
Appeal Decision

Site visit made on 24 May 2017

by A Jordan BA Hons MRTPI

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

Decision date: 20 June 2017

Appeal Ref: APP/A3010/W/17/3169640

Land off Beckingham Road, Walkeringham, Doncaster, DN10 4HZ

- 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 Mr & Mrs D W & L A White against the decision of Bassetlaw District Council.
 - The application Ref 16/00550/OUT, dated 21 April 2016, was refused by notice dated 23 November 2016.
 - The development proposed is described as an outline planning application for residential development.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs D W & L A White against Bassetlaw District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The supporting statement refers to up to 25 units being erected on site. The proposal is made in outline form with all matters reserved other than access. I have therefore proceeded on the basis that the layout and exact number of dwellings is not a matter before me.
4. The parties agree that the Council are unable to demonstrate a 5 year supply of housing land at this time. Paragraph 49 of the *National Planning Policy Framework* (Framework) states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if a 5 year supply of housing sites cannot be demonstrated. Since the appeal was lodged the Supreme Court¹ came to a view concerning the interpretation of paragraph 49 of the Framework and its relationship with paragraph 14 of the Framework. The judgment also went on to consider both footnote 9 (to paragraph 14) and paragraph 135 of the Framework. I sought the views of the parties in relation to this judgement and have taken the comments received into account in the determination of the appeal.

¹ Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP and Another v Cheshire East Borough Council [2017] UKSC 37

5. The Council maintain that the proposal would give rise to the need for CIL contributions and additional financial contributions to be secured through a S106 agreement. Affordable housing is also sought at a level of 35%. The appellant has not objected to either the affordable housing requirement or the other financial contributions. The proposal is not accompanied by a legal agreement to secure these elements of the scheme. Whilst I have no reason to assume such an agreement could not be provided in this case, as I have found that the development would be otherwise unacceptable due to flood risk, it was not expedient to seek such an agreement in this case.
6. The site lies close to the Church of St Mary Magdelene which is a Grade I Listed Building the Grade II Listed Manor House and the Old Vicarage. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. The site also lies close to Meadow View which is a non-designated heritage asset. The Framework advises that in assessing the impact of proposals on non-designated heritage assets a balanced judgement will be required, having regard to the scale of any harm or loss and the significance of the heritage asset.

Main Issues

7. Accordingly, 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;
 - Whether the proposal would conflict with policies for residential development which seek to protect the character of the countryside and to achieve a sustainable pattern of development;
 - The effect of the proposal on the setting of the Grade I listed Church of St Mary Magdelene, the Grade II listed Manor House and Old Vicarage and the non-designated Meadow View.

Reasons

Risk of Flooding

8. 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". 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 lack of a sequential assessment formed part of the Council's reason for refusal.
9. 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

Environment Agency's Standing Advice also states that before a flood risk assessment is undertaken, the developer should check if a sequential test is needed. No sequential test is provided as part of the proposal. Policy DM12 of the *Bassetlaw District Local Development Framework Core Strategy & Development Management DPD* (CS) explicitly states that development within Flood Zone 2 will not be supported while development sites remain available in sequentially superior locations.

10. Furthermore, the "Proportionate Flood Risk Assessment" which accompanied the proposal provides limited information. Although I note that only part of the site falls within Zone 2, and that the layout of the development is not a matter before me, the details provided do not include any detailed information on site levels or flood levels and based on the submitted flood map it is unclear whether the proposed site access is outside the area identified on the Environment Agency's Flood Risk Map as being at risk of flooding. Further information was submitted with the appeal. This refers to the O.S. maps for the site and states that on this basis the site lies above 5.0 AOD, which the appellant assumes is the flood level. However, even taking into account the additional information supplied with the appeal, the proposal provides no meaningful analysis of flood risk at the site. No detailed topographical information is provided and so no reliable assessment of the extent of the site below the identified flood level can be inferred.
11. Therefore, whilst I am mindful that a more detailed Flood Risk Assessment may show that the site can be appropriately developed without being at risk from flooding or increasing such risk elsewhere, notwithstanding the appellant's stated aim to employ flood attenuation measures and to ensure floor levels are raised, based on the evidence before me I cannot be assured that the site can be safely developed without increasing the risk of flooding.
12. I therefore conclude that, as it has not been demonstrated that the sequential test would be met in this case, or that the site can be safely developed, the development fails to take full account of flood risk. It would thereby conflict with Policy DM12 of the CS and 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. This matter carries substantial weight against the proposal in the planning balance.

Sustainable Pattern of Development

13. Policy CS1 of the CS sets out a hierarchy for the release of land for housing in the District. Policy CS8 of the CS seeks to restrict new housing development within Rural Service Centres to within the development boundary. However, the plan predates the Framework. The Framework advises where a development plan is out of date due weight should be given to the policies within it in accordance with their degree of consistency with the guidance contained within the Framework. Insofar as they seek to protect the countryside from unnecessary development, the aims of both policies are broadly in accordance with the Framework. However, the Framework varies from the CS in that rather than precluding development outside defined settlement boundaries it refers instead to the need to resist isolated new dwellings in the countryside. The Framework also states that new residential development is most appropriate in locations where there is access to

alternative modes of transport other than the private car (paragraph 30) and where journey lengths to services and opportunities for employment can be minimised (Paragraph 37).

14. The site is a flat open field on the edge of the village of Walkeringham. It is adjoined to the north by existing residential development and is a short distance from the village centre. The Council state that the site is well related to the existing settlement and would not therefore appear unduly discordant in terms of landscape character. The application is made in outline form, and taking into account the size of the site I consider that it could accommodate residential development without compromising the relatively loose urban form which characterises the wider pattern of development. Therefore whilst the loss of the field would erode the character of the countryside in this location, the visual effects of the proposal could be minimised with an appropriate layout and associated landscaping.
15. In terms of local services I am advised that the village has a temporary post office but no local shop. I therefore note the concerns of some residents regarding the availability of local services and their comments regarding available public transport. However, the village has a public house and a church, a primary school and a village hall. Therefore whilst it is likely that future residents of the development would be dependent upon the private car to access employment and services outside the village, there is scope for meeting some day to day needs locally. I also take into account that the Council consider the site to lie in a sustainable location and that the proposal would assist in maintaining the viability of existing services and facilities.
16. It follows that although the proposal would lie outside the Rural Service Centre and would fail to comply with Policy CS8 of the CS, the identified harm that would arise to the character of the countryside and as a result of increased reliance on the private car would be relatively limited. I therefore attribute only limited weight to this harm in the planning balance.

Heritage Assets

17. The Church of St Mary Magdelene is a Grade I Listed Building, parts of which date from the 13th Century. It is an attractive example of a building of its type and its significance lies in its status as a well preserved example of ecclesiastical architecture of its period. The Manor House is a Grade II Listed Building which dates from the 16th Century, with 19th and 20th Century additions. Its significance lies in the antiquity of parts of its structure, the preservation of its architectural detailing and as an attractive example of a building of its period. The Old Vicarage is also a Grade II Listed Building which dates from 1825 which sits further afield to the south west of the Manor House, the listing for which recognises a number of original details which contribute to its significance.
18. There are very limited views of these assets from the appeal site, due to their position some distance from the appeal site on the opposite side of the road and the screening provided by established tree cover. The proposal would therefore have no direct impact on the wider setting of these assets. I note the comments of Historic England, that the appeal site contributes to the rural setting of the listed assets by creating a sense of place in which the village and church are experienced and enjoyed and that the proposal would erode this setting and the separation of the listed buildings from their rural surroundings.

I acknowledge that the proposal would reduce the extent of countryside surrounding these assets. However, the site in question does not provide any important views of these assets and taking into account the extent of available views available I do not consider the limited degree to which the proposal would erode wider rural character to be significant in this case.

19. The appeal site is also in close proximity is Meadow View, a non-designated heritage asset. It is separated from the appeal site to the north by Birdcroft Lane, a minor roadway with large trees on its north side. In terms of the setting of Meadow View, a non-designated heritage asset, the site allows views of the asset across the field from Beckingham Road. However I concur with the views of the Council's Conservation Officer, that the views are incidental which arise from the location of the building and the low boundary hedges around the site and are not formal or planned. Therefore although the open nature of the wider setting of the dwelling would be reduced along with available views of the asset, I am satisfied that this would not materially harm the significance of the asset. The Council have also referred to the setting of Walkeringham village. I have not been provided with any details of the historic significance of the village or how it would be harmed. However, having regard to my conclusions regarding the limited impact on Meadow View, I have no evidence on which to conclude that the development would lead to harm to any further assets located within the village.
20. A geophysical survey states that the site shows few visible features of archaeological interest. I am therefore satisfied that subject to an appropriate condition requiring a watching brief and investigation before works commence the archaeological interest of the site could be protected.
21. I therefore conclude that the proposal would not cause harm to the setting of the Church of St Mary Magdelene, The Manor House, The Old Vicarage and so would not cause harm to the special interest of the listed buildings or to their significance. It would also not cause harm to non-designated heritage assets. It follows that the proposal would comply with national policy outlined in the Framework.

Other Matters

22. The proposal would provide up to 25 dwellings. Having regard to the need to significantly boost the supply of housing explicit in the Framework, this matter carries significant weight in favour of the proposal in the planning balance.
23. Policy DM11 of the CS relates to the provision of strategic infrastructure which seeks to ensure that any necessary infrastructure is provided either before, or in tandem with new development. I note from the Council's committee report that the proposal would give rise to the need for CIL contributions and additional financial contributions to be secured through a S106 agreement. These relate to the provision of 5 additional primary school places, the provision of play equipment and the implementation and maintenance of Sustainable Urban Drainage on site. Policy DM5 relates to the provision of a range of housing and refers to providing a mix of tenures. The committee report also states that affordable housing should be provided on the site at a level of 35% in line with policy CS8 of the CS. The appellant has not objected to either the affordable housing requirement or the other financial contributions.

24. Planning guidance is clear that financial contributions cannot be sought by way of a planning condition. As such, the proposal before me provides no means of securing the financial contributions identified by the Council. Planning guidance also advises that affordable housing should only be secured by way of a planning condition for complex or strategically important developments, neither of which apply to the development before me. The absence of a means to adequately secure the identified infrastructure and affordable housing weighs against the proposal in the planning balance.
25. A number of adjoining occupiers have raised concerns regarding the impact of the proposal on highway safety. However, taking into account the scale of the development and the access proposed, I concur with the views of the County Highway Engineer who is satisfied that the proposal can be safely accessed and subject to appropriate conditions would not be detrimental to highway safety. This matter does not therefore weigh against the proposal.

Conclusion

26. The proposal would provide up to 25 houses and would contribute to housing supply. The parties agree that there is no 5 year supply of housing land in the district. As a result paragraph 49 of the Framework is engaged and relevant policies for the supply of housing must be considered out-of-date. 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.
27. 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, having regard to the need to respond to climate change, and the advice in footnote 9 to paragraph 14 of the Framework, the harm that would arise as a result of flood risk is determinative in its own right. The harm that would arise as a result of a failure to adequately secure affordable housing or contributions to ensure adequate strategic infrastructure weighs further against the proposal. The development cannot therefore be considered a sustainable form of development.
28. Accordingly, for the reasons outlined above, and having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR