

Appeal Decision

Site visit made on 8 November 2016

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 29th November 2016

Appeal Ref: APP/R2520/W/16/3155758

Land East of Laburnum Close, Branston, Lincolnshire

- 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 Castle Estates (Lincs) Limited against the decision of North Kesteven District Council.
 - The application Ref 15/1322/FUL, dated 28 October 2015, was refused by notice dated 23 June 2016.
 - The development proposed is erection of 6 No. partial subterranean dwellings; partially bunded car port; formulation of new access road (Terram geocell); creation of additional waterbody; and hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues for the appeal are:
 - Whether the proposed development would be at risk of flooding or would increase the risk of flooding elsewhere;
 - The effects of the proposal on the character and appearance of the area, and
 - The effects of the proposal on local wildlife;

Reasons

Flooding

3. The Framework advises that inappropriate development in areas at risk of flooding should be avoided and, at paragraph 100, it advises decision makers that such development should only be considered appropriate if, amongst other things, it has been informed by a site specific flood risk assessment following the "sequential test".
 4. The sequential test seeks to avoid flood risk by first ensuring that development only takes place in areas at risk from flooding if there are no reasonably available alternative sites at locations where the risk is less. The Framework is clear that before granting planning permission for a scheme in an area at risk from flooding, the decision maker must be satisfied that the requirements of the sequential test are met and advises that the Strategic Flood Risk Assessment will provide the basis for applying this test. The *North Kesteven*
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Strategic Flood Risk Assessment 2008 identifies the site as Flood Zone 3a (high probability). The submitted Flood Risk Assessment (FRA) also includes Environment Agency Flood Maps which show the site as lying within the Zone 3 which is classified as being at high risk from flooding. Residential development is classified as being "more vulnerable" to the risks of flooding and, within Zone 3, planning guidance indicates that such development is inappropriate.

5. Following an assessment of the hydraulic modelling provided by the appellant the Environment Agency have stated that they have no objection to the proposal, provided mitigation measures are implemented as part of the approved scheme. In this regard, the Environment Agency appears to be satisfied that subject to mitigation, the proposal would be safe for its lifetime, without increasing flood risk elsewhere. Nevertheless, the appellant has not sought to challenge the Environment Agency Flood Map and the site remains in Zone 3.
6. With the precautionary principle in mind, and having regard to guidance in the Framework which directs decision makers to carry out a sequential assessment before considering whether the effects of the proposal could be made acceptable, I am of the view that the potential to employ acceptable mitigation does not negate the need to first consider whether the site is sequentially preferable. Neither the submitted Flood Risk Assessment (FRA), nor any other part of the evidence before me demonstrates that a sequential test has been undertaken. I therefore agree with the view expressed by the Council, that it cannot be assumed that the proposal could not be located within a zone with a lower probability of flooding.
7. Furthermore, I note that the FRA recommends minimum floor levels within the proposed dwellings to respond to the possibility of groundwater flooding. These measures were contained within the FRA submitted to the Environment Agency during the course of the application. It is not clear to me whether the submitted cross sections supplied as part of the proposal have taken account of these floor levels as they appear to pre-date the Environment Agency's advice on this matter. Therefore, based on the information before me I cannot be sure if the proposed measures would alter the appearance of the proposed scheme or be appropriately accommodated within it without significant revision.
8. I therefore conclude that, as it has not been demonstrated that the sequential test would be met in this case, the development fails to take full account of flood risk. It would thereby conflict with guidance in the Framework which aims to direct development away from areas at highest risk of flooding, in order to avoid increased vulnerability to the range of impacts arising from climate change. It would also conflict with Policy C10 of the *North Kesteven Local Plan 2007* (Local Plan) which seeks to direct new development towards sites at lower risk of flooding. This matter carries substantial weight against the proposal in the planning balance.

Character and Appearance

9. The appeal site is a piece of low lying land which sits within the village of Branston and is adjoined to the east and west by existing residential development. Along with land to the south it has been designated as a Local Wildlife Site (LWS) known as The Jungle. It is adjoined by watercourses on its eastern and western edges and an area of low lying marshy land lies towards

the northwestern part of the site. Elevated footpaths lie along the eastern, southern and western edges of the site. It has a wild and unspoilt appearance with numerous trees and overgrown planting within the site, particularly towards the edges. This contrasts strongly with the suburban character of the housing which surrounds it. In this regard the site forms an undeveloped enclave which makes a positive contribution to the quality of the local environment.

10. The proposal relates to the construction of 6 partially subterranean dwellings towards the southeastern section of the site. These would be around 1.5 storeys in height and would be arranged in two clusters of three, with access achieved via an existing hammerhead at the end of Laburnum Close. The dwellings would be constructed using earth bunding or around 3 metres in height and would feature timber cladding and zinc roofing. A small number of trees and a large area of scrub willow would be cleared to facilitate development. The proposal would also include a largely open plan layout with private amenity space provided within enclosed courtyards which would lie to the rear of the dwellings. Parking and cycle storage would be provided within a part submerged parking court. The site would be naturalised with the use of native planting which would include a drainage pond and reed bed which would function as part of the drainage system for the site.
11. The design, materials, layout and use of landform seek to ensure the proposal integrates with the natural character of the site. However, the attractiveness of the site, and the contribution it makes to the character of the local area lies in essence in the fact that it is wild and undeveloped. I am unconvinced that a scheme of this nature could be assimilated into the site without entirely altering these attributes. Despite being partly submerged the dwellings would be clearly visible in views from the west and in staggered formation from the south, where the use of natural materials would not mitigate the urbanising effect of the buildings' profile. In addition, although I note that private amenity space is to be within enclosed courtyards, evidence of normal domestic occupation is likely to be visible within the open plan foreground to the dwellings, which would further suburbanise views from the west.
12. The Council have also expressed concerns relating to the potential visual impact of parked cars. I note that the proposal provides 6 spaces within a screened parking court. No further areas suitable for parking a car are provided within the development. Therefore, it is unlikely that additional parked cars would be a visual feature within the development. However, access to the site, even if using materials which allow the road to be grassed, would be likely to be a highly visible route across the site, due to wear resulting from daily use. This would dissect the site and undermine attempts to provide a naturalised setting for the development.
13. It has been put to me that the proposal presents the opportunity to improve the character of the site, which the appellant contends has been subject to vandalism and anti-social behaviour. I found no evidence of vandalism during my visit although parts of the site showed evidence of children's play. Local residents have also stated that they were unaware of anti-social behaviour at the site. This leads me to the view that any benefits in this regard are largely unsubstantiated and I attribute limited weight to them.

14. Taking these factors into account I consider that the proposal would not be comfortably assimilated into the site and instead would harm its attractively undeveloped character. The position of the site, within a linear strip of similarly undeveloped land would also effectively isolate the southern tip of The Jungle and so erode the established character of the adjoining land. As such the proposal would fail to comply with guidance in the Framework which seeks development which takes account of the different roles and character of different areas and improves the character and quality of that area and the way it functions. It would also fail to comply with Policies C1 and C18 of the Local Plan which together seek development which contributes positively to the character of the area, or with Policy LW3 which also seeks to protect Visual Amenity Areas which have an open character and the positive contribution they make. This matter carries significant weight against the proposal in the planning balance.
15. The Council also consider the proposal to be contrary to Policy T5 of the Local Plan, which seeks to provide acceptable levels of parking within developments, up to a maximum standard. The Council's concerns appear to relate primarily to the visual impact overspill parking would have. For the reasons given above I do not consider that this matter would arise in this case and I find Policy T5 to be of limited relevance.

Local Wildlife

16. The site lies within The Jungle Local Wildlife Site which also includes land to the south. In 2008 it was identified as marsh, pond and improved grassland habitat. The proposal is accompanied by an Ecology and Protected Species Survey and an Ecology and Landscape Management Strategy. These were later supplemented with a Botanical Survey Update which was carried out in April 2016. It has not identified the site as a habitat for any protected species.
17. The reports identify that the southeastern corner of the site has been subject to drying out, which has altered the balance of species found on it from water based plant species to terrestrial ones. Incidents of fly-tipping on site were also considered to undermine its potential for a range of flora. However, although species within part of the south-eastern corner of the site were found to be in decline, the number and range of species found across the site was such that it still met the original specifications for designation. Furthermore, even if the section of the site proposed for development and identified as being in decline was considered in isolation, that part of the site also met the original specifications for designation. The 2016 update also found that following a breach of the river bank, attributed to vandalism the part of the site which had been drying out had flooded and that as a result some of the effects of this were less evident at the time of the survey.
18. The appellant considers that the proposal would not lead to a significant loss of habitat and would offer opportunities for enhancement through the drainage measures proposed and as part of a programme of conservation management of the site. Of the plants identified in the survey only the lesser water-parsnip was found to be exclusively located within the development site.
19. However, I take into account the views of Lincolnshire Wildlife Trust who have drawn my attention to the fact that the site is now home to a wider range of plants considered to be indicative of the identified habitats that when it was originally designated in 2008. Furthermore, aside from the assertion that the

residential development would prevent fly-tipping, I have been provided with very little substantive evidence of how the nature conservation interest of the site would be better managed as a result of the proposal. I am therefore unconvinced that the site is in significant decline, and give no weight to the view that the proposal would improve its long term prospects. Furthermore, having regard to guidance in the Framework which advises that in seeking to provide net gains to biodiversity new development should be directed to sites with less harmful impacts in this regard, I have been provided with no evidence that the site could not be located elsewhere.

20. As the proposal would lead to a loss of part of a Local Wildlife Site it would lead to a loss of wildlife habitat and so would fail to protect or enhance the natural environment. It would thereby conflict with Policy LW6 of the Local Plan which states that development which would adversely affect such sites will only be supported if the need for the development overrides the importance of the site, the development cannot be feasibly located elsewhere, and appropriate mitigation measures are secured. It would also conflict with the Framework, which seeks development which provides net gains to biodiversity and which seeks to avoid harm by locating development on sites with less harmful impacts. This matter carries significant weight against the proposal in the planning balance. This reflects guidance in the Framework.

Other Matters

21. The materials of construction, levels of insulation, orientation of the building, and the generation of renewable energy would provide a development with low energy needs which I am advised is capable of achieving "Passivhaus" standard, capable of forming an exemplar project of regional significance. Although I have been provided with no substantive evidence of how learning from the project would be disseminated, having regard to the need to respond to climate change I nonetheless attribute some limited weight to the limited renewable energy benefits that would arise from a proposal of this scale.
22. The Council have expressed concerns as to whether a private sewage treatment system would meet Environmental Permitting Regulations in this case. I note that if on-site treatment could not be achieved this would undermine some of the appellant's aspirations for the scheme. However, as the site lies within a short distance of a mains connection I have no reason to believe that the site could not be adequately serviced. Neither would a mains connection alter measures to reduce and treat surface water run-off. I therefore attribute no weight to the matter in the planning balance.
23. The proposal would bring some limited economic benefits through the provision of Council Tax, and jobs during construction, to which I attribute limited weight in favour of the proposal.
24. I take into account residents' concerns in relation to precedent, but as the nature of the proposal is relatively unusual, I have no substantive evidence that the scheme would form a precedent for other similar developments, and I give the matter no weight. I also have no convincing evidence that the proposal would lead to subsidence, and so this limits the weight I can attribute to it.
25. The Council have put forward policies from the *Central Lincolnshire Local Plan* (Emerging Local Plan). These include the allocation of the land as Local Green

Space. However, as this plan has not yet been adopted this diminishes the weight I can attribute to the policies within it.

26. The proposal would provide 6 houses in an accessible location and would contribute to housing supply. The parties dispute whether there is a 5 year supply of housing land in the district and the appellant considers that as a result paragraph 49 of the Framework is engaged and relevant policies for the supply of housing must be considered out-of-date.
27. Paragraph 14 of the Framework advises that where the development plan is out-of-date permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or, specific policies in the Framework indicate development should be restricted. These include policies which relate to locations at risk of flooding. Flood risk is a material consideration in this case and a matter on which I have found significant harm. Therefore, although I attribute substantial weight to the contribution the development would make to housing provision, the matter of 5 year housing land supply in the district is in this case not a factor on which the appeal turns.

Conclusion

28. The contribution the proposal would make to housing provision, the limited economic benefits and benefits by way of renewable energy production weigh in favour of the proposal. Notwithstanding the substantial weight I attribute to housing supply, having regard to the need to respond to climate change the harm that would arise as a result of flood risk is sufficient to significantly and demonstrably outweigh these benefits. I add to this the significant harm that would arise as a result of loss of wildlife habitat and the further significant harm that would arise to the character and appearance of the area which further tip the balance against the proposal. The development cannot therefore be considered a sustainable form of development.
29. Accordingly, for the reasons outlined above, and having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR