The Planning Inspectorate

Appeal Decision

Site visit made on 13 August 2019

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 29 November 2019

Appeal Ref: APP/D0515/W/19/3230206
Land Adj. Woodlands, Mill Lane, Newton-in-the-Isle PE13 5HZ

- 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 & Mrs C Burton against the decision of Fenland District Council.
- The application Ref F/YR18/0888/O, dated 28 July 2018, was refused by notice dated 6 December 2018.
- The development proposed is 4 no. dwellings.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The proposal seeks outline planning permission, with all matters reserved except access. I have considered the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative.

Main Issues

3. The main issues are:

   - The effect of the proposal on the character and appearance of the area;
   - Whether the proposed development would be safe from flooding; and
   - Whether the proposed development would provide a suitable location for housing, having regard to the accessibility of services and facilities.

Reasons

Character and appearance

4. The appeal site is a grassed field which lies between dwellings on Mill Lane, where it approaches the village of Newton. The pattern of development along the lane is one of open countryside interspersed with sporadic dwellings. An open area lies behind the site, and fields lie to the opposite side of Mill Lane. The area consequently has an open and rural appearance.

5. The site has a prominent location on the approach to the village, and within views from the rear of dwellings on Fen Road. Its undeveloped appearance contributes positively to the open and rural appearance of the area. It marks

the commencement of a looser and more spacious pattern of development along Mill Lane where it leaves the village.

6. The proposed dwellings and associated drives and potential garages would introduce significant residential built form within the setting, which would have an urbanising effect on the area's appearance. The dwellings would be likely to occupy much of the site's width due to the proposed density of the scheme. The resulting mass of built form within views from the highway would be inconsistent with the prevailing loose and spacious pattern of development. These factors would erode the rural appearance of the lane. Material harm would additionally arise as a result of the loss of openness which the proposal would bring about.

7. Thus, the proposal would harm the character and appearance of the area. Therefore it conflicts with Policy LP16 of the Fenland Local Plan (2014) ("the FLP"), which sets out that development should make a positive contribution to the local character of the area. Further conflict exists with the design aims of the National Planning Policy Framework (2019) ("the Framework").

Whether safe from flooding

8. The Framework sets out a sequential, risk-based approach to the location of development. The Planning Practice Guidance indicates that the aim of this approach is to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) where possible.

9. The appeal site lies within Flood Zone 3 according to the Environment Agency's ("the EA") flood risk mapping. Land within this zone has a high probability of flooding.

10. Policy LP14 of the FLP sets out that development in areas known to be at risk from any form of flooding will only be permitted following, in the first instance, the successful completion of a Sequential Test, having regard to actual and residual flood risks.

11. The Flood Risk Assessment ("the FRA") document which accompanies the application acknowledges that the site is recorded within Flood Zone 3, but considers that this category is incorrect. It contends that the EA's Flood Risk Map for Planning is used in applying the Sequential Test unless EA "hazard maps" are available. It states that the EA Hazard Map shows the site to be unaffected by any floodwater, and that it should consequently be shown in Flood Zone 1. It therefore concludes that the sequential approach is unnecessary, and does not consider it further.

12. The PPG states that the information in a FRA should be credible. However, the FRA evidence on the matter of flood zone categorisation is extremely limited. Furthermore, these submissions are not verified by, for example, confirmation from the EA that it considers that the site's flood zone category should be altered.

13. Moreover, the Council's "Draft Approach to the Sequential Test for Housing" guidance ("the DAST") states that the Council will use the EA's Flood Maps for Planning to establish the flood risk of a site. The DAST is not an adopted development plan document, however it has been produced to assist in the interpretation of the Council's adopted Cambridgeshire Flood and Water Supplementary Planning Document ("the SPD").

14. The DAST further states that hazard maps will only be used to steer development that is necessary in flood zones 2 and 3 to the lowest hazard locations. The guidance sets out that the Sequential Test must be undertaken prior to any use of hazard maps. Thus, the Council considers that the Sequential Test should be undertaken in respect of the application.

15. The EA's response to the Council's consultation indicates that it does not object to the scheme, however this is on the assumption that the Council has applied the Sequential Test. As the body responsible for managing the risk of flooding from rivers and the sea, the view of the EA is one to which I attach significant weight.

16. Thus, the evidence in respect of the site's correct flood zone category is not sufficiently compelling for me to reach a different view on the matter to that of the EA. I therefore conclude that the appeal site is in Flood Zone 3 for the purposes of this appeal. Accordingly, I concur with the view of the EA and of the Council, namely that it is necessary to consider whether the Sequential Test has been satisfied.

17. The aim of the Sequential Test is to steer new development to Flood Zone 1. Where there are no reasonably available sites in Flood Zone 1, such sites in Flood Zone 2 should be considered. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.

18. The Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The PPG states that the area to which the test should be applied will be defined by local circumstances relating to the catchment area for the type of development. Thus, neither specifies the area of search for alternative sites which should be used. The SPD states that the search area should be agreed with the Council, and will usually cover the entire district.

19. The Council's officer report on the application states that it considers that the area of search for alternative sites for residential development in this location is the settlement of Newton. In making this assessment it relies on its DAST. The DAST states that the area of search is to be determined by consideration of a proposal's objectives. It defines areas of search only in the case of proposals that demonstrate a clear objective to sustain particular settlements or the countryside. The SPD sets out that the search area is usually over the entire Council area and may only be reduced because of the functional requirements and objectives of the proposed development, and because there is an identified need for it.

20. However, the Council provides evidence which indicates that the current development threshold for Newton has been exceeded by a significant degree, and that the housing target in "other locations" (i.e. rural areas and villages) for the plan period has also been exceeded. Furthermore, there is no significant opposing evidence of a need for the development. Thus, the appeal does not demonstrate that there is an identified need for the development. Therefore a clear objective to sustain the existing community has not been demonstrated. Accordingly, I do not consider that the provisions of the DAST can be used in determining an area of search in this case.

21. The appellants provide details of a number of sites which have been subject to planning schemes in and around Newton. They dispute the availability of the majority of these. Whilst the appellants provide limited details of an area of land which is for sale elsewhere in the district, minimal further evidence of any reasonably available sites elsewhere is before me. The Council considers that suitable reasonably available sites in areas with a lower risk of flooding are available within Newton.

22. Notwithstanding this, there is minimal evidence before me to suggest that it is necessary for the development to be sited within or close to Newton. Thus, the proposal does not form an exception from the district-wide area of search which is set by the SPD. Furthermore, I consider that suitable sites in Flood Zones 1 or 2 which are also reasonably local are likely to be available due to the relatively small size of the development.

23. As a result, I conclude that the area of search could reasonably have been wider than the limited area which was considered. Accordingly, the appeal does not demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

24. Thus, the proposal fails the Sequential Test. As this is the case, it is unnecessary for me to proceed to consider whether the Exception Test is met.

25. Development should not be permitted due to the failure of the proposal to prove that there are no reasonably available appropriate sites in areas with a lower risk of flooding. The appeal proposal fails the Sequential Test, and the proposed development would consequently not be safe from flooding. Thus, the proposal conflicts with Policy LP14 of the FLP and the Cambridgeshire Flood and Water SPD, which seek to direct development to areas of lowest flood risk. As development in an area which is at a high risk of flooding, the proposal also conflicts with the Framework.

Location of development

26. The site lies a short distance from one of the main settlement areas of Newton. Mill Lane is relatively narrow at this point, and is unlit. It is subject to a national speed limit, and has no footway into the village. Narrow verges are available, but these would not provide safe pedestrian access. The lack of a footway and street lighting between the site and the village would preclude safe pedestrian access along this section of Mill Lane for the occupants of the development. Whilst similar circumstances may exist in the area, I am required to assess this proposal on its own merits and thus I do not attach any particular weight to the submission that the proposed pedestrian access is typical of the situation elsewhere in the district.

27. Newton has a village hall, a playing field, a church and a limited post office service. However, occupants of the proposed development would need to travel elsewhere in order to meet the majority of their day-to-day needs.

28. The neighbouring villages of Tydd St Giles and Gorefield have further services and facilities. Nevertheless, the roads between Newton and these settlements are generally unlit, with no footway. Furthermore, the road to Gorefield has a relatively narrow width for much of its distance. Given these elements and the distances involved, I do not consider that these would form realistic routes for

occupants of the proposed development to regularly walk or cycle at all times of the year.

29. Bus stops in Newton offer a service to Wisbech, which is a larger local settlement with good facilities and services, although the Council considers the frequency of bus services to be very limited. However, the lack of safe pedestrian access along Mill Lane which I have identified above is likely to discourage occupants of the proposed development from using the bus service concerned. Furthermore, the very limited services and facilities which lie within easy walking or cycling distance weigh against the proposal. I therefore consider that occupants of the proposed development would be likely to rely on the private car.

30. I acknowledge that Newton is identified within Policy LP3 of the FLP as a "Small Village", where development will be considered on its merits but will normally be of a very limited nature. However, the policy seeks to steer most new development to those larger places that offer the best access to services and facilities. The policy also includes the categories "Growth Villages" and "Limited Growth Villages", which have access to more services and facilities, but Newton has not been included in these. Thus, I do not concur with the submission that its categorisation as a Small Village indicates that the village has acceptable access to services and facilities.

31. The local highway authority considers that it is likely that occupiers of the proposed development would be reliant upon the private car, with resulting policy conflict. Whilst I have had regard to its view that the development would not cause unacceptable harm to highway safety, I have found above that the proposal would not offer safe pedestrian access for occupiers of the development. This factor combined with the lack of accessibility to services and facilities would result in a reliance on the private car. The views of the highway authority are similar to my own on these matters.

32. Thus, I conclude that occupiers of the proposed development would be likely to rely on use of the private car for access to almost all of the day-to-day services and facilities they would require. Therefore the proposed development would not provide a suitable location for housing, having regard to the accessibility of services and facilities. It consequently conflicts with Policy LP15 of the FLP, which requires development to be located so that it can maximise accessibility, help to increase the use of non-car modes and provide safe access for all, giving priority to the needs of pedestrians. Additional conflict exists with the transport aims of the Framework.

Other Matters

33. Policy LP12 of the FLP provides for new development in "Small Villages" such as Newton in certain circumstances, including where the proposal would occupy an infill site. The term "infill" is generally understood to denote the development of a relatively small gap between existing buildings. However, as a relatively large area, the site cannot be considered to form a relatively small gap.

34. Moreover, whilst the appeal site lies between dwellings, one of these, "Tewinbury House", is subject to a condition limiting the property to agricultural occupancy alone, which was attached because of its location within the open countryside. Furthermore, the appeal site forms an undeveloped area which has an authorised agricultural use.

35. Thus, I consider that the appeal site corresponds more to the open countryside to the south than to the developed footprint of the village. Accordingly, I consider that the provisions of Part A of Policy LP12 of the FLP, which concern development in villages, have only limited relevance to the proposal. Similarly, the provisions of Policy LP3 of the FLP (with regard to Small Villages) are of limited relevance by reason of the site's location within open countryside.

36. I acknowledge representations indicating some local support for the proposal, which submit that permission should be granted in view of another development in the vicinity. Limited details of the other development are before me, such that I have been unable to assess whether the two schemes are comparable. However, even if the other development and circumstances were similar, it is unlikely that they would provide an example that should inevitably be followed even if harm would result from the appeal proposal. Thus, I attach only minimal weight to the relevance of the other development in determining the appeal.

Conclusion

37. The appellants dispute the Council's ability to demonstrate a 5 year Housing Land Supply ("5Y HLS"), citing a recent appeal decision[1] on the matter. The Council contends that it can demonstrate a 5Y HLS. If I were to accept that there is a shortfall in HLS as suggested by the appellants, paragraph 11 of the Framework sets out that it is then necessary to grant permission for development proposals, subject to certain criteria. These include where the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed. The policies referred to include those in the Framework relating to areas at risk of flooding.

38. I have found above that the application of the flooding policies of the Framework provides such a reason for refusing permission for the appeal proposal. Accordingly, the "tilted balance" of paragraph 11 is not engaged in this case.

39. Thus, for the reasons given above, I conclude that the appeal should be dismissed.

C Beeby

INSPECTOR

[1] APP/D0515/W/17/3171513