



## Appeal Decision

Site visit made on 6 September 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> November 2023

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Appeal Ref: APP/K2610/W/23/3314826

Brandiston Road, Cawston, Norwich NR10 4ES

- 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 Eggleton, Eggleton and Berry against the decision of Broadland District Council.
  - The application Ref 20221213, dated 26 July 2022, was refused by notice dated 2 November 2022.
  - The development proposed is five three bedroomed single storey dwellings, comprising three self-build and 2 build-to-rent.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The planning application was made in outline with all matters reserved for future consideration. The submitted site plan drawing shows details of landscaping, layout and access. However, given the nature of the application and as the appellant has described the submitted site plan as indicative and conceptual, I have treated it as such in my assessment of this appeal.
3. The appellant has referred to policies of the emerging Greater Norwich Local Plan (GNLP), which they indicate had been through Examination at the time the application was made. Copies of these policies have not been provided and the Council did not refer to this document in its decision notice or officer report, nor in its subsequent appeal statement. There is no evidence to indicate whether there are outstanding issues with emerging policies, when the plan is likely to be adopted or if any policies will be modified. I have therefore determined the appeal based on the adopted development plan.

### Main Issues

4. The main issues are:
  - The effect of the proposal on the integrity of European sites, with particular regard to nutrient neutrality;
  - The effect of the proposal on highway and pedestrian safety;
  - Whether the proposed development would provide a suitable location for housing with respect to the accessibility of the site, with particular regard to walking, cycling, public transport, and access for people with disabilities; and

- Whether the proposed development would provide a suitable location for housing with respect to **the Council's spatial strategy**.

## Reasons

### *Nutrient neutrality*

5. Guidance was issued by Natural England (NE) on 16 March 2022 requiring competent authorities to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.
6. Based on the evidence before me and representations from NE in its role as the Statutory Nature Conservation Body, the appeal site is located within the nutrient neutrality catchment of the River Wensum Special Area of Conservation (SAC). As the competent authority, I must therefore have regard to The Conservation of Habitats and Species Regulations 2017 (as amended). These regulations require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of **the project's implications in view of the relevant site's conservation objectives**.
7. The SAC is a naturally enriched, calcareous lowland river. The upper reaches are fed by springs that rise from the chalk and by run-off from calcareous soils rich in plant nutrients. This gives rise to beds of submerged and emergent vegetation characteristic of a chalk stream. Lower down, the chalk is overlain with boulder clay and river gravels, resulting in aquatic plant communities more typical of a slow-flowing river on mixed substrate. Much of the adjacent land is managed for hay crops and by grazing, and the resulting mosaic of meadow and marsh habitats provides niches for a wide variety of specialised plants and animals.
8. The SAC is designated for its water course with floating vegetation, often dominated by water-crowfoot, and providing habitats for the following qualifying species: white-clawed crayfish, bullhead, brook lamprey and **Desmoulin's whorl snail**. The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the favourable conservation status of its qualifying features.
9. NE has highlighted that the SAC is in unfavourable condition due to nutrients (in this case phosphorus), where new development may have an adverse effect by contributing additional nutrients and therefore where nutrient neutrality is a potential solution to enable development to proceed.
10. The appeal scheme would include 5 new dwellings and so would likely lead to an increase in the local population. In turn, it would lead to an increase in nutrient loading from phosphates. Given the unfavourable status of the SAC, and the likely increases in nutrient loading, the appeal scheme is likely to have a significant effect on the aforementioned species and habitats (both alone, and in combination with other development). I must therefore undertake an appropriate assessment in accordance with the Habitat Regulations.
11. **NE's Nutrient Neutrality Methodology enables a nutrient budget to be calculated** for all types of development that would result in a net increase in population

- served by a wastewater system. Nevertheless, no information has been provided in this case on the anticipated levels of phosphorous that would arise from the development and require mitigation.
12. Excessive levels of nutrients can cause the rapid growth of certain plants through the process of eutrophication, resulting in a loss of biodiversity and is one of the primary reasons for habitats sites being in unfavourable condition. Given the conservation objectives above, without adequate mitigation, any net increase in nutrient loads arising from the development would adversely affect the integrity of the SAC.
  13. The appellant maintains that any additional nutrient loads can be adequately mitigated through on-site woodland and wetland creation, the extent of which I am advised was informed by NE advice. While a proposed woodland area and pond for ecological gain/enhancement is shown indicatively on the submitted site plan, there is insufficient detail of specific mitigation or offsetting measures, or how these have been calculated. It is therefore not possible to assess the efficacy of such measures to determine whether the proposal would achieve nutrient neutrality.
  14. In addition, the appellant has offered to purchase nutrient credits for the scheme through The Council's Joint Venture Company set up to administer credits. The Council has confirmed that they have now launched this company and had intended to allow applicants to purchase credits from summer 2023. Nevertheless, no further information on this scheme is before me, such as what mitigation measures would be provided and the timescales for their implementation, nor is there any evidence that the requisite credits have been purchased by the appellant.
  15. The appellant has suggested that this matter could be resolved through a planning condition to prevent commencement or occupation of the dwellings until the requisite mitigation had been secured by the Council. As the competent authority in this case, I must be able to rule out all reasonable scientific doubt that the proposal would have an adverse effect on the integrity of the SAC at the time of my decision. Given the level of ambiguity in the information before me, and the high level of statutory protection afforded to the SAC, I am therefore not satisfied that a condition would provide adequate certainty that adverse effects on the integrity of the SAC would be avoided.
  16. **I recognise the appellant's frustration regarding the limited availability of public guidance in respect of nutrient mitigation or offsetting.** However, this does not indicate that the proposal before me is acceptable in respect of this issue.
  17. The evidence before me is therefore not sufficiently precise, robust or conclusive on this matter. Consequently, I cannot conclude, beyond all reasonable scientific doubt, that the appeal scheme would not have an adverse effect on the integrity of European Sites (in this case the River Wensum SAC), with particular regard to issues pertaining to nutrient neutrality.
  18. The Council also indicate that the proposal would be within the nutrient neutrality catchment area for the Broads SAC. NE did not identify this within its representations. Nonetheless, the evidence before me indicates that the River Wensum is a major tributary of the River Yare, and the Yare Broads and Marshes Site of Special Scientific Interest (SSSI) is a component part of the Broads SAC. There is also a degree of connectivity between populations of

qualifying species within the River Wensum SAC and the Broads SAC. However, even if I were to also find harm to the Broads SAC in this regard, this would not alter my conclusion on this main issue, given the harm already identified.

19. The Council has not asserted any conflict with any particular development plan policy. Nonetheless, on the basis of the evidence before me, the proposal would conflict with Policy EN1 of the Development Management DPD 2015 (the DM DPD). This policy, among other provisions, seeks to ensure development proposals protect and enhance the biodiversity of the district, and requires development proposals that may result in harmful impacts to demonstrate that the development cannot be located elsewhere, adequate mitigation is incorporated and the benefits of the development clearly outweigh the impacts.
20. Additionally, the proposal would conflict with Paragraph 174a of the National Planning Policy Framework (the Framework) which, among other provisions, requires that planning decisions protect sites of biodiversity value in a manner commensurate with their statutory status (in this case, a site afforded statutory protection under the Habitat Regulations). In the absence of compelling evidence to the contrary, it would also fall foul of paragraph 180 of the Framework, which states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.

#### *Highway and pedestrian safety*

21. The indicative site plan shows access taken from Brandiston Road. This road has the characteristics of a narrow country lane. It is of insufficient width for two vehicles to pass for much of its length, though there are some spaces to pass in the vicinity of the site. There is no pedestrian footpath along this route in either direction or any streetlights in the vicinity of the appeal site.
22. Vegetation lines the verge, which is steep in places, providing limited space for pedestrians to step out of the carriageway. Brandiston Road terminates at a bend in Norwich Road, leading into the village centre. This junction has restricted visibility due to its alignment and the proximity of a dwelling to the intersection. In the other direction, there are a series of bends that also limit visibility along the route.
23. The Local Highway Authority (LHA) notes that the section of Brandiston Road adjacent to the appeal site is subject to the national speed limit for single carriageway roads of 60mph, though observed speeds are around 30mph due to the narrow sinuous nature of the road. However, there is limited substantiated evidence before me regarding the level of traffic along this route at various times of day.
24. Nevertheless, the current conditions of the route clearly present a degree of risk for road users. The appeal scheme would intensify the use of this route, and inevitably would result in increased conflict between vehicles, cyclists and pedestrians. It would be particularly unsafe to navigate for users with a pushchair, carrying shopping or using a wheelchair or other walking aid.
25. The appellant has indicated that they would be willing to provide additional passing points for vehicles along Brandiston Road in the vicinity of the site, in addition to that provided by the site access. No further details of these have been provided however and given the increased traffic movements it is not

clear to what extent this would improve highway safety. Moreover, this would not improve the route heading towards Cawston.

26. The provision of an informal footpath along the western boundary of the site would provide a modest improvement by allowing pedestrians to step out of the carriageway. However, this would be limited in length and would not provide any meaningful improvements in the route to Cawston. In the absence of further details, it is also unclear how accessible this would be for all pedestrians.
27. While there may be limited evidence of road traffic accidents or pedestrian casualties in the past, this does not demonstrate that there would not be any highway or pedestrian safety issues arising from the proposal in future, particularly given the intensification of the use of this route.
28. Though Brandiston Road undoubtedly shares characteristics with many other rural roads within Norfolk, this does not demonstrate that the appeal proposal before me is acceptable with respect to this main issue.
29. Notably, the LHA objected on the basis that the proposal is detrimental to highway safety and contrary to transport sustainability and accessibility objectives.
30. The proposal would therefore have a significant harmful effect on highway and pedestrian safety. It would be contrary to Policy TS3 of the DM DPD which, among other provisions, seeks to resist development that would result in any significant adverse impact upon the satisfactory functioning or safety of the highway network.
31. Even if the residual cumulative impacts on the road network were not severe, the proposal would have an unacceptable impact on highway safety and so would conflict with Paragraph 111 of the Framework in this regard. It would also be contrary to Paragraph 110, which seeks to ensure that safe and suitable access to the site can be achieved for all users.
32. Policy 6 of the Joint Core Strategy for Broadland, Norwich and South Norfolk Adopted March 2011, amendments adopted January 2014 (the JCS) concerns matters of accessibility and transportation. In respect of this main issue, I have found no direct conflict with this policy, though it is considered further below.

### *Accessibility*

33. Policy 15 of the JCS designates Cawston as a Service Village. These are defined as settlements with a good level of services/facilities, including a primary school, food shop and a village hall. Based on the evidence before me and my own observations, Cawston continues to benefit from these services, in addition to a public house, church, café and post office. I am therefore satisfied that the **Policy 15 designation continues to reflect Cawston's current role**. However, while there is a bus stop in the village centre, the LHA indicates that this provides limited service, and the appellant does not appear to dispute this.
34. The distance of these facilities from the appeal site varies given they are dispersed throughout the village. However, most can be found along High Street/Aylsham Road (B1145). Despite **the site's peripheral location**, many of these services and facilities could be reached from the site within a 10-minute

- walk, in good conditions. This is not a particularly unreasonable distance, and not dissimilar to other residential areas at the edges of the village.
35. Nevertheless, the appellant contends there is a need for bungalows in this area and nationally, in part due to an ageing population, and states that the proposal would help to meet the housing needs of older people and people with disabilities. It is therefore likely, and somewhat expected, that some of the proposed dwellings would be occupied by the elderly or individuals with mobility issues or other disabilities. There is therefore added importance on providing safe and adequate pedestrian routes in this case.
  36. Sections of the routes leading to village services/facilities from the appeal site do not benefit from a dedicated footpath or street lighting. Combined with the highway and pedestrian safety issues presented by the existing condition of Brandiston Road set out above, this is unlikely to encourage future occupiers to walk or cycle into the village to access village services or public transport. Such a proposition would be particularly unattractive in darker winter months or in periods of adverse weather, and even less so for people with disabilities.
  37. The private car is likely to remain an important means of travel for future occupiers of any rural development, particularly for longer journeys. However, while the location of the appeal site does not preclude use of alternative means of travel for shorter journeys, the nature of the development and its poor accessibility would result in undue reliance on the private car for most trips.
  38. My attention has been drawn to other developments in the immediate area, which similarly do not directly benefit from pedestrian facilities. The development at 21 and 23 Brandiston Road provided 2 dwellings only, which the evidence indicates were constructed some time ago and therefore determined in a different local planning policy context. The residential development of 5 new houses at 21 Norwich Road is located within the settlement limits, closer to the village centre and on a different road. Neither of these examples are directly comparable to the appeal proposal and they do not lead me to a different conclusion on this main issue.
  39. I conclude that the proposal would fail to provide a suitable location for housing with respect to the accessibility of the site, with particular regard to walking, cycling, public transport, and access for people with disabilities. It would be contrary to Policy 6 of the JCS which, among other provisions, seeks to concentrate development in locations to encourage walking and cycling as the primary means of travel with public transport for wider access.
  40. With regard to the type of development proposed and its location, it has also not been demonstrated that appropriate opportunities to promote sustainable transport modes have been identified and pursued, as required by Paragraphs 104 and 110 of the Framework.

#### *Spatial strategy*

41. The evidence before me indicates that the appeal site sits adjacent to, albeit outside of, the settlement limit for Cawston. Policy GC2 of the DM DPD states that, outside of the settlement limits defined on the policies map, development which does not result in any significant adverse impact will be permitted where it accords with a specific allocation and/or policy of the development plan. The supporting text indicates that settlement limits have been identified to achieve

the growth targets set out in the JCS. This seeks to focus residential development in settlements which are well-linked and well-related to existing development, services, facilities and employment.

42. Paragraph 219 of the Framework indicates that weight should be given to policies adopted or made prior to its publication according to their degree of consistency with the Framework. The aims of Policy GC2 of the DM DPD remain largely aligned with those of Paragraph 105, which seeks to ensure the planning system actively manages patterns of growth, focusing on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Policy GC2 does not preclude development beyond the settlement limits that is unarmful and otherwise policy compliant, and it therefore remains responsive to local circumstances and needs, in line with Paragraph 78. I therefore afford it considerable weight.
43. Policy 15 of the JCS states that in each Service Village, land will be allocated for small-scale housing development. There is no compelling evidence before me to indicate that the proposal would accord with a specific allocation of the development plan.
44. Accordingly, whether the proposal would conflict with Policy GC2 of the DM DPD is contingent on whether it would result in any significant adverse impacts and whether it would accord with other development plan policy. Based on my conclusions above in respect of the other main issues, the proposal would result in significant adverse impacts on the integrity of European Sites, highway and pedestrian safety and would not provide a suitable location for housing with respect to the accessibility of the site, contrary to various development plan policies.
45. I therefore conclude that the proposal would not provide a suitable location for **housing with respect to the Council's spatial strategy. It is contrary to Policy GC2** of the DM DPD for the reasons set out in detail above.

#### Other Matters

46. The Council acknowledge that they cannot demonstrate a 5-year housing land supply (5YHLS), and the appellant contends that the local housing need is not being met. Paragraph 11(d) of the Framework indicates that the presumption in favour of sustainable development is engaged where the policies which are most important for determining the application are deemed out-of-date. This includes, for proposals involving the provision of housing, situations where the local planning authority cannot demonstrate a 5YHLS, such as in this case.
47. Paragraph 11(d) stipulates that planning permission should be granted, unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development.
48. Footnote 7 of the Framework confirms that such policies include those relating to habitats sites. Paragraph 182 is also clear that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.
49. As set out above, it has not been demonstrated that the proposal would not adversely affect the integrity of the affected habitats sites. The habitats sites

- policies within the Framework therefore provide a clear reason for refusing the development proposed, and therefore the proposal does not benefit from the presumption in favour of sustainable development in this instance.
50. Notwithstanding this, I recognise that the proposal would contribute to local housing supply and delivery, including the supply of bungalows and 3-bedroom homes. The evidence before me in respect of local housing need is limited. Nevertheless, due to the 5YHLS position, the delivery of housing would weigh in favour of the proposal.
51. Additionally, Paragraph 69 of the Framework states that small sites are often **built out relatively quickly, and this would support the Government's objective** of boosting the supply of homes. The proposal would also provide a temporary boost in employment during construction, and additional residents may contribute to the local economy and vitality of the community. However, given the small scale of the development, these benefits would be relatively modest.
52. The scheme could provide ecological enhancements, including bat and bird boxes, pollinator and bat friendly planting and new hedgerow. Carbon offsetting through woodland planting on site is also proposed, in addition to wetland creation. Nevertheless, due to the outline nature of the application, limited details of these elements of the scheme have been provided and the extent of any biodiversity net gain is not clear.
53. The proposal would provide opportunities for additional landscaping. However, the information before me does not demonstrate that this would amount to enhancement of the landscape setting of Cawston, particularly given the positive contribution the site currently makes to the village setting.
54. The appeal proposal seeks to provide self-build plots. Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) requires that enough serviced plots of land be granted planning permission to meet the demand for **self-build and custom housebuilding in the authority's area which arises in each** base period. The Council contend that they are providing sufficient self-build plots and, while I recognise self-build are important in assisting in the supply of housing, there is no compelling evidence to indicate there is a shortfall in this area. Moreover, only limited details of the scheme are before me, and no formal mechanism has been advanced to ensure it would be delivered in a form that meets the statutory definition of self-build and custom build homes.
55. The appellant indicates that they are willing to offer all 5 dwellings at a 20% discount to local people. This would therefore have the potential to be considered affordable housing, in accordance with the definition contained within the Framework, and would be a further benefit of the scheme. As above however, no formal mechanism has been advanced to ensure the development would be delivered in this form and remain as such in perpetuity.
56. Paragraph 69 of the Framework also indicates that great weight should be given to the benefits of using suitable windfall sites within existing settlements for homes, but the appeal site is not within the settlement limits of Cawston. Moreover, Paragraph 119 of the Framework seeks to promote the effective use of land. This must be balanced against safeguarding and improving the environment and ensuring safe and healthy living conditions. Given the harm identified, it has not been demonstrated that the proposal would be an effective use of land.



57. The appeal site also falls within the Zone of Influence for multiple European designated sites scoped into the Norfolk Green Infrastructure and Recreational Disturbance Avoidance and Mitigation Strategy (GIRAMS). The alleged effects relate to increased recreational pressure on these sites as a result of the increased population associated with the proposed development.
58. The Council has indicated that payment of the Recreational Avoidance Mitigation tariff of £185.93 per dwelling, or accommodation unit equivalent, and the provision of on-site or off-site green infrastructure equivalent to 2ha per 1000 population, is required to address this issue and mitigate any adverse effect on the integrity of these sites.
59. This would need to be secured through a legal agreement, and the appellant has indicated that they would have signed such an agreement had they been asked to do so. There is however no executed legal agreement before me to secure this. Nevertheless, given that I am dismissing the appeal on other grounds, it is not necessary for me to consider this matter any further.
60. My attention has been drawn to planning permissions recently granted for 3 dwellings on the west side of Norwich Road, and a large family dwelling elsewhere on the same road. However, very little information is before me regarding these developments and the circumstances of those decisions. Similarly, the appellant and an interested party have referred to a proposal for a **traveller's** site at Eastgate contained within the emerging GNLP. No further details of this have been provided, and the status of this policy is not clear. I therefore cannot draw any meaningful comparisons with the appeal scheme, and ultimately each case must be considered on its own merits.
61. I have also been directed to several other appeal decisions which the appellant considers weigh in favour of the proposal. Notably, all differed from this appeal in terms of the amount of development proposed, the accessibility of the site and/or the level of access to local services/facilities. Several were located within different local authority areas, and thus were considered in a different local planning policy context. None appear to have been subject to the same highway and pedestrian safety concerns or adverse impacts on European sites. These do not therefore lead me to a different conclusion on the main issues.
62. Other than where set out above, I have not identified conflict with any other parts of the development plan or national policy and guidance. However, the absence of harm or development plan conflict with respect to other relevant matters is neutral and weighs neither for nor against the proposal.

### Conclusion

63. The proposed development conflicts with the development plan, taken as a whole. The modest benefits of the proposal identified above do not outweigh the significant harm and development plan conflict that I have identified. There are therefore no material planning considerations that indicate the proposal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

*Ryan Cowley*

INSPECTOR