
Appeal Decision

Site visit made on 25 July 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 8th August 2017

Appeal Ref: APP/N2535/W/17/3172910

Land off Granary Close, Morton, Gainsborough, Lincolnshire.

- 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 and Mrs Youngman against the decision of West Lindsey District Council.
 - The application Ref 135482, dated 17 November 2016, was refused by notice dated 18 January 2017.
 - The development proposed is outline application for the erection of 9 dwellings.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by West Lindsey District Council against Mr and Mrs Youngman and by Mr and Mrs Youngman against West Lindsey District Council. These applications are the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with all detailed matters reserved apart from access. I have considered the proposal on this basis, taking the layout and house plans submitted as being for indicative purposes only and the plan of existing and proposed site levels as addressing the flood risk issues.
4. Since the Council's decision the Central Lincolnshire Local Plan (CLLP) was adopted on 24 April 2017. This becomes the development plan for this area, replacing the policies of the West Lindsey Local Plan First Review 2006 referred to in the refusal reasons, and my decision takes account of this.

Main Issues

5. The main issues are whether this would be an appropriate location for the proposal in respect of:
 - The nature of the site and the effect of the development on the character and appearance of the area.
 - Whether the development would comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Nature of the site and the effect on character and appearance

6. The village of Morton, where the development is proposed, has expanded to merge with the larger town of Gainsborough to its south. The nine dwellings would be on a 0.9 hectare site, part of open horse paddocks adjoining the back gardens of dwellings along Granary Close and Mill Lane. This housing currently provides the north-eastern extent of the main built-up part of this settlement and beyond is mainly open countryside. The nature of the site is greenfield, not previously developed land. Access is proposed from Granary Close.
7. This proposal follows the Council's refusal for a higher density outline scheme of 37 dwellings on a larger part of the same site where a later appeal was dismissed on 5 October 2016¹. In the previous appeal the Inspector noted that the site was not within a wider landscape identified as being of particular sensitivity or value and the subsequent adoption of the CLLP has not altered this.
8. In the previous appeal the Inspector found the proposed 37 dwellings would have a harmful effect, albeit limited, on the character and appearance of the area mainly by intruding into the existing open landscape as viewed from the surrounding built-up area. I concur with the previous Inspector that the trees along the site boundary would screen the proposed houses from views from the countryside beyond. This proposal would be for significantly fewer dwellings than the earlier scheme, resulting in a lower density, more spacious development. As previously it would involve raising the site levels to address flood risk.
9. CLLP Policy LP2 provides a spatial strategy and settlement hierarchy for Central Lincolnshire, including West Lindsey. This focusses most development in the larger urban areas and settlements and proportionally less in the smaller ones, thus enabling more people to access jobs, services and facilities locally and making the most effective use of previously developed land.
10. Morton is designated to accommodate a limited amount of development as a Medium Village defined in Policy LP2, typically on sites of up to 9 dwellings and only in appropriate locations. The policy defines appropriate locations as those which do not conflict with other CLLP and national policies and where the core shape and form of the settlement would be retained, with no significant harm to its character and appearance, its rural setting or to the surrounding countryside.
11. Although the proposal would be a relatively modest addition to the existing built framework it would still be a quite expansive extension of low density housing into open countryside which would contrast with the generally more compact grain of the existing development.
12. The current use as horse paddocks is appropriate to the rural fringe of the village and does not undermine the character of this area. Notwithstanding the lower density now sought the scheme would still result in a significant expansion of housing into the open countryside, on raised land visually prominent from the adjacent development, which would harm the character and appearance of the rural setting of the settlement.

¹ APP/N2535/W/16/3152072

13. The spread of low density suburban housing into open countryside, beyond the more compact limits of the village, would fail to retain the core shape and form of the settlement and significantly harm its setting. Therefore, this proposal would not be the appropriate location required to support the limited amount of development allowed in Medium Villages through Policy LP2.
14. The low density development of a greenfield site within countryside at the edge of the settlement would be contrary to both the most effective use of previously developed land sought generally through Policy LP2 and to the sequential priority given by CLLP Policy LP4 to the development of brownfield sites within the village footprint. The proposal would not be in an appropriate location when judged against CLLP Policy LP26 which seeks that development contributes positively to local character, makes effective and efficient use of land and relates well to the site and surroundings.
15. The inefficient use for housing of green field land on the edge of the village, of harm to its character and appearance, would conflict with the CLLP policies referred to and consequently the development would be inappropriate in this location.

Flood risk

16. The National Planning Policy Framework (the Framework) establishes a Sequential Test to steer new development to areas with the lowest probability of flooding. CLLP Policy LP14 seeks that all development proposals be considered against this requirement. Morton and the surrounding area, including the appeal site, fall within Flood Zone (FZ) 3 as defined in the Environment Agency flood maps. FZ 3 is an area with a high risk of flooding (more than a 1:100 annual probability). The primary flood risk to Morton relates to the potential breach or over-topping of the defences to the adjacent tidal stretch of the River Trent.
17. The Framework requires that a site-specific flood risk assessment (FRA) be provided for all new development proposals within FZ 3. This proposal relies on the FRA produced to support the previous scheme for 37 dwellings. Based on this the appellants' case is that, as all of Morton falls within FZ 3, there were no alternative sites in this area at a lower flood risk and therefore the Sequential Test would be met.
18. The appellants' principle argument in respect of flood risk is that the reduced scheme of 9 houses would be the modest amount of housing development permitted under Policy LP2 and part of the 15% increase of some 72 further dwellings allowed in Morton up to 2036 by Policy LP4. Therefore the appellants argue that applying the Sequential Test for this modest amount of housing to an area wider than Morton would serve to frustrate the 15% growth level set in the CLLP.
19. Policy LP4 provides a strategic steer for the appropriate level of growth in Morton over the plan period. This is set at 15% to reflect the presence of key facilities within the village and its proximity to the wider range of services in the nearby main town of Gainsborough. However, the Council points to the supporting text in paragraph 3.4.5 whereby the 15% housing growth allowed remains dependent upon overcoming the flood risk constraints in Morton which falls entirely within FZ 3.

20. The site sought for the nine dwellings is approaching the same size as the previous proposal for 37 units. It is less mainly because there is an area to the south-east corner of the appellants' land holding which does not form part of the application red line. Whilst all planning applications are treated on their individual merits, were the 9 dwellings to be approved it might then be difficult to resist allowing the rounding off of this development with further houses in this south-east corner.
21. Although this proposal is for a substantially lower number of dwellings it nonetheless seeks residential status for an area of land slightly less than that considered in the last appeal. Consequently, I find no reason to depart from the conclusion of the previous Inspector that the scale of the proposed development is such that the Sequential Test should apply to a wider area than the parish of Morton.
22. Because it has not been shown that there would not be the potential for the development to be accommodated within a lower flood risk area within a wider catchment, such as to the south around Gainsborough, the Sequential Test set by the Framework would not be satisfied. Therefore, to comply with Policy LP14 the proposal would need to meet the Exception Test as set out in the Framework.
23. Classed as More Vulnerable development, housing in FZ 3 should pass the Exception Test to be allowed. As set out in paragraph 102 of the Framework there are two parts of the Exception Test which must both be passed for the development to be permitted. In respect of the first part, the contribution made to the supply of family-sized housing in a reasonably sustainable location would be insufficient to demonstrate that the development provided wider sustainability benefits to the community that outweighed the flood risk.
24. The second part of the Exception Test is that a FRA must demonstrate that the development will be safe for its lifetime taking into account of the vulnerability of its users, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.
25. The flood-volume compensation area provided by the northern part of the appellants' land holding, proposed in the FRA, falls outside the application red line for this development. Therefore, whilst this mitigation might be achievable in principle, it is not secured through the application submitted.
26. The proposal includes plans indicating the raising of the existing site levels by 0.8 – 1.7m in the same way as set out in the FRA for the previous scheme. This would meet the Environment Agency advice that the floor slab levels of the houses should be 300m above the potential flood levels were there to be a breach or over-topping of the River Trent defences.
27. I have no reason to disagree with the previous Inspector that such mitigation would provide a reasonable degree of safety for future occupiers in the event of a flood. In principle I am persuaded that, with the flood-volume compensation area, the permeable ground conditions, the use of sustainable drainage systems and flood resilient construction methods, the proposal could adequately manage residual flood risks and not increase the flood risk to adjacent properties.

28. Much of this would rely on further details in support of this proposal but, subject to this, I find that it can be demonstrated that the second part of the Exception Test is met. However, both parts must be met and, as this is not the case, the proposal would not comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding and be contrary to both Policy LP14 and the Framework.

Conclusion

29. The CLLP is a newly adopted plan that has recently undergone examination. The appellants' case refers to the housing supply situation prior to the plan's adoption and has not been subsequently updated or added to. With regard to paragraph 49 of the Framework I have no reason to suppose that the relevant policies for the supply of housing should now be considered as not up-to-date in respect of demonstrating a five-year supply of deliverable housing sites. Therefore, it is not necessary to apply the tilted balance required by paragraph 14 of the Framework whereby permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. The proposal would provide moderate social benefits in helping to boost the supply of family-sized housing within West Lindsey in an environmentally sustainable location accessible to local facilities and by bus and cycle to services, secondary schools and employment in Gainsborough. However, these benefits would be clearly outweighed by the harm found to the open rural setting of the village and from the inefficient use of a green field site on the edge of the village where housing would be placed within an area at high risk of flooding. Consequently the development would not be appropriate for this location and I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR