



# Appeal Decision

Hearing held on 16 February 2010

Site visit made on the same day

by **Isobel McCretton BA(Hons) MRTPI**

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

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**Decision date:**  
**10 May 2010**

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## Appeal Ref: APP/F2605/A/09/2117084

### Shadwell Breck Yard, Snarehill, Thetford IP24 2SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Philip Hodson against the decision of Breckland District Council.
- The application Ref. 3PL/2008/1627/F, dated 26 November 2008, was refused by notice dated 2 November 2009.
- The development proposed is a new cottage and garage.

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### Application for Costs

1. At the Hearing an application for costs was made by Mr Hodson against Breckland District Council. This application is the subject of a separate Decision.

### Decision

2. I dismiss the appeal.

### Main Issue

3. The Council takes no issue with the need for the proposed dwelling in terms of the advice in Annex A to PPS7. The main issue is therefore whether the proposed development would have an adverse effect on the integrity of the Breckland Farmland and Heath Special Protection Area (SPA).

### Reasons

4. The appeal site is within the extensive Shadwell Estate, a large racing stud. The proposed dwelling would be sited in close proximity to an existing 20 horse box American barn, lunging ring and horse walker and would house the yard manager who would be responsible for the horses in the yard at all times. The 3 bedroom dwelling would be modest in size and similar in design to a dwelling at another nearby yard on the estate. It would be sited between the barn and an area of woodland to the north and west. In landscape terms I consider that the proposed design and siting would be acceptable.
  5. The dwelling would be around 535 metres from the SPA. The SPA was designated under the Conservation (Natural Habitats etc Regulations) 1994 (the Habitats Regulations) which is the enactment in British law of the European 'Birds Directive'. It is therefore an international obligation as well as a matter of British law. The SPA protects bird species listed in Annex 1 of the Directive which, in this case, includes the stone curlew. At one point the SPA
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- contained around 75% of the UK population of stone curlews. Through conservation and habitat management the population has increased, but the birds are still subject to the Habitats Regulations. The Habitats Regulations contain a precautionary principle that, in the absence of evidence that an adverse effect from any project or proposal on the integrity of the SPA would not occur, planning permission should not be granted.
6. The SPA was an important issue in the consideration of the Council's Core Strategy adopted in 2009 and which now forms part of the statutory development plan. Policy CP10 places a restriction on new built development within 1500 metres of the SPA. Development will be restricted to the reuse of existing buildings or where existing development completely masks the new proposal from the SPA, providing it can be determined that there would be no adverse impact on the qualifying features of the SPA. The policy was developed in close consultation with Natural England (NE) and the Royal Society for the Protection of Birds (RSPB). The Council has since drawn up a set of criteria to assist in the application of this policy in the determination of planning applications, and these have been supported by NE.
  7. Both NE and the RSPB were consulted on the appeal proposals: Initially NE did not object to the proposal. Since the appeal was submitted, NE has changed its stance in the view of the adoption of the Core Strategy policy and the implementation of the Council's checklist. It now considers that proposed developments within the 1500m constraint zone which are likely to have a significant effect on the bird species should be assessed as to the extent of any adverse effect; to determine whether the proposal may be modified to remove any adverse effect; and to determine whether suitable mitigation can be undertaken to offset any adverse effect<sup>1</sup>.
  8. The RSPB initially objected to the planning application<sup>2</sup> considering that a likely significant effect would be found if a screening exercise were carried out and that an appropriate assessment would be required to demonstrate that the proposed development would not have an adverse effect upon the integrity of the SPA. The RSPB did not consider that the proposed development was effectively screened by existing development. Although there was some vegetation around the proposed development site, the RSPB was aware that the analysis which underpinned the 1500m buffer zone was clear in that the disturbance effect of development upon stone curlews is not diminished by vegetation screening of development. As such, a damaging effect could not be ruled out.
  9. Following a site visit the RSPB stated that, on the basis of the current knowledge of stone curlew ecology and the current evidence base, it was now its view that an adverse effect would not be caused by the proposal. It was indicated that this was an appropriate assessment for the purposes of the Habitats Regulations. However, as argued by the Council at the Hearing, no evidence has been adduced to support this change of stance on the part of the RSPB. There is no information as to what has changed since the appropriate assessment carried out for the Core Strategy. The consultation reply refers to the proximity of development, the existing activity on the site and the

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<sup>1</sup> Letter from NE to Breckland Council dated 08/01/10

<sup>2</sup> Letter from RSPB 29/04/09

residential occupation of the caravan close to the proposed site of the new dwelling. Even so, there is a limited, but nonetheless direct, line from the proposed dwelling to the SPA where there are no buildings. The proposed dwelling and garage would be materially larger than the existing caravan on site (granted temporary planning permission before the formulation of the Core Strategy) and would be within a defined residential curtilage. As such I consider that it could have a materially greater impact than the current temporary caravan and it needs to be clearly demonstrated why this would not have a detrimental effect on the stone curlew population.

10. Given this uncertainty I cannot be sure that there would not be an adverse effect on the stone curlew population which is the special interest feature of the SPA. I therefore conclude that, in view of the precautionary principle enshrined in the Habitats Regulations, it is not appropriate to grant planning permission at this stage.
11. For the reasons given above I conclude that the appeal should be dismissed.

*Isobel McCretton*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Keith Warth	KWA Architects
Meghan Warth BA, MSc	KWA Architects
Chris Kennard	Shadwell Estate

FOR THE LOCAL PLANNING AUTHORITY:

Jayne Owen MA, MRTPI	Senior Development Control Officer, Breckland DC
Gilbert Addison BSc, CEnv	Tree and Countryside Officer, Capita Symonds for Breckland DC
Philip Mileham MA, MRTPI	Senior Planning Policy Officer, Capita Symonds for Breckland DC

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1 Council's letter of notification  
Document 2 Core Strategy policy CP10

DRAWINGS:

A1-4 Drawings submitted with the planning application (602-01B, 602-03, 602-04, 602-300A,