



Appeal Decision

Site visit made on 12 April 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/Z2505/W/22/3311829

Land adjacent Holly Cottage, Station Road, Old Leake, Commonside, Boston, Lincolnshire PE22 9QJ

- 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 Goodwin against the decision of Boston Borough Council.
 - The application Ref B/22/0087, dated 28 February 2022, was refused by notice dated 26 May 2022.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues of the appeal are:
 - whether the appeal site is an appropriate location for residential development, with regard to the development strategy and accessibility;
 - the effect of the proposed development on the character and appearance of the area; and,
 - whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Appropriate location

3. Policy 1 of the South East Lincolnshire Local Plan 2011-2036 (LP), March 2019, outlines the spatial strategy for the area. It is not disputed by either party that the appeal site is located outside of the defined settlement boundaries and is therefore located in the "Countryside".
4. Policy 1 of the LP also indicates that in the Countryside, development will be permitted that requires a countryside location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits. Paragraph 3.2.17 of the LP advises that housing may also, by exception, be justified in the Countryside for example for gypsy, traveller and travelling show people or to meet the specific housing needs of a settlement.
5. From the evidence before me, the proposed development does not conform with either of the residential development exemptions listed in Paragraph

3.2.17. Nevertheless, as Policy 1 of the LP refers to the two exemptions as examples, there may be other circumstances in which housing is justified in the Countryside. It has been put to me that it is necessary for the site to be permanently occupied to protect the proposed nature reserve from interference. However, whilst the appellants wish to establish a nature reserve on the bulk of the application site. It is acknowledged this is not currently in existence and therefore, it cannot be used as a justification for a permanent residential presence to protect it from interference. In any event the proposal is for a single dwelling and despite the flood risk assessment (FRA) referring to a dwelling and wildlife sanctuary this is not the basis on which the application was made.

6. The appellant says the proposed development would generate some environmental benefits through the creation of a nature reserve, and social benefits as the appellant intends it to be open for local naturalists and schools to engage with. There would be economic benefits through the construction of a house. Nevertheless, the appeal before me is for a single dwelling with no reference other than in the FRA of a nature reserve which would be publicly accessible. It has not therefore been substantiated how the proposed development would meet the sustainable needs of the area. Therefore, the proposed development would be contrary to the spatial strategy outlined in Policy 1 of the LP.
7. The appeal site is not isolated in the context of case law cited by the appellant¹ as it is located adjacent to a cluster of houses. However, the appeal site is remote from any day-to-day facilities and is accessed via narrow roads which do not benefit from pavements, moreover there is no street lighting in proximity to the site. Whilst nearby public transport options are limited to infrequent bus services, given the remoteness of the site, the character of the local road network and the lack of realistic public transport options in proximity to the appeal site, it is likely that future residents would be heavily reliant on private vehicles.
8. For the reasons set out above, the appeal site is not an appropriate location for the proposed development with regard to the development strategy and accessibility of services. The proposed development would therefore be contrary to Policy 1 of the LP which directs development to urban areas. The appeal scheme would also be contrary to Section 2 and paragraph 79 of the National Planning Policy Framework (the Framework) which indicate that the sustainable development objectives outlined in the Framework should be delivered through the implementation of plans and application of its policies and which require housing to be located where it would enhance or maintain the vitality of rural communities.

Character and appearance

9. The appeal site is located adjacent to residential development on Station Road and Fellands Gate but is largely free from built development other than a low boundary mesh fence, gate and a telegraph pole which are sited close to the road. The site is predominantly grassland with taller and more dense vegetation closer to the boundary with properties on Fellands Gate. Given its verdant nature and relatively transparent boundary treatment, the site is

¹ Braintree v others [2017] EWHC 2743 (Admin)

markedly rural in nature. Beyond it are open fields which are also largely free from any built development.

10. Whilst a large section of the site would be intended as a nature reserve, the proposed development would formalise around a third of the appeal site and would lead to the introduction of extensive built development. As such the proposed development would reduce the open character of the site and would appear at odds with the prevailing character of the site and wider area.
11. For these reasons, the proposed development would have a harmful effect on the character and appearance of the area in conflict with Policies 2 and 3 of the LP and to paragraphs 130 and 134 of the Framework. These, amongst other things, indicate that permission would only be granted for proposals which meet sustainable development considerations in relation to the character and appearance of the area and which maximise opportunities for improving the character and quality of an area and which indicate that development that is not well designed should be refused.

Flood risk

12. It is acknowledged by both parties that the appeal site is located in Flood Zone 3 on the Environment Agency's (EA) flood map. Policy 4 of the LP explains that development proposed in Flood Zone 3 would be permitted, where it can be demonstrated that there are no other sites available at a lower risk of flooding.
13. Whilst the Appellant may have considered several alternative sites before purchasing this site, I have not been provided with a list of these sites nor why they were considered unacceptable. It has also been put to me that the appeal site is unique and therefore cannot be subject to a sequential test. However, I have not been presented with any substantive evidence to demonstrate that the site is unique. I cannot conclude that the appeal site has been subject to a thorough sequential flood test.
14. Whether the appeal site passes the sequential flood test or not is a planning matter and therefore the EA is not required to be consulted on this issue and it was not considered by the Lead Local Flood Authority.
15. The Appellant has argued that the EA modelling provides a worse than worst case scenario. Notwithstanding, alternative detailed modelling has not been provided to demonstrate that the site is not at a high risk of flooding. The Appellant has sought to demonstrate that the proposed development complies with the requirements of paragraph 167 of the Framework. However, the requirements of this paragraph only apply in light of an acceptable Flood Risk Assessment, flood sequential test and exception test. For the reasons given above, the site has not been subject to a thorough flood sequential test and therefore the requirements of paragraph 167 of the Framework are not required to be considered.
16. The proposed development would not comply with the Framework requirements which seek to steer new development away from areas at the highest risk of flooding. The proposed development is therefore contrary to Policy 4 of the LP which requires it to be demonstrated that there are no other sites available at a lower risk of flooding.

Other Matters

17. The conduct of the Council during the determination of the planning application, and previous planning applications on the site, are not relevant to the planning merits of the appeal scheme and do not influence my findings on the main issues outlined above.

Conclusion

18. The proposed development would conflict with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harms and associated development plan conflict.
19. Therefore, for the reasons given above the appeal is dismissed.

J Hobbs

INSPECTOR