
Appeal Decision

Site visit made on 24 April 2025

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th July 2025

Appeal Ref: APP/L2630/W/24/3351811

Land west of Town Farm, Pound Lane, Ditchingham Norfolk, NR35 2DN

- 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 Stephen Byard against the decision of South Norfolk District Council.
 - The application Ref is 2023/3458.
 - The development proposed is the erection of a paragraph 84 e) self-build dwelling, a living swimming pond, a new access, extensive landscaping and biodiversity enhancement.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made Mr Stephen Byard against South Norfolk District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. Those parts of the Framework most relevant to this appeal have not been substantially amended. As a result, I have not sought submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach. Accordingly the description of development has been amended to reflect the relevant updated Framework paragraph.
4. The appeal has also been subject to an Environmental Impact Screening Assessment and the Secretary of State, in exercise of powers conferred by Regulations 14(1) and 7(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, has directed that this development is not Environmental Impact Assessment development.
5. A Unilateral Undertaking (UU), made under section 106 of the Town and Country Planning Act 1990, has been submitted. The purposes of the UU are to secure financial contributions towards the provision of green infrastructure and for use in mitigating the potential impacts of the proposed development upon the integrity of Habitats Sites. As necessary, I comment on these matters later in my decision.
6. The updated Preliminary Ecological Appraisal (PEA) August 2023 submitted in support of the application indicates that Given the presence of a Great Crested Newt breeding pond nearby, the proposal would necessitate Natural England (NE) licencing or for the project to be registered under the NE District Level Licencing

(DLL) scheme for Norfolk. The main parties have been given the opportunity to comment on the implications of this as part of the appeal. I have made this a main issue.

Main Issues

7. The main issues are:

- the effect of the proposed development on protected species, with particular regard to GCN; and
- whether the proposal would be in a suitable location for new housing having regard to sustainable patterns of development and other considerations.

Reasons

Protected species

8. The appeal site comprises a large area of land adjacent to Town farm off Pound Lane. The site itself is west of the main dwelling and comprises a mown garden area of grass and numerous trees. There are open arable fields to the north, south and west boundaries of the appeal site. The proposal for a single dwelling would be a unique build. It would have a contemporary appearance and roof form, using traditional materials set within a sylvan setting.
9. The updated PEA advises that there are three ponds located within 250m of the site, including a breeding pond around 60m away. Despite the regularly mown character of the site, newts were found under logs, thus indicating suitable terrestrial habitat for GCN which are European Protected Species (EPS).
10. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of EPS, including GCN.
11. As there is no DLL certificate before me, I am obliged to consider the three derogation tests set out in Regulation 53 of the Regulations. In this respect I have had regard to the standard guidance from NE on EPS and the planning process¹. I am required to ensure that any potential harm to an EPS would be adequately mitigated and whether or not the proposed development is unlikely to be licensed.
12. When determining whether or not to grant a licence, NE must be satisfied that the following three tests have been met: preserving public health or public safety or other imperative reasons of overriding public interest; there is no satisfactory alternative; and the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. There are no objections from Council consultees on this matter nor NE. However, the response before me from NE is in respect of European Sites, it has provided only standing advice in respect of protected species. I cannot be certain that this is adequate in this respect.

¹ Natural England Guidance Note: European Protected Species and the Planning Process. Natural England's Application of the 'Three Tests' to Licence Applications, dated 2010

13. As the Council has cannot demonstrate a housing land supply, it is possible that there is a reasonable prospect of this first test being met. Having regard to the relevant tests the design of the dwelling would be a unique and could not be replicated elsewhere. The NE guidance advises that It should be recognised that there are always going to be alternatives to a proposal and, in terms of licensing decisions, it is for Natural England to determine that a reasonable level of effort has been expended in the search for alternative means of achieving the development whilst minimising the impact on the EPS. In other words, Natural England expects the applicant to demonstrate that alternatives have been considered, explain what those alternatives were, and provide a justification for their decisions to select their preferred option and discount the others as satisfactory. As part of the process we always require the applicant to have considered the 'do nothing' scenario. Whilst I appreciate the proposal is informed and developed by its immediate surroundings it has not been demonstrated that any alternatives have been considered.
14. With regards to the third test, the appellant has undertaken an ecological assessment. The appellant's suggest that it is unlikely they will be able to build somewhere where newts are not likely to be on the site. I have been advised that harm could be avoided during construction through the exclusion of GCN from development areas through fencing and/or capture and removal of GCN from development areas using a variety of search and capture methods. In addition, compensation could be provided such as the creation of newt hibernacula within the site.
15. The standing advice from NE sets out that there is normally a high to medium impact on terrestrial habitat 50m to 250m from ponds. Unfortunately, the proposal does not provide an appropriate level of detail on impact avoidance, mitigation, compensation or enhancement measures. Nor are there details about long term management and security of the potential mitigation. The broad approach does not provide sufficient certainty that NE would grant a licence, or that harm would be mitigated. The proposed development has failed to demonstrate that the development could be implemented in such a way as to ensure no harm would occur to the protected species or secure favourable conservation status of the species impacted.
16. I conclude that, on the information before me, the proposal would harm protected species, with particular regard to Great Crested Newts. Furthermore, paragraph 193 of the Framework requires that where significant harm to biodiversity cannot be avoided, adequately mitigated, or compensated, then planning permission should be refused.

Suitable location

17. Policy DM1.3 of the South Norfolk Local Plan Development Management Policies Document, October 2015 (the Local Plan) addresses new development in the countryside and seeks to guide new development to protect the countryside and promote sustainable patterns of development. However it also allows for exceptions where other sustainable development considerations apply: either it complies with another specific development plan policy or allocation or it demonstrates overriding benefits in terms of the economic, social, and environmental dimensions of sustainable development as addressed in Local Plan Policy DM1.1.

18. The proposal would not comply with Local Plan Policy DM1.3 insofar as it sets out to ensure that new development is located within settlement boundaries in the interests of promoting sustainable patterns of development. The proposal would not be expressly permitted by other policies in the development plan. Given my findings above in respect of GCN the proposal does not demonstrate overriding benefits in terms of the environmental dimension as required in Local Plan Policy DM1.3.
19. Paragraph 84 of the Framework seeks to avoid the development of isolated homes in the countryside unless one or more of a number of circumstances apply. The circumstance relevant to this appeal is part e) which supports development where the design is of exceptional quality in that it: i) is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and ii) would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
20. The word isolated is not defined within the Framework. Braintree District Council v SSCLG & Ors [2017] EWHC 2743 (Admin) stated that 'isolated' should be given its ordinary objective meaning of "far away from other places, buildings or people; remote". In Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610 "...the word 'isolated' in the phrase 'isolated homes in the countryside' connotes a dwelling that is physically separate or remote from a settlement. However, when read as whole and in conjunction with the judgments in the subsequent City and Country Bramshill Ltd v SSHCLG, Hart DC and other [2021] EWCA Civ 320 it is clear that isolated in this context should be considered as 'outside a settlement'.
21. What constitutes a settlement is also not defined in the Framework. The Council has considered local appeal decisions in this respect to support their determination. It considered that Inspectors had considered the close spatial relationship with neighbouring dwellings, leading to a conclusion of non-isolation.
22. Properties and buildings within the vicinity of the appeal site are sporadically scattered spatially along Pound Lane and nearby rural roads. However, there is a small group of three dwellings in the immediate area including Town Farm (the original farmhouse) and converted barns that were formerly part of the same farmstead. These are adjacent to the appeal site but are set back some distance from Pound Lane. Their rural character, layout and relationship with each other is relatively compact. Their presence was, at the time of my site visit, well concealed by vegetation. As such, although there are other dwellings located near the site, the presence of established field boundaries, hedgerow trees and woodlands results in an overwhelmingly rural and undeveloped landscape, with traditional buildings contributing to this rather than appearing as part of any settlement.
23. The appeal site would be perceived within the context of Town Farm. However, visually the proposal would be located in an area where there would be limited views of it from the wider area and surrounding landscape. The Council has not disputed the findings of the appellant's Landscape and Visual Impact Assessment. This identifies that the proposal would be nestled into the landscape given the well vegetated setting and that it would not extend the perception of development within the wider area.

24. From my observations, although the proposal would not be a lone building in the countryside the existing house and barns to the east already sit within a well-defined and separate area and the proposal would not be extremely close to them. Although limited visibility and separateness do not make a proposal isolated, my view is that the above site specific characteristics and the very small number of homes in the immediate vicinity do not have the overriding sense of a being closely clustered together or a settlement, and that the proposal therefore constitutes isolated development in the countryside.
25. I have taken into account the Appeal decisions referred to by the Council from Dereham within the Breckland Council area and Shotesham in South Norfolk. The appellant provided copies of these decisions alongside aerial images depicting the location of those sites.
26. The Inspector in the Breckland appeal² identifies that the settlement of Swanton Morley, falls within the settlement hierarchy for the area as a 'Local Service Centre' for that Council. The Inspector stated that the appeal site "*is set a significant distance away from the settlement boundary*" and "*that the site is not isolated given its close proximity to other dwellings.*" The aerial images before me show the main part of the settlement with numerous homes and in depth development emanating from the B1147. Further ribbon type development emanates along Woodgate Road and Frog's Hall Lane. That appeal site was located towards the edge of a built up area towards Frog's Hall Lane, and adjacent to a cluster of several homes. It has not been demonstrated that it falls outside the settlement of Swanton Morley. I do not disagree with that Inspector that the Breckland appeal site is not isolated, however it is far removed from the appeal site before me.
27. The Inspector in the Shotesham appeal³ stated that the site was in "relatively close proximity to the nearest settlement, with other dwellings also located directly to the north." This suggests that appeal site was closer to a settlement, which is not the case here. The aerial evidence also shows proximity to more notable clusters of residential development.
28. The above appeal decisions do not therefore alter my view that paragraph 84 e) of the Framework therefore remains relevant. Although the specifications relating to a design of exceptional quality are very high bars to meet, the Council positively commends compliance of the proposal with these requirements. From all I have read and seen I have no reason to disagree. Therefore, it is a material consideration in planning decisions, and I can give weight to paragraph 84 e) in determining the appeal.
29. Notwithstanding the above, the site's distance from essential facilities like schools and shops, coupled with the lack of safe pedestrian access along high-speed roads and unlit paths to public transport makes relying on walking or cycling impractical for all users. Future residents would therefore be highly dependent on cars for daily needs.
30. However, the Framework also indicates that some travel by private vehicle is likely in rural areas. Ditchingham is not so distant that long journeys would occur, and the distances involved do not preclude some journeys being undertaken by cycle

² APP/F2605/W/22/329089

³ APP/L2630/W/22/3302776

by some users. Framework paragraph 84 e) does not specify isolated homes should meet the requirements of Framework paragraphs 110 and 115, which seek to locate new development in places that minimise the need to travel.

31. As such whilst I acknowledge there are material considerations that weigh in favour of the proposal, a matter which I return to, I must conclude that it would not be in a suitable location for new housing having regard to sustainable patterns of development contrary to the aims of Policy DM1.3. The policy seeks to ensure that new development is located within settlement boundaries in the interests of promoting sustainable patterns of development.

Other Considerations

32. The site lies within the Zone of Influence of one or more European Sites comprising the Norfolk Green Infrastructure and Recreational disturbance Avoidance and Mitigation Strategy (GIRAMS). A Unilateral Undertaking (UU) has been submitted with the appeal, which seeks to secure a financial contribution to mitigate the additional recreational pressure on the European Sites arising through the proposed development. The submitted UU seeks to mitigate the latter. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects upon the Habitats Sites. However, I am dismissing the appeal because of my findings on the first main issues. Therefore, there is no requirement for me to undertake an Appropriate Assessment.
33. I note that there has been support for the proposal from interested parties, including the Parish Council. There are no public objections. There are no concerns raised in respect of highway matters; flood risk and drainage, heritage assets, the design, effect on nearby residents of other homes or effects on trees that could not be addressed by conditions. I have not undertaken an AA, but the evidence suggest the effects on European sites, could be addressed. However, these elements carry neutral weight, as they are requirements all development should achieve.
34. The proposal is for a self-build dwelling. Whilst benefits can be attributed to self-build development, there is no evidence before me how many people are on the Council's Self-Build register or whether the Council is meeting its duty within the Self Build and Custom Housebuilding Act 2015 to have regard to and give enough suitable development permissions to meet the identified demand. It is also important to ensure that permissions for custom and self-build homes are secured and delivered as self-build. Such matters would normally be required to be contained within a legal agreement, such as a UU.
35. The proposal would allow the appellant's to realise more flexible living accommodation, This would enable them to care for elderly relatives. Although personal benefits carry little positive weight in favour of the proposal, I have had regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. This includes the need to eliminate unlawful discrimination and to advance equality of opportunity and foster good relations between people who share a protected characteristic (including age) and people who do not share it.

Planning Balance

36. Paragraph 11d) of the Framework is a relevant consideration as a result of the Council's housing supply. It indicates that in the circumstances of this case,

permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

37. It is clear that the design of the dwelling proposed is unique and well considered and would be an enhancement of the site. It would align with Framework paragraph 84 e). There would be some environmental benefits flowing from this through the use of renewable heat sources, the potential use of solar arrays, water management, the use of sustainable materials biodiversity, including priority habitats and tree enhancement. I attach significant weight to this aspect.
38. The provision of a single home would make a small contribution to the supply of homes in the area. There would also be limited benefits that would contribute to the economic and social objectives through spending in the local economy by the occupants. Even if I were to consider the proposal as a self-build dwelling, the overall benefits in these respects would attract limited weight because the scale of the development is only for one home.
39. Whilst I am mindful of the space and care needs of the family members, it has not been demonstrated that the proposal is the only means to provide the care required or that it represents the least harmful. I therefore attach little positive weight to this aspect.
40. The proposal would not be a suitable location when purely considered against the development plan as the site lies in the countryside away from any recognised settlement. The harm identified in this respect brings the scheme into conflict with Local Plan Policy DM1.3 The site is also remote from services and facilities and its occupiers would be reliant on the use of a car for their day-to-day needs. The weight to be attached to these harms is very small due to the Council's housing land supply position and because the proposal would satisfactorily address the requirements of paragraph 84 e) of the Framework.
41. However, the proposal has not sufficiently demonstrated it would not harm GCN or a license would be granted. Whilst I attach limited weight to the conflict with Local Plan Policy DM1.3 due to the housing land supply position. Whilst the planning balance is not a mathematical equation, very substantial negative weight is afforded to the harm in respect of GCN which overrides the above benefits as indicated in the Framework at paragraph 193.
42. Therefore, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Thus, in applying Framework paragraph 11 d) planning permission should not be granted and the proposal would not represent sustainable development.

Conclusion

43. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

K Williams

INSPECTOR

