
Appeal Decision

Site visit made on 6 June 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 29 June 2017

Appeal Ref: APP/V2635/W/16/3166311

Margaretta House, 100 Main Road, Clenchwarton, Norfolk PE34 4BG

- 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 Neil Jordan against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 15/01446/O, dated 11 September 2015, was refused by notice dated 9 September 2016.
 - The development proposed is a new residential housing development.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council have confirmed that when it made its decision the King's Lynn and West Norfolk Local Plan (1998) formed part of the development plan but this has been superseded by the adoption of the King's Lynn and West Norfolk Site Allocations and Development Management Policies Plan (SADMP) in September 2016. As this change took place prior to the submission of this appeal neither party has been prejudiced by this change in policy circumstances.
3. The application was submitted in outline with all detailed matters reserved. The submission included a site plan layout of the possible siting and means of access for the dwellings on this site which I have considered as being for illustrative purposes only.

Main Issues

4. The main issues are whether the proposal would represent a suitable site for housing development having regard to (i) spatial strategy and relevant housing policies for the area and (ii) the flood risk in the area.

Reasons

5. The appeal site comprises part of an open field on the eastern edge of the village of Clenchwarton, south of Main Road and enclosed by mature hedgerows and trees on the boundaries. Residential development is located to the south, north and west and open fields to the east. The proposed residential development would be accessed via the Main Road and the indicative details show five dwellings with associated access, parking and landscaping.
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Spatial Strategy

6. The Council's Spatial Strategy and Settlement Hierarchy are set out in Policies CS01 and CS02 of the King's Lynn and West Norfolk Core Strategy 2011 (CS). This defines a settlement hierarchy, which seeks to ensure that new development at an appropriate scale occurs in the most sustainable locations. Thus, it identifies the roles of various towns and villages in the borough, seeking to direct new development to its larger settlements.
7. Within the settlement hierarchy, Clenchwarton is defined as being a Key Rural Service Centre and the appeal site is located outside the development boundary of the village in the SADMP. It is therefore classed as being in the open countryside wherein CS Policy CS06 and SADMP Policy DM2 apply.
8. In accordance with CS Policy CS06 and SADMP Policy DM2 requires that residential development in the open countryside should meet an essential need for agricultural or forestry, a small scale affordable housing need or involve the conversion or re-use of existing buildings. There is no evidence before me that the appeal scheme would meet any of these criteria and therefore it follows that the proposal conflicts with CS Policies CS01, CS02 and CS06 and SADMP Policy DM2, key policies which define the Council's Spatial Strategy, which counts significantly against the proposal.
9. Furthermore, Paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing cannot be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable sites. However, this is not engaged by the proposal as there is no substantive evidence before me to contradict the Council's statement that it has the required supply and the Council have provided an appeal decision¹ and High Court decision which support this position.
10. I have considered this proposal against Paragraph 55 of the Framework. Paragraph 55 seeks to promote sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities. Paragraph 55 goes on to state that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances. These include where there is an essential need for a rural worker, or where the development would be of exceptional quality, or would be of a truly outstanding or innovative design, to help raise design standards more generally in rural areas, which does not apply in this case.
11. 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). These aims are reflected in CS06 and CS08 which seeks to give priority to sustainable form of development that offers alternative choice of transport modes to reduce car dependency and minimises the need to travel.
12. The appellant considers that the proposal would form a sustainable form of development that would be closely related to existing services and facilities. Clenchwarton has a small range of local services and facilities, sufficient to meet some of the day to day needs of residents. My visit to this site confirmed

¹ APP/V2635/W/14/2221650

that the appeal site was within walking distance of the services available in the village, including a local shop, post office and primary school. The appellant has indicated that a bus service runs to and from King's Lynn and the nearby villages and bus stops are situated on the Main Road outside the site. However, all of these settlements are some distance away and no information has been provided about the frequency and availability of this service particularly in the evenings and on Sundays.

13. Therefore, although some day to day trips could be undertaken by sustainable means, the appeal site would, in my judgment, be sufficiently isolated in this rural location such that the future occupiers of the proposed development would be potentially reliant on the use of the car to reach essential services, facilities and significant employment opportunities elsewhere in the larger towns and villages nearby.
14. The appellant argues that the appeal site, although it lies outside, is immediately adjacent to the development boundary and is situated closer to local services and facilities than two of the proposed housing sites allocated in the village. These, however, form part of the Council's development plan that have been selected through extensive public consultation and independent examination and comply with the Council's spatial strategy and housing policies to the focus housing within the development boundary of the village.
15. I also note the comments from the appellant that all of the allocated housing sites in the village now have outline planning permission that highlights the rate of demand for new housing in this location. Whilst this maybe so, this does not set a precedent for such an inappropriate development in this location for the reasons set out above. I therefore accord these matters limited weight.
16. Consequently, I conclude that the proposal would conflict with the requirements of CS Policies CS01, CS02 and CS06 and SADMP Policy DM2 as set out above. In addition, it would conflict with paragraphs 17 and 55 of the Framework which seek to avoid isolated homes in the countryside and to actively manage patterns of growth through the plan-led system to make the fullest possible use of public transport, walking and cycling.

Flood risk

17. The site is located in Flood Zone 3 as defined in the King's Lynn and West Norfolk Strategic Flood Risk Assessment 2009 (SFRA) and Environment Agency's Tidal River Hazard Mapping Area 2015 (TRHM) for the Rivers Great Ouse and Nene. In the event of an overtopping/breach of the defences of the Great River Ouse the site could be flooded up to a depth of between 1.0m to 1.5m metres. The appellant's Flood Risk Assessment (FRA) outlines that the site is not in a Functional Floodplain and is about 2km from the tidal defences in a defended Flood Zone 3, outside the Tidal Hazard Zone, where there is low risk of tidal flooding in the event of a breach of the flood defences.
18. The Protocol² between the Council and the Environment Agency advises that the TRHM is the most up-to-date and accurate information which should be used in conjunction with the SFRA to get a thorough understanding of the flood risk to a site. Although the TRHM moderates the severity of flood risk to the site as given in the SFRA, the site remains within Flood Zone 3 and it is

² SADMP 2016 – Approach to Flood Risk (Appendix 3) and Flood Risk Protocol (Appendix 4)

necessary to carry out the Sequential Test as advised by paragraph 100 of the Framework.

19. Paragraph 101 of the Framework states that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. The Council maintains that there are sequentially preferable sites within and adjacent to the village at less residual risk of flooding which could accommodate the development. The Council have provided information that the three sites allocated for residential development in the village in the SADMP have outline planning permission granted and are sequentially preferable sites.
20. However, the appellant has stated that all of the allocated sites together with the rest of Clenchwarton fall within Flood Zone 3 and considers that the appeal site would have a lower flood risk as compared to the development allowed for the 40 dwellings at Fosters Sport Ground, Clenchwarton³ and the 10 dwellings approved in Hall Road, Clenchwarton⁴.
21. Therefore, whilst the allocated sites may be reasonably available for the proposed development there is insufficient evidence to demonstrate that they are in areas at lower risk of flooding than the appeal site. As both the village and the appeal site are protected by the same flood defences against a 1 in 200 event, inclusive of climate change. Both must, therefore, have the same risk of flooding and there is no sequential preference between them.
22. Accordingly, the appeal site falls to be considered under the Exception Test. Paragraph 102 of the Framework sets out two limbs for the Exception Test. Firstly: the development should provide wider sustainability benefits to the community that outweigh the flood risk; and secondly, a site-specific flood risk assessment must demonstrate that the development should be safe for its lifetime taking into account the vulnerability of its users without increasing flood risk elsewhere, and where possible, reduce flood risk overall.
23. In terms of sustainability benefits for the community, I note the appellant's statement that the private market dwellings would meet the local housing need and provide some wider economic benefits to the area. However, I find insufficient community benefits arising from this proposal to outweigh the risk of flooding identified in this area to which I attach significant weight. Therefore, despite the Environment Agency accepting the findings of the FRA that the site could be made 'safe', provided that suitable mitigation measures were provided and appropriate conditions were attached, the proposal fails the Exception Test in this case.
24. For the reasons given I conclude that the proposal would not accord with CS Policies CS01 and CS08 that seek to avoid development in areas at risk of flooding. In addition, it would conflict with the aims of paragraph 102 of the Framework that seek to ensure that the development provides wider sustainability benefits to the community that outweigh the flood risk and that the development will be safe for its lifetime.

³ APP/V2635/A/14/2219315

⁴ 15/01315/FM

Other matters

25. I have noted the other developments in the area drawn to my attention by the appellant. The planning appeal for up to 40 dwellings at Fosters Sport Ground, Clenchwarton is for a different scale and form of development and was allowed in a different policy context when the Council could not demonstrate a 5 year land supply. The 10 dwelling scheme approved in Hall Road, Clenchwarton has different development and locational characteristics to the appeal scheme. I therefore accord this limited weight as a precedent in this case.
26. I have noted the issues raised by the appellant regarding the way in which the application was processed by the Council and that if it was determined in a timely manner, the proposal would have accorded with the Framework, particularly paragraphs 14 and 49. However, whilst I appreciate the appellant's concerns and complaints regarding the advice given and the delays in determining prior to the change in policy circumstances, these are matters to which I can attach only limited weight in making this decision.
27. The appellant considers that the proposal would form a sustainable form of development that would provide some social and economic benefits, through contributing to the mix of housing and local services in the area. However, the small number of dwellings proposed would make a limited contribution to the vitality of this rural community and, more generally, to the housing stock in the district. There is not any evidence before me to suggest that local services are at risk such that the small number of dwellings proposed would secure their retention and I do not consider that these factors would outweigh the site's significant locational shortcomings.
28. The appellant also considers that the appeal scheme would have some environmental benefits associated with the site's location and accessibility, the retention of the hedgerows and the proposed landscaping. However, for the reasons given above, I consider that the adverse impacts arising from locating the proposed development in this rural location outside the development boundary of the village, would conflict with the environmental dimension of sustainable development. In my view, this would be sufficient to outweigh the scheme's benefits when assessed against the policies in the Framework as a whole. The proposal would not therefore amount to sustainable development in terms of the Framework.
29. I have also noted the comments from Clenchwarton Parish Council and the objections from local residents to the proposal. However, in light of my findings on the main issues of the appeal, my decision does not turn on these matters.

Conclusion

30. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR