



Appeal Decision

Site visit made on 10 December 2019

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2020

Appeal Ref: APP/E2340/W/19/3237541

Morris Ing, Skipton Road, Earby BB18 6JL

- 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 Beecroft against the decision of Pendle Borough Council.
 - The application Ref 19/0094/OUT, dated 29 January 2019, was refused by notice dated 6 June 2019.
 - The development proposed is the erection of 6 no. two storey 2, 3 & 4 bedroom dwellings with associated gardens and parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The development proposed is in outline with all matters reserved. I have had regard to the submitted plans but have treated all elements of these drawings as indicative.
3. The Council's decision notice refers to the erection of 6 No. two storey dwelling houses. However, I understand that the appellants submitted a revised site layout to the Council on 8th May 2019, reducing the number of dwellings to 5 in order to address concerns from Lancashire County Council Highways (the Highway Authority). The committee update and the minutes of the meeting held on 4 June 2019, confirm that the Committee considered and resolved to refuse the application based on the revised scheme for 5 dwellings.
4. Furthermore, the Council's appeal statement, the appellants' appeal form and statement of case also refer to the development proposed as the erection of 5 No. two storey dwelling houses. Both parties concur that the number proposed is 5 dwellings, and that the highways concerns have been addressed. Therefore, I have proceeded on this basis and confined the main issue to flood risk.
5. The Council have submitted an appraisal report¹ of the appellants' Flood Risk Assessment Report Ref 16937-L-RP-002-R0 (the FRA) The report was appended to the Council's appeal statement, and the appellants have been provided an opportunity to comment on the appraisal through the appeal process. Therefore, I am satisfied that no party would be prejudiced by the consideration of this information through this appeal.

¹ Ref 2019-123/FRA/001A, Flood Risk Consultants Limited, dated 13 November 2019

Application for costs

6. An application for costs was made by Mr & Mrs Beecroft against Pendle Borough Council. This application is the subject of a separate Decision.

Main Issue

7. The main issue is the effect of the proposal on flood risk.

Reasons

8. Policy ENV7 of the Local Plan for Pendle Core Strategy 2011-2030 (2015) (the Local Plan) does not support development where it would be at risk of flooding and would increase the risk of flooding elsewhere. Furthermore, paragraph 155 of the National Planning Policy Framework (the Framework) states that *'inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.'*
9. The appeal site is located within a flood risk zone 1 and is therefore located within an area with a low probability of river and sea flooding, defined as such in National Planning Policy Guidance² (NPPG). The NPPG defines buildings used for dwelling houses as more vulnerable uses. Paragraph 163 of the Framework states that when determining any planning applications, local planning authorities (consequently the decision maker) should ensure that flood risk is not increased elsewhere.
10. Whilst in a flood risk zone 1 footnote 50 of the Framework sets out when a developer will be required to provide a site specific FRA including, among other things, *'where proposed development or a change of use to a more vulnerable class may be subject to other sources of flooding'*. The NPPG explains what an FRA should establish, this includes the risks of flooding from all sources, the potential to increase flooding elsewhere, and measures to deal with these effects and risks.
11. I have been provided a copy of the FRA (Report 16937-L-RP-002-R0, March 2019) submitted by the appellants, with the original submitted scheme of 6 dwellings. Whilst the report identifies the site as Flood Zone 1 (low risk) and concludes that the site is acceptable for development, the site is located in a topographical ball, and based on the evidence provided the area has experienced significant problems with surface water drainage. The appellants contend that the proposal would incorporate a surface water drainage scheme that would improve flooding issues in the area, and not exacerbate it, although no detailed proposals have been provided.
12. Unlike the appellants' FRA, the Council's appraisal includes detailed modelling and analysis of surface water flooding across the site, accounting for 1 in 30, 1 in 100 (as well as 1 in 1000) year flood events. This detailed analysis concludes that the proposed finished floor levels would not be sufficient to prevent the inundation of flood waters during a 1 in 100 year flood event. Furthermore, increasing the finished floor levels to take into accounts a 1 in 100 year event would result in an increased risk of flooding to an existing residential property north of the site, referred to by both parties as Dalesway.

² Paragraph: 065 Reference ID: 7-065-20140306

13. Whilst the on-site flood risk to the proposed dwellings could be resolved by a condition setting the finished floor levels, from the evidence before me the increased floor levels required to deal with 1 in 100 event would likely increase the risk of flooding on the adjoining property, and there are no solutions before me to demonstrate that this can be mitigated through any on-site measures or the off-site matters raised by the appellants.
14. I have considered the appellants' comments on the Council's appraisal report, with regards to the assumptions adjacent property 'Dalesway' that the finished floor level would not be less than the channel level in the road, however no detailed level information has been provided to support this assumption, nor does it address potential flooding to the external grounds of Dalesway.
15. Whilst I appreciate that both the appellants' FRA and the Council's appraisal report are both based on the original proposals for 6 dwelling, there is no evidence before me that this would alter my findings, if the scheme were reduced to 5 dwellings.
16. I have considered the appellants' comments on the Council's appraisal report, and the attached supplementary document (Mason Clark Associates, Ref 16937-L-RP-003 R1, November 2019) which highlights off-site issues that affect the functioning of surface water drainage within the vicinity of the site, and suggests maintenance works on these assets could improve matters. Even if I were to accept that there are potential off-site solutions, no detailed proposals have been put forward, and the works appear to relate to land outside of the control of the appellants, with no mechanism presented to adequately secure the works. Given these works are off-site it would not be suitable to use a planning condition.
17. I understand that the appellants drainage consultant would like further clarification and discussion with the Council's drainage consultants regarding the appraisal, however I am required to consider the appeal on the information before me, which is sufficient to determine the appeal.
18. I have considered the comments made by Yorkshire Water, and acknowledge that there is an absence of any comments from the Council's own drainage engineers, and the Environment Agency. However, whilst Yorkshire Water do not object, I am required to consider all of the evidence put before me, and there is insufficient information to demonstrate that the proposed development would not increase the risk of flooding elsewhere.
19. Whilst the application is outline with all matters reserved, the evidence provided by the Council leads me to conclude that the use of planning conditions would not be a suitable mechanism to resolve these matters, given the proposed more vulnerable use of dwelling houses and the identified increased risks of flooding off-site.
20. Therefore, I conclude, there is insufficient information to demonstrate that the measures advanced by the appellants would be sufficient to mitigate against the identified sources of flooding, and the proposal would likely increase the risk of flooding for others off-site. The proposal does not accord with Policy EN7 of the Local Plan which seeks to prevent more vulnerable development from flood risk, and to prevent and increase in flooding elsewhere. It would not be consistent with the Framework which advises new development should

be appropriately flood resistant and resilient and ensures that flood risk is not increased elsewhere.

Other Matters

21. The southern part of the appeal site falls within Earby Conservation Area (the CA), although the majority of the site is outside. The CA covers a large proportion of the settlement of Earby. Its special character consists of the settlements rural origins, which eventually developed into textile industries. The buildings reflect this change, and vary from older 16th and 17th century buildings, to a more uniform pattern of Victorian and Edwardian stone terraced properties in the western part of the settlement. These terraced properties significantly contribute to the character of the area to the south of the appeal site. The application is in outline with all matters reserved, based on the illustrative plans and supporting information, I am satisfied that the principle of providing housing on the site would not harm the special character of the CA, and that the detailed design and appearance could be adequately addressed at the reserved matters stage. The proposal is consistent with Policy ENV2 of the Local Plan, and paragraph 193 of the Framework, which collectively seeks to ensure that new developments preserve and enhance Conservation Areas and prevent harm to designated heritage assets.
22. I have considered the benefits of the scheme with regards to improvements to the adjacent Public Right of Way (PRoW), and contribution to housing land supply in the Borough. However, whilst I accept this would improve connectivity to the centre of Earby, the contribution of the additional dwellings is likely to have a limited effect on the overall supply within the Borough. Therefore, these matters do not outweigh the harm in terms of flood risk.
23. I have considered the appellants' submission that the site is within the defined settlement boundary, that they consider the site to be in a sustainable location, the dwellings would be of a high quality design, and would have regard to the context of the site. However, this does not alter my findings above.
24. Whilst I understand previous highways concerns may have been addressed, there is no dispute between the appellants and the Council with regards to living conditions, and the detailed layout and design could be addressed at reserved matters stage, this does not affect my findings with regards to the main issue.

Conclusions

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

R Cooper

INSPECTOR