. To the east is a small cul-de-sac of single storey terraced dwellings, with those fronting onto Small Lode set behind front gardens. Directly behind part of the appeal site are what appear to be two adjoining agricultural buildings constructed of concrete blocks and corrugated sheeting.
8. Other than the traditional agricultural buildings that front onto the road in front of No 40, development in the area around the appeal site has a spacious feel, with dwellings being set back from the road. The presence of the traditional agricultural buildings along with the variation in the layout of built form contributes positively to the character and appearance of the area.
9. The appeal site is located within the CA. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Paragraph 212 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The special interest of the CA, for the purposes of this appeal, is derived from the rural landscape setting, the character and pattern of built form and the relationship between built form and the road network and waterways.
10. Under a previous appeal¹, the Inspector considered that due to the characteristics of the site and the presence of boundary treatments and its relationship with surrounding existing built form, the appeal site is currently a neutral feature that does not contribute to the significance of the CA. It was also identified that due to separation and intervening built form and boundary treatments, the principle of development on the appeal site would not be harmful to the buffer situated around the nearby Lode House. Having reviewed the evidence and carried out my site visit, I concur with these views.
11. The proposed layout, with development set back behind other buildings would be characteristic of this part of the CA. However, whilst the design approach to

¹ APP/V2635/W/22/3299013

emulate a traditional farmyard development would respect the rural setting of the settlement, the overall scale combined with the arrangement of the proposed built form would result in an overly dominant development that would not respond to the local context. The proposal would provide variation in the scale of built form with single storey projections attached to each of the two storey elements. However, the proposed dwellings would appear more domestic in character than converted traditional agricultural buildings and the arrangement of the proposed two storey elements would not reflect the evolution of a traditional farmyard.

12. The various fenestration proposed would not reflect that found in traditional agricultural buildings. I have not been referred to any other examples where a similar form of either traditional or modern barn style development is present within the wider CA that the proposed development would take design cues from. Consequently, the appearance of the proposed scheme combined with the arrangement of built form would fail to reflect the overarching design intention and would be out of keeping with the surrounding area. As a result, it would appear as a contrived development that would be harmful to the character and appearance of the area. For the same reasons it would not preserve or enhance the character or appearance of the CA and consequently would be harmful to it.
13. I note that the appellant has suggested that conditions could be used to require revised details in order to overcome any issues relating to design given that the application was made in outline originally. Nevertheless, as stated above, as the Council has considered the full details submitted by the appellant, I must also. A condition could not therefore be used to require revised details as this could fundamentally change the overall design, which may lead to a significantly different scheme to the one before me now, that would not have been subject to proper consultation.
14. I therefore find that the proposed scheme would result in harm to the character and appearance of the area, and it would not preserve or enhance the character or appearance of the CA. The proposal would therefore be contrary to Policies CS08 and CS12 of the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy Adopted Version July 2011 (CS), Policy DM15 of the Site Allocations and Development Management Policies Plan (SADMPP) and Policy H3 of the Upwell Parish Neighbourhood Plan Adopted Version 2021 (NP). These policies seek, amongst other things, that new development should be of high quality design, protect and enhance the historic environment and respond to local distinctiveness and the context and character of the area.
15. In this case I find that the harm to the CA would be less than substantial. Paragraph 215 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
16. It is agreed by the parties that there is an extant permission for one dwelling within the appeal site, and therefore the net gain from this appeal proposal would be for two additional dwellings, which would contribute to the housing supply within the settlement of Upwell. Economic benefits would result during the construction phase and after with future occupiers supporting local services and facilities. However, given the limited scale of the proposal any public benefit would be modest and would not outweigh the harm that I have identified to the CA.

Surface water drainage

17. The submitted Flood Risk Statement (Ellingham Consulting) identifies that the appeal site is located within Flood Zone 1, an area with a low probability of flooding. It is also stated that it is at very low risk of surface water flooding. I note that surface water flooding was not raised as a reason for refusal by the Council on the previous scheme. Nevertheless, in relation to the appeal before me, significant concerns have been raised by interested parties including the Internal Drainage Board (IDB) about the risk of the proposed development increasing surface water flooding elsewhere.
18. Whilst I note the appellant's contention that it is not for developers of sites removed from the IDB operations to resolve the issues with the wider drainage system, paragraph 181 of the Framework states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.
19. The IDB suggest that recent surface water flooding events in the local area may be due to the combination of a high ground water table and subsequent overland flows. The constraints of the existing drainage system are highlighted by the IDB as well as the required works to upgrade the system in order to accept increased flows and to prevent the surcharging of any on site drainage system. The IDB identify that the ground conditions in the local area are not generally conducive to the use of infiltration devices such as soakaways and that it is unlikely that such a system could be used with no material prejudice to the IDB operations or the local water level management system. There is no convincing evidence before me to the contrary on this matter.
20. Whilst I note that the IDB identify that there is a post application consultation process that the appellant could engage with, I find that there is insufficient information before me at this stage to demonstrate that the proposal would result in a neutral impact on surface water drainage as suggested by the appellant.
21. I am therefore not satisfied, based on the information before me, that the proposed development would not result in increased surface water flooding elsewhere in the local area. Consequently, the proposal would be contrary to Policy DM15 of the SADMPP and Policy EN1 of the NP. These policies seek, amongst other things, that development that would have a significant adverse impact on the amenity of others is refused and that schemes do not increase the risk of flooding on site or elsewhere.

Living conditions

22. The dwelling identified on Plot 3 would be located alongside the existing side elevation of No 40 with limited separation and the proposed built form would project beyond the rear building line of the rear elevation of No 40. The proposed development on Plot 3 would be clearly visible from the external space to the rear of No 40. However, the proposed dwelling would largely sit behind the existing rear projection of No 40, with the main private rear garden space situated to the northwest, further away from the proposal.
23. The single storey element of the proposal would pitch away from the boundary with No 40 and given its limited height, it would not appear overly oppressive to those using the rear garden area of No 40. Given the limited height of the single

storey element which would be located more directly to the south of No 40, I do not consider that it would overshadow the garden area of No 40 significantly or result in a significant loss of daylight or sunlight.

24. Consequently, due to the siting of the proposed two storey element in relation to the siting of No 40, the limited proposed height of the single storey rear projection and the arrangement of the external space, I do not consider that the proposal would result in unacceptable harmful effects on the living conditions of those occupying No 40, with regard to outlooks or daylight and sunlight. In this respect the proposal would comply with Policy DM15 of the SADMPP which, amongst other things, requires that development should not have a significant adverse impact on the amenity of others.

Other Matters

25. As discussed above, under a previous appeal decision, an outline proposal for residential development at the appeal site was considered. That previous scheme was dismissed due to a lack of safe and suitable access being demonstrated and due to insufficient evidence in relation to the loss of Grade 1 agricultural land. Both of these previous issues appear to have been resolved with the Council as part of the revised scheme now before me. Nevertheless, as identified above I must consider the detailed information submitted to the Council. I have been provided with the indicative site plan submitted with the previous appeal and it is clear that it suggested a different scheme to that before me now. I must consider this appeal proposal on its individual merits.
26. It is stated that no objections were received from the Highway Authority or Natural England. Nevertheless, a lack of objection on these matters would not outweigh the harm that I have identified under the main issues above. The appellant asserts that there would be no harm to the living conditions of the occupiers of other neighbouring dwellings. Even if I were to agree, a lack of harm in this respect would not weigh in favour of the proposal.
27. The appellant asserts that the agricultural building to the rear of the appeal site would benefit from permitted development rights under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use to residential. I am referred to the Mansell case² where the Court of Appeal confirmed that there should be a 'real prospect' of a fallback development being implemented and that the decision maker should exercise their planning judgement as to whether that would be the case.
28. The appellant states that in order to benefit the character of the CA, they are choosing not to exercise the permitted development rights under Class Q to create up to 5 dwellings in the adjacent agricultural building, instead looking to develop the surrounding land with new build plots. There is no evidence before me that a prior approval application has been submitted in relation to the adjacent building. There is also no mechanism before me that would ensure that any permitted development rights under Class Q, if they were applicable in this case, would not be taken forward. The considerations under the prior approval process related to Class Q are also different to that of a planning application, which is what I must consider when assessing this appeal. I therefore give this matter very limited weight.

² Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

29. Paragraph 11 d) of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless certain circumstances apply. Footnote 8 of the Framework states that for applications involving the provision of housing, paragraph 11 d) applies where the Housing Delivery Test (HDT) indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
30. The appellant asserts that in the December 2024 HDT release, the Council only achieved 60% meaning that paragraph 11 d) should be engaged. The Council has responded, stating that this figure is currently being challenged and that Government are reviewing the HDT figure. Nevertheless, Paragraph 11 d i) of the Framework states that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed.
31. I have found above that the proposal would not preserve or enhance the character or appearance of the CA and therefore it would be harmful to its significance. I have also found that this less than substantial harm would not be outweighed by public benefits. The CA is a designated heritage asset and is therefore included as an asset of particular importance under Footnote 7 of the Framework. There is therefore a strong reason for refusing the proposal in any event, and the presumption in favour of sustainable development is not engaged.
32. The appeal site is located within the Zone of Influence of multiple European sites, including The Wash and North Norfolk Coast Special Area of Conservation (SAC), the Wash Special Protection Area (SPA) and Ramsar and the Breckland SPA and SAC. I note that the Council's fourth reason for refusal relates to this matter. Had I been minded to allow the appeal I would have carried out an appropriate assessment (AA) of the effect of the proposal on the integrity of those European sites. However, as I am dismissing the appeal for other reasons, an AA is not necessary as undertaking one would not change the outcome of the appeal.

Conclusion

33. I conclude that the proposal conflicts with the development plan as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

G Dring

INSPECTOR