
Appeal Decision

Site visit made on 5 August 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2020

Appeal Ref: APP/V0510/W/20/3250630

Plot adj 78 Camel Road, Littleport, Ely, Cambs CB6 1EW

- 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 Ms S Law against the decision of East Cambridgeshire District Council.
 - The application Ref 19/00460/FUL, dated 26 March 2019, was refused by notice dated 10 January 2020.
 - The development proposed is described as 1no 3 bed dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. There are two main issues. These are a) whether the proposed development would be at an unacceptable risk of flooding; and b) its effect on the safe use of the highway with specific regard to visibility.

Reasons

Flood Risk

3. The appeal site is in flood zone 3 as it is identified on the Environment Agency (EA) flood zone mapping. This is the highest risk area. Table 2 of Planning Practice Guidance (PPG) states that buildings in use as dwellings are more vulnerable in flood risk terms. Table 3 explains that either development should not be permitted or that an Exception Test (ET) is required for more vulnerable development in flood zone 3. This is clarified by paragraph 159 of the Framework¹ which states that, if it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the ET may have to be applied. The need for the ET will depend on the potential vulnerability of the site and of the development proposed, in line with the aforementioned flood risk vulnerability classifications.
4. As well as setting out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, paragraph 158 of the Framework explains that development should not be allocated or permitted if there are reasonably available sites

¹ The National Planning Policy Framework 2019

appropriate for the proposed development in areas with a lower risk of flooding. These objectives should be achieved through the application of the Sequential Test (ST).

5. PPG also sets out that the flood zones as refined by the Strategic Flood Risk Assessment (SFRA) for the area provide the basis for applying the ST. The appellant has stated in their submissions that the East Cambridgeshire SFRA Climate Change Map indicates the appeal site is in flood zone 1. I have not seen a copy of this map in the evidence and the Council themselves do not refer to it. As such I am unsure as to whether this situation supersedes that of the EA flood zone mapping. Whilst I am aware from the evidence that the appeal site is within a defended area of flood zone 3, it strikes me as odd that this would necessarily mean it would then be re classified as flood zone 1, at least for the EA's purposes or that of the Framework and the ST.
6. Not all of Littleport is in flood zone 3 according to the Council's evidence, some is at a lower flood risk. As a vacant, undeveloped green field site proposed to accommodate a single dwelling it seems to me there would be reasonably available sites at a lower risk very local to the appeal site. If one were to extend the ST to a wider area, I would again be confident in concluding that a single dwelling plot on an undeveloped site could be accommodated at a lower risk. I would therefore be minded to conclude that the proposed development would not pass the ST.
7. I have seen the appellant's arguments in terms of the various measures that the proposed development could incorporate to ensure that it will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, reducing flood risk overall. These have been recommended by a site specific flood risk assessment. That said, the Framework is explicit in setting out two stages to the ET, the other explaining it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk. I have not seen any such arguments in the evidence and thus I could not be satisfied, if the proposed development were sequentially appropriate, that it would pass the ET.
8. With the above in mind, the appeal scheme would be at an unacceptable risk of flooding. Such that it would conflict with the aims of section 14 of the Framework and Policy ENV8 of the Local Plan². Together, these policies seek to ensure that new development is steered away from areas at higher risk of flooding, to those at a lowest risk as well as being made safe for users.

Highway Safety

9. The Council's concerns in regard to this main issue appear to stem from how the extent of planting to the southwest and west of the proposed new dwelling would unacceptably impede visibility at the point of access which would be in the form of a driveway linked to the north side of the carriageway of Camel Road which runs east to west at this point. A short distance further west, Camel Road turns through almost 90 degrees and runs north towards the A10.
10. I would be inclined to agree with the Council that due to the extensive planting, which consists mainly of coniferous trees that are proposed to be retained as

² East Cambridgeshire Local Plan 2015

per the submitted plans, visibility would be severely restricted in the direction of where the road turns north, to the right of vehicles that would be exiting the driveway. The shape of the road at this point would, to my mind, be an exacerbating factor to poor visibility.

11. I note from the appellant's evidence that there is a proposal to remove all of the trees on the site, including those proposed for retention on the plans considered by the Council. There is further a proposal for a low wall around parts of the site's road facing boundary which would allow a wider field of visibility, particularly to the right for exiting vehicles, and around the bend in the road. On its face, it seems this may be sufficient to overcome the Council's concerns which, as I have explained, I share.
12. However, the changes proposed in this respect would include the removal of a substantial amount of existing tree cover. This would make the dwelling itself considerably less conspicuous. Further consideration therefore needs to be given to the resulting impact on the character and appearance of the area in that regard. So too in respect of a new boundary wall. When taken together, I feel such changes would represent an altered scheme to the point not only that it would require further consideration through the planning process by the Council, but also potentially need input from statutory consultees such as the Highways Authority to ensure they have no objections. In coming to a view on the proposed amendments, I am mindful of annex M of the Planning Appeals – England Procedural Guide (July 2020) which explains, amongst other things, that if an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
13. I have therefore considered the appeal scheme as submitted and, in regard to this main issue, would conclude it would have the potential to adversely affect the safe use of the highway for vehicles. This would be contrary to Policies ENV2 and COM7 of the Local Plan. Amongst other things, these policies seek to ensure that new development is designed to a high quality and provides a safe and convenient access to the highway network.
14. The Council refer to Policy COM8 of the Local Plan in their findings on this main issue. On my reading of this policy it appears to be concerned with parking provision in new development which, on my understanding, is not a contentious matter in the appeal. I do not therefore find it is particularly relevant.

Other Matters

15. At the time the Council determined the planning application they explained they were unable to demonstrate the supply of housing sites as required by the Framework. Under normal circumstances, this would have taken them to paragraph 11 (d) of the Framework. Amongst other things, this means, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date³, granting permission unless any adverse impacts of doing so would significantly and demonstrably

³ In situations where, for applications involving the provision of housing, the local planning authority cannot demonstrate a five year supply of deliverable housing sites

outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

16. In April 2020, the Council published the East Cambridgeshire District Council Five Year Land Supply Report which seeks to demonstrate they can now show the required supply of housing sites. I have not interrogated the document. There is no substantive evidence before me to doubt the report's findings but equally I am mindful that it is relatively new and to my knowledge yet to be analysed and its evidence fully tested.
17. That being said, I would not in this particular case be taken to considering the appeal scheme under the so called tilted balance I have set out above. This is owing to part (i) of paragraph 11 (d) of the Framework which explains that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 6 includes such areas as those at risk of flooding. With this in mind, and taking into account my findings above, the appeal scheme would not be sustainable development for which the presumption in favour applies.
18. The appellant has advanced that the appeal scheme would not be one for an isolated home for the purposes of the Framework. There is no reason for me to disagree. Indeed, this was not a contentious matter in the appeal. There are also other areas in which the proposed development would be acceptable, but these would accordingly be a lack of harm in each case and thus, by definition, incapable of weighing against that which I have found in my consideration of the main issues.

Conclusion

19. For the reasons I have set out above, the appeal is dismissed.

John Morrison

INSPECTOR