
Appeal Decision

Hearing held on 11 May 2021

Site visit made on 12 May 2021

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2021.

Appeal Ref: APP/L2630/W/20/3258481
Storage Land, Welbeck, Brooke, NR15 1AT

- 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 Rix, Mr Tobin and Mr Plume against the decision of South Norfolk District Council.
 - The application Ref 2019/2566, dated 23 December 2019, was refused by notice dated 29 May 2020.
 - The development proposed is the erection of three dwellings for self-build purposes.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether or not:
 - the proposal represents an acceptable form of development having regard to fluvial flooding and the provisions of local policy and the National Planning Policy Framework;
 - the appeal site is an appropriate location for housing with regard to connectivity to services and facilities; and
 - the proposed change of use to housing and associated loss of the existing employment site is acceptable.

Reasons

Planning Policy

3. The Development Plan for the area includes the South Norfolk Local Plan Development Management Policies Document, 2015 (the DMP) and the Joint Core Strategy for Broadland, Norwich and South Norfolk, adopted 2011 and amended 2014 (the CS). The Greater Norwich Local Plan is an emerging Local Plan. It has not yet been submitted for Examination and is likely to be the subject of modification before it is adopted. It is common ground between the main parties that the plan and its policies carry limited weight. I agree with this position.

Flooding

4. I note the Flood Risk Assessment (FRA) identifies surface water and fluvial flood risks to the site. Nonetheless, the only contentious element of the proposal in relation to flood risk is regarding the fluvial flooding. In this regard, the part of the appeal site nearest the nearby river is in Flood Zone (FZ) 3a. There is then a short slither of land in FZ 2, and the remaining part of the site is in FZ 1. The extent of these zones has been reviewed in the FRA. The existing appeal site provides storage development, including buildings, across the entire site, including in FZ 3a and FZ 2. It is proposed to erect three houses, their entrance drives and their garages within the FZ 1 part of the site. The FZ 3a and FZ 2 parts would be used for the gardens of the proposed properties.
5. The Planning Practice Guidance (PPG), at Table 2, confirms that storage uses are 'less vulnerable' and that houses are 'more vulnerable'. The PPG also states¹ that where developments contain different elements of vulnerability, the highest category should be used unless the development can be considered in its component parts.
6. The assessment of flood risk does not apply solely to the risk to life, but also to property and to the effects on flood risks elsewhere. In this regard, I view the gardens to the proposed houses as being an integral part of each planning unit, indivisible from the occupation and enjoyment of the proposed houses. They cannot therefore be viewed in their component parts and gardens are a 'more vulnerable' use as defined by Table 2. The appeal proposal would therefore result in uses more vulnerable to flooding than the existing uses being built within FZ 3a and FZ 2.
7. As set out in paragraph 158 of the National Planning Policy Framework (the Framework), a sequential test is required to ensure that development not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The appellant contends that the sequential test has been passed because the most vulnerable elements of the proposal have been allocated, within the site, to FZ 1. However, as set out above, I do not believe that the gardens can be disaggregated from the proposed houses. The correct sequential test is therefore to consider the proposal as a whole in comparison to potential sequentially preferable alternative sites located either entirely in FZ 1 or within FZ 1 and FZ 2. In this regard, no detail or assessment has been provided by the appellant of alternative sites. Consequently, it has not been demonstrated that the sequential test can be passed.
8. I acknowledge that the proposal would allow for safe access and egress to the front of the properties (all of which would be located within FZ 1), that the most vulnerable elements of the proposal have been located in FZ 1, and that buildings would be removed from FZ 3a and FZ 2. However, none of these factors overcome the fundamental concern regarding the location of part of each proposed dwelling and garden combined in FZ 3a and FZ 2. The appellant has suggested that they could make two planning applications, one for the houses and one for the gardens, and then link them with a s106 planning obligation. However, this would be a contrived approach and in any event would not overcome the concerns, because at the point the applications

¹ Paragraph: 067 Reference ID: 7-067-20140306

became combined by the planning obligation, the gardens and houses would be considered as one planning unit again for the purposes of the sequential test.

9. The proposal is not for minor development or solely for a change of use because it also includes the demolition of existing buildings and construction of new buildings. Paragraph 164 of the Framework does not therefore apply. I also note that the Environment Agency have confirmed that as the proposal is for 'more vulnerable' development and that the site partly lies in FZ 3a and partly in FZ 2, both sequential and exception tests must be passed. I have not undertaken an exception test in this instance because the proposal has fallen at the first hurdle because it has not been demonstrated that the sequential test can be passed.
10. My attention has been brought to an appeal decision². The relevant part of the decision related to access to the site and whether or not a sequentially preferable location could be found for the access, rather than the gardens to the proposed properties. The full facts of this case are not before me and I am not aware if there were other factors which also fed into the decision of the Inspector, in that case, to disaggregate the site for the purposes of the sequential test. I have carefully considered the appeal proposal and do not consider it appropriate to split the gardens from their respective houses because these elements are inseparable from one another when considering the use of each house and garden combined by future occupiers.
11. The proposal would not, therefore, represent an acceptable form of development with regard to fluvial flooding. It has not been demonstrated that the sequential test has been passed and that the proposal would minimise flood risk. The proposal fails to comply with the relevant parts of Policy 1 of the CS and Section 14 of the Framework.

Location

12. The appeal site is not in an isolated location, because it sits directly next to existing residential properties on the outskirts of a village. Paragraph 79 of the Framework does not, therefore, apply. However, it is outside of defined development boundaries and is therefore in the countryside as defined by Policy DM1.3 of the DMP.
13. The appeal site lies relatively close to a bus stop and the services and facilities of the village of Brooke, but access would be only along an unlit country road with no pavements for much of its length. It is therefore likely that the majority of the journeys to and from the proposed houses would be by car. However, Brooke village and also Poringland, a defined Key Service Centre offering a range of services, facilities and employment opportunities, are both located close by to the site, reducing the distance required to travel. The site is therefore in a relatively sustainable location within a countryside setting.
14. The appellant has offered to provide electric vehicle charging points for each of the proposed properties, to be secured by condition. Policy DM3.10 of the DMP requires that development maximise sustainable forms of transport appropriate to the location. It is not explicitly defined in the DMP, but I would consider electric cars as a form of sustainable transport. I acknowledge that just because the properties provide an electric vehicle charging point would not

² Ref APP/E2734/W/18/3219294

guarantee that the future occupants purchase an electric car but this is the most that a development in this location and of this size could reasonably expect to offer.

15. The proposal is therefore in an appropriate location for housing with regard to connectivity to services and facilities. It complies with the relevant parts of Policy DM3.10 of the DMP. It also complies with Policy 1 of the CS which, amongst other criteria, seeks to give priority to low impact modes of travel.

Change of use

16. The appeal site is in use as a builder's storage yard. The proposal would result in the closure of the yard to be replaced by residential development. The appellant has stated that the current operator has alternative locations to move to in the local area. However, if it were to do so that would merely displace other economic activity. I have not been provided with evidence that the operator could move to an alternative location without this displacement. The proposal would therefore result in a loss of employment on the site and within South Norfolk District Council's area. Policy DM2.2 of the DMP therefore applies.

Planning balance

17. Both Policies DM1.3(d), in relation to countryside location, and DM2.2(b), in relation to loss of employment, state that development in such circumstances is acceptable in principle if the proposal demonstrates over-riding benefits in terms of economic, social and environment dimensions.
18. The proposal would improve the character and appearance of the appeal site by replacing an area of storage and industrial buildings with residential properties and their gardens. The appeal site is also adjacent to existing residential properties and the proposal would be more in-keeping with this surrounding character and appearance. However, it is relatively visually self-contained, with limited visibility from the road or surrounding properties due to the nearby hedgerows and trees, which would limit these environmental benefits. I give this moderate weight.
19. The proposal would replace a storage yard with residential use which would be more compatible with the surrounding residential uses in terms of disruption to neighbours. However, I give only limited weight to this social and environmental benefit because I have limited evidence, beyond the concerns raised by the Parish Council regarding the operation of the existing builders yard, of the operation of the appeal site causing any significant harm to the living conditions of neighbours.
20. Construction of the proposal would provide temporary employment. I give limited weight to this economic benefit due to its temporary nature and the relatively small scale of the construction.
21. The provision of three houses is an economic and social benefit, and the provision of housing is a key aspiration of both the development plan and the Framework. I give only moderate weight to this because only three houses are proposed. Although raised by the appellant, I have not been provided with any substantive evidence that Covid-19 has had a material effect on housing supply so as to justify placing greater weight on this provision.

22. A Unilateral Undertaking, dated 24 August 2020, has been provided by the appellant. This includes the provision that all of the proposed houses would be built and firstly occupied for self-build purposes only. The Self-Build and Custom Housebuilding Act 2015 (as amended) (the Act) places a statutory duty on Council's to give sufficient permissions for self-build housing to meet demand within each 'base period', of a year. The PPG provides further detail on this, stating that Council's must give suitable permissions to meet the demand in their area³ and provides examples, albeit not exclusively, of the types of 'suitable permissions', which are: (i) where it is clear that the initial owner of the homes will have primary input into its final design and layout; (ii) where a planning application references self-build; (iii) where a Community Infrastructure Levy or s106 planning obligation has been granted for a particular development⁴.
23. In this case, the Council state that they have provided suitable permissions to meet demand in their area. Their calculation for this includes all single dwelling permissions, all permissions with 'self-build' in the title, or larger permissions with self-build forming a specific phase of the development. I have not been provided with full details but it is not clear if planning obligations have secured self-build or that the initial owner, in these schemes, would have primary input into the final design and layout. I have also not been provided with information on the proportion of the suitable permissions that include self-build in the title. The Council has not therefore demonstrated that it has given sufficient permissions for self-build homes against its requirement for the current 'base period'. The proposed three self-build units would help to address this potential shortfall. I give only moderate weight to this because although the extent of the shortfall has not been confirmed this would represent only three units.
24. Although I have found that the proposal is in an appropriate location for housing with regard to connectivity to services and facilities, this weighs neutrally in the planning balance.
25. Weighing against these benefits are that it has not been demonstrated that the proposal would minimise flood risk from fluvial flooding. I give substantial weight to this environmental harm because of the importance placed on minimising flooding in the Framework and the development plan. The proposal would also result in the loss of employment from the site, causing economic harm. I give moderate weight to this because the appeal site does not provide substantial existing employment.
26. The policy test is that there be 'over-riding' economic, social and environmental benefits. Taking this wording in its plain English, I view this test as meaning that the benefits must do more than simply outweigh the harms. The benefits must instead clearly outweigh any harms. If the test were meant to be a simple balancing exercise then it would have been stated as such in the policy. In this regard, the economic harm of the loss of employment land coupled with the potential environmental harm from fluvial flooding are not clearly outweighed by the benefits of the provision of three houses even accounting for their self-build nature, temporary employment during construction, and environmental improvements. Consequently, it has not been demonstrated that the proposed change of use to housing and associated loss of the existing employment site

³ Paragraph: 023 Reference ID: 57-023-201760728

⁴ Paragraph: 038 Reference ID: 57-038-20210508

would be acceptable, and the appeal proposal fails to comply with the relevant parts of Policies DM1.3 and DM2.2 of the DMP.

Other Matters

27. There is dispute between the parties as to whether or not the Council can demonstrate a 5-year housing land supply. However, I do not need to come to a conclusion on this matter because paragraph 11(d)(i) of the Framework states that the 'tilted balance' does not come into effect if policies that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 6 confirms that this includes areas at risk of flooding. As established above, it has not been demonstrated that the sequential test has been passed which provides a clear reason for refusing the development proposed.
28. A number of submissions have been made by neighbours and by Brooke Parish Council in support of the appeal. These are with regard to the enhancement of the site, more appropriate proposed use, and reduction on noise and other disturbances to neighbours. I have dealt with these topics above.

Conclusion

29. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward

INSPECTOR

ANNEX A: APPEARANCES

FOR THE APPELLANT:

Jason Parker	Parker Planning Services
Magnus Magnusson	Parker Planning Services

FOR THE LOCAL PLANNING AUTHORITY:

Tim Barker	South Norfolk District Council
Simon Marjoram	South Norfolk District Council