



Appeal Decision

Site visit made on 28 October 2019

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/E2734/W/19/3235262

Manor House, Lower Dunsforth Village Street, Lower Dunsforth YO26 9RZ

- 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 Carl Dyson against the decision of Harrogate Borough Council.
 - The application Ref 18/01099/OUT, dated 14 March 2018, was refused by notice dated 19 July 2019.
 - The development proposed is the construction of two residential dwellings with associated access and parking (all matters reserved except access).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Carl Dyson against Harrogate Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development given on the planning application form and appeal form differ. The description in the header above is taken from the planning application form which accurately describes the proposals.
4. The planning application was in outline with all matters reserved except for access. I have had regard to the proposed site plan (drawing SK03) and site location plan (drawing (000) 001 Rev A) but have regarded all detailed elements of these drawings as indicative apart from the access.
5. The Council refer to policy EQ2 of the Harrogate District Local Development Framework Core Strategy adopted 2009 (CS) within the 2nd reason for refusal. However, this does not appear to be relevant to flood risk.

Main Issues

6. The main issues in this appeal are whether the site represents an appropriate location for the proposed development with regards to:
 - access to services and facilities;
 - the effect on the character and appearance of the area including the effect on non-designated heritage assets; and
 - its flood zone location.

Reasons

Planning policy

7. The development plan for the area consists of the CS and the Harrogate District Local Plan Saved Policy Version adopted 2007 (LP). The hierarchy of settlements is identified under Policy SG2, which states that the purpose of drawing development limits is to allow sustainable growth within those settlements that have the best access to jobs, shops and services. Lower Dunsforth is not listed within the settlements under Policy SG2 and is therefore considered to be countryside for the purposes of Policy SG3. Policy SG3 states that there will be strict control over new development in the countryside in accordance with national policy. The policy lists certain forms of development which are encouraged, which does not include market housing. Therefore, the appeal proposal would not accord with this policy.
8. Policy SG3 is broadly consistent with the National Planning Policy Framework (the Framework), to the extent that it seeks to promote sustainable rural development and recognises the intrinsic character and beauty of the countryside. However, the restrictive nature of Policy SG3 would unduly constrain the housing supply and is not in that respect consistent with the Framework.
9. The Council has referred to several policies from the emerging Harrogate District Local Plan (ELP) within the reasons for refusal. The ELP has been through public examination and modifications have been made. These have been the subject of a further public consultation. The Council suggest that significant weight can now be attributed to these policies. However, I have been referred to recent appeal decisions, including appeal ref: APP/E2734/W/19/3228519, where the Inspector gave the emerging policies less than moderate weight. The ELP has advanced since this appeal decision with the completion of the consultation period on the main modifications. Nevertheless, although the plan is advanced, it has not yet been adopted and does not carry full weight. Due to its level of progress, I give the policies of the ELP no more than moderate weight within this decision.
10. Although diminished weight is attributed to policies GS2 and GS3 of the ELP, Lower Dunsforth is not listed within the settlements under Policy GS2 and is therefore considered to be countryside for the purposes of the ELP. In such a location, development would only be appropriate if permitted by other policies of the ELP, a Neighbourhood Plan or national policy.

Access to services and facilities

11. Although referred to in the second reason for refusal in relation to flood risk, Policy EQ1 of the CS also seeks to minimise car usage and is relevant to this main issue. The appeal site is located within the village of Lower Dunsforth. Even though the appeal site is not isolated in the context of the Framework there is little in the way of day to day services and facilities within Lower Dunsforth. Moreover, I have not been provided with any substantive evidence that there are any public transport connections linking the village to other settlements. Whilst I recognise that some residents may cycle, in my view, future occupants of the development would be largely reliant on private motor vehicles to access services and facilities within nearby settlements such as Marton cum Grafton, Great Ouseburn and Boroughbridge. Even though these

settlements are a relatively short drive from the appeal site, such a reliance does weigh against the proposals.

12. I therefore conclude that the appeal scheme would place a reliance on private motor vehicles, would not have particularly good access to services and facilities and would therefore conflict with Policy EQ1 of the CS. Policy EQ1 is broadly consistent with the objectives of the Framework. However, paragraph 103 of the Framework does acknowledge that opportunities for sustainable transport solutions in rural areas are reduced. Moreover, paragraph 78 of the Framework recognises the role that development in one village can have in supporting services in another. As such, the harm I attach to the relatively unsustainable location is lessened.

Character and appearance

13. The appeal site forms part of a grassed paddock containing earthworks within the wider ownership of Manor House, an attractive period property, which the main parties agree is a non-designated heritage asset.
14. There appears to be ridge and furrow earthworks within the area. However, evidence provided by the appellant suggests that the earthworks at the development site comprise of several possible building platforms and are likely to relate to the occupation of a moated farmhouse. The evidence suggests that these earthworks form part of the wider earthwork remains relating to a medieval and post-medieval village. Both the platforms and moated ditch are visible on site and are non-designated heritage assets.
15. Views of the appeal site, including the earthworks, the countryside beyond, Manor House and the adjacent Manor Farm and several outbuildings can all be seen to varying degrees between the trees along the road and access driveway. These features form an attractive view from within the settlement. As a result, the appeal site, contributes positively to the character and appearance of the area and the verdant setting of Manor House.
16. The proposals would result in the loss of some earthworks on site. Moreover, and acknowledging that the application is in outline, the proposed dwellings and associated domestic paraphernalia would significantly intrude into the verdant setting of Manor House. It would, in my view, diminish the views through the site of Manor House and to a lesser extent the countryside beyond. In consequence, the character and appearance of the area would be harmed.
17. Orchard House to the east is located on land that appears to have formed part of the original Manor House grounds. As such, I recognise that the sense of space around Manor House has been eroded in the past. Moreover, whilst I note the Council's position that this is not an infill plot, the proposals would appear along a similar building line to other adjacent buildings and within the confines of the built form of Lower Dunsforth. However, this does not outweigh my concerns regarding the scheme having regard to the site-specific characteristics and the subsequent harm I have identified.
18. I therefore conclude that the proposals would significantly harm the verdant setting of Manor House and the character and appearance of the area, having regard to non-designated heritage assets. Such harm weighs against the proposals. The proposed development would conflict with Policy C2 of the LP and Policy SG4 and EQ2 of the CS. These policies, amongst other things, aim to

ensure that development adds to the spatial qualities of the area and is appropriate to the form and character of the settlement.

19. These policies are broadly consistent with paragraphs 127 and 130 of the Framework, and therefore any conflict with them are a matter of significant weight. In line with paragraph 197 of the Framework, any direct or indirect effects to non-designated heritage assets need to be balanced against other factors, including the benefits of the proposed dwellings. I shall address any other matters and suggested public benefits later in my decision.

Flood zone

20. The Council refer to Policy EQ1 of the CS, which amongst other things, seeks development to minimise flood risk. This is consistent with the objectives of the Framework.
21. The site is located within flood zone 3a, as identified by the Environment Agency (EA). The application is accompanied by a flood risk assessment demonstrating that the development could be engineered to avoid its occupiers being subjected to an unacceptable level of flood risk. In that regard the EA has not raised an objection to this development. However, the EA's advice is caveated, in line with what is now contained in paragraph 158 of the Framework and the flood risk and coastal change section of the Planning Practice Guidance. This means that planning permission should not be granted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. In other words a sequential test (ST) should be performed to establish whether the development could be accommodated wholly in a location or locations at a lower risk of flooding.
22. An updated ST was submitted based on a search area, agreed with the Council, encompassing the villages of Lower Dunsforth, Upper Dunsforth, Marton cum Grafton and Great Ouseburn. As this area of search includes settlements targeted for growth by the Council, I am satisfied that this is a pragmatic approach. The Council state that, although a site within the ST at Great Ouseburn (18/01751/OUT) has permission, it has not been implemented and is therefore potentially available. However, the site is the subject of a current application for reserved matters (19/01997/REM) for 5 units. It is therefore unlikely to be available for the proposed development. Accordingly, and in the absence of any identifiable alternatives, I find that the ST is satisfied.
23. The site is also required to meet the Exception Test (ET) if the ST is met, as set out at paragraphs 159-160 of the Framework. This has 2 requirements. First, that the development would provide wider sustainability benefits to the community that outweigh the flood risk. Second, that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. The effect of the EA's comments, which are not disputed by the Council, is that subject to conditions the second requirement of the ET is passed, and that flood risk would not be increased elsewhere. In order to conclude on this main issue, the first limb of the ET will be considered in the overall planning balance.

Other Matters

24. The appellant has referred me to other examples of housing development being allowed at appeal within the District. The appellant also refers to applications granted by the Council at Lower Dunsforth. However, the characteristics of each site and settlement are different, and I do not have the full details of those proposals and sites. I cannot, therefore, be sure that they represent a direct parallel to the appeal proposals in terms of their location, character and the Council's position in relation to its housing supply. In any case, I have determined the appeal on its own merits against the specific and unique characteristics of the appeal site.
25. Within the grounds of Manor Farm lies a grade II listed dovecote. I have therefore had regard to the special duty placed on decision makers in sections 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The dovecote is not referred to within the reasons for refusal, although it is referred to in the Council's Officer Report and its appeal Addendum Statement. In my view, the appeal site is sufficiently detached from the dovecote, due to the position of other outbuildings that it does not form part of its setting and therefore the listed building and its setting would be preserved. As such, there would be no conflict with paragraph 184 and 193 of the Framework in respect of the conservation of listed buildings.
26. The Council did not make findings of harm with respect to highway safety, drainage, ecology or the preservation of any archaeological remains, subject in certain cases to recommended conditions. I have considered the concerns raised in relation to these matters by interested parties. However, taking all the evidence into account, I do not reach different conclusions to the Council in respect of these matters. Moreover, in principle there would be enough space and separation distances to existing properties to create satisfactory living conditions for both existing and future occupants. The absence of harm in these respects is, however, a neutral matter weighing neither for nor against the proposals.

Planning Balance

27. It is not disputed that the Council is able to demonstrate a 5 year supply of housing. However, the Council accepts that some of its policies which are the most important for determining the application are out of date. As a result, Paragraph 11d is potentially engaged which states that permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Alternatively, specific policies in the Framework may indicate development should be restricted, and the 'tilted balance' disengaged. Those relating to flooding are one such category.
28. In order to pass the first limb of the ET, as set down in paragraph 160 of the Framework, the development must provide wider sustainability benefits to the community that outweigh the flood risk. The proposed houses would make a modest contribution to maintaining the supply. Reference has been made that the dwellings would be self-build, which is a form of development that is supported by the Framework. The proposals would provide a limited amount of short-term employment through the construction of the houses.

29. There would be some limited benefits from the additional support to the vitality of the local community, and local economy, from the future occupiers of the houses. Such support would be limited though, due to the location of the site within a village with few facilities. Whilst these are factors which are encouraged by the Framework and other policies, the benefits arising from 2 dwellings would be limited.
30. Against these limited benefits, the proposals would result in negative impacts. This would include the loss of some historic earthworks within the appeal site and the erection of 2 dwellings, which would result in significant harm to the verdant setting of Manor House and the character and appearance of the area. It would also result in future occupants having a high dependency on the use of private motor vehicles for access to services. On balance, I do not consider that the proposals would provide wider sustainability benefits to the community that outweigh the identified flood risk. The proposals would therefore fail this element of the ET.
31. The proposals would therefore be contrary to guidance in the Framework relating to flood risk. In such a scenario, the tilted balance towards granting permission set out at Paragraph 11d of the Framework would not apply. This is because policies in the Framework that protect areas of particular importance (in this case relating to flood risk) provide a clear reason for refusing the proposals.
32. Even if the tilted balance and presumption towards granting permission set out at paragraph 11d of the Framework did apply, overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the proposals would not represent sustainable development.

Conclusion

33. For the reasons given above, the appeal is dismissed.

Robert Walker

INSPECTOR