



Appeal Decision

Site visit made on 14 August 2019

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 24 October 2019

Appeal Ref: APP/Y2003/W/19/3229858

Land to the rear of 26-52 Chesswick Crecent, Keadby, Scunthorpe, North 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 Liam Dexter against the decision of North Lincolnshire Council.
 - The application Ref: PA/2018/1307, dated 7 June 2018, was refused by notice dated 11 December 2018.
 - The development proposed is described as 'outline planning for residential development (15 dwellings) – all matters reserved'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is submitted in outline with all matters reserved for future consideration. Plans have been submitted showing the layout of the scheme. I am advised that these are indicative only and accordingly I have considered the appeal on this basis.
3. In support of the appeal the appellant has submitted drawing ref: LIKC 009. It is not clear that this drawing formed part of the application, or that interested people's views have been sought upon it. I therefore cannot be satisfied that no party would be prejudiced by my consideration of the revised drawing in the appeal. Consequently, I have determined the appeal on the basis of the scheme and the plans which were before the local planning authority when it made its decision.
4. Following my site visit, the Council confirmed that its position regarding the provision of a five year housing land supply had changed. I allowed the parties to comment on this matter and have taken these comments into consideration in determining this appeal.

Main Issues

5. The main issues are:-
 - i) whether the proposal represents an acceptable form of development having regard to flood risk;
 - ii) whether a safe and suitable access could be provided to the appeal site;

- iii) the effect of the proposal on the character and appearance of the surrounding area; and
- iv) the effect of the proposal on protected species.

Reasons

Flood risk

6. The appeal site is located within Flood Zones 2 and 3a where it is identified that there is a high probability of flooding. Planning Practice Guidance (PPG) requires that a Sequential Test needs to be applied in order to justify 'more vulnerable development' such as residential development. The National Planning Policy Framework (Framework) indicates that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
7. A Flood Risk Assessment (FRA) was submitted with the planning application. It advises that there are no alternative sites with lower flood risk available given that the entire village of Keadby lies within Flood Zones 2 and 3a. However, the assessment does not consider any sites that lie further afield. The PPG advises 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. However, there is no substantive evidence before me that the development is needed to sustain the existing community nor to satisfy an identified housing need within Keadby. As such, I find that there is no justification for the Sequential Test to be limited only to the settlement of Keadby.
8. Given the above, I find that the appellant has not demonstrated that there are no other reasonably available sites appropriate for the proposal in areas with a lower probability of flooding. The proposal therefore fails the Sequential Test and would therefore not be an acceptable form of development with regards to flood risk.
9. I have had regard to the appellant's Drainage Strategy that was obtained subsequent to the planning application and I am mindful that the Environment Agency were satisfied with the mitigation measures proposed, however, as the proposal fails the Sequential Test, there is no requirement to consider whether the Exception Test is satisfied.
10. Accordingly, I conclude that the proposal would be contrary to Policy CS19 of the North Lincolnshire Core Strategy (2011)(CS) insofar as this policy requires development to avoid areas of current or future flood risk and to determine the suitability of land for development by a risk based sequential approach. In addition, the proposal would fail to accord with provisions of the Framework which seek to steer development to areas with the lowest risk of flooding.

Highways

11. Given that the application is made in outline with all matters reserved including access there is limited evidence before me regarding the details for the proposed access. However, according to the submitted illustrative plans and from my observations at the site visit it is apparent that access is intended to

be taken via the access in between dwellings that mark the end of Chesswick Crescent and the start of Queen's Crescent.

12. The proposal seeks to introduce 15 dwellings which I accept would not be likely to generate an excessive number of vehicular movements. Notwithstanding this, by reason of the constrained width of the access which prohibits two vehicles from passing simultaneously, together with an absence of any passing place and pedestrian footway, it is far from clear that safe and suitable access to the appeal site would be achieved.
13. The appellant suggests that the proposal could be amended to suit the requirements of the Highway Authority, however, no detailed amendments are before me to consider and more particularly, given that the access is constrained by neighbouring dwellings, I cannot conclude that an acceptable access can be achieved. Thus, I conclude that there would be significant harm to highway safety. Therefore the proposal fails to comply with policies T2 and T19 of the North Lincolnshire Local Plan (2003)(LP) insofar as these policies require development to provide satisfactory access and adequate provision for parking.

Character and appearance

14. The appeal site lies within the countryside for the purposes of planning policy where development is limited to uses that are appropriate to the countryside. In the absence of anything to suggest that the proposed dwellings would be consistent with countryside policies, the principle of development would clearly conflict with the spatial strategy for the district and the proposal is contrary to LP Policy RD2.
15. The roughly triangular shaped appeal site is enclosed to one side by a row of two storey dwellings of a mix of style, type and treatments. A railway and its raised embankment exists along the length of the opposite boundary which, taken together with irregular vegetation positioned towards the remaining boundary results in the appeal site being largely screened from views from the wider countryside.
16. Whilst the introduction of dwellings would inevitably alter the land from its present overgrown state, given the close proximity of other dwellings and its relative seclusion, I find that the proposal would not be viewed as an unacceptable intrusion into the countryside.
17. As the application is in outline with all matters reserved for future determination, the design and scale of the dwellings are not known at this stage. However, notwithstanding the requirement to incorporate the necessary flood mitigation measures, I consider that dwellings could be appropriately scaled and accommodated on the appeal site without causing material harm to the character and appearance of the countryside or the surrounding area particularly given the presence of nearby built form of two storeys height. Thus, whilst not specifically referred to by the Council in their reason for refusal, the proposal would accord with the provisions of CS Policy CS5 insofar as this policy requires development to be appropriate for its location and informed by its surrounding context.

Protected species

18. Circular 06/2005 states that the presence of a protected species is a material consideration when a proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to state that it 'is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.'
19. It also advises that ecological surveys should only be required where clearly justified, for instance, where there is a reasonable likelihood of species being present and affected by the proposal.
20. I find that the mitigation measures specified within the Ecology Survey dated January 2019 would have been adequate to mitigate any adverse impact to protected species and that this mitigation would have been capable of being secured by an appropriately worded condition.
21. Thus, I conclude that the proposal demonstrates that protected species would not be adversely harmed and therefore would accord with CS Policy CS17 which seeks to ensure any impacts on biodiversity are appropriately mitigated for. In addition, the proposal would accord with provisions of the Framework that require development to minimise impacts on biodiversity.

Planning balance and conclusion

22. The Council advise that they are presently able to demonstrate a five year housing land supply, which the appellant does not dispute. However, it is the appellants case that the LP and CS are of an age that renders them as out of date. The appellant has provided an appeal decision¹ which I have had regard to. In such circumstances, the Framework indicates that where relevant policies are out-of-date planning permission will be granted unless material considerations indicate otherwise, taking into account whether any adverse impacts of planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (the tilted balance test).
23. I have concluded that the proposal would not harm the character or appearance of the countryside and surrounding area nor adversely harm protected species provided that appropriate mitigation measures are undertaken. However, even if I were minded to accept that the tilted balance applies, the adverse impact would arise in relation to flood risk and highway safety and in my judgement, this harm carries substantial weight.
24. In terms of benefits, the proposal would construct quality homes in an accessible location with access to services and facilities and it would make a modest contribution to housing supply.
25. The appellant suggests that there are other benefits arising from the proposal. I note it is proposed that the dwellings would be designed to reflect local distinctiveness, the use of a suitable palette of materials and the protection of living conditions of neighbouring occupiers. However, these are matters that would be considered as part of a future reserved matters application and as

¹ APP/F4410/W/17/3169288

such, the absence of harm is a neutral factor that weighs neither for nor against the proposal. The proposal would tidy up an overgrown site that experiences instances of fly-tipping and anti-social behaviour and retain existing and provide additional landscaping that would enhance the ecological value of the locality. However, none of these benefits amount to more than limited weight either individually or collectively.

26. I have found that there would be harm to highway safety and that the proposal represents an unacceptable form of development having regard to flood risk. In this regard, the proposal would be in conflict with the development plan policies CS Policy CS19 and LP Policies T2 and T19 and the Framework. These are matters to which I attach significant weight. Whilst the proposal would deliver social and economic benefits they would, to my mind, be significantly and demonstrably outweighed by the adverse effect of the environmental harm identified.
27. Given the above, I have found that the harm from the scheme would significantly and demonstrably outweigh the benefits of the provision of 15 additional dwellings. As such, the Framework is a material consideration which also weighs against the proposal. Therefore, in the circumstances of this appeal the totality of the other material considerations does not justify making a decision other than in accordance with the development plan.
28. For the reasons given above and having regard to all matters raised, I conclude that the proposal would conflict with the development plan and the core principles of highway safety and flood risk as set out in the Framework.
29. Accordingly, the appeal is dismissed.

E Brownless

INSPECTOR