



Appeal Decision

Site visit made on 20 April 2015

by Geoffrey Hill BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 May 2015

Appeal Ref: APP/L2630/A/14/2221553

Land to the south of Mereside, Brooke, Norwich, Norfolk NR15 1JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Peter Sabberton against the decision of South Norfolk District Council.
 - The application Ref 2014/0474/O, dated 10 March 2014, was refused by notice dated 11 June 2014.
 - The development proposed is described as "outline application for residential development (17 dwellings total) and associated works including access".
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Decision

1. The appeal is dismissed.

Matter of Clarification

2. The application is for outline planning permission with access and layout as detail matters for approval at this stage.

Main Issues

3. As well as having objections to the principle of permitting additional housing development in Brooke, the Council has also raised objections on the grounds that insufficient information has been put forward to demonstrate the acceptability or feasibility of either implementing or adequately mitigating some aspects of the proposed scheme.
4. It is argued that the Council should have not accepted the application until all such information had been submitted, and the Council's objections on the basis of insufficient information are not a justification for refusing the application. It is likely that the Council may only have become aware of the deficiencies once formal consultations had been carried out on a registered application. I do not see the hypothetical procedural point posited by the appellant as a reason for not addressing those objections now that they are open for discussion at appeal stage. The appellant is clearly aware of what those objections are, and has had the opportunity to bring forward evidence to rebut them and to demonstrate whether they are justifiable or not. Accordingly, I will address these objections as matters at issue in this appeal.
5. Following on from the above, I consider there are five main issues in this appeal:

- i) whether the proposed scheme represents sustainable development having regard to the development plan policies and the supply of developable housing land;
- ii) the effect of the proposed scheme on the character and appearance of the area;
- iii) the effect of the scheme on wildlife interests, and Great Crested Newts in particular;
- iv) whether, having regard to the development plan policies, the scheme would provide sufficient affordable housing;
- v) whether sufficient information has been provided to satisfy concerns over potential flood risk associated with the development.

Reasons

Sustainable development

6. The adopted Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS) sets the pattern for the distribution of housing growth in this area. The JCS differentiates between the City of Norwich (the Norwich Policy Area) and the Rural Policy Area. Brooke falls within the Rural Policy Area.
7. Along side the JCS policies are those of the adopted South Norfolk Local Plan (SNLP). Although the SNLP was adopted prior to the publication of the National Planning Policy Framework (NPPF), its policies for generally controlling the distribution of housing development in the rural areas can be seen to be compatible with the JCS and hence the SNLP policies can be given due weight in this appeal.
8. For reasons of promoting a sustainable pattern of development JCS Policy 4 seeks to direct the majority (approximately 90%) of new housing development to the Norwich Policy Area, with the smaller residual proportion assigned to the Rural Policy Area. One of the purposes of allocating houses to rural settlements is to ensure that places identified as service villages – that is, those with a good level of services - remain viable so that the community can remain, as far as possible, self-supporting. JCS Policy 15 identifies Brooke as a service village. Policy 15 envisages that between 10-20 additional dwellings would be an appropriate level of growth in each service village.
9. Evidence provided by the Council shows that two sites have been allocated in the emerging Site Specific Allocations and Policies Local Plan (SSA&PLP) to accommodate the indicative level of growth given in the JCS. I acknowledge that this local plan has not yet completed its public examination and hence its policies may not be given full weight in this appeal. However – subject to there being no demonstrable requirement to find sites for additional development outside the village development boundary - SNLP Policy ENV 8 remains a relevant consideration in the determination of this appeal. Under Policy ENV 8 the appeal site is shown to be in the countryside, where permission for housing development should only be granted to meet specific the needs of agriculture or forestry, or to sustain economic and social activity in rural areas.

10. Although the examination of the emerging SSA&PLP has yet to be concluded, the Council state that the preferred housing sites in Brooke were supported at public consultation stage. In which case, this has to be acknowledged as a material consideration. I acknowledge that in the plan preparation process the appeal site was identified as a reasonable alternative site and I accept that it cannot be discounted entirely as a feasible development site. However, the key word in this analysis is "alternative"; which indicates that it should only be brought forward if it can be shown that development of the preferred sites would not be possible.
11. The appellant clearly feels aggrieved that his site has not been given consideration as a preferred site in the preparation of SSA&PLP. However, from the information submitted with this appeal I understand the local plan examination is still in progress. A Section 78 appeal is not the forum to run a parallel, or duplicate, of the local plan process for identifying acceptable sites. The evidence submitted with this appeal does not show that development of the preferred sites is not possible, it simply seeks permission for this site in addition to those identified and – seemingly - already committed.
12. With sufficient housing already allocated or committed to Brooke there is a *prima facie* conflict with Policy 15. Policy 15 would allow for more housing in a service village where it can be clearly demonstrated that it is needed to improve or maintain local service provision and where it is compatible with the overall strategy. As noted above, the overall strategy is to direct the majority of development to Norwich, and to limit the development in the Rural Policy Area. The appellants' submissions do not put forward evidence to demonstrate that additional housing is needed in Brooke to improve or maintain local services.
13. Policy 15 would allow for additional development in a selected number of villages if necessary to help deliver the smaller sites in the Norwich Policy Area. However, Brooke is not in the Norwich Policy Area and is not one of the villages identified in that policy as being appropriate for such schemes.
14. It may also be reasonable to allow additional development in Brooke if the housing land supply is insufficient to meet the needs of a 5-year period. In the November 2013 Housing Land Supply Assessment, the South Norfolk element of the Rural Policy Area showed a land supply of 7.9 years, with an excess of 280 completions or commitments over the 5-year supply requirement. That is, there is no shortfall in housing land supply in the Rural Policy Area.
15. With there being no strategic imperative to locate additional housing in Brooke, which might require sites outside the village development boundary, the proposed scheme is in conflict with SNLP Policy ENV 8, as it is not being promoted as housing for essential rural workers.
16. The appellant has concerns as to whether the December 2014 housing land supply figures for the Norwich Policy Area give a reliable evaluation of the land supply and points to paragraph 49 of NPPF as offering support for development in such circumstances, implying that the JCS should not be considered up-to-date. As advised at paragraph 3-033-20150327 of Planning Practice Guidance, scrutiny of a housing land supply statement is not a matter which can be properly considered in a Section 78 planning appeal. This is particularly so in an appeal being considered by written

representations. Nevertheless, even if there is a shortfall in the housing land supply in the Norwich Policy Area, it would not be in accordance with the JCS to make up such a shortfall in the Rural Policy Area; the appropriate response to such a situation (were it found to exist) would be to boost the supply of sites in the Norwich Policy Area. I do not consider that a shortfall in land supply is justification for ignoring a main structural policy of the JCS. The JCS has been drawn up so as to limit the amount of development in the Rural Policy Area for sound reasons of sustainability.

17. I acknowledge that paragraph 47 of NPPF looks for a significant boost in housing land supply, but that has to be in accordance with the policies of the NPPF itself. Paragraph 14 of NPPF gives support for sustainable development but, for the reasons set out above, an excess supply in the Rural Policy Area would not represent sustainable development, whether or not a site may have been considered potentially suitable for development during the preparation of the emerging local plan.
18. The first bullet point of paragraph 17 of NPPF states that planning should be a plan-led process. To allow excess development in the Rural Policy Area would be contrary to the adopted development plan policy. In conclusion on this first main issue, I do not consider that the proposed scheme represents sustainable development having regard to the development plan policies and the supply of developable housing land.

Character and appearance

19. The appeal site is within the Brooke & Kirkstead Conservation Area. This is an extensive conservation area which includes a wide swathe of farmland to the south of the village core. The appeal site is part of this rural outskirts.
20. The conservation area is characterised by a mix of housing types, with traditional cottages and houses, up to and including some significantly larger properties set in substantial gardens. There is a generally informal pattern to the layout of the development, and there is no predominant architectural style, materials or detailing.
21. The proposed scheme is in outline and matters of appearance, landscaping and scale are reserved for subsequent consideration. However, detailed matters of design can significantly influence whether development can be regarded as acceptable or not. SNLP Policy IMP 18 states that new development should not be permitted in a conservation area unless the proposed scheme would blend with (amongst other matters) the scale, height, form, massing and detailing of its surroundings. Although adopted before the publication of the NPPF I do not consider that this policy is in conflict with the objectives of NPPF. Conservation of heritage assets is a core planning principle set out at paragraph 17 of NPPF, to which great weight should be given in decision making¹.
22. Mereside is small group of houses built seemingly about 30 years ago. The group stands between the village core and the appeal site, which means that whatever development might be permitted on the appeal site would not be seen to be closely or directly associated with the pattern and style of development in the village core – and particularly around the lakes. That is, I

¹ National Planning Policy Framework paragraph 132.

accept that there is scope to accommodate an area of new development without necessarily overwhelming the core of the conservation area.

23. However, the proposed scheme would be a notable intrusion into the rural hinterland section of the conservation area. Even with retained hedges and additional planting, it would be clearly seen from Hunstead Lane, where it would occupy a slightly elevated position, overlooking the farmland gently falling away to the south. It would also be seen from Mereside and in passing views from The Street at the junction of Mereside with The Street.
24. The layout of the development is a matter for approval at this stage, and the submitted layout plan indicates that it is proposed to build a number of substantial dwellings in a variety of sizes and styles. Whilst the designs shown might only be for illustrative purposes, these have to be regarded as a reasonable illustration of the type and scale of development which is proposed. The indicative size and scale of these houses would be significantly different from the seemingly more modest houses in Mereside, and much larger than many of the houses or bungalows within the core of the conservation area.
25. Without reliable details of the scale and appearance of these buildings, it is not possible to assess whether the proposed scheme would be compatible with its surroundings, and whether it would serve to preserve or enhance the character or appearance of the heritage asset. That is, the scheme in its submitted outline form would not satisfy the concerns expressed in Policy IMP 18.
26. A mature birch tree currently stands adjacent to the turning area at the end of Mereside. This is a notable tree within the conservation area. It may be possible to form the access to the scheme using construction techniques and materials which would not harm the long-term health of this tree, but it would have to be removed in order to construct the sewer connection. Whereas its loss may be regrettable, it is necessary to take a balanced view about the degree of harm to the conservation area. If the scheme were considered to be acceptable on all other grounds, I consider that the removal of this tree need not be regarded as an overriding objection.
27. Drawing the above points together on this main issue, because there is insufficient information relating to the scale and design of the proposed houses, there is an unacceptable level of uncertainty that the proposed scheme would not harm the character and appearance of the conservation area. Because I do not agree that this is an appropriate location to make up for any housing shortfall across the wider Housing Market Area, I do not consider that there are substantial public benefits which would outweigh the possible harm that could be caused by granting permission without a full understanding of the implications of the scheme on the character and appearance of the conservation area.

Effect on wildlife

28. As noted in the Extended Phase I Habitat Survey Report submitted with the planning application, there is a degree of uncertainty as to whether Great Crested Newts may be found on the site². The Great Crested Newt is a

² Extended Phase 1 Habitat Survey Report, paragraphs 3.3.6.11 and 4.2.2.2

species protected under the Wildlife and Countryside Act 1981 and subject to safeguards under the Conservation of Habitats and Species Regulations 2010.

29. It is not disputed that there is a reasonable likelihood of the species being present and potentially affected by the proposed development. The appellant argues that such concerns, and how they may be mitigated, can be subject to a planning condition on a planning permission, and refers to paragraph 98 of Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System* in support of that view.

30. However, paragraph 99 of the Circular advises that:

"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted otherwise all relevant material considerations may not have been addressed in making the decision."

That is, it would be appropriate to attach a planning condition to a permission to ensure that mitigation is carried out, but planning permission should not be granted until it is certain what mitigation needs to be carried out and that the proposed mitigation would be both appropriate and feasible.

31. The Circular goes on to state that leaving the need to carry out ecological surveys until after planning permission has been granted should only be left to coverage under planning conditions in exceptional circumstances. I do not consider that exceptional circumstances exist in this instance – either by reason of overriding need for additional housing or that development needs to be carried out urgently to address some other pressing matter. In which case, I consider that without complete information on the possible presence of Great Crested Newts and whether mitigation would be both necessary and feasible, I consider that granting planning permission for the proposed scheme would represent an unacceptable risk to protected wildlife, contrary to the objectives SNLP Policy ENV 15 and JCS Policy 1.

Affordable Housing

32. JCS Policy 4 requires a proportion of new housing developments to be made available as affordable housing. In this case, the requirement would be for 33%, with a mix of sizes and types. 33% of 17 gives a figure of 5.61. Clearly that is a notional calculation and in order to implement the policy in any practical way this needs to be rounded to the nearest whole figure, giving the requirement to provide six affordable dwellings as part of the appeal scheme.

33. The appellant contends that with 17 houses it would only be viable to provide four as affordable units – but does not put forward any detailed viability evidence to demonstrate it would not be possible to comply with the expectations of JCS Policy 4. Without such evidence I am not able to accept a bald assertion that it is not possible to meet the terms of a policy which would apply to all other housing schemes in this locality; that is, I do not have the evidence before me to substantiate an exception to the policy.

34. Furthermore, as noted above, the application seeks approval for the layout of the development at this stage. I presume that the submitted layout for 17 dwellings shows four affordable units annotated as a-d. I presume these are

the 2 x 2 bedroom houses and 2 x 1 bedroom bungalows referred to in the appeal correspondence. Plans and elevations of some house types (presumably illustrative) are included with the application drawings, but these do not include illustrative drawings for plots a-d. I do not know if this was an omission, or whether no thought had been given to the possible design of the houses and bungalows intended to satisfy the affordable housing requirement. Consequently there has to be some doubt – albeit perhaps only a little doubt – as to whether the nominated affordable housing plots would meet the appropriate requirements in terms of size, amenity space and relationship to neighbouring properties.

35. I accept that this might be a matter which could be clarified at detail planning stage, but if the layout plan applied for is not capable of accommodating an acceptable range of affordable dwellings, then a permission encumbered by a condition to provide such housing might not be capable of being implemented. Such a condition would be unreasonable and unenforceable and hence would not meet the six tests set out at paragraph 206 of the National Planning Policy Framework.
36. The appellant argues that if the scheme is increased to 19 dwellings then it would be possible to provide six affordable units. There is no correspondence on the appeal file to show that there has been a formal request to change the description of development. Whereas it may be possible to accept revisions which reduce the scope of the proposed scheme – either by it occupying a smaller area, or the number of units being reduced - I am not able to accept an intensification of the proposed scheme (that is, the increase to 19 dwellings). This would represent a material change to the nature and extent of the scheme which will not have been advertised, nor would the Council, statutory consultees and interested persons have had the opportunity to formally comment on such revisions and how they may affect other interests³; not least the local highway authority⁴.
37. Nevertheless, although six affordable units may be welcome if the development were to be acceptable on all other grounds (which is not the case in this appeal), I do not have the evidence to demonstrate why a scheme with 13 market houses + 4 affordable units would be viable, whereas a scheme of 11 + 6 would not.
38. On this fourth main issue I come to view that the proposed scheme would not provide sufficient affordable housing, as required by the development plan policy.

Flood risk

39. It is proposed to dispose of surface water through infiltration soakaways. Whilst this is seen to be acceptable in principle, it is not clear that, given the soil type locally, this would be feasible given the anticipated volumes of surface water. The Environment Agency (EA) has noted that the submitted Flood Risk Assessment does not demonstrate that surface water would be managed appropriately. The EA has set out what work would be required to demonstrate that the proposed strategy would be workable. That information

³ See: *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another*; (1982) 43 P.&R.133.

⁴ See: letter from Norfolk County Council dated 7 May 2014.

has not been provided as part of the application, nor with the appeal submissions⁵.

40. This is an outline application and, all other matters being equal, it may be possible to grant planning permission subject to a condition requiring the submission of drainage details. I note the Council has accepted that approach on another site in Brooke. However, I am not aware of the full circumstances of that other site, and whether the soil conditions and the drainage potential are the same as for this appeal site. For this appeal scheme the Council has been advised by EA – the agency responsible for flood security – that further information is required. In view of the harm that uncontrolled flooding can cause it would be irresponsible not to follow that advice.
41. Taking account of the underlying doubts over the feasibility over the proposed drainage strategy, it is not appropriate to grant a planning permission subject to a condition requiring submission of, and compliance with, a scheme which may not prove to be technically feasible or be capable of being implemented. That is, I consider that insufficient information has been provided to satisfy concerns over potential flood risk associated with the development.

Other Matters

42. Local residents have raised concerns as to whether The Street could safely accommodate the additional traffic generated by the scheme. Whereas the local highway authority is seemingly content to accept a scheme of 17 dwellings, this would be subject to localised widening of The Street. The highway authority suggests this could be addressed through a planning condition⁶. On the basis that such a condition would meet the tests of paragraph 206 of NPPF in that it would be possible for the appellant to meet the terms of the suggested condition, I have no technical evidence from other interested persons to support the contention that the proposed scheme would give rise to unreasonable obstruction to the free flow of traffic and unacceptably endanger the safety of drivers, cyclists and pedestrians.

Overall Conclusion

43. I have come to the conclusion that there is no need to identify additional housing land in the Rural Policy Area and, moreover, to do so would be contrary to the principles of plan-led sustainable development. Insufficient information has been provided to come to a conclusive view as to whether the proposed scheme would adversely affect the character and appearance of the area. Similarly, insufficient information has been provided on the effect on wildlife and whether adequate mitigation of such effects could be put in place. Nor is there enough information to demonstrate that the proposed drainage strategy would be feasible and effective. Finally, no compelling evidence has been submitted to demonstrate that the scheme would not be

⁵ See: Environment Agency letter of 16 April 2014 and its accompanying Technical Explanation, and Environment Agency's subsequent letter of 14 August 2014 in response to publicity for this appeal.

⁶ See letter from Norfolk County Council dated 7 May 2014

viable if were to be required to meet the proportion of affordable housing expected in the JCS policy. Accordingly, the appeal should be dismissed.

Geoffrey Hill

INSPECTOR

Richborough Estates