



Committee Report

Planning Committee North – 10 November 2020

Application no DC/18/0789/FUL

Location

Car Park And Adjacent Land At
Links Road
North Denes
Lowestoft
Suffolk
NR32 4PQ

Expiry date 16 April 2018
Application type Full Application
Applicant Peter Colby Commercials Ltd

Parish Lowestoft
Proposal Construction of a restaurant/cafe with public toilets and play area
Case Officer Melanie Seabrook

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1. Summary

- 1.1 The application seeks planning permission for a single storey café, with play area and toilet facilities to be located adjacent to the car park on Links Road. Links Road is a popular area within the town serving dog walkers and nature enthusiasts who visit the adjacent nature reserve. Links Road is accessed via Gunton Cliff, the southern portion of which is partially within the North Lowestoft Conservation Area; however this does not include the Denes area subject to this application although it is designated as public open space within the adopted East Suffolk (Waveney) Local plan 2019.
- 1.2 Members considered the application at the Planning Committee Meeting of 19 December 2019, resolving to grant authority to approve subject to the submission of further ecological and contaminated land assessments to officer agreement. Further negotiations have taken place between officers and the applicant in the intervening period regarding matters of contaminated land and ecology. However, as these issues have not been addressed through the required survey work, the application has been returned to Committee, with the

recommendation for refusal due to insufficient information regarding ecological impacts and ground contamination investigation. These matters cannot be dealt with by planning conditions, in this instance, because of the interrelationship between potential remediation works and ecological impacts – all of which need to be understood prior to any planning permission being granted.

- 1.3 As noted in the December 2019 Committee Report (see appendix 1 for a copy) there are a number of issues surrounding this site including the civil covenant which, although not a material planning consideration, but a civil matter, remains an area of concern particularly given the 'Note of Implementation' that was instigated by the then Waveney District Council in 2012 following issues arising from the extension of the North Denes Caravan Park to the south of this site. The 'NOI' confirms the use of the land as public open space with the Denes area being transferred to the ownership of Lowestoft Town Council upon their creation. As landowners they have the final agreement as to consents to use the land; however they have objected - and continue to object - to the proposed café for a number of reasons and have stated that if planning permission is granted it does not necessarily follow that landowner consent will be granted to implement the development. This is not a planning matter, but the information has been provided to give members the full context to the application.

2. Site description

- 2.1 The site subject to this application is located to the west of the Links Road car park, which is accessed via Links Road, which in turn is accessed off Gunton Cliff to the west. The North Denes is a predominantly undeveloped, un-landscaped parcel of land which stretches some 1.2km from the Birds Eye factory in the south to Links Road and it is popular location for local people accessing the adjacent County wildlife site/local nature site or beach for dog walking and other leisure purposes. The East of England park is to the south, adjacent to the factory and there is a caravan park on the eastern side of the Denes. Alongside this there is currently a fenced off area adjacent to the caravan park that is subject to an ongoing enforcement appeal. The last part of the built environment which characterises this area is the Denes Oval cricket ground and tennis courts.
- 2.2 The land to the south of the site which forms the current open area has been used for camping and caravanning (touring) in the past, with the land to the north of Links Road forming the Gunton Denes and a County Wildlife Site/local nature site as defined on the adopted proposals map.
- 2.3 Gunton Cliff, which is the residential area, runs from north to south along the western side of the Denes in an elevated position with views over the Denes and beach with direct views out to sea. The dwellings vary in scale, age and design from very grand and imposing Victorian Villas to mid to late 20th century properties, many of which have been previously altered and extended. The whole Denes area measures approximately 33 acres (13.3 hectares) with the site area of this application measuring a little over 1.5ha including the car park which represents 0.1995% of the whole site.

2.4 The site is adjacent to but is outside the physical limits boundaries of the town as defined in the adopted local plan and is therefore classed as open countryside despite its relationship to the town.

3. Proposal

3.1 Construction of a restaurant/cafe with public toilets and play area.

4. Consultations/comments

4.1 Further to the December 2019 Committee Report, no new representations have been received; however, Lowestoft Town Council maintain their objection, although they have been in discussion with the applicant and their agent, and their stance has not changed insofar as they are proceeding with their Neighbourhood Plan and are considering this site within the context of that work.

5. Consultees

Parish/Town Council

Consultee	Date consulted	Date reply received
Parish Council	22 February 2018	8 March 2018
<p>Summary of comments:</p> <p>The Planning Committee of Lowestoft Town Council considered this application at a meeting on 6 March 2018. It was unanimously agreed to recommend refusal of the application. The Council noted that the application was not in line with the development of the East of England Park and had not been considered as part of the wider plans for the area (WDC Policy WLP2.5). The Council felt that the generic design and style of building were not appropriate for the unique area and had many concerns regarding the environmental impact of the development; building on previous landfill site, contamination, noise pollution, smells and increased traffic. (WDC Policies WLP8.22 and 8.164 refer).</p> <p>It was also to be noted that the Town Council were the owners of the site proposed for development and no consultation had been undertaken with them by the developer and no permissions had been granted for use of land.</p>		

Statutory consultees

Consultee	Date consulted	Date reply received
Suffolk County - Highways Department	22 February 2018	5 March 2018
<p>Summary of comments:</p> <p>Suffolk County Highways: Holding refusal, further information required regarding access for vehicles and pedestrians, width of current access, servicing and impact on parking in the vicinity.</p>		

Non statutory consultees

Consultee	Date consulted	Date reply received
WDC Environmental Health - Contaminated Land	22 February 2018	No response
Summary of comments: Object to the granting of permission (conditional or otherwise) until such time as it can be demonstrated that the site is or can be made suitable for the proposed development.		

Consultee	Date consulted	Date reply received
Suffolk Fire And Rescue Service	N/A	9 March 2018
Summary of comments: No objection, standard comments received		

Consultee	Date consulted	Date reply received
Economic Regeneration (Internal)	N/A	31 October 2018
Summary of comments: The idea of a café is not without merit and will bring economic benefits to the area however it appears premature and lacking in detail as to how it will fit in with the wider vision for the area. However, officers are keen to see this underutilised area brought back into use as a priority for the both community and visitors.		

Site notices

General Site Notice

Reason for site notice: General Site Notice

Date posted: 23 February 2018

Expiry date: 15 March 2018

6. Planning policy

WLP8.22 - Built Community Services and Facilities (East Suffolk Council - Waveney Local Plan (March 2019)

WLP8.23 - Protection of Open Space (East Suffolk Council - Waveney Local Plan (March 2019)

WLP2.5 - East of England Park (East Suffolk Council - Waveney Local Plan (March 2019)

WLP8.29 - Design (East Suffolk Council - Waveney Local Plan (March 2019)

WLP8.34 - Biodiversity and Geodiversity (East Suffolk Council - Waveney Local Plan (March 2019)

WLP8.35 - Landscape Character (East Suffolk Council - Waveney Local Plan (March 2019)

7. Planning considerations

Policy and Principle

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that where in making any determination under the planning Acts, if regard is to be had to the development plan, then determination shall be made in accordance with the plan unless material considerations indicate otherwise.
- 7.2 The site is situated within the East Suffolk (Waveney) Local Plan area. A number of policies were considered at the December Committee meeting, as covered in the Committee Report (appendix 1). Members resolved to grant planning permission on the basis that the proposed development was in compliance with policies WLP2.5, WLP8.22, WLP8.23, WLP8.29, WLP8.35 and WLP8.37 of the Local Plan.
- 7.3 However, the Committee resolution to approve was subject to matters of ground contamination and ecological impact being addressed through submission of further details, prior to any permission being granted.

Ecology

- 7.4 The ecological concerns relate to policy WLP8.34 - biodiversity and geodiversity – which sets out that developments will be supported where it can be demonstrated that it maintains, restores or enhances existing green infrastructure. Consideration needs to be given to developments that directly or indirectly impact on County Wildlife Sites to ensure appropriate mitigation.
- 7.5 As already noted, this site is close to a County Wildlife Site which is on the opposite side of Links Road. However, whilst the proposed structure itself is unlikely to have any significant or detrimental impact on the designated site, there is the issue of potential importation of soil to resolve the potentially contaminated land where the development would be sited. The Council's Ecologist has commented on the application and has confirmed that the proper ecological surveying of the site needs to be undertaken and submitted prior to any permission being granted, so as to ensure that the LPA can properly consider the ecological impacts of the development including any required ground remediation works. Ecology is an important consideration given the site location and the habitats currently present on site. Importing soil to cover the site would effectively have the same impact on the habitats and species potentially present as stripping the site back to bare ground. Therefore, the impacts need to be assessed and mitigation identified prior to the determination of the application.
- 7.6 However, as noted at the December 2019 Committee Meeting, precise construction details are unknown, and the applicants had stated that, subject to consent being granted, they would submit an assessment prior to issuing of decision. Whilst this was not an ideal solution, it would have allowed the LPA to fully and robustly consider ecological implications on the County Wildlife Site, and suggested mitigation measures, prior to granting any planning permission. Members resolved to grant authority to approve the application subject to these matters being addressed.
- 7.7 Following the resolution of the Planning Committee, further discussions have taken place with the landowners, who maintain their refusal to issue a lease to the applicant. Thus, the

applicants are unable to carry out the assessments without the support of the landowner. As such the application cannot be supported as the ecological impact of the development has not been fully assessed and is therefore contrary to policy WLP8.34.

Contaminated Land

- 7.8 With regards to the issue of contaminated land, this has been subject to considerable discussions and the most suitable way to deal with this matter. The land is known as a former landfill site, amongst its previous uses, and therefore contamination is a key issue. Despite ongoing discussions, with the applicants, since the December Committee Meeting, no agreement has been reached about ground investigation work being undertaken prior to decision.
- 7.9 The Council's Environmental Protection Officer maintains an objection to the proposed development until such time as it has been proven that the land can be made safe; however it remains that the applicants are unwilling to undertake such work without a planning permission in place, as it will be expensive to carry out the ground investigation and tests required. However, without evidence that the land can be made safe, the Environmental Protection Officer cannot suggest conditions as, given the former use of the land and potential risk, this needs to be addressed up-front. This leads to a similar situation with the lack of ecological assessment.
- 7.10 Consequently it is not possible to keep the application open for an indeterminate amount of time and, as it is not possible to resolve the issues of ground contamination and ecology, the application is being brought back to Committee with a recommendation of refusal due to insufficient information in regard to these matters.

8. Conclusion

- 8.1 Whilst the Committee previously resolved to grant authority to approve the application, the matters of ecology and ground contamination investigation have not been addressed to enable permission to be granted. Officers continue to support the application insofar as the proposed café would offer an attraction to this part of the town as an enhancement of the Denes area but, in the absence of the required assessments (which need to be provided prior to determination of the application and not by pre-commencement planning condition) officers are now recommending refusal of the application on the grounds of insufficient information.

9. Recommendation

- 9.1 Refuse due to insufficient information in respect of ecological and contaminated land assessments.

The reason for the decision to refuse permission is:

1. Insufficient information has been submitted to allow the local planning authority to make a full assessment of the proposed development particularly in relation to ecological impacts and imported soil and remediation of any potentially contaminated land.

In the absence of these surveys the proposed development is considered to be contrary to the adopted East Suffolk (Waveney) Local Plan 2019 policy WLP8.34 Biodiversity and Geodiversity.

Informatives:

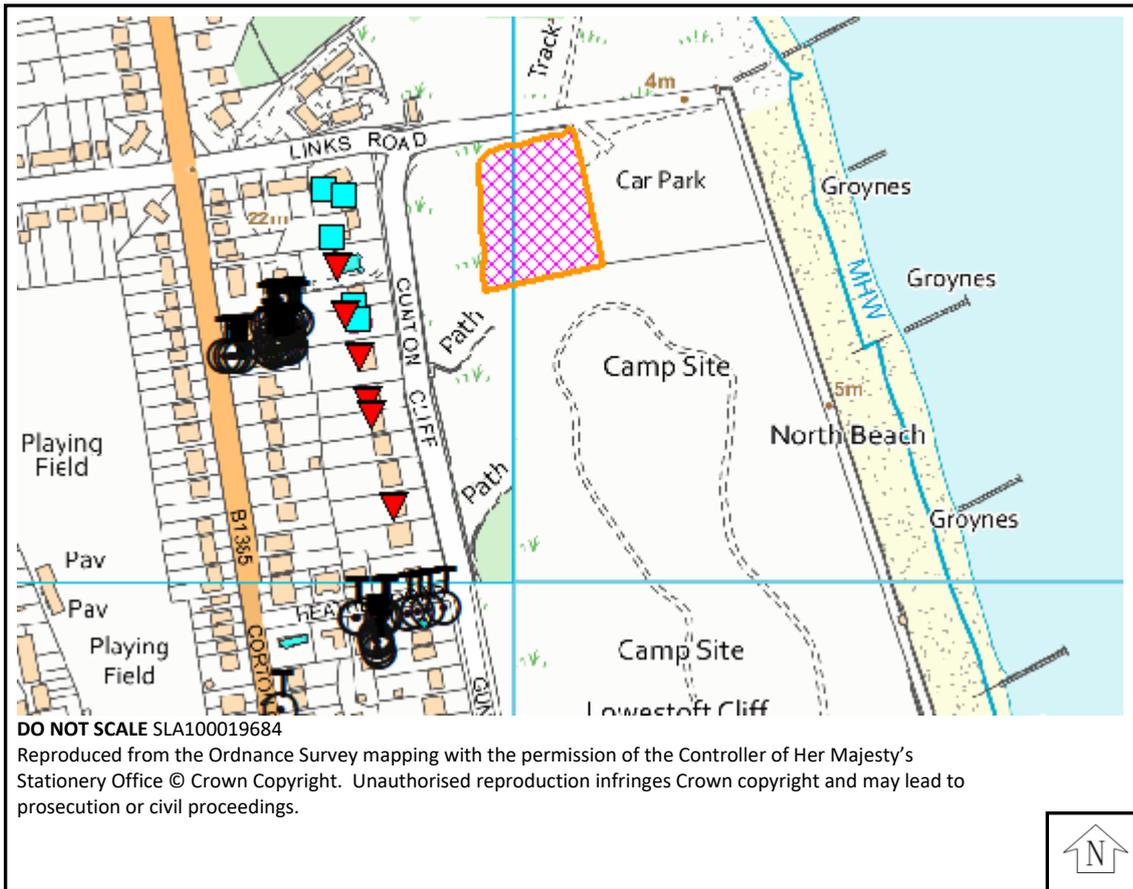
1. The local planning authority has identified matters of concern with the proposal and the report clearly sets out why the development fails to comply with the adopted development plan. The report also explains why the proposal is contrary to the objectives of the National Planning Policy Framework and local plan to deliver sustainable development.

Background Papers

See application reference DC/18/0789/FUL on [Public Access](#)

Appendix 1 – 19 December 2019 Committee Report (Item 6 – DC/18/0789/FUL)

Map



Key

-  Notified, no comments received
-  Objection
-  Representation
-  Support