



Appeal Decision

Site visit made on 9 June 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th August 2020

Appeal Ref: APP/E2001/W/20/3247156

Land North East of 1 Broad Lane, Howden DN14 7GG

- 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 Lawrence Hayes against the decision of East Riding of Yorkshire Council.
 - The application Ref: 19/03488/PLF, dated 30 September 2019, was refused by notice dated 27 January 2020.
 - The development proposed is described as: Erection of shed/store.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address of the appeal site is given on the planning application form as 'Land south of A614 off Broad Lane Howden'. From the site visit and the submitted plans, the address used on the Decision Notice issued by the Council, as set out in the heading above, is more accurate, and I note that the appellant has also used this address on the Appeal Form. I have, therefore, used this for the purposes of the appeal.
3. The planning application describes the development proposed as 'Erection of shed/store'. The decision notice issued by the Council describes the proposal as 'The erection of an agricultural storage building' and the appellant has also used this description on the appeal form. The proposed use of the building is one of the matters where there is dispute between the parties, and which is dealt with under the main issues below. There is no indication that the change in the description was agreed and, consequently, I have retained the original description of the proposal from the planning application for the purposes of the appeal as that is what planning permission was sought for.

Main Issues

4. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development having regard to the risk of flooding; and
 - Whether the appeal proposal is a suitable form of development in a countryside location, having regard to the development plan.

Reasons

Whether the appeal site is a suitable location for the proposed development having regard to the risk of flooding

5. Policy ENV6 of the East Riding Local Plan Strategy Document 2016 (the Local Plan) seeks to manage environmental hazards including, amongst others, flood risk, to ensure that proposed developments do not result in unacceptable consequences. Policy ENV6 seeks to direct new development, as far as possible, towards areas that are at the lowest risk of flooding through the application of a Sequential Test to site selection. This is consistent with the requirements of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (the PPG).
6. It is common ground that the appeal site lies within an area identified as Flood Zone 3 and which is at the highest risk of flooding. Buildings for storage and distribution and buildings for agricultural purposes are both considered to be 'less vulnerable' uses of land in terms of flood risk and, as such, either would be an appropriate form of development within Flood Zone 3, subject to a Sequential Test.
7. A Flood Risk Assessment was submitted with the planning application which contains a brief section titled 'Sequential and Exceptions' test. This states that an internet search found no other site for sale within three miles of the appeal site which was either within a lower risk flood zone or was not already subject of an existing development scheme. However, no details are provided of the sites that were identified or why the sites that were identified were considered unsuitable. Similarly, there is no information provided in respect of the other areas of land that are used in connection with the appellant's farming business and why it is not possible to locate the proposed building on any of this land. Consequently, I find that there is insufficient information to determine whether the requirements of the Sequential Test have been satisfied and that it has not been demonstrated that the proposed development cannot be located in an area that is at a lower risk of flooding.
8. I have noted that the Environment Agency have not raised any objection to the proposal. However, this does not remove the need for an appropriate Sequential Test to be carried out as required by Local Plan Policy ENV6, the Framework and the PPG. The Framework requires that all development in Flood Zones 2 and 3 should be subject to a site specific flood risk assessment including a Sequential Test.
9. In addition, there is no information in the Flood Risk Assessment in respect of the predicted water levels resulting from a flood event and, as a result, it is not possible to conclude that the mitigation measures set out in the Flood Risk Assessment are appropriate to suitably address the effects of any potential flooding.
10. I have found that it has not been demonstrated that the proposed development cannot be located in an area that is at a lower risk of flooding, nor has it been demonstrated the proposed development would be safe in the event of a flood incident. I therefore conclude that the appeal site is not a suitable location for the proposed development having regard to the risk of flooding. It would not comply with the relevant requirements of Local Plan Policy ENV6, or the

Framework, which expect new development to be located in areas of lowest flood risk.

Whether the appeal proposal is a suitable form of development in a countryside location, having regard to the development plan

11. It is not in dispute that the appeal site is located in the countryside for the purposes of applying the policies in the Local Plan. Local Plan Policy S4 is supportive of development in the countryside for a number of specific purposes, including development for agricultural, horticultural and forestry uses. Policy EC1 of the Local Plan seeks to direct new employment development to locations where they will help strengthen the area's key employment sectors and clusters, and sets out various circumstances where employment development beyond development limits will be supported.
12. Although the Council have not raised any objections to the proposal in terms of the character and appearance of the area, it is contended that the proposed building is not intended solely for agricultural purposes and the Council suggest that it may be additionally used for commercial storage. The Council state that the appellant had advised that the proposed building would be used for storage in connection with other parts of his business operation. However, there is absolutely nothing that would support this assertion in either in the planning application documents, or the copies of correspondence I have been provided with.
13. Although the planning application form describes the proposed development as the erection of a shed/store, the section of the form where the proposed non-residential floorspace is recorded states that the proposal would result in 270m² of agricultural floorspace and does not list any other type to be provided. The submitted flood risk assessment also refers to an agricultural building.
14. Policy S4 does not require a proposed agricultural building to be located on the agricultural unit it is to serve. Although the Council argue that the design and siting of the building would not allow access for large agricultural vehicles, in correspondence with the Council, the appellant sets out that the proposed building would be used for the storage of smaller items of equipment, materials for fencing repairs, and bags for produce. I have no evidence that would indicate that this would not be the case.
15. Notwithstanding the description on the planning application form, there is no compelling evidence that the appeal proposal is not for an agricultural storage building. In any event, if the appeal proposal was acceptable in all other respects, a suitably worded planning condition could be used to restrict the use of the building to use for agricultural purposes. This being the case, the locational requirements of Local Plan Policy EC1 are not applicable.
16. The Council suggest that the use of the site for agriculture has been abandoned. At the time of the site visit the site was very overgrown and clearly it had not been used for a period of time. Nonetheless, a period of non-use is not synonymous with abandonment and there is no substantive evidence that there has been either an intervening, non-agricultural, use or that the previous use was ceased with the clear intention that it never be resumed. Consequently, I can give no weight to this line of argument. There is no other

evidence that the proposal would offend the requirements of Local Plan Policy S4.

17. I therefore conclude that the appeal proposal would be a suitable form of development in a countryside location, having regard to the development plan. It would comply with the relevant requirements of Policy S4 of the Local Plan and would not conflict with the requirements of Local Plan Policy EC1.

Other matters

18. I have had regard to the point that an agricultural building has been permitted on the adjoining land. Very little information has been provided in respect of this scheme, although I note that the Council state that this site is a larger parcel of land, the approved shed would be used in relation to the land on which it would be sited, and that a satisfactory Flood Risk Assessment was provided for the proposal. I have no reason to believe that this is not the case. This is different from the proposal before me where I have found that the submitted Flood Risk Assessment contained insufficient information to allow me to conclude that the proposed development cannot be located in an area of lower risk or that the proposed building would be suitably protected.
19. I have noted that the Council have not raised any other concerns in respect of the proposed development, other than the matters raised in the reasons for refusal. From what I have read and from what I saw when I visited the site, I have no reason to find differently. However, this would not overcome the failings of the scheme in respect of flood risk.

Conclusion

20. I have found that the appeal site is not a suitable location for the proposed development having regard to the risk of flooding and would conflict with the requirements of Local Plan ENV6. Although I have found that the proposal would not conflict with the more general locational strategy set out in Local Plan Policies EC1 and S4, these policies have to be read in context with the requirements of Local Plan Policy ENV6 and compliance with these other policies does not warrant granting planning permission for a development which does not comply with Policy ENV6. No other material considerations have been identified that would indicate that permission could be granted for a development which conflicts with a relevant policy in the development plan.
21. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR