
Appeal Decision

Site visit made on 28 October 2019

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2019

Appeal Ref: APP/E2001/W/19/3234868

Land Rear of 80 Kings Causeway, Swinefleet DN14 8DL

- 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 Michael Farrar against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/00072/PLF, dated 8 January 2019, was refused by notice dated 15 February 2019.
 - The development proposed is described as 'Erect 2 pairs of semi-detached houses and 1 detached house with garage'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has suggested that the principle of residential development has been established at the appeal site through the implementation of previous permissions.
3. However, there is no evidence before me that confirms the lawfulness of any development or otherwise and this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 and it therefore carries limited weight as a fallback position. It is open to the appellant to apply to have that matter determined under sections 191 or 192 of the Act and any such application would be unaffected by my determination of this appeal.

Main Issues

4. The main issues are:
 - i. whether the proposal would comply with development plan policy which seeks to steer new development away from areas at the highest risk of flooding;
 - ii. whether the proposal would be appropriate development within Swinefleet and whether it would relate acceptably to the character and appearance of the village;
 - iii. whether the proposal would provide an acceptable housing mix; and
 - iv. whether a suitable foul and surface water drainage scheme is in place.

Reasons

Flood risk

5. Swinefleet is set adjacent to the River Ouse, a short distance from Goole. The appeal site is located within flood zone 3 which means that it has a high probability of suffering from flooding. Residential dwellings are classified as being 'more vulnerable'.
6. Policy ENV6 of the East Riding Local Plan Strategy Document (ERLPSD) (2016) seeks to manage flood risk to ensure that development does not result in unacceptable consequences to its users. It requires the application of a sequential test and the aim is to steer new development to areas with a low probability of flooding.
7. The National Planning Policy Framework (the Framework) advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.
8. The appellant has provided a Flood Risk Assessment with the application and based upon this work, the Environment Agency has not raised an objection to the development subject to a number of measures to reduce the risk to the site from flooding. Nevertheless, as the Agency state in their response, the sequential approach should be applied.
9. The overall aim of the sequential test is to steer new development to areas with the lowest risk 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.
10. Given the residential nature of the development and its location within flood zone 3, national planning policy indicates that there is a requirement to undertake a sequential test. Whilst the appellant has indicated that there are no sequentially preferable sites in Swinefleet given that the whole area is within the same flood risk zone, to my mind, the sequential test should not be limited to such a narrow area.
11. Instead, because Swinefleet is located only a short distance from Goole and its surrounds, I consider that the test could reasonably be applied to the wider Goole Housing sub market area. The Council have indicated that development land is available within this sub market area which would be at lower risk of flooding. No evidence has been presented to me to dispute this view.
12. Whilst I am also mindful that the National Planning Practice Guidance states that a pragmatic approach on the availability of alternative sites should be taken, from the limited evidence before me, I am not persuaded that there are not other more suitable sites for the proposed development in the area.
13. I have also taken into account the possibility that some form a residential development could be constructed at the appeal site without a further planning permission. However, from the evidence before me, the appeal development would result in a net increase in the number of residential units when compared to any fallback position. Therefore, even if the suggested fallback position could be built out, there would be a greater flood risk associated with the appeal development.

14. For the above reasons, the proposal would fail to minimise flood risk as it would locate new housing in an area of flood risk contrary to the aims of the Sequential Test. Because of this, I conclude on this issue that the proposal would be contrary to Policies ENV6 and A4 of the ERLPSD which seek to steer new development away from areas at the highest risk of flooding. It would also be at odds with the flood risk aims of the Framework.

Character and appearance

15. The appeal site sits partly within and partly outside of the Swinefleet settlement boundary. However, its physical characteristics mean that it relates much more closely to the settlement, rather than the countryside due to its position between the rear garden of 74 Kings Causeway and Field House.
16. The appeal site is well contained and separated from open countryside to the south by robust boundary planting. It has a close relationship with modern residential dwellings on Kings Causeway to the front of the site and is served by an existing tarmac access. As a result, Policy S4(B) of the ERLSPD is most relevant. This Policy seeks to ensure that development would not detract from the character and appearance of the Village.
17. The policy does allow for new housing development within villages usually comprising a single dwelling. Importantly, the word 'usually' suggests that there may be occasions where, if appropriate in relation to character and appearance, more than one house may be acceptable. Given the characteristics of the appeal site I do not consider that the appeal proposal would detract from the character or appearance of the village.
18. The supporting text to the policy confirms that appropriate development, including residential dwellings, can offer opportunities for villages that include a limited range of services, such as Swinefleet, to grow organically.
19. Therefore, I conclude on this issue that the appeal proposal would accord with Policies S1, S2, S4 and ENV1 of the ERLPSD which amongst other matters require good quality design that is appropriate to the character of the area.

Housing mix

20. Policy H1 of the ERLPSD requires that new residential development contribute to the overall mix of housing in its locality taking into account housing need. It requires a housing mix to be provided on both larger and smaller sites. The Council report that their Strategic Housing Market Assessment shows an oversupply of 3-bedroom dwellings within Swinefleet Parish and an undersupply of 2-bedroom properties in both the Parish and wider Goole housing market area.
21. There is concern that plots K3 and K4 would be provided as three, rather than 2-bedroom dwellings as a result of the provision of an additional, third bedroom in the roof-space.
22. Whilst the submitted plan provides an element of confusion owing to the labelling of the two bedrooms as 'bedroom 2' and 'bedroom 3', the overall plan does only show two bedrooms. As such, I consider that these plots are two bedroom properties and any deviation from that when constructing the dwellings, were I minded to allow the appeal, would invariably require further permission from the Council.

23. Consequently, I conclude that the appeal proposal would accord with Policy H1 of the ERLPSD which seeks to ensure that new residential development contributes to the overall housing mix in the locality.

Drainage

24. The Council are concerned that insufficient information has been provided to enable them to assess the acceptability of the proposed means of foul and surface water drainage. The plans indicate surface and foul water discharging to an existing outfall although reference is also made to a package treatment plant.
25. Notwithstanding that, I am satisfied that a suitable drainage scheme could be provided and whilst details have not been submitted with the application or appeal submissions, this could be appropriately addressed through a suitably worded condition. Taking that into account, the appeal proposal would accord with Policy ENV6 of the ERLPSD insofar as it relates to foul and surface water drainage.

Other Matters

26. The appellant has drawn my attention to an appeal¹ which was allowed for a house within Flood Zone 3a. However, the site is within the boundaries of a different local authority and dates from 2012 and would have been determined against a different planning policy background. It is therefore set in a different context and I afford this very limited weight. Moreover, each proposal must be considered on its individual merits.
27. The appellant has made reference to the Framework and the Housing White Paper Consultation (2017) in support of the appeal. Nonetheless, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. However, I have not been able to identify any such considerations which would outweigh the harm I have identified.

Conclusion

28. Taking all matters into account, I conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR

¹ APP/Y2003/A/11/2167029