



Appeal Decision

Site visit made on 5 January 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th January 2021

Appeal Ref: APP/A3010/W/20/3255273

Fox Covert Farm, Fox Covert Lane, Misterton DN10 4ER

- 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 T Hollingshead against the decision of Bassetlaw District Council.
 - The application Ref: 19/00890/FUL, dated 3 July 2019, was refused by notice dated 15 June 2020.
 - The development is described as 'the completion and permanent retention of partially completed dwellinghouse'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the time of my site visit, the dwelling had not been completed. The Council made its decision on the basis of the submitted plans that show the completed dwelling and, hence, so have I.

Main Issues

3. The main issues are the effect of the proposal on (i) flood risk, in particular with regard to the application of the sequential test; (ii) the character and appearance of the area; and (iii) whether it would provide suitable living conditions for its future occupiers by way of outdoor amenity space provision, outlook and noise.

Reasons

Flood Risk

4. The partially completed dwelling is located on an agricultural holding that lies on the edge of the settlement of Misterton. The dwelling has a raised form. There are a number of associated structures which lie close to it, including a barn, outdoor pens and other types of animal enclosure. There is also a mobile dwelling which is utilised as the existing residential accommodation for the holding. The adjacent land is used for grazing associated with the enterprise. At the time of my visit, there were numerous animals present, in particular calves, cattle and pigs. The operation is stated to centre on the sourcing and rearing of surplus newly born beef and milk stock. This is consistent with what I saw on the site.

5. The dwelling lies within Flood Zone 2 (medium probability of flooding). The National Planning Policy Framework (Framework) seeks to avoid, where possible, flood risk, to people and property. Part of this approach under paragraph 158 is the application of the sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding. Development is not to be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
6. The appellant's position on the sequential test relates to the functional need for the dwelling. The appellant refers to the need for the dwelling to be within sight and sound of the livestock, in particular the young cattle, and the associated welfare requirements. DEFRA guidance is also referred to in this regard.
7. The Misterton Neighbourhood Plan 2018-2035 (2019) (NP) allocates the land which falls within the holding up to the road for residential development (NP12 allocation). It does not include the land where the dwelling is located on the site, but it is in close proximity to it. To the west, land which borders the holding is also allocated for residential development (NP11 allocation). The Council has stated in its submissions that both these allocations lie in Flood Zone 1 (low probability of flooding), apart from a small part which is Flood Zone 2. This has not been contested by the appellant.
8. The appellant has stated that the allocated land is not readily available. The evidence to justify this position is, though, of a limited nature, in particular as the land has been allocated for residential development. It is also not apparent why at least some of this land which is at a lower risk of flooding would not be within sight and sound of the livestock as much of the holding lies within the NP12 allocation, as well as being close to the NP11 allocation. Accordingly, this land would be accessible from which to tend the livestock. More distant allocations would be unlikely to meet the sight and sound test, but this would not seem to apply to the allocations that are close by.
9. As a consequence, there is insufficient evidence to demonstrate that the sequential test has been passed. Whilst the dwelling has a raised floor level and measures are proposed to deal with surface water drainage, this does not negate the need to pass the sequential test under the Framework.
10. I conclude that the proposal would have an unacceptable effect on flood risk, in particular with regard to the application of the sequential test. As such, it would not comply with Policy DM12 of the Bassetlaw District Local Development Framework Core Strategy & Development Management Policies DPD (2011) (DPD) where it states that proposals for the development of new units in Flood Zones 2, 3a and 3b that are not defined by national planning guidance as being suitable for these zones will not be supported while development sites remain available in sequentially superior locations across the District.
11. The proposal would also not accord with paragraph 158 of the Framework because it has not been adequately demonstrated that there are not reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Character and Appearance

12. The dwelling, when complete, would be constructed externally of horizontal boarding as regards the external walls. At the time of my visit, the box profile roof sheeting was in place, as was the overall form of the dwelling as an elongated pitched roof building. It is well set back from the access onto Fox Covert Lane. Mainly employment uses and a railway line lie to the east in the vicinity of the site. Beyond the housing allocations, there are established residential areas which are set out in a linear arrangement of primarily semi-detached dwellings, with front and rear gardens. Further open fields are found to the north of the holding and on the opposite side of Fox Covert Lane.
13. The site lies in the Mid-Nottinghamshire Farmlands Policy Zone 02: Walkeringham in the Bassetlaw Landscape Character Assessment (LCA). A number of the characteristics it identifies are evident around the site, in particular the fragmented nature of the landscape with the extent of the built form and infrastructure. The LCA's actions include conserving what remains of the open rural landscape by concentrating new development of appropriate design and scale around the existing settlement of Misterton.
14. The Neighbourhood Profile (2018) report, that was used to inform the preparation of the NP, also refers to the varied nature of what is defined as 'zone 7'. This is where the appeal site is found. It refers to housing, open fields and grazing land, as well as commercial related uses.
15. Within its varied surroundings, the dwelling would not appear at odds with what remains of the rural setting. As it would be related to an agricultural use, it would reflect what is left of the open rural landscape under the LCA. In addition, the NP allocations will further alter the rural landscape to one which is of a more built up nature.
16. With the distance that the dwelling is set back from the road, its scale, form and mass would not result in a prominent building. As it lies within the clustering of buildings on the site, this would reduce both its dominance when complete and the effect on views, as well as screening any associated domestic paraphernalia. That it is 'backland' as far as it is set back from the road is not untypical with a dwelling associated with an agricultural holding. It is also well separated from the residential development to the west, and so would have a limited impact on their character.
17. Both the LCA and the Neighbourhood Profile report refer to the use of brick as part of the local character. This is less evident where the dwelling is located because of the proximity to employment uses, where cladding is also evident. Whilst the materials may be untypical, they would not unduly detract from the local character.
18. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. As a result, it would comply with Policy DM4 of the DPD where it concerns high quality design, local character and distinctiveness, including that new development, particularly backland and infill development, should respect its wider surroundings, in relation to historic development patterns or building/plot sizes and forms, density and landscape character.

19. The proposal would also comply with Policy DM9 of the DPD where it states that new development proposals will be expected to be designed so as to be sensitive to their landscape setting, and that they will be expected to enhance the distinctive qualities of the landscape character policy zone in which they would be situated, as identified in the LCA. It would also accord with the LCA in that it would not conflict with creating and conserving of what remains of the rural landscape.
20. The proposal would also comply with Policies 1 and 2 of the NP where they relate to development that does not adversely affect the character and appearance of that part of the village in which it is located, and that new development will only be supported where proposals demonstrate that their design and specification complement the established character of the village as described in the Neighbourhood Profile Report. It would also accord with paragraphs 127 and 170 of the Framework where they are concerned, respectively, with development that is sympathetic to local character and history, including the surrounding built environment and landscape setting, and landscape character considerations.

Living Conditions – Future Occupiers

21. The appellant has informed that it would be the intention that outdoor amenity space provision would be sited on the area where the mobile home is currently found. The mobile home would be removed from the site on completion of the dwelling.
22. The Council's Successful Places Supplementary Planning Document (2013) (SPD) states that all schemes should provide a level of outdoor amenity space that is proportionate to the type of accommodation, appropriate to its location and suitable to meet the occupiers likely requirements. It also sets out minimum size spaces.
23. With regard to the dwelling's location on an agricultural holding, the proposed outdoor amenity space provision would not be unreasonable. It would be suited to the accommodation, including the occupiers likely requirements, and be sited close to the dwelling. In the event that I was minded to allow the appeal, providing the outdoor amenity space is a matter that could be dealt with through the imposition of a planning condition.
24. With regard to the proximity of the dwelling to the structures that are used to keep animals, this is not an unusual arrangement on an agricultural holding where livestock are involved. A close outlook from habitable room windows would not render the proposal unacceptable in such circumstances, in particular as the supervision of animals is part of the justification for the need for the dwelling. Nor does the proximity to fencing alter my view, also taking account of that the dwelling is elevated. Similarly, in relation to noise, this would not be unexpected where there is livestock involved. It is an arrangement that is consistent with the type of development on the holding as a whole.
25. I conclude that the proposal would provide suitable living conditions for its future occupiers by way of outdoor amenity space provision, outlook and noise. Therefore, it would comply with Policy DM4 of the DPD where it concerns amenity matters, including that new development should provide a decent standard of private amenity space. It would also accord with Section 3.11 of the SPD in respect of the guidance it provides on private amenity space

provision and with paragraph 127 of the Framework where it concerns a high standard of amenity for existing and future users.

Other Matters

26. Both main parties have indicated they consider that the tilted balance should apply, as is set out in paragraph 11 d) of the Framework. This is on the basis of the age of the DPD and, in this regard, the appellant has drawn to my attention the DPD's housing locational policies. The tilted balance is not, though, unqualified. This includes where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. These policies include areas at risk of flooding, where I have found the proposal conflicts with the Framework. The application of the tilted balance does not, thus, favour the proposal.
27. As regards the benefits, the proposal would make a modest contribution to the need for housing. There would also be a similar level of contribution to the rural economy and there is some justification based on the need to supervise livestock. The dwelling is also intended to be carbon neutral and at the time of my site visit, small wind turbines had been erected on it. In these respects, it would accord with the related DPD policies that I have been referred to and also the Framework. It is also in an accessible location to local services.
28. There is also agreement between the main parties that the proposal would not constitute an isolated home in the countryside under the Framework. As with the effect on both the character and appearance of the area, and the living conditions of the future occupiers, this is a matter which attracts neutral weight. Nor are matters in relation to the planning history of the site for my consideration where they do not concern the dwelling.
29. I am not unsympathetic as regards the personal circumstances that have been drawn to my attention and the issues which have arisen in relation to the mobile home. However, there is not the evidence before me that persuades me that a dwelling could not be located where there is less flood risk, for the reasons that I have set out. Matters in relation to flood risk are also of wider legitimate public interest. In addition, the needs of the appellant could be jeopardised by the flood risk.
30. In relation to the adverse impacts, the proposal would have an unacceptable effect on flood risk, in particular with regard to the application of the sequential test. There would be conflict with Policy DM12 of the DPD and with the Framework, in this regard. This matter attracts significant weight in my decision. On an overall basis, the benefits that would arise would not outweigh the harm.

Conclusion

31. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. It conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR