
Appeal Decision

Site visit made on 16 September 2025

by **R Gee BA (Hons) Dip TP PGCert UD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2025

Appeal Ref: APP/V2635/W/25/3369828

Olive Tree House, Chapel Road, Tilney Fen End, Tilney St Lawrence, Norfolk PE14 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 Noel Maxwell against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 24/02169/F.
 - The development proposed is change of use of land to garden land and erection of domestic outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have omitted the word 'retrospective' from the description in the banner heading above, as this is not an act of development. Nevertheless, from the evidence before me, and as observed at my site visit, I am aware that the development is complete.
3. The description of the development refers to 'change of use of land to garden land'. However, garden land is not a clearly defined use of land. I have therefore assessed the proposal as a change of use to residential on the basis that the proposal seeks to extend the garden of Olive Tree House.
4. The Council adopted the Kings Lynn & West Norfolk Local Plan 2021-2040 (KLWNLP) in March 2025, after its refusal of planning permission. The KLWNLP replaces the Kings Lynn & West Norfolk Borough Council Local Development Framework - Core Strategy (2011) and Site Allocations and Development Management Policies Plan (2016) which are cited within the Council's Decision Notice. In these circumstances, I am required to determine the appeal against the current development plan for the area at the time of my Decision. The appellant and Council were invited to make comments on the relevant KLWNLP policies, and I have taken these comments into account in reaching my decision.
5. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework). The parts of the Framework most relevant to the appeal have not substantively changed from the previous version.
6. The appellant's statement proposes an amended plan that would significantly reduce the site area to be included as part of the change of use. The Procedural Guide for Planning Appeals is clear that the appeal process should not be used to

evolve a scheme, and it is important that what is considered is essentially what was considered by the Council, and on which interested people's views were sought. Having regard to the '*Wheatcroft Principles*'¹, which has now been advanced by *Holborn Studios Ltd*² to consider such a modification would be a substantive difference and procedurally could prejudice interested parties by depriving those who should have been consulted on the change the opportunity of such consultation. For this reason, I have determined the appeal on the basis of the plans that were before the Council when it made its decision.

Main Issue

7. The main issue is the effect of the proposal upon character and appearance.

Reasons

8. The appeal site comprises a relatively level parcel of land located to the north of three residential properties, including Olive Tree House. The appeal site is predominantly rectangular in shape but also includes a narrow strip of land that runs alongside Olive Tree House which is bound by a pair of solid gates. The appeal site lies outside of a settlement, and for planning purposes lies within the countryside. The site has an open, verdant appearance.
9. Olive Tree House, along with the neighbouring properties, are set within modest plots. Long, rectangular parcels of agricultural land extend north towards a dyke.
10. The resultant extended residential use would be extensive and, in my judgement, disproportionate to the size of the dwelling to which it relates. It would also be at odds with the pattern of development in the immediate vicinity of the appeal site.
11. Photographic evidence before me indicates that the appeal site has been an undeveloped parcel of land. Although there are limited public views of the appeal site the area of land to which the appeal relates is extensive and represents a significant encroachment into the countryside. This results in harm to the intrinsic character and appearance of the area.
12. In respect of the outbuilding, it is recognised that it is used for private use related to the appellant's hobbies. Notwithstanding its modern external appearance and limited height, the building is substantial in its footprint and is domestic in nature. Furthermore, the outbuilding essentially sits on its own within an area of open space appearing as an incongruous feature, resulting in the domestication of the land.
13. Both individually, and cumulatively, the proposed development has a residential character and consequently has an urbanising influence on the countryside that detracts from the open rural character of the locality.
14. If permission were given to retain the change of use, it is reasonable to anticipate that a more intensive residential use would follow, with further ornamental planting, domestic paraphernalia, garden buildings and structures, which may not require the benefit of planning permission. This would add further to the incongruity of the use in the countryside and would significantly harm the attractive rural appearance of the wider surrounding area.

¹ Bernard Wheatcroft Ltd v SSE 1982

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWCH 2823 (Admin)

15. I have considered removing permitted development rights for further buildings and structures on the land by way of planning condition. However, the Planning Practice Guidance sets out that such conditions will rarely pass the tests of reasonableness and necessity and should only be used in exceptional circumstances; that is not the case here.
16. For the reasons stated, I conclude that the proposal would unacceptably harm the character and appearance of the area. This draws the proposal into conflict with Policies LP18 and LP21 of the KLWNLP. Amongst others, these policies seek proposals to respond to the local context and character by ensuring scale, layout and materials enhance the quality of the environment and the landscape setting as well as enhancing the amenity of the wider environment.

Other Matters

17. There is private benefit in use of the additional land for residential purposes, including the ability to undertake personal hobbies. However, this does not outweigh the harms identified.
18. I have some sympathy with the appellant who submits that the appeal site was sold with the dwelling and is within their Title Deeds. Nevertheless, land ownership is not determinative to its lawful use.
19. The appellant further submits that the appeal site had previously been owned by Downham Haulage. However, there is little substantive evidence before me to suggest that any of the land was utilised for haulage purposes. The evidence includes a copy of the approved plans for the dwellings³ which indicates the land in question was beyond the red line application site boundary. The land is annotated as paddock, with the rear garden of the dwellings clearly annotated on the submitted plans, enclosed by a post and rail fence.
20. Notwithstanding the above, it is not for me under a Section 78 appeal to determine the lawful use of the land as the appeal has arisen from the Council's refusal to grant planning permission for the application submitted. Thus, whether or not the current use of the land is lawful, falls outside the scope of this appeal and cannot form part of my considerations. It is open for the appellant to make an application for a Certificate of Lawful Development (for an existing use) to the Council, where any available evidence could be considered.

Conclusion

21. For the reasons given above, having had regard to the development plan and Framework as a whole, the appeal is dismissed.

R. Gee

INSPECTOR

³ Swann Edwards Architecture SE-792 Dwg No 10