
Appeal Decision

Site visit made on 4 May 2021

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 21 May 2021

Appeal Ref: APP/D0515/W/20/3264239

17 Burnthouse Sidings, Turves, Cambridgeshire, PE7 2HS

- 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 P Birch against the decision of Fenland District Council.
 - The application Ref F/YR20/0661/O, dated 2 July 2020, was refused by notice dated 14 September 2020.
 - The development proposed is 3 no self-contained dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - the suitability of the location for the proposed dwellings, and
 - the flood risk associated with the proposed dwellings.

Reasons

Location of the proposed dwellings

3. The appeal site lies in open countryside away from established settlements. Next to the site is 17 Burnthouse Sidings. There are a small number of sporadic dwellings located along the road. In front of the site, beyond the road lies a wide drain. Behind the site are older buildings which appear to be in some form of commercial use. In the near distance are a group of wind turbines. The whole area around the appeal site is a typical flat fenland landscape with very few buildings and few features.
4. The road on which the appeal site lies is single track with opportunities for vehicles to pass. It appears to be a no through road, and it is some distance from the main highway network, which itself is no more than country lanes. Therefore, whilst the appeal site is not in an isolated location, it is remote from services and established settlements.
5. The appeal site itself has the appearance of a small paddock. It currently has an access at its left-hand side (closest to the existing house) directly from the road. It is set down from the road and has open land on two sides.
6. The development plan for the area includes the Fenland Local Plan, adopted in May 2014 (LP). Its strategy is based on a hierarchy of settlements which

directs growth to areas that offer best access to services to reduce the need to travel, makes best use of existing infrastructure and previously developed land. This approach is set out in Policy LP3.

7. In terms of Policy LP3 the appeal site lies outside those areas in the plan that are identified for growth and is defined as an 'elsewhere' location. In these areas' development is limited to certain categories that require a countryside location. The appeal proposal does not fall within any of the categories the policy defines as requiring a countryside location.
8. Whilst not strictly isolated development the appeal site is in a remote location away from services and existing infrastructure. It would require the occupants of the proposed dwellings to access all services by means of the private car. Consequently, the development would be in conflict with Policy LP3 of the LP and the purposes it is meant to serve.

Flood risk

9. The site lies within Flood Zone 3 as defined on the Environment Agency's flood maps. Flood Zone 3 is the area which is identified as that which is at the highest risk of flooding. It is Government Policy set out in The National Planning Policy Framework (the Framework) to avoid directing new development to areas which are at the highest risk of flooding.
10. Where development is proposed in Flood Zone 3 the Framework requires proposals to be subject to a sequential test to ensure that there are no reasonably available sites appropriate for the proposed development in areas which are at a lower risk of flooding. I note that the appeal proposal has not been supported by a sequential test and the appellant has not engaged with the Council to define the area within which it would be appropriate to search for reasonably available sites at a lower risk of flooding.
11. The Planning Practice Guidance (PPG) states the search for reasonably available sites should take a pragmatic approach depending upon the type of development being proposed. It should also have regard to the Local Plan when defining the likely area of search. The development proposed does not require to be located in a countryside area and is for three dwellings which would potentially be available on the open market.
12. The Local Plan identifies as part of its settlement hierarchy areas within the District where it would be appropriate to site new dwellings which has been supported by a Strategic Flood Risk Assessment. Its policies would allow for this type of development in other areas of the District which would be at a lower risk of flooding than the area within which the appeal site is located. I therefore consider that it is appropriate that the whole of the District should constitute the search area for reasonably available sites with a lower risk of flooding.
13. I note that the appellant has argued that the dwellings would be for the use of his family members and that this could be controlled by a condition attached to any grant of planning permission. I do not consider that such a condition would meet the tests for condition set out in the Framework as it would lack precision and therefore would be difficult for the Council to enforce. This does not change my view that the area of search for the reasonably available sites at a lower risk of flooding should be the whole of the District.

14. I also acknowledge that the appellant has stated that it is not appropriate to extend the area of search across the whole of the District as he only owns land around the appeal site and not in the rest of the District. However, the PPG states that for housing the extent of the sequential test should not be constrained by land ownership and realistically will often extend across a town or district area. This reinforces my view that the area of search for reasonably available appropriate sites for this type of development should be the whole the District.
15. The appellant has argued that due to the presence of flood defences in the area the location of the appeal site should be classified as Flood Zone 1. The Environment Agency's Maps are clear in that they identify land at risk of flooding and do not take account of flood defences. That is because defences themselves, during a severe flooding event, are at risk of being breached or overtopped. This is reinforced in the Cambridgeshire Flood and Water Supplementary Planning Document which highlights that the majority of land in the area lies below embanked higher level drainage channels which represent a residual risk of defences being over topped or breached. Moreover, the Framework emphasises the use of the Environment Agency's flood maps in the application of the sequential approach. Consequently, I do not consider that the site should be considered to lie in Flood Zone 1 when defences are taken into account.
16. Policy LP14 of the LP deals, amongst other things, with flooding, and development. It requires developments to adopt the sequential approach and will only permit developments once a successful sequential test has been completed, having regard to actual and residual flood risk. It is clear that the applicant has not provided a sequential approach to assessing whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Furthermore, given the policies for the location of development in the LP it is also clear that there are likely to be sites in areas with a lower risk of flooding which are available for the development. I therefore find that the proposal is in conflict with this policy of the development plan.

Other Matters

17. The appellant has referred me to other sites where development has been allowed either near to the appeal site or in other areas in the District. It appears from the evidence I have seen that these sites either comply with the Council's policies relating to replacement dwellings, constitute permitted development (subject to the requirements of the prior approval process) or are in areas where the LP would allow new development. Whilst I have had regard to the examples supplied, for the reasons given, carry limited weight in this decision. In any event I am required to determine this appeal based on the merits of the case before me.
18. I note that the appellant has argued that the proposal would contribute to the vitality of villages in the area. The site is remote from settlements in the area and would require the occupants to use their cars to access any service either offered in nearby villages or further afield. It is likely that once the residents are in their car that they will access the larger settlements in the area rather than those nearby that only offer limited services. I therefore give this

argument limited weight as the proposal is unlikely to contribute to the vitality of services in nearby villages.

19. The appellant has argued that the proposal would boost the supply of houses within the District. However, the Council has demonstrated that it has a 5-year supply of deliverable housing sites. Therefore, the ordinary balance applies to the proposal rather than the so-called tilted balance. As a result, as the proposal is for a small number of dwellings, I give this argument limited weight. Consequently, I find that this is insufficient to outweigh the harm the proposal would cause.
20. The applicant has stated that the proposed dwellings would not be for sale but would be for family members. There is no indication in the evidence I have seen as to how this might be achieved. However, it is unlikely that a condition limiting the occupancy of the proposed dwellings to members of the appellants family would comply with the tests for conditions set out in the Framework as it is likely to be difficult to enforce. In any case even if the proposal were to be controlled by such a condition it would still be in conflict with the policies of the LP in terms of its location and risk of flooding.

Conclusion

21. In accordance with S38(6) of the Planning and Compulsory Purchase Act 2004 planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal is in conflict with the policies of the LP and that the material considerations advanced by the appellant are of insufficient weight to mean that the appeal should be allowed.
22. Therefore, the appeal is dismissed.

Peter Mark Sturgess

INSPECTOR