



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: 14 March 2025

Appeal Ref: APP/V2635/W/24/3347791

Land south of Leith House Orchards Caravan Club Site, Mill Lane, Burnham Thorpe, Burnham Overy Town PE31 8JL

- 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 Max Maufe against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 24/00077/F.
 - The development proposed is siting of 3 Shepherds Huts.
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Decision

1. The appeal is allowed and planning permission is granted for the siting of 3 Shepherds Huts at land south of Leith House Orchards Caravan Club Site, Mill Lane, Burnham Thorpe, Burnham Overy Town, PE31 8JL in accordance with the terms of the application, Ref 24/00077/F, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appellant has stated at Part E of the appeal form that the description of development has changed from that stated on the application form and wording matching that on the Council's decision notice has been entered. However, there is no evidence before me that the appellant agreed to the revised description. Therefore, the description of development in the heading above is taken from the application form rather than the appeal form.
3. At the time of my site visit one shepherd's hut was present on site. The appellant has acknowledged this identifying that it is not being operated as holiday accommodation currently but would be used as part of the appeal proposal if the appeal is allowed. I have dealt with the appeal on this basis.
4. The Council dispute the lawful use of an existing caravan site to the north of the appeal site. Within the context of an appeal under section 78 of the Town and Country Planning Act 1990 (as amended) it is not for me to formally determine the lawful use of the adjacent site. However, I shall consider the evidence as far as it is material to this appeal.
5. The appeal site is within the Zone of Influence (Zoi) of a number of European Sites. Whilst not a disputed issue, I have a legal duty under The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) to carry out an Appropriate Assessment (AA). I have therefore added this matter as a main issue and will consider it further below.

Main Issues

6. The main issues are:

- whether the site is in a suitable location for the development proposed having regard to local and national policies;
- the effect of the proposal on the character and appearance of the area; and
- the effect of the proposal on the integrity of European sites.

Reasons

Location

7. Policy CS06 of the King's Lynn and West Norfolk Borough Council Local Development Framework – Core Strategy Adopted Version July 2011 (CS) states that there will be support for farm diversification schemes for business purposes in accordance with Policy CS10 subject to a number of considerations. Policy CS10 of the CS provides support for new tourism accommodation in rural areas subject to a number of criteria including being located in or adjacent to villages or towns. There is no dispute between the parties that the appeal site is within the countryside for the purposes of the development plan. The proposal would therefore conflict with Policy CS10 of the CS in that the appeal site is not within or adjacent to a village or town.
8. Paragraph 88 of the Framework sets out that planning decisions should enable sustainable growth and expansion of all types of business in rural areas, the development and diversification of agricultural and other land-based rural businesses and sustainable rural tourism and leisure developments which respect the character of the countryside. It is also stated at paragraph 89 that decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. There is therefore acceptance under national policy that rural based businesses will not always be located within or adjacent to settlements.
9. The appellant asserts that the existing business is a family run fruit orchard with over 40 varieties of fruit, some of which are unique to the site. The loss of traditional orchards nationally and the reduction in profitability of the sector is also identified. The appellant states that the intention is to preserve the orchard through the appeal proposal which would provide a low impact diversification scheme. Based on the evidence before me, I find that the appeal proposal would represent the diversification of an existing farming business.
10. The site is located on Mill Lane which is a narrow quiet lane. Mill Lane joins with the B1155 road to the north which leads to Burnham Market, where there are a range of services and facilities. Heading south along Mill Lane leads to Burnham Thorpe where I noted a public house/restaurant during my site visit. Both Burnham Thorpe and Burnham Market are less than a five minute drive away from the appeal site. The roads in the vicinity of the appeal site do not have separate footways and are unlit meaning that they are unlikely to be used to access nearby facilities and services by foot. I am told that public transport can be accessed from Burnham Market, although I have no further information on that provision.

11. I therefore find that people would be likely to travel to the accommodation in their own vehicles and then drive to most places whilst staying there. However, given the relative proximity of the site to nearby tourist attractions such as villages, beaches, coastal footpaths and numerous visitor attractions such as Holkham Hall, there is potential for these vehicle journeys to be very short. I am also mindful that the proposal is for three small units of accommodation and so the total volume of journeys that would be generated would be modest.
12. Paragraph 110 of the Framework identifies that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account. I witnessed public rights of way along Mill Lane that would allow for recreational walks in the local area, without the use of the private car. I also saw signage for the National Cycle Network Route 1 in Burnham Thorpe, a relatively short distance from the appeal site which means there would be access to this nationally recognised cycle route should visitors to the appeal site wish to cycle. In this case, considering the context of the rural location there would be some opportunity to use sustainable transport modes.
13. Policy DM11 of the Site Allocations and Development Management Policies Plan 2016 (SADMPP) refers to touring and permanent holiday sites and states that proposals for new holiday accommodation sites or units or extension or intensification to existing holiday accommodation will not normally be permitted unless, along with other requirements, a business plan demonstrates how the site will be managed and how it will support tourism or tourist related uses in the area.
14. Whilst not submitted with the planning application, a Business Plan (BP) was submitted with the appeal. The importance of the tourism industry in the local area is acknowledged. The figures provided set out the cost of implementing the appeal proposal and the projected financial returns, which would appear to provide financial support for the existing orchard business.
15. Notwithstanding the Council's concerns about the lawful status of the adjacent touring site, the BP sets out that this site has been managed by the appellant's family since 1975. There is little evidence to the contrary before me on this matter. It is stated that based on the experience of running this adjacent touring site for a significant number of years, the appellant would be able to effectively manage the proposed tourist accommodation and brief information is provided about the marketing that would be undertaken to promote the appeal scheme.
16. I therefore find that the proposal would not fully accord with the requirements of Policy CS10 of the CS, due to the appeal site location outside of and not adjacent to a village or town. However, this requirement in Policy CS10 for rural development to be located adjacent to settlements, pre-dates the Framework and is not in general consistency with it. The appeal proposal would represent a farm diversification scheme that would support the existing orchard business. It would add directly to the Borough's tourism and recreation offer and would boost the rural economy through revenue from bookings and visitor spending in the local area, in accordance with the aims of the Framework. There would not be an opportunity for the appellant to site the proposal any closer to a settlement or other modes of sustainable transport options, given the scheme is proposed to diversify the existing orchard business.

17. I find that given the scale of the proposal, the total volume of journeys that would be generated as a result of the development would be modest and those journeys could be very short due to the range of visitor attractions within close proximity of the appeal site. There would also be some recreational opportunities nearby in terms of walking and cycling routes that would not require the use of the private car.
18. In conclusion, having regard to all of the evidence put to me, I find that the material considerations set out above outweigh the identified conflict with the development plan in relation to this main issue. Therefore, I conclude that the site is in a suitable location for the development proposed. As a result, I do not find conflict with the overarching aims of Policies CS01, CS02 and CS06 of the CS and Policy DM2 of the SADMPP which seek to promote sustainable patterns of development and to support appropriate development in rural areas, including farm diversification schemes. I also find, based on the submitted information, that a suitable BP was submitted in accordance with the requirements of Policy DM11 of the SADMPP.
19. Policy DM1 of the SADMPP is referred to in the Council's decision notice and sets out an approach to the presumption in favour of sustainable development. I do not find conflict with this policy. Policy DM3 of the SADMPP is also referred to in the Council's reason for refusal. However, this policy relates to development in the smaller villages and hamlets. As the appeal site is not within one of these settlement types, this policy is not directly relevant to the proposal before me.

Character and appearance

20. The appeal site is located within an existing orchard and the surrounding area is rural in character with the key distinguishing feature of the appeal site being the regimented organisation of trees within the orchard and the mature boundary trees around the wider site. The verdant nature of the appeal site contributes positively to the rural character and appearance of the area. Given the mature boundary trees, the appeal site is not visible from public viewpoints outside of the wider site.
21. The appeal site is within the Norfolk Coast National Landscape (NL)¹. Paragraph 189 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in NLs which have the highest status of protection in relation to these issues. Furthermore, it states that the scale and extent of development within these designated areas should be limited.
22. The proposal would introduce three structures into the orchard which would be more domesticated in appearance. However, the small number, design, materiality and form of the shepherd's huts would mean that it would appear as a limited development of more rural character. The proposal to have pedestrian access only from the existing parking area to the shepherd's huts would also limit any further development within the wider site, maintaining the form and nature of the existing orchard setting. In my view, the development, given its modest scale and its siting would not appear visually intrusive in the landscape.
23. Given the existing enclosed nature of the appeal site and due to the proposed siting of the shepherd's huts within the orchard, public views of the proposed development would be significantly limited. As stated above the increase in the number of vehicular movements would be modest due to the limited scale of the

¹ Formerly known as an Area of Outstanding Beauty (AONB)

proposal. The use of an existing access and parking area would limit any significant impacts on the character of the area because of an increase in vehicular movements.

24. I therefore conclude that the proposed development would not cause unacceptable harm to the character and appearance of the area and given the limited scale, design and the proposed siting, it would conserve the landscape character and natural beauty of the NL. The proposal would therefore accord with Policies CS01, CS06 and CS10 of the CS and Policy DM11 of the SADMPP which seek amongst other things, to protect the countryside for its intrinsic character and beauty, to not adversely affect the landscape setting and scenic beauty of the NL and that the proposal is of a high standard of design.

European sites

25. The appeal site is located within the Zol of a number of designated European sites, including The Wash and North Norfolk Coast Special Area of Conservation, the North Norfolk Coast Special Protection Area (SPA), the North Norfolk Coast Ramsar, The Wash SPA and The Wash Ramsar. The coastline along The Wash is the largest marine embayment in Britain, with the second largest expanse of intertidal sediment flats in the country. The Norfolk Coast from the Wash around to the East coast is the only typical British example of a barrier beach system with extensive areas of salt marsh with characteristic creek patterns that have developed behind sand and shingle spits and bars. The Wash and North Norfolk coast is important for breeding and moulting of one of Europe's largest populations of common seal. The intertidal mudflats and salt marshes represent one of Britain's most important winter-feeding areas for waders and wildfowl outside of the breeding season.
26. The Norfolk Green Infrastructure and Recreational impact Avoidance and Mitigation Strategy Habitats Regulations Assessment Strategy Document March 2021 (GIRAMS) sets out the potential for recreational activities to disrupt the protection objectives of European Sites in and around Norfolk, specifically as a result of an increase in population. The appeal scheme involves the provision of three small units of visitor accommodation within the Zol. This is likely, in turn, to increase recreational pressure and it is therefore likely that the proposal, would have a significant effect on the European Sites identified above. As such, in accordance with the Regulations, it is necessary for me to conduct an AA of the project's implications in view of the relevant sites' conservation objectives.
27. The European sites identified above are covered by the GIRAMS which has been adopted by the Council. The GIRAMS comprises a range of mitigation measures including the provision of open space as part of developments, monitoring, education and communication with recreational users, collating information about habitats and working with landowners and partners. The GIRAMS identifies a financial contribution to be sought in connection with proposals that are likely to adversely affect the integrity of the European Sites, to fund avoidance and mitigation measures on a wider strategic basis. Based on the evidence before me I am satisfied that the Council has received the contribution required by the GIRAMS in this respect. I therefore conclude that I am satisfied that delivery of the mitigation secured by the appellants' financial contribution, would ensure that the appeal proposal would not have an adverse effect on the integrity of European sites.

Other Matters

28. I note the Council's response to the examples cited which the appellant considered to be similar to the proposal before me. These appeared to be in different locations to the appeal site before me. Nevertheless, I have considered the scheme before me on its individual merits.

Conditions

29. A number of conditions have been suggested by the Council and the Highway Authority in the event of the appeal being allowed, which I have assessed and, where necessary, amended and reordered in line with the advice provided in the Planning Practice Guidance. A shepherd's hut is already in place, I therefore accept that a condition relating to the standard implementation period is unnecessary. However, in the interests of certainty and enforceability I have imposed a condition which sets out the approved plans.
30. I have imposed an additional condition requiring that the ecological enhancements set out in the submitted Ecology Report are completed prior to first use, in line with the comments received from the Council's Ecology Officer. A condition requiring a lighting scheme is also imposed. These conditions are necessary in the interests of biodiversity. The suggested condition restricting the length of occupation to 28 days is necessary to ensure the tourism benefits of the proposal are maximised and due to the location of the appeal site. Conditions requiring the parking and turning area to be retained for that use and to ensure that no means of obstruction is erected across the vehicular access without prior permission are imposed in the interests of highway safety.
31. I have not imposed two conditions suggested by the Highway Authority relating to the upgrading of the existing access and works to the parking and turning area. The access and hardstanding within the site are existing. During my site visit I found there to be sufficient space for parking and turning within the existing area of hardstanding. There is no evidence before me to suggest the existing hardstanding is deficient in any respect or that it could not adequately accommodate the additional vehicle parking and turning that would result from the proposal. The access is established and given the modest number of vehicle movements that would be associated with the proposed scheme, I do not consider that the development would result in unacceptable highway safety impacts, without the suggested upgrading works.

Conclusion

32. The proposal conflicts with the development plan as a whole. However, I have found that material considerations, including the Framework, indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, the appeal is allowed subject to conditions.

G Dring

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawings named Location Plan, Site Layout Plan and General Layout and Elevations (Drawing No. 1557:001).
- 2) The development hereby permitted shall be carried out in accordance with the ecological enhancement and net gain measures set out in section 7 of the Ecology Report by Wild Frontier Ecology Revision issued March 2024. These measures shall be completed prior to the first use of any of the shepherd's huts permitted as visitor accommodation.
- 3) Prior to the installation of any outdoor lighting, a detailed scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not be limited to details of the type of lights, the orientation/angle of the luminaries, the spacing and height/locations of the lighting, the extent/levels of illumination over the site and on adjacent land and the measures to contain light within the curtilage of the site. The scheme shall be implemented in accordance with the approved scheme and thereafter maintained and retained as agreed.
- 4) The accommodation shall be for short stay accommodation only (no more than 28 days per single let) and shall not be occupied as a person's sole or main place of residence; and the owners / operators shall maintain an up-to-date register of lettings/occupation and shall make this available at all reasonable times to the Local Planning Authority.
- 5) The existing hard standing car park identified on the Location Plan shall be retained for that use and shall be kept available at all times for the parking and turning of vehicles.
- 6) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking, amending or re-enacting that Order) no gates/bollard/chain/other means of obstruction shall be erected across the approved vehicular access unless details have first been submitted to and approved in writing by the Local Planning Authority.