



Appeal Decision

Site visit made on 11 July 2017

by L Fleming BSc (Hons) MRTPI

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

Decision date: 17 July 2017

Appeal Ref: APP/V2635/W/17/3172310
281 The Drove, Barroway Drove PE38 0AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs G J Cooper against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 16/00768/F, dated 20 April 2016, was refused by notice dated 3 October 2016.
 - The application sought planning permission for the erection of self-contained residential annexe without complying with a condition attached to planning permission Ref 2/03/1899/F dated 9 December 2003.
 - The condition in dispute is No 2 which states that: This permission relates to the creation of accommodation ancillary to the main dwelling for occupation in connection with that dwelling. The ancillary accommodation shall at all times be held and occupied with the existing dwelling within the same curtilage and shall at no time be occupied as a separate unit of residential accommodation.
 - The reason given for the condition is: To meet the applicants needs for additional accommodation and to ensure the building, which is inappropriately sited as a separate unit of accommodation, is not occupied as such.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the submission of the appeal the Council adopted the Kings Lynn and West Norfolk Borough Council Site Allocations and Development Management Plan (2016) (SADMP). I must base my decision on the policies from the development plan prevailing at the time of determination. However, the relevant policies have not changed significantly from the draft policies referred to in the Councils decision notice. Moreover, the appellant is aware of these changes and has had the opportunity to comment upon them. Consequently no prejudice has been caused to the appellant's case.

Main Issues

3. The main issues are whether the condition is necessary and reasonable with particular regard to:
 - flood risk;

- whether the proposal would amount to sustainable development having regard to the development plan and national policies.

Reasons

Flood Risk

4. The appeal site is within Flood Zone 3 as identified on the Environment Agency's Flood Zone Maps. Paragraph 100 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Furthermore, the Framework requires a sequential, risk based approach to the location of development by applying the Sequential Test.
5. Therefore, the appeal site has a high probability of flooding and buildings used for dwelling houses are defined in the Technical Guidance on Flood Risk¹ as a more vulnerable use which is only appropriate development in Flood Zone 3, subject to passing the Sequential Test and the Exception Test.
6. I acknowledge the comments that all of Barroway Drove and the surrounding area is in a flood risk zone and that the proposal would be no different to the existing properties nearby or dwellings under construction in Barroway Drove. However, the full details of those other examples are not before me and there is no substantive evidence before me which takes the form of what could be considered as a detailed Sequential Test as required by paragraph 100 of the Framework. Without such I am not satisfied that alternative sites are not available which would avoid the need to develop in Flood Zone 3 and it has not been demonstrated that the proposal could not be directed toward locations with lower risk of flooding having regard to evidence such as a Strategic Flood Risk Assessment.
7. Furthermore, even if I did accept the Sequential Test was passed, the Exception Test would need to be passed and among other things would need to demonstrate wider benefits to the community outweigh the flood risk. There is no substantive evidence on this matter before me. Although, I will return to it below.
8. On this basis, I must conclude that the proposed development would increase the risk of flooding in the area, putting future occupants at risk, without appropriately considering developing in locations of a lower probability of flooding. The proposal would therefore conflict with the aims of the Framework which seeks to direct development away from areas at risk of flooding. It would also conflict with Policies CS01 and CS08 of the Kings Lynn and West Norfolk Borough Council Core Strategy (2011) (CS) which seek to ensure new homes are safe from flooding and reduce flood risk overall. Thus condition 2 is reasonable and necessary to avoid this harm.

Sustainable development

9. Barroway Drove is designated as a smaller village and hamlet through Policy CS02 of the CS. It does not have a settlement boundary and Policy DM2 of the SADMP states areas outside development boundaries will be treated as countryside where new development will be more restricted and will be limited to that identified as suitable in rural areas. It lists uses deemed appropriate in

¹ Technical Guidance to the National Planning Policy Framework, DCLG, March 2012

the countryside which include rural worker housing and affordable housing. Furthermore, it states that in smaller villages and hamlets, infilling in accordance with Policy DM3 of the SADMP will also be permitted.

10. Policy DM3 of the SADMP makes clear that new development will be limited in smaller villages and hamlets subject to a number of exceptions including housing which meets a specific identified local need and the sensitive infilling of small gaps within an otherwise continuously built up frontage. Moreover, it states that in exceptional circumstances the development of small groups of dwellings in smaller villages and hamlets may be considered appropriate where the development is of a particularly high quality and would provide significant benefits to the local community.
11. The removal of the condition would effectively create a new independent dwelling unit. There is no substantive evidence before me to demonstrate that it would meet an identified local need and the proposal would not be for a rural worker or involve the provision of an affordable home.
12. Whilst the appeal building is already in place and in domestic use, a new separate domestic curtilage behind No 281 The Drove would not amount to sensitive infilling and the basic appearance of the appeal building would not be significantly changed. Thus the proposal would not result in a particularly high quality development. Furthermore, there is no substantive evidence before me which demonstrates the proposal would provide any significant benefits to the local community other than the personal benefits to appellant. Thus, the proposal is in conflict with Policy CS02 of the CS and Policies DM2 and DM3 of the SADMP.
13. Furthermore, I acknowledge that the area has access to public transport, but no substantive details of those routes or their frequency have been put before me. Whilst there may be some services and employment in nearby settlements the likely limited frequency of any public transport and the lack of significant employment and services such as schools, shops or healthcare in Barroway Drove means the occupants of the proposed dwelling would need to travel long distances to meet their day to day needs and would be dependent on the private car for the majority of their journeys which is the least sustainable mode of transport. This would be in conflict with the promoting sustainable transport aims of the Framework.
14. Moreover, paragraph 55 of the Framework encourages housing in rural areas where it will maintain or enhance the vitality of rural communities but requires isolated new homes in the countryside to be avoided unless there are special circumstances. However, there is no substantive evidence before me which demonstrates that the proposal would meet any of the special circumstances listed in paragraph 55 of the Framework.
15. I have considered the appellant's personal circumstances and note the personal and financial difficulties associated with caring for dependent relatives. I have also noted the comments of local estate agents with regard to achieving a saleable return. However, planning is concerned with land use in the public interest.
16. I note the occupants of the proposed dwelling might work locally and use local services. There would be a social benefit associated with the provision of a

new dwelling for a family and economic benefits associated with new customers, employees and the construction of the proposed development.

17. However, even if I were to accept that the proposed dwelling would not be isolated, even taking into account the personal benefit to the appellants and their personal circumstances, due to the modest scale of the proposal it would have a negligible impact on the vitality of the rural community. Thus, the vitality of the rural community would be at best maintained.
18. Therefore, when all of the benefits are combined they are outweighed by the significant environmental harm I have identified as a result of flood risk and lengthy journeys to access services and employment and the dependence on the private car for those journeys given the location of the proposal in the countryside. Consequently, the proposal would not amount to sustainable development and would be in conflict with the development plan and the Framework.
19. Thus, I conclude the condition is necessary and reasonable and without condition No 2 attached the development would be in conflict with the development plan and the Framework. It would specifically conflict with Policy CS02 of the CS and Policies DM2 and DM3 of the SADMP which seek to ensure a sustainable pattern of development and reduce the need to travel.

Other Matters

20. I acknowledge the comments about whether or not the Council can demonstrate a five year land supply as required by paragraph 47 of the Framework. However, these claims are not substantiated by any evidence, even so I have found conflict with both the development plan and the Framework and the benefits of the development are significantly and demonstrably outweighed by the harm I have identified.

Conclusion

21. For the reasons given above and with regard to all other matters raised, the proposal would not accord with the development plan and thus the appeal is dismissed.

L Fleming

INSPECTOR