
Appeal Decision

Site visit made on 21 August 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 01 September 2017

Appeal Ref: APP/D0515/W/17/3172149

107 Leverington Common, Wisbech, Cambs PE13 5BW

- 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 C Brown against the decision of Fenland District Council.
 - The application Ref F/YR16/0993/O, dated 2 November 2016, was refused by notice dated 29 December 2016.
 - The development proposed is erection of one dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of one dwelling at 107 Leverington Common, Wisbech, Cambs PE13 5BW in accordance with the terms of the application, Ref F/YR16/0993/O, dated 2 November 2016, subject to the conditions set out in the Schedule to this decision.

Procedural Matter

2. The application is in outline with all matters reserved for consideration at a later stage. I have determined the appeal on this basis and have treated the layout shown on the submitted plans as illustrative only.

Main Issues

3. The main issues in this appeal are:
 - the effect of the proposal on the character and appearance of the area
 - the effects on the living conditions of the occupiers of 107 and 107 A Leverington Common with regard to noise and privacy
 - the effects on flood risk
 - the effects on the safe and efficient operation of the highway next to the appeal site

Reasons

Character and appearance

4. The proposal comprises the erection of a dwelling in what currently forms the rear garden of no. 107. This property is situated behind no. 107A, which fronts the street. An existing driveway at the side of no. 107A provides access to no. 107 and would also serve the proposed dwelling. Immediately to the east of this is a substantial area of public open space. Residential development lines

both sides of the street creating a linear pattern of development even though there has been some backland development.

5. The appeal site is enclosed by a mix of mature trees and shrubs. It is also obscured in views from Leverington Common by the dwellings in front. Therefore, views into the site from surrounding areas are very limited and the introduction of the proposed modestly sized single-storey dwelling would not be readily apparent or therefore, incongruous.
6. Whilst the proposal would introduce a third dwelling behind nos. 107 and 107A, it would not extend beyond the approximate building line of other residential developments to the rear of properties on the southern side of the road. However it would result in a significant volume of development on what was once a single plot. Nevertheless, although the resultant plots for the new dwelling and no. 107 would be smaller than some of the neighbouring ones, the spaces around them would be in general accordance with the overall density and pattern of development in the area.
7. Policy LP16 of the Fenland Local Plan (2014) (LP) requires, amongst other things, that development provides sufficient private amenity space in accordance with the local character of the area. As a guide, the policy says that a minimum of one-third of the plot should be set aside as private amenity space. Based on the submitted illustrative plans, it would appear that the proposal would accord with the 'one-third' requirement. The proposal would therefore accord with LP policy LP16. Notwithstanding this, the Council would, in any case, be able to exert control over the final layout of the development at reserved matters stage.
8. To conclude on this main issue, I am not therefore persuaded that the proposal would result in an unacceptable change to the character and appearance of the area. It would respect the site's natural boundaries and the core shape and form of the settlement in accordance with those criteria of LP policy LP12. It would also accord with the relevant design criterion of LP policy LP16.

Living conditions

9. The access to site is constrained to the width between the eastern elevation of no. 107 and the site boundary. Consequently, vehicles to and from the site would pass in very close proximity to no. 107. However, the comings and goings of vehicles would be limited to those associated with the provision of only a single dwelling.
10. There is no evidence to indicate that the windows in no. 107's eastern elevation serve any main habitable rooms. Indeed at my site visit, I observed that one of the windows is obscure glazed. Although the potential for looking into the other room would remain. However, that window is small and those walking past it from the proposed dwelling would not, in all likelihood linger to look through it.
11. On balance, I am not persuaded that the level of any disturbance caused to no. 107's occupants would be of such magnitude to warrant dismissal of the appeal solely on this matter.
12. In relation to no. 107A, there is a garage that sits between the access and the main part of the dwelling. Given the separation of the access from the dwelling, I do not consider that passing vehicles would give rise to any material adverse

effects on no. 107A's occupiers, particularly taking into account the modest number of vehicle trips likely to be generated.

13. For the above reasons, there would be no significant harm to the amenities of the occupiers of nos. 107 or 107A in terms of noise or privacy. The proposal would therefore result in a satisfactory level of amenity and accordance with the relevant criteria of LP policies LP2 and LP16.

Flood risk

14. Development in areas at risk of flooding should be avoided by directing development away from areas at highest flood risk. An area at risk of flooding means land within Flood Zones 2 and 3, or land within Flood Zone 1 which has a high probability of flooding.
15. Paragraph 100 of the National Planning Policy Framework (the Framework) says that local plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk by applying the Sequential Test. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. All of this is reflected in LP policy LP14.
16. Planning Practice Guidance (PPG) advises that it is for local planning authorities, taking advice from the Environment Agency (EA) as appropriate to consider the extent to which Sequential Test considerations have been satisfied¹. The Council did not consult the EA on the proposal because the illustrative plans show the dwelling wholly within Flood Zone 1. However, the Council also considers² that because part of the site is within Flood Zone 3 the Sequential Test should be applied.
17. It is evident that the parties disagree over whether the *majority* of the site is in Flood Zone 1 or 3. However, based on the illustrative plans, it seems clear to me that the majority of the area within which the proposed dwelling would be sited falls within Flood Zone 1. Accordingly, the dwelling would be within an area of low flood risk and would thus be acceptable unless it can be shown that the site has a high probability of flooding.
18. The Council nonetheless argues that there are other sites in Flood Zone 1 that are preferable for development. However, the Council has accepted that the dwelling would be within an area with the lowest probability of flooding and PPG is clear that it should not normally be necessary to apply the Sequential Test to development proposals in Flood Zone 1 unless the Strategic Flood Risk Assessment for the area, or other more recent information, indicates there may be flooding issues now or in the future³.
19. I have not been provided with any substantive evidence to demonstrate that the part of the site within Flood Zone 1 is at risk of flooding. Moreover, the appellant has provided a Flood Risk Assessment⁴ setting out the various types

¹ Paragraph: 034 Reference ID: 7-034-20140306

² Within the officer's report

³ Paragraph: 033 Reference ID: 7-033-20140306

⁴ Final Report by Geoff Beel Consultancy dated October 2016 Ref GCB/VAWSER

of flood risk and its conclusions have not been challenged. Notably it describes the flood defences put in place after the flood event of 1978 and concludes that these are sufficient to ensure the development will not be at risk from fluvial flooding. There is no indication that any other forms of flooding have greater than low probability.

20. Taking all of this into account, I am not persuaded that the development would result in harm to people or property by way of being at risk of flooding and the proposal therefore accords with LP policy LP14.

Safe and efficient operation of the highway

21. Leverington Common is a straight road for much of its length in the vicinity of the site and is subject to a 40mph speed limit. At application stage, the highway authority sought amended plans to demonstrate that visibility splays of 2.4m x 120m could be provided at the access. The Council did not seek these amendments because of in-principle objections to the proposal on other substantive grounds.
22. Consequently, I have nothing on the submitted plans before me to show whether the required visibility splays can be provided. However, from my own observations, visibility in both directions along Leverington Common from the access was good. Moreover, I do not consider there to be any material difference in visibility between the access to the proposed development and that immediately next to it that serves no. 107A. The appellant argues that visibility matters were addressed when this other development was considered and that both access points are equal in terms of visibility. I agree and see no reason why the highway authority's requirements could not be satisfied at reserved matters stage.
23. Added to this is the likelihood that only a small number of additional vehicle movements will be generated by the proposal for a single dwelling and that at my site visit, I observed a very low volume of traffic passing along Leverington Common.
24. For the above reasons, I do not find that the proposal conflicts with LP policy LP15, which amongst other things, says that development schemes should provide well designed, safe and convenient access for all.

Conditions

25. I have considered the conditions suggested by the Council. I have made minor amendments the wordings of the imposed conditions where appropriate in the interests of clarity and precision and to more closely reflect the statutory tests.
26. In addition to the standard time limits, I have imposed a condition specifying the relevant drawings as this provides certainty. A visibility splay condition is imposed in the interests of highway and pedestrian safety. It is not necessary to include reference to pedestrian visibility as this will be provided within the vehicle visibility requirements. Also in the interests of highway safety, conditions are necessary in relation to the parking and unloading of construction vehicles and the surfacing of the access. A boundary treatments condition is necessary in order to safeguard residential amenity. However, a pre-commencement condition is not justified.

27. The Council has suggested restricting permitted development rights. However, PPG is clear that such conditions should only be imposed in exceptional circumstances, which I do not consider exist here and no substantive evidence has been submitted to the contrary. Moreover, it is unclear whether other surrounding dwellings are subject to similar restrictions and it would be inequitable in my view, to restrict the rights of the new dwelling's occupiers where no such restrictions apply to their neighbours.

Conclusion

28. For the above reasons and having had regard to all other matters raised including those by interested parties, the appeal succeeds.

Hayden Baugh-Jones

Inspector

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan at 1:1250 scale.
- 5) No development shall take place until visibility splays of a depth of 2.4 metres and a length of 120 metres measured from the centre point of the junction of the access with the public highway have been provided. The provided visibility splays shall subsequently be kept free from obstruction.
- 6) No development shall take place, until details of the arrangements for the parking of vehicles of site operatives and visitors and for the loading and unloading of plant and materials have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) The dwelling hereby permitted shall not be occupied until the access has been surfaced in a bound material for a width of 5m and a length of 10m from the highway and which shall be constructed to drain away from the highway.
- 8) No development shall take place until details of boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the approved boundary treatments shall be retained thereafter.