



Appeal Decision

Hearing held on 10 August 2022

Site visit made on 10 August 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2022

Appeal Ref: APP/L2630/W/22/3296988

Land North of Heath Loke, Poringland, NORWICH, NR14 7JU

- 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 Boardwalk Property Developments Ltd against the decision of South Norfolk District Council.
 - The application Ref 2021/0488, dated 21 February 2021, was refused by notice dated 13 October 2021.
 - The development proposed is erection of up to 19 dwellings with all matters reserved except for access.
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Decision

1. The appeal is allowed and planning permission is granted for Erection of up to 19 dwellings with all matters reserved except for access at Land North of Heath Loke, NORWICH, NR14 7JU in accordance with the terms of the application, Ref 2021/0488, dated 21 February 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Boardwalk Property Developments Ltd against the decision of South Norfolk District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant has submitted a duly executed legal agreement which I have taken into account. It provides for a Public Open Space Contribution to South Norfolk District Council and for a contribution towards ecological mitigation and I have contemplated this further later in my decision.
4. The original application was made in outline with all matters reserved except for access and I have had regard to drawing no 10210-1003D. I have dealt with the appeal on this basis and I have treated any details not to be considered at this stage as being illustrative only.

Main Issues

5. The main issues are:
 - the effect of the development on the character and appearance of the area;

- whether the development has a prospect of being delivered within the next five years; and
- whether the site represents an appropriate location for the proposed dwellings.

Reasons

Character and appearance

6. The South Norfolk Landscape Assessment, which sets out the key characteristics of the Poringland Settled Plateau Farmland states that the farmed plateau appears as a rural setting for the built up areas. The appeal site, which was previously used as pasture, is situated adjacent to a recently completed housing development and the associated designated open space. It is adjacent to open fields to the west which extend into the adjoining countryside beyond.
7. The existing site provides a visual separation between the existing built development and contributes to the open rural nature which is experienced beyond the appeal site. The proposed development would result in the infilling of the existing paddock and there would be a degree of urbanisation and countryside encroachment through additional housing. In addition to this the development would extend beyond the natural boundary which is provided by the River Chet and its tributaries which run alongside the existing housing. The appeal site would extend into the existing paddock to an arbitrary point which is not defined by any landscape feature or existing boundary.
8. It is common ground that the appeal site does not form part of the farmed plateau which is more widely experienced beyond the settlement of Poringland and that the development would not result in any conflict with Policy 4.5 of the South Norfolk Local Plan Development Management Policies Document (October 2015) (LP) which requires development to respect and conserve the landscape character of its immediate and wider environment. However, I share the Parish Council's concerns about the encroachment of the development beyond the natural boundary of the existing development which is provided by the tributary to the River Chet. The expansion beyond this point into an area which is partly wooded would result in development which would fail to respect the existing landscape character, contrary to the aims of policy DM4.5 of the LP. It is these factors taken together which lead me to the conclusion that there is a degree of localised harm to the character and appearance of the area.
9. I have been referred to the previous appeal decision¹ on this site where the Inspector concluded that there would be limited and localised harm arising from the proposed development and identified a conflict with both policies DM1.3 and DM4.5 of the LP. My views are consistent with the findings of the Inspector in that case.
10. The development would fail to respect the landscape character and quality of the area and be harmful to the character and appearance of the immediate environment contrary to policy DM4.5 of the LP.

¹ APP/L2630/W/18/3209464

Delivery

11. It has been put to me that due to uncertainty regarding the appellants ability to provide suitable means of access due to land ownership issues, there is a risk to the deliverability of the site which could outweigh any benefits arising from the development.
12. However, the evidence before me in the response from the County Highway Authority (CHA) is that the site could provide a safe access subject to provision of appropriate visibility splays. Whilst the proposed development would result in increased traffic on the local road network and in particular at the junction with Sebald Crescent and Tubby Drive, I have nothing before me to suggest that this would be detrimental to highway safety or that would lead me to disagree with the CHA.
13. The planning system is concerned with land use in the public interest and whilst I have not been provided with details of any legal obligation that secures access into the site, and the Parish Council articulated at the hearing their unwillingness to allow access, this is a private matter between the parties and nothing in my decision affects the rights that any other persons may enjoy.
14. Furthermore, the Council have suggested a commencement condition with shortened timescales for submission of reserved matters and commencement on site. The appellant has raised no objection to this and is content that the site can be delivered within this shortened timeframe. The appellants willingness to accept this indicates that there is a degree of confidence that this matter can be resolved swiftly and therefore I am content that the condition as suggested would be reasonable.
15. On this basis I am satisfied that the site can be delivered within a reasonable timeframe and therefore any benefits arising from the development could be considered against the requirements of Policy DM1.3 of the LP.

Appropriate Location

16. Poringland is defined under Policy 14 of the Joint Core Strategy for Broadland, Norwich and South Norfolk (January 2014)(JCS) as a Key Service Centre. These are locations which have a range of facilities enabling them to meet local needs as well as the needs of residents of surrounding areas. The parties agree in the statement of common ground that the site is sustainably located.
17. Poringland is also located within the Norwich Policy Area(NPA), where Policy 14 states that it may be considered for additional development to help deliver smaller sites in the NPA as required by Policy 9 of the JCS. This is in addition to an allocation of 100-200 dwellings. It was agreed at the hearing that the site would go some way to meeting the requirements of the JCS for smaller sites and I have afforded compliance with the JCS significant weight.
18. Policies DM 1.3 and DM3.10 of the LP require development outside of the defined boundaries of settlements to demonstrate overriding benefits in terms of economic, social and environmental dimensions. Therefore, whilst there is a limited degree of conflict with policy DM1.3, due to the sites location outside of the defined settlement boundary, it is necessary to consider if the benefits of the development would outweigh any identified harm. I will consider this further towards the end of my decision.

19. The Poringland Neighbourhood Plan (NP) sets out in Policy 2 that individual proposals for development should be located on sites no larger than one hectare and the proposed development would therefore comply with this policy. The supporting text to the policy sets out that the NP seeks to encourage smaller scale development to come forward in the future. This policy does not preclude development outside of the settlement boundary.
20. Whilst the supporting text to Policy 4 of the NP confirms that development beyond the settlement boundary isn't generally acceptable, the policy itself seeks to ensure that proposals minimise the increase of traffic through the village centre and should be located and designed to make it easy and attractive for new residents to walk or cycle. It is common ground that the site is well located and whilst it is outside of the development boundary, there is no conflict with Policy 4 of the NP and I am also of the view that the proposal accords with this policy. I have afforded compliance with the NP significant weight.
21. I therefore conclude that the site represents an appropriate location for the proposed dwellings and would accord with Policies 9 and 14 of the JCS and Policy DM3.10 of the LP and Policies 2 and 4 of the NP in so far as they seek to ensure that development is located where there is good access to services and facilities.

Planning Balance

22. The proposed development would be a smaller site in a sustainable location and would therefore contribute to the requirements of the wider NPA and comply with the JCS. The site would also accord with the policies of the NP. These factors weigh in favour of the development.
23. I have had regard to the current impacts of nutrient neutrality on the district council, which has resulted in the Council acknowledging that they can no longer demonstrate a 5 year housing land supply (5YHLS). The Council were unable to outline the extent of the shortfall or the number of houses currently affected by this issue but has accepted that paragraph 11d of the National Planning Policy Framework would apply.
24. It has been put to me that both the Chief Planning Officers letter² and the Written Ministerial Statement³ recognise the concerns that some Local Planning Authorities have around the impact of nutrient neutrality on their ability to demonstrate they have sufficient and deliverable housing land supply. Whilst new guidance is expected through updates to the Planning Practice Guidance in the summer, the statement sets out that judgements on deliverability of sites should take account of strategic mitigation schemes.
25. Whilst a package of strategic mitigation measures are in the process of being drawn up by South Norfolk Council in conjunction with other affected authorities, given the timescales outlined at the hearing, I consider that there will inevitably be a short term delay in housing delivery. Therefore, I have attached great weight to the site's location outside of the nutrient neutrality catchment area which means that it can be delivered in the short term.

² Department for Levelling Up, Housing and Communities, Letter to Chief Planning Officers dated 21 July 2022

³ Statement on improving water quality and tackling nutrient pollution made by George Eustace, Secretary of State for Environment, Food and Rural Affairs on 20 July 2022.

26. The delivery of a smaller site within the NPA, which is also outside of the nutrient neutrality catchment area and where no conflict has been identified with the NP, providing 6 affordable dwellings for affordable rent and shared ownership, would in this site specific case, based on the evidence before me, amount to an overriding benefit for the purposes of Policy DM1.3.
27. Although the proposal would result in some harm to the character and appearance of the area and a limited conflict with Policy DM4.5 of the LP, this would result in only limited environmental harm which does not demonstrably and significantly in this case outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development applies which points towards the grant of planning permission.

Other Matters

28. I have also taken into account the matters raised in the representations received including issues such as highway safety, flood risk and access to health care and education. Concern has also been raised relating to the impact on wildlife, local fauna and flora. The Parish Council have also directed me to relevant policies within the NP regarding both flood risk (Policy 13) and the natural environment (Policy 6). However, there is no evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council or statutory consultees in regard to these matters. Therefore, none of the matters raised provide a compelling reason why planning permission should not be granted.
29. Representations have been received regarding the ongoing examination of the Greater Norwich Area Local Plan and the evidence presented at the hearing with regard to the Councils 5YHLS. I understand that the Inspectors appointed to hear and report on the GNALP Examination requested a land supply and delivery statement be provided and updated to a base date of 1 April 2022 in order to determine whether a 5YHLS would be available on adoption of the Local Plan.
30. However, I understand that whilst the Councils are working upon an emerging local plan, delays have occurred due to the nutrient neutrality considerations. The Council have confirmed that they are unable to confirm when an update (base date 1 April 2022) would be available. Therefore, I must base my decision on the evidence before me and that presented at the hearing whereby the parties agreed that the Council are currently unable to demonstrate a 5YHLS.

Planning Obligations

31. The appellant has provided a legal agreement under section 106 of the Town and Country Planning Act 1990, which includes a number of obligations which would come into effect if planning permission were to be granted. I have considered the obligations in light of the Framework, Planning Practice Guidance and the Community Infrastructure Levy Regulations (the CIL Regulations). These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

32. The unilateral undertaking facilitates a financial contribution towards public open space provision, secures the provision of affordable housing and a recreation avoidance mitigation strategy contribution.
33. Affordable Housing: The delivery of 6 affordable dwellings for rent and shared ownership would be in line with Policy 4 of the JCS which required affordable housing to be provided at 33 per cent of the overall total. Furthermore, the provision of affordable houses as part of the development would accord with the Framework which seeks to ensure a sufficient supply of homes to reflect identified needs. I am satisfied that this planning obligation meets all three tests and so is necessary. I give this obligation significant weight.
34. Open Space: Policy DM3.15 of the LP and Policy 10 of the NP requires open space, play and recreational facilities to be provided as part of the development. The planning obligation secures open space on site with any short fall of informal recreational space to be met by a financial contribution. This would be required to meet the needs of the future residents of the scheme and so is necessary.
35. On this basis, I consider the agreement accords with the criteria of Regulation 122 of the CIL and with paragraph 57 of the Framework. I can therefore reasonably take it into account.

Norfolk Habitats Sites

36. The appeal scheme proposes dwellings on a site that lies within the Zone of Influence of a number of Norfolk Habitats sites as set out within The Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy 2021 (GIRAMS).
37. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the Norfolk Habitats Sites. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
38. Since the development is for nineteen dwellings, the number of additional recreational visitors would be modest and the likely effects on the Norfolk Habitats Sites from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site.
39. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
40. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned sites. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.

41. The GIRAMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the Norfolk Habitats Sites.
42. The appellants have submitted a planning obligation for the per dwelling contribution of £185.93 per dwelling to fund the Norfolk GIRAMS. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
43. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Conditions

44. The Council has suggested conditions which I have considered against the advice in the Framework and Planning Practice Guidance. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. This is a shortened time limit to ensure delivery in an expedited manner. I have also included a condition specifying the relevant plans as this provides certainty.
45. To ensure that any unexpected contaminants are correctly identified and remediated to ensure that the future users of the site are protected from risks associated with contaminants it is necessary to require an assessment of the risks posed and details of remediation.
46. In order to ensure that the roads and junctions are designed and constructed to an appropriate specification, including street lights and fire hydrants. I have imposed conditions which require the works to be completed prior to the occupation of any dwelling.
47. The submission and implementation of a construction management plan is necessary to minimise detrimental effects to the living conditions of neighbouring residents and ensure highway safety during the construction phase.
48. To manage the surface water environment of the scheme a condition is necessary that secures a detailed surface water drainage scheme to be submitted to and agreed by the Council and details of foul drainage works to be agreed.
49. Furthermore, in order to support the government's objective of increasing sustainable development I have imposed a condition to ensure that details of decentralised, renewable or low-carbon sources of energy are provided for the development and that measures for water efficiency are provided within each dwelling.

50. To protect and enhance biodiversity I have found it necessary to impose a condition requiring the mitigation outlined in the Preliminary Ecological Appraisal to be carried out and details of enhancements to be submitted and agreed.
51. Finally in order to ensure that any trees within the site are protected during construction I have imposed a condition to ensure that details are submitted with the submission of reserved matters.

Conclusion

52. Pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, a determination must be made in accordance with the development unless material considerations indicate otherwise. There would be limited harm arising from the conflict with Policy DM4.5 of the LP for the reasons I have set out above. However, taken as a whole, the benefits of the appeal scheme are considerable material considerations that would outweigh the minor conflict with the policies of the development.
53. Accordingly, there are material considerations that indicate that the proposal should be determined otherwise than in accordance with the development plan.
54. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be allowed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Magnus Magnusson – Parker Planning Services
Jason Parker – Parker Planning Services
Stuart Roffey – Boardwalk Property Developments Ltd
Jane Liddle – Spire Solicitors LLP

FOR THE LOCAL PLANNING AUTHORITY:

Helen Bowman BA Hons MSc MRTPI – Principal Planning Officer
Thomas Piggott BA Hons – Graduate Planning Officer
Chris Raine – Team Leader, Major Projects

INTERESTED PARTIES:

John Joyce – Poringland Parish Council
Charlotte Hummel – Poringland Parish Council
John Henson – Poringland Parish Council
Rodney Aldis – Chet Valley B-Line
Graham Tuddenham – United Business & Leisure (Properties) Ltd
Florence Ellis – South Norfolk District Councillor

-Schedule of Conditions-

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 1 year from the date of this permission.
- 2) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Proposed Development Plan for 19 units (10210-1003D).
- 5) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

The assessment shall include: a survey of the extent, scale and nature of contamination; the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground waters and surface waters; ecological systems; and archaeological sites and ancient monuments.

- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) Concurrent with the submission of reserved matters for layout, detailed plans of the roads, including the re-alignment of the existing footway (south of 5 Seabald Crescent) and layout of the proposed junction onto Seabald Crescent, footways, street lighting and fire hydrants shall have been submitted to and approved in writing by the local planning authority. All works shall be completed in accordance with the approved plans prior to the occupation of the final dwelling.
- 9) Before any dwelling hereby approved is first occupied the roads and footways shall be constructed to binder course surfacing level from the dwelling to the adjoining County road and the footway realignment works shall be carried out in accordance with the details previously agreed under condition 7.
- 10) Prior to the first occupation of the development hereby permitted visibility splays measuring 2.4m x 25m shall be provided to each side of the access where it meets the highway. The splays shall thereafter be maintained at all times free from any obstruction exceeding 0.225 metres above the level of the adjacent highway carriageway.
- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - wheel washing facilities;
 - delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 12) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and,
 - provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 13) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 14) None of the dwellings hereby permitted shall be occupied until a scheme for generation a minimum of 10% of the predicted energy requirements of the development from decentralised renewable and/or low carbon sources (as defined by the Framework) must be submitted to and approved in writing by the local planning authority. The development shall not be occupied until the agreed strategy has been implemented. The approved scheme shall remain operational for the lifetime of the development.
- 15) The dwelling shall not be occupied until the Building Regulations Optional requirement Part G (water efficiency) of Schedule 1 and regulation 36 (2b) to the Building Regulations 2010, as amended has been complied with.
- 16) Concurrent with the submission of reserved matters for landscaping details of ecological enhancements, including a timescale for their implementation have been submitted to and approved in writing by the local planning authority. These details shall include the provision of bird and bat boxes. The development will be carried out in accordance with the approved details and the mitigation measures contained in the Parker Planning Preliminary Ecological Appraisal Validation Assessment dated September 2019.
- 17) The details submitted in accordance with condition 3 above shall include:
- a plan showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees are to be removed;
 - a schedule in relation to every tree identified listing: information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and, any proposed pruning, felling or other work;

- in relation to every existing tree identified to be retained on the plan referred to above, details of:
- any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and,
- all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced);
- areas of existing landscaping to be protected from construction operations and the method of protection.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

-END-

Richborough Estates