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## Appeal Decision

Hearing Held on 5 February 2020

Site visit made on 5 February 2020

**by John Morrison BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 February 2020**

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**Appeal Ref: APP/V2635/W/19/3227606**

**Fosters Sports Ground, North Field, Clenchwarton, Norfolk PE34 4BP**

- 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 Elm Park Holdings Limited against the decision of King's Lynn and West Norfolk Borough Council.
  - The application Ref 18/01252/OM, dated 3 July 2018, was refused by notice dated 30 October 2018.
  - The development proposed is described as 'outline planning application for a residential development of up to 40 dwellings consisting of 28 private, 8 affordable houses and 4 fully serviced plots of 3 or 4 bedroom detached self build units with all matters reserved other than access.'
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. As alluded to in the written evidence and as discussed at the hearing there have been some changes to the appeal scheme since the determination of the planning application. The scheme remains as one seeking outline planning permission with the same matters reserved but the mix of dwellings is proposed as 20 private, 12 affordable and 8 self build units. The upper limit as specified has not changed. Given that this change only relates to the mix of dwellings I don't see it as fundamental. The main parties are aware and the Council do not object. I do not feel therefore that any parties will be prejudiced by me considering the appeal on this basis. The appellant set out at the hearing that the reason for the change was so that greater weight could be placed, in their view, on the provision of affordable and self build housing. I shall revisit this matter later.
3. At the hearing, local residents against the proposal wished to submit for my attention a lengthy flood risk and drainage impact and capacity study that had been completed by a member of the group. I said I would give consideration to their request after the hearing. As can be seen from my decision I have concluded that the appeal should be dismissed on flood risk grounds and therefore the submission of the report would not have affected the outcome of the appeal. Consequently, there was no reason for me to request the submission of this document.

4. Prior to the hearing, the appellant's solicitor and the Council exchanged correspondence on and drafts of a planning obligation which would seek to secure, amongst other things, the proposed affordable housing, self build units and habitat mitigation. Through discussion at the hearing it seemed to be the case that, whilst in the form of a Unilateral Undertaking (UU), the main parties were close to agreeing terms albeit the Council remained concerned about some of the detailed wording. Both main parties agreed they needed more time to finalise and execute an obligation.
5. Being mindful of the fact that I have resolved to dismiss the appeal, I feel it would be unfair of me to put the appellant to further time and cost in completing a planning obligation since, even in the event I had a completed one before me it would not, given the reasons I have set out below, affect the outcome of the appeal. Hence, I have issued my decision before receiving the final signed and dated version of the obligation but have had regard to the benefits the planning obligation would provide.

### **Main Issues**

6. The main issues are a) whether the appeal site is an appropriate location for new housing having regard to the development plan and sustainable patterns of development; and b) whether the proposed development would be at an unacceptable risk of flooding.

### **Reasons**

#### *Appropriate Location*

7. The appeal site is located outside of the development boundary of Clenchwarton as it is defined by the development plan. At the hearing the appellant confirmed it was in the region of 1km away from the edge of the defined settlement. It is a largely flat, open and undeveloped area of land laid to grass that was formerly a sports field. It backs onto dwellings that face Ferry Road to the north and Jubilee Bank to the east. An extant planning permission exists for 40 dwellings on an adjoining field to the south<sup>1</sup>.
8. By virtue of the appeal site falling outside of the development boundary, it would conflict with the approach of containing new development to within them as it is set out by Policy DM2 of the SADMP<sup>2</sup>. The development boundaries serve to identify those areas where new development will be acceptable as a matter of principle, protect areas of countryside for reasons of its character as well as encouraging sustainable patterns of new development.
9. I accept that future occupiers of the proposed development would have a fairly limited but reasonable range of basic services that could be accessed via sustainable means. However, such an argument would also apply to numerous other sites in the borough either immediately adjacent to or further outside defined settlements.
10. The Council take the view that the development of the appeal site would be unlikely to detrimentally affect the character and appearance of the area given its context and surrounding built form and I agree. In essence, and considering

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<sup>1</sup> Planning Inspectorate Reference APP/V2635/A/2219315

<sup>2</sup> Borough Council of Kings Lynn and West Norfolk Site Allocations and Development Management Policies Plan 2016

the appeal site would be outside of a defined development boundary, development of it would not cause undue harm to the particular character or innate beauty of the countryside as an entity.

11. Policy CS01 of the Core Strategy (CS)<sup>3</sup> sets out, amongst other things and in regard to the growth strategy for rural and coastal areas, that most new development will be focussed within or adjacent to Key Rural Service Centres (KRSC). One of which is Clenchwarton. I recognise therefore there is some (arguable) flexibility in whether development can be accommodated within or adjacent to a development boundary. Be this as it may, I am not convinced that being in the region of 1km away from the edge of the defined settlement for the purposes of the development plan the appeal site could be considered adjacent to.
12. These factors temporarily aside, the Council have identified, allocated and record extant planning permissions for sites in Clenchwarton for 49 dwellings. The CS sets out that a minimum of 2880 new homes be provided in selected KRSC, of which there are 21. It further establishes that 660 new homes be provided through allocations. Therefore, given the number of KRSC, the 49 dwellings already benefitting from implementable planning permissions already exceed the average number of new homes spread equally among the KRSC (31). I agree that the figures are minimums and there is the commitment set out in the Framework<sup>4</sup> to boost significantly the supply of housing. That said, the numbers set out in the CS are part of an adopted development plan, the evidence base and the assessed need for housing therefore was subject to thorough examination to ensure that planned growth was proportionate to the size and capacity of the settlement.
13. The Council have a supply of housing sites over eight years (this is not challenged by the appellant). Clearly, this far exceeds the requirement set by the Framework and is underpinned by an up to date adopted Local Plan. I realise the numbers in the Plan are a minimum and that Clenchwarton may be able to accommodate the further growth that the proposed development would provide. However, this is not a sufficient reason to depart from the strategy set out in the adopted Plan. Particularly given where the appeal site is located.
14. Taking all of the above into account I find that the appeal scheme would conflict with Policies CS01, CS02, CS06 and CS09 of the CS and Policies DM1 and DM2 of the SADMP. Amongst other things, these policies seek to ensure sustainable patterns of new development that is within or adjacent to defined settlements and that required housing is distributed suitably across the main settlements in a hierarchical manner.

### *Flood Risk*

15. The appeal site is in flood zone 3 as defined by the Environment Agency's (EA) Flood Map. It is also within the Tidal Hazard Breach Mapping Area. The Framework sets out the commitment to direct development away from areas at highest flood risk. Via the use of the Sequential Test (ST) the Framework further states that development should be steered towards areas with the lowest risk of flooding.

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<sup>3</sup> Kings Lynn and West Norfolk Borough Council Local Development Framework – Core Strategy 2011

<sup>4</sup> The National Planning Policy Framework 2019

16. In the case of Clenchwarton, there are little areas that are not within flood zone 3. At least not sufficient to be able to accommodate any meaningful growth for the settlement bearing in mind its status as a KRSC and the objectives of the CS. It is in this context that I am mindful of the aforementioned extant housing allocations which, given the above, would be at the same or close to the same mapped risk of flooding for the purposes of the Framework. One could reasonably argue therefore that the development of the appeal site would represent development at the same risk of flooding as extant allocations which have been deemed acceptable as well as it being sufficiently clear that, as far as any growth in Clenchwarton is concerned, it would always be in a flood zone. As a consequence, and again for Clenchwarton as a KRSC, it would be difficult to be able to steer development towards an area at lowest risk.
17. That said, I am drawn to paragraph 155 of the Framework which sets out the national planning policy position in relation to development in areas at risk of flooding. After explaining the need to direct development away from areas at the highest risk, it states that where development is necessary in such areas, the development should be made safe for its lifetime.
18. Following on from my findings on the first main issue, I am struggling to reconcile the argument that the development of the appeal site is necessary. I agree with the Council's assessment that the housing site allocations in the development plan that have been measured, tested and adopted were necessary for the sake of a plan led growth of Clenchwarton. However, given that the Council have an adopted development plan and a healthy supply of housing sites, I do not accept that the additional housing that could be provided by the proposed development is necessary.
19. I do not therefore find that the proposed development would be sequentially appropriate and as such there is no need for me to investigate compliance with the Exception Test.
20. With the above in mind, and concluding on this main issue, I find that the proposed development would be at an unacceptable risk of flooding. Contrary to section 14 of the Framework and Policies CS01 and CS08 of the CS and DM1 of the SADMP. Amongst other things, these policies seek to ensure that development is directed away from areas at the highest risk of flooding and steered towards areas at lowest risk. It should ultimately be sustainable and directed towards the right places, ensuring that it is appropriate to the risks and zones identified.

### **Other Matters**

21. I acknowledge that my findings here are contrary to those of my colleague who allowed an appeal for the development of the south field, which I have referred to above. However, at that time the Council did not have the supply of housing sites as required by the Framework and so the material considerations and treatment of the relevant policies of the development plan in that case were very different.
22. The appellant advanced the provision of open market housing, the sustainability of the location of the appeal site and what the development plan says about the bringing forward of sites in areas at risk of flooding to meet housing need as benefits of the scheme.

23. I have considered the provision of housing and noted that the Council's supply is healthy. The development plan is making policy compliant provision therefore. I have not doubted that the appeal site is in a sustainable location but this would have to be the case for the development to be acceptable in any event and thus it cannot be considered a benefit. I also note that there is recognition that, owing to the nature of the district, some development may have to be in a flood zone. But that would apply to those schemes that are acceptable in other planning respects and other policies of the development plan. I agree that rural areas need to grow and there is every indication that, through extant planning permissions for tested and assessed allocations, that growth is being enabled through the plan led system.

### **Planning Balance and Conclusion**

24. The Council's adopted development plan is up to date and they have nearly 8.5 years supply of housing sites. I have found conflict with the development plan in relation to the first main issue. I have also found that the proposal would result in unacceptable flood risk, contrary to national and development plan policies. These harms weigh significantly against the proposal.
25. In favour of the appeal scheme, the proposal would provide for 30% affordable housing which, as I have stated above, would amount to 12 of the 40 unit total. This would be more than the development plan which has a requirement for 20%. These would be provided via a planning obligation.
26. The Council's evidence demonstrates that there are sites with planning permission across the district delivering on affordable units at policy complaint levels. It also being pointed out at the hearing that there were very few examples of where development viability had come into play to reduce such provision and so the provision is likely to continue.
27. I attach moderate weight to the provision of affordable housing, including that above the level which would just make it policy compliant. Although this is tempered to some degree by the fact that I have limited evidence before me to demonstrate that the development could stand the cost of over provision given other contributions that would be required under other development plan policies, as well as the additional cost of works that would be needed for bringing forward a development in an area at high risk of flooding.
28. Turning to the matter of self build plots, the appeal scheme would provide eight in total. These would also be secured through a planning obligation and help towards the Council's obligations under The Self Build and Custom Housebuilding Act 2015.
29. The Council's evidence in this respect is that they are delivering on self build plots as measured over the last four years. The Council confirmed that the permissions that had been granted were not accompanied by any conditions or obligations to ensure delivery as self build but drew my attention to section 2A of the Act which states that, in respect of what may constitute a suitable permission for a self build plot, a permission in respect of development that could (my emphasis) include self build and custom housebuilding. It is the Council's case therefore that, under the wording of the Act, permissions granted for individual plots could be self build and are thus counted towards the number granted and recorded as such. Taking the wording of the Act on face value I can see logic to this argument.

30. The Council were also able to confirm that a significant number of planning permissions have been granted that are exempt from payment of the Community Infrastructure Levy (CIL) on the basis of them being self build projects. It is the appellant's argument that given there are no controlling mechanisms in the permissions discussed to ensure the delivery of them as self build projects, then it would be difficult to reconcile an argument to guarantee they would be and thus meet the requirements of the Act.
31. I understand this. However, even if I were to increase weight to the provision of self build plots to the level the appellant requires, I would still be stacking it, and the only moderate weight I would be attaching to the provision of affordable housing, alongside planning harms and conflicts with the development plan that are multiple and significant. It is for those reasons that the appeal is dismissed.

*John Morrison*

INSPECTOR

## **APPEARANCES**

### FOR ELM PARK HOLDINGS LIMITED

|                   |                                  |
|-------------------|----------------------------------|
| Mr Richard Brown  | Planning Agent                   |
| Mr Matt Cheeseman | Consultant – Flood Risk          |
| Mr Jeremy Peachy  | Consultant – Landscape (Pegasus) |
| Mr Alan Wallis    | Architect                        |

### FOR THE BOROUGH COUNCIL OF KINGS LYNN AND WEST NORFOLK

|                   |                       |
|-------------------|-----------------------|
| Mr Alex Fradley   | Planning Policy       |
| Mr Peter Jermany  | Planning Policy       |
| Mrs Natacha Osler | Planning Case Officer |
| Mr Karl Patterson | Strategic Housing     |

### THIRD PARTIES

|                                 |                             |
|---------------------------------|-----------------------------|
| Mr Steven Bearshaw              | Clenchwarton Parish Council |
| Mr Richard Brown                | Local Resident              |
| Mr Stephen Brown                | Local Resident              |
| Mr James Drennan                | Local Resident              |
| Mr Steve Fox                    | Local Resident              |
| Mr Martin Hitch                 | Local Resident              |
| Cllr Mrs Alexandra Kemp         | Local Ward Member           |
| Mr Rodger and Mrs Margaret Pate | Local Residents             |
| Mr John Simpson                 | Local Resident              |
| Mr Danny Thorpe                 | Local Resident              |