



Appeal Decision

Site visit made on 28 October 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 11 November 2019

Appeal Ref: APP/E2001/W/19/3235226

37 Burney Close, Molescroft HU17 7EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jonathan Northgraves (Right Home Solutions Ltd) against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/00787/PLF, dated 5 March 2019, was refused by notice dated 18 June 2019.
 - The development proposed is construction of a 1¾ storey detached two bedroom dwelling in grounds of, and to south of, 37 Burney Close, Beverley HU17 7EQ.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are;
 - Whether the proposed development would be an acceptable form of development with regard to flood risk;
 - The effects of the proposed development on the character and appearance of the surrounding area; and
 - The effects of the proposed development on living conditions, with particular regard to outdoor amenity space for existing occupiers of No. 37 and future occupiers of the proposed dwelling and privacy for existing occupiers of neighbouring properties and future occupiers of the proposed dwelling.

Reasons

Flood risk

3. There is no dispute between the main parties that the appeal site lies within Flood Zones (FZ) 2 and 3a, these being areas at a medium to high probability of fluvially dominated flood risk. The appellant's Flood Risk Assessment (FRA) concluded, by way of a Sequential Test (ST) that there were no sequentially preferable sites available at a lower risk of flooding than the appeal site. The FRA also set out an Exceptions Test (ET) which concluded that the proposal would be safe from flooding for its lifetime and would not increase the risk of flooding elsewhere.
4. The area of search was limited to the town of Beverley. I have been referred to a recent appeal decision elsewhere within the East Riding¹ where the matter

¹ APP/E2001/W/17/3183296

of the sequential test's search area was considered. In that instance, I have noted that it was concluded that a search area based on the particular parish and land surrounding the settlement was considered appropriate and proportionate. That search area was, when compared to the guidance set out in the East Riding 'Flood Risk Note for the Planning Application Process' (the Guidance Note), significantly smaller than the Holderness housing sub-area that that site lay within.

5. In this instance, the Council's acceptance of a search area based on the town of Beverley, rather than the wider Beverley housing market sub-area, seems to me to be a proportionate and pragmatic response to the matter of an appropriate search area for a single dwelling. Even if, as the appellant suggests, that search area was further tightened to a ward level as in the appeal case referred to, the Council argue that this would still amount to roughly half of Beverley town, within which they still consider sequentially preferable windfall and allocated sites exist.
6. Neither party has submitted compelling or substantive evidence to support their respective positions. However, the Council's Guidance Note confirms that all allocated sites have been subject to sequential and, where necessary, exceptions tests, and as the East Riding Local Plan Strategy (ERLPS) allocates sufficient housing land to meet the housing needs of the East Riding², it is likely that for proposals in FZ2 or 3 on non-allocated sites there will be sequentially preferable sites.
7. Although the Council have not provided any substantive evidence to support their contention that there are sequentially preferable sites at lower risk of flooding than the appeal site within Beverley, nor has the appellant expanded upon the passing comments on the market search of the local area which it is claimed was undertaken. Indeed, the appellant's own FRA describes this market search as being 'cursory'.
8. Thus, on the basis of the available evidence, I am not persuaded that it has been adequately demonstrated that there are no sequentially preferable sites at a lower risk of flooding than the appeal site. The proposal fails the sequential test and as such there is no requirement in the development plan, National Planning Policy Framework (the Framework) or Planning Practice Guidance (the Guidance) to undertake an exceptions test. Whilst the appellant's FRA considers that the proposal also satisfied the ET, as the proposal fails the sequential test, I give the ET limited weight. The proposal would fail to properly respond to the risk of flooding and is therefore contrary to ERLPS policies ENV6(B) and A1(C.6), the Strategic Flood Risk Assessment and the Guidance Note.
9. In addition to the appeal case that has been brought to my attention, the appellant has also stated that the neighbouring local planning authority has a different approach to sequential test search areas, setting out smaller and more tightly defined areas. In response, the Council contend that such matters are within different development plan policy and flood risk contexts. I have limited details of either and, in any event, I have to determine the case before me on the basis of the development plan in force for the area and the available evidence. The approach of a neighbouring local planning authority carries little weight in this respect.

² Paragraph 3.13 – Flood Risk Note for the Planning Application Process'

10. Nor do I have the full details of other allocated or application sites that the appellant has referred to³ before me. However, from the available evidence it seems that there are sufficient differences between those sites and the appeal site in terms of their flood risk status and the processes by which their allocation and planning status was derived. I cannot therefore be confident that they provide a direct comparison to the appeal site and I give these matters limited weight.

Character and appearance

11. Burney Close is a pleasant residential street culminating in two cul-de-sac spurs. Both are reasonably spacious along their length, with largely open-bordered front gardens and a generous grass verge contributing significantly to this sense of space. Only towards the head of each spur does this sense of space reduce. In the case of the appeal site, Nos. 37 and 38 are situated at the end of the cul-de-sac, with the appeal site a sub-divided portion of the former's tapering side garden area. Despite closing off views along the cul-de-sac I saw there to be a significant degree of spacing between Nos. 36 and 37, through which the verdant backdrop of the landscaped wedge and open space behind can be seen.
12. The proposed dwelling responds creatively to the heavily tapering shape of the appeal site, its hexagonal form following the alignment of three sides of the appeal site's perimeter. However, despite this, the proposed dwelling would nevertheless be an incongruous and discordant feature set amongst the relatively conventional character and appearance of existing houses and bungalows within Burney Close.
13. The appellant describes the dwelling as akin to a 'lodge' or a 'prow'. Neither are particularly inaccurate descriptions but do, to my mind, highlight the incongruous nature of the proposal in amongst its more conventionally designed neighbours. Its scale may be subservient to the two-storey scale of Nos. 35 and 36, but it would not enjoy a similarly subservient relationship with No 37. The latter, despite its substantial roof structure and ridge height, is a more modest building to eaves level than Nos. 35 or 36. Nor would the specification of matching facing bricks and roof tiles be sufficient to allow the dwelling to blend in with the surrounding properties, or other otherwise downplay the incongruous design of the proposal. The dwelling would undeniably make a strong statement, but I do not consider that that statement would make a positive contribution to the character or appearance of the residential cul-de-sac context in which it would sit.
14. The hexagonal form of the dwelling and its multi-plane roof structure would be a strident and prominent structure and would account for a significant proportion of the space between Nos. 36 and 37 that presently exists. As such, it would dominate that space and significantly reducing the gap between them whilst heavily impinging upon views towards the verdant sylvan backdrop of the open space to the rear. Although those views are taken across the side garden of No. 37, the absence of structures above fence height positively contributes to the open character established by the landscaped grass verge and tree planting on approach to the site.

³ Paragraph 1.7 – Appellant Statement of Case citing LPA Ref Nos: DC/14/03062/STOUT/START, 19/00054/STEM and BEV-J housing allocation

15. The access from the cul-de-sac to the open space is taken via a footpath link that opens up into the space beyond. To a degree, there is already a sense of enclosure along this stretch of path at odds with the openness enjoyed elsewhere. However, the flank walls of the proposed dwelling would be substantially higher than the existing fence, and its presence so close to the footpath link would have an imposing and overpowering impact on users of the footpath, harmfully affecting the attractiveness of the link and the character of the surrounding area.
16. Taking these factors together, the proposed dwelling would be an incongruous design and scale at odds with the prevailing character and appearance of the surrounding area, whilst its siting would erode the openness of the streetscene and impinge upon the verdant backdrop to Burney Close evident through the gap between Nos. 36 and 37 and over the appeal site. Thus, for the reasons I have set out, the proposal would fail to secure high quality design and would not integrate successfully with the character or appearance of the surrounding area. Thus, the proposal would be contrary to ERLPS policy ENV1 (A.1), (B.1) and (B.3).

Living conditions

17. The proposed dwelling would make provision for outdoor amenity space in the form of a patio area and small area of lawn. The existing dwelling at No. 37 would retain an area of garden broadly equivalent to the width of the house. Neither would be particularly generous, especially so in the case of the proposed dwelling.
18. However, although the Council are concerned about these spaces not being of sufficient size to provide adequate outdoor amenity space, I have not been provided with any guidance or policy content regarding what the Council consider to be acceptable in this respect. Whilst I have concluded that the scale and siting of the proposed dwelling, and the comparative lack of space around the building, would be harmful to the character and appearance of the area, I am not persuaded that the implications of this would be so harmful to living conditions for occupiers of either existing or proposed dwellings, as to be determinative in this instance.
19. Given the proposed dwelling's hexagonal form, it would have a number of elevations that would contain various door and window openings. Whilst they would be close to the flank elevations of Nos 36 and 37, the flank elevation of the former is largely blank and dominated by the sloping roof of the attached garage. Although the flank of the latter does feature a glazed door and window, the existing timber fences marking the perimeter of the site would ensure that direct overlooking from ground floor windows would be unlikely to be significant or harmful.
20. Although there would be a number of rooflights within the various roofplanes of the proposed dwelling, I am not persuaded that these would be positioned in such a manner as to result in direct or harmful overlooking or loss of privacy. Furthermore, the largely blank flank elevation at No. 36 is such that, despite the proximity of the proposed dwelling to it, I am not persuaded that the proposal would have an overpowering or harmful impact on the outlook from No.36. For these reasons, there would be no conflict with ERLPS policy ENV1(B.4).

Other Matters

21. I have carefully considered matters relating to the water main that crosses the site and methods of surface water disposal. However, as I have found against the proposal in terms of flood risk and character and appearance the need to consider these aspects would not arise and I have not considered these further.
22. I have also noted the concerns of local residents regarding the site's location at the head of the cul-de-sac, accessed directly from the turning head thereof. I accept that the proposal would give rise to an additional dwelling accessed from relatively tight area of the turning head but note that the Council consider the proposal to provide adequate parking and access provision for both the retained and the proposed properties. These concerns have not determinative in my consideration of the proposal.

Conclusion

23. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR