
Appeal Decision

Site visit made on 17 October 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 2nd November 2017

Appeal Ref: APP/A2335/W/17/3179327
87 White Lund Road, Morecambe, LA3 3DX

- 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 Darren Gates against the decision of Lancaster City Council.
 - The application Ref 16/01237/OUT, dated 29 September 2016, was refused by notice dated 16 January 2017.
 - The development proposed is residential development of up to 9 dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is in outline with all matters reserved for future consideration. A drawing showing an indicative layout of the development was submitted with the application, and I have had regard to this in determining this appeal.

Main Issues

3. The Council is currently unable to demonstrate a 5 year supply of housing sites, as required by the National Planning Policy Framework ('the Framework'). In these circumstances, paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date.
4. Where paragraph 49 of the Framework applies, paragraph 14 states (unless material considerations indicate otherwise) that 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; or specific policies in the Framework indicate development should be restricted. In this context, the main issues in considering this appeal are:
 - (a) Whether the development would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - (b) Whether the development would result in an unacceptable loss of open space.

Reasons

Flood risk

5. The western part of the appeal site is located within Flood Zones 2 and 3 as defined by the Environment Agency Flood Map for Planning (Rivers and Seas). This risk relates to tidal flooding. The Framework seeks to steer new development to areas with the lowest probability of flooding by applying a Sequential Test. This states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
6. The Planning Practice Guidance (PPG) states that "*the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed*"¹. In this regard, the appellant contends that a district-wide catchment area for the Sequential Test is not appropriate in this case. Instead, a catchment area is proposed that relates to the part of Morecambe in which the appeal site is located. This covers an area of 2.25 square kilometres, with a population estimated at 5,518 (according to the appellant). By comparison, Lancaster City Council's administrative area extends to 576 square kilometres.
7. The appellant states that the catchment area for a housing development should be restricted to the market area in which it sits. However, there is no detailed evidence before me to demonstrate that the identified catchment genuinely reflects a housing market area or sub-area in this case. The submitted commentary regarding the character of adjoining areas is general in nature. Moreover, the location of nearby shops and facilities is not sufficient to demarcate a housing market area or sub-area within part of a town. Whilst a catchment that applied to part of the District may be justifiable, there is limited evidence to support the use of the suggested catchment area in this case. Accordingly, I am not persuaded that it is an appropriate catchment against which to assess compliance with the Sequential Test. With regards to the Council's approval of application ref 16/00581/OUT, PPG states that a catchment based on an identified regeneration area may be appropriate². However, that consideration does not apply here.
8. The Council is currently unable to demonstrate a 5 year supply of housing sites. However, that does not absolve the need for this development to pass the Sequential Test. There is no indication in either the Framework or the PPG that the 5 year supply requirement should be used as a benchmark against which to assess compliance with the Sequential Test. Instead, this is a separate, district-wide, requirement that is intended to act as a trigger for the 'tilted balance' set out at paragraph 14 of the Framework.
9. The development is also required to pass the Exception Test as it proposes a 'more vulnerable' residential use in Flood Zone 3. In order to pass the Exception Test, the Framework states, firstly, that "*it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared*". In this case, the development would provide up to 9 additional dwellings in a relatively accessible location, and would make a small contribution to the Council's deficient 5 year supply position. The development would also have some economic benefits including the creation of employment, and the purchasing of materials and furnishings. However, these are relatively

¹ Paragraph: 033 Reference ID: 7-033-20140306

² Paragraph: 033 Reference ID: 7-033-20140306

modest benefits that most urban housing developments would be expected to deliver. They do not outweigh the risk of flooding in this case.

10. The second part of the Exception Test requires that "*a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere*". In this regard, the appellant has submitted a site Flood Risk Assessment to show that the development would be safe without increasing flood risk elsewhere. I further note that the Environment Agency has withdrawn its initial object to the development. However, the Framework requires that both elements of the Exception Test must be passed for the development to be permitted, following the application of the Sequential Test.
11. Whilst the site is in Flood Zone 3 it benefits from sea defences which provide some protection to the appeal site. However, a breach in these defences cannot be ruled out during harsh conditions. In this regard, there is little detail before me regarding the nature of the existing defences or their likely resilience during a flood event. Whilst my attention has been drawn to a diagram from the North-West England and North Wales Shoreline Management Plan, this provides little detail regarding the existing defences. Moreover, whilst the appellant states that a policy of 'hold the line' is in place for at least 20 years, beyond this 'managed realignment' is recommended that will allow the shoreline to move backwards or forwards. It is unclear what this latter process will involve, or to what extent the existing flood defences would be maintained during this period. These uncertainties reduce the weight I can attach to the presence of flood defences in this case.
12. The appellant highlights that some sites assessed as 'deliverable' in the Council's Strategic Housing Land Availability Assessment are also in Flood Zone 3. However, the full details of those sites, including their planning status, are not before me. In any case, I have come to my own view regarding the development's compliance with the Sequential and Exception Tests.
13. My attention has also been drawn to an appeal at Carnforth³. However, that development proposed a significant reduction in flood risk to a number of existing properties. That Inspector concluded that the lack of conformity with the Sequential Test was outweighed by this flood risk benefit. Separately, application ref 15/00238/OUT was approved on the basis that it would secure regeneration benefits that were considered to outweigh the flood risk. These cases are therefore not directly comparable to the current appeal proposal.
14. For the above reasons, I conclude that the development would fail to comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding. It would therefore be contrary to Policy DM38 of the Lancaster District Development Management Development Plan Document (DPD) (2014). This policy requires that new development in Flood Zones 2 and 3 meet the Sequential and Exception Tests as appropriate. It would also be contrary to guidance in the Framework relating to flood risk.

Open space

15. The appeal site comprises an area of open land that is currently used for the keeping of horses. It adjoins existing residential development on 3 sides. The

³ APP/A2335/A/12/2179354

site is identified as forming part of the Oxcliffe Road Natural and Semi-Natural Open Space in the Lancaster District PPG17 Study (2010).

16. The appeal site is not publicly accessible, and there are no public footpaths that run through or adjacent to it. It is also in a backland location and has limited visibility from public vantage points. I further note that the submitted Extended Phase 1 Habitat Survey found no protected habitats or species on or around the site. Whilst there are a number of trees located on the edge of the site, these could be retained in any redevelopment. Moreover, the Lancaster District PPG17 Study identifies the site as being the lowest quality Natural and Semi-Natural Open Space in the Heysham and Morecambe area. Whilst this study identifies an overall shortfall of this type of open space in the area, the appeal site is within walking distance of open countryside. Accordingly, I do not consider that the site has any significant environmental, economic, or community value that would merit its protection. Compensatory provision would therefore not be required. Furthermore, it is not realistic to expect that the site would become publically accessible, or subject to significant environmental improvement, in the future.
17. For the above reasons, I conclude that the development would not result in an unacceptable loss of open space. It would therefore be consistent with Policy DM26 of the Lancaster District Development Management DPD (2014). This policy seeks to protect recreational open space from development.

Other Matter

18. The appeal is in outline with all matters reserved for future consideration. Accordingly, the exact position of the proposed dwellings is unclear at this point in time. However, I am satisfied that a scheme is capable of being developed that would not result in an unacceptable level of overlooking to adjoining properties. Similarly, the effect of the development on the adjoining drain would be capable of being dealt with at reserved matters stage.

Conclusion

19. Whilst the Council is unable to demonstrate a 5 year supply of housing sites, in this case, specific policies in the Framework (relating to flood risk) indicate that development should be restricted. It has not been demonstrated that the development would pass either the Sequential Test or the Exception Test, and in this regard it would be contrary to Policy DM38 of the Lancaster District Development Management DPD (2014) and guidance in the Framework.
20. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan.
21. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR