
Appeal Decision

Site visit made on 20 August 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2020

Appeal Ref: APP/X3540/W/20/3250664

Land off Pilgrims Way, Bungay NR35 1HL

- 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 Halsbury Homes Ltd against the decision of East Suffolk Council.
 - The application Ref DC/18/4104/OUT, dated 28 September 2018, was refused by notice dated 14 February 2020.
 - The development proposed is residential development for up to 40 dwellings with open space, landscaping, access and associated infrastructure.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Halsbury Homes Ltd against East Suffolk Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application is made in outline with all matters reserved for future consideration. That is the basis on which I have considered the appeal. I have treated the submitted plans as illustrative only.
4. A signed legal agreement, prepared under the provisions of Section 106 of the Town and Country Planning Act 1990 (S106 Agreement), has been submitted during the course of the appeal. This agreement is dated 18 August 2020 and is signed and executed as a deed. I have taken the S106 Agreement into account in reaching my decision.

Main Issue

5. The main issue is whether the proposed development would be acceptable in respect of the risk from flooding.

Reasons

6. There is no dispute between the parties that the appeal site is located within the Environment Agency (EA) Flood Zone 1, and that parts of the site are susceptible to surface water flooding. It is also not disputed that the Council's most recent Strategic Flood Risk Assessment 2018 (the 2018 SFRA), also identifies the appeal site as being within Flood Zone 1. However, equally, it is not disputed that the Council's Strategic Flood Risk Assessment 2008 (the 2008

SFRA) identifies the appeal site as being within Flood Zone 2 when climate change has been taken into consideration.

7. The appellant accepts that the 2018 SFRA did not include modelling of the Tin River and did not include the climate change flood outlines for this river from the 2008 SFRA. Therefore, in this respect the 2018 SFRA does not supersede the 2008 SFRA. The Council therefore considers that the appeal site lies within Flood Zone 2. This places more vulnerable development, such as the appeal scheme, at a medium risk of flooding.
8. Policy WLP8.24 of the East Suffolk Council – Waveney Local Plan 2019 (LP) requires development proposals to consider flooding from all sources and take into account climate change. The policy also requires that proposals at risk of flooding (taking into account impacts from climate change) should only be granted planning permission subject to a number of provisos, including that there are no available sites suitable for the proposed use in areas with a lower probability of flooding. This is consistent with the National Planning Policy Framework (the Framework), which requires all plans to apply a sequential, risk based approach to the location of development, taking into account the current and future impacts of climate change, so as to avoid, where possible, flood risk to people and property.
9. The appellant has not sought to justify the appeal scheme by application of the sequential test. Instead, the appellant has sought to demonstrate, by way of undertaking their own hydraulic modelling of the Tin River, that the site is located within Flood Zone 1 when climate change has been taken into consideration.
10. The Council employed an external consultant to independently assess the appellant's findings. This review identified 25 'fails' within the modelling. The appellant was given the opportunity to address the concerns raised and subsequently provided an amended modelling and updated report which they consider demonstrates that the site is situated within Flood Zone 1 when climate change is taken into consideration. No independent review of the revised modelling has been undertaken.
11. The appellant's amended hydraulic modelling can be considered to be the most up to date flood risk assessment of the appeal site. However, given the number of flaws identified within the original report and in the absence of independent specialist verification that the 'fails' have been satisfactorily addressed, I remain unconvinced of the flood risk status of the site. No evidence has been submitted that directly challenges the findings of the 2008 SFRA which places the appeal site within Flood Zone 2 when climate change is taken into account.
12. On the basis of the conflict between the findings of the 2008 SFRA and the unverified findings of the appellant's revised modelling, I do not consider that it can be determined with any degree of certainty that the development would be contained wholly within Flood Zone 1 or that it would be safe for its lifetime taking into account the vulnerability of its users, and would not increase flood risk elsewhere.
13. The absence of objection from the EA is not determinative given that they are not a statutory consultee and have not provided formal comment on the proposal or on the appellant's modelling of the Tin River. I note that the Lead Local Flood Authority have no objection to the proposal subject to the

imposition of a number of conditions on any grant of planning permission. However, their remit is related to surface water drainage and not other forms of flood risk and therefore is also not determinative.

14. I therefore conclude that it has not been satisfactorily demonstrated that the proposal would be acceptable in respect of the risk from flooding. The proposal is contrary to LP Policy WLP8.24 which seeks, amongst other matters, to ensure that development is directed to areas at lowest risk of flooding, including when taking into consideration the effects of climate change. For the same reasons the proposal would fail to adhere to the guidance contained within the Framework.

Other Matters

15. On the basis of my conclusions on the main issue, it has not been necessary for me to reach a conclusion on the effectiveness or otherwise of the obligations set out in the submitted S106 agreement. This is with the exception of the obligation relating to the provision of affordable housing. This is because the provision of affordable housing would be a benefit of the proposed development required to be weighed in the planning balance against any identified harms.
16. I am satisfied that there is a development plan policy basis for seeking the provision of affordable housing within the proposed development and that the obligation meets the requirements of LP Policy WLP8.2. The provision of such would satisfy the provisions and tests set out within the Framework and the Community Infrastructure Levy Regulations 2010. In these respects, the delivery of affordable housing is a benefit of the proposal which I return to in the planning balance.
17. The appeal site is situated adjacent to the Bungay Conservation Area (CA) and there are a number of listed buildings in the vicinity of the site. The appellants application was supported by a detailed heritage assessment which concluded that the proposal would not result in any harm to the designated assets. The Council's officer report concludes that impact on the heritage assets would be 'minimal' and that overall, the harm would be less than substantial.
18. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states, amongst other things, that special regard is to be paid to the desirability of preserving the listed building or its setting. The Listed Buildings referred to in the evidence are the grade II, 14 Wingfield Street, 4 St Johns Road and Dunelm House. The nearest of these to the site being 14 Wingfield Street. Based on all that I have seen and read, I am satisfied that the proposal would preserve the character and appearance of the CA and also the significance of the nearby listed buildings and their settings. The proposal would not result in harm to these heritage assets.
19. The County Archaeological Unit has advised that there is high potential for the discovery of below ground heritage assets at the site. I am satisfied that any below ground heritage assets are capable of being dealt with by an appropriate condition, should the appeal be allowed.
20. I appreciate that Council officers recommended approval of the application to the planning committee. However, it was within the committee's gift to make a decision on the application contrary to the officer recommendation, thus this consideration has had no bearing on my decision.

Planning Balance

21. I note the contribution that would be made to the supply of housing by this site. The delivery of up to 40 dwellings, including the delivery of a policy compliant level and mix of affordable housing, would make a meaningful contribution to the overall supply and mix of housing in the area. I afford this benefit moderate weight.
22. I am also mindful that the Framework acknowledges at Paragraph 68 that small sites can make an important contribution to meeting the housing requirements of an area and that the proposed development could be built out quickly.
23. The site lies within the settlement boundary and would provide good access to services and facilities. There would be economic investment, and therefore benefits, resulting from both the construction and subsequent occupation of the proposed development. These are benefits which weigh in favour of the proposal. Other issues, where no material harm has been identified, would be neutral in the overall planning balance.
24. I have found that the proposed development would conflict with LP Policy WLP8.4 in relation to flood risk. This conflict carries significant weight against the appeal. I consider that the benefits of the proposal are not sufficient to outweigh the harm that I have identified and do not justify a decision being made other than in accordance with the development plan.

Conclusion

25. For the reasons above the appeal is dismissed.

S Tudhope
Inspector