



Appeal Decision

Site Visit made on 24 June 2021

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2021

Appeal Ref: APP/E2001/W/21/3271346

Burgundenau, Beech Tree Farm, Main Street, Bielby YO42 4JW

- 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 John Halley against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/02963/OUT, dated 27 August 2019, was refused by notice dated 15 December 2020.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has been submitted in outline with all matters reserved for future consideration except access. I have dealt with the appeal on that basis, treating the submitted plans as being indicative apart from the access.
3. The appellant contends that the Environment Agency (EA) Flood Zones are not consistent with the situation on the ground and has been in communication with the EA regarding a review of the geographical extent of the Flood Zones in the area. Any alterations to the Flood Zone Mapping is a matter for the EA and outside of the scope of this appeal. In determining this appeal I must have regard to the published evidence of the Flood Zones currently contained in the Flood Maps produced by the EA.

Main Issues

4. The main issues are:
 - Whether the appeal site is a suitable location for the proposed development having regard to the risk of flooding; and
 - Whether an acceptable form of development could be achieved, with particular regard to its relationship to a protected tree and implications for the outlook and provision of adequate private garden space for its occupiers.

Reasons

Flood risk

5. Parts of the appeal site are located in Flood Zone 2 and Flood Zone 3 as determined by the EA's published flood risk mapping. The appellant's Flood

- Risk Assessment¹ (FRA) states that the dwelling would be positioned wholly within Flood Zone 2. However, the precise scale and layout of the proposed dwelling remains uncertain at this stage.
6. Policy ENV6 of the East Riding Local Plan Strategy Document 2016 (Local Plan) sets out that flood risk will be managed to ensure that development does not result in unacceptable consequences to its users, the wider community, and the environment. The risk of flooding to development will be managed by applying a Sequential Test to ensure that development is steered towards areas of lowest risk, as far as possible. This is consistent with the approach of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) sections on flood risk.
 7. The PPG advises that, in applying the Sequential Test, the aim is to steer new development to Flood Zone 1, these being areas with a low probability of flooding. Only where there are no reasonably available sites in Flood Zone 1 should sites in Flood Zone 2 be considered. If the Sequential Test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding the Exception Test may have to be applied.
 8. Although the submitted FRA includes a brief section on the Sequential Test, there is no information regarding detailed site analysis or specific evidence related to any other sites from which it would be possible to consider if the appeal site would be sequentially preferable. Nor is there justification why the Sequential Test should be confined just to the village of Bielby, as the FRA appears to suggest.
 9. The PPG sets out that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. The Council refers to its Flood Risk Guidance Note, which indicates that the search area for the Sequential Test should be the relevant Housing Market sub area, in this case the Wolds sub area. I have no details before me to indicate that an alternative area of search had been agreed or is appropriate in this case. The Council states that there are a number of housing allocations within the Wolds sub area, as well as windfall sites which are at a lower risk of flooding than the appeal site. This has not been contested.
 10. Consequently, it has not been demonstrated that the requirements of the Sequential Test have been passed. The Sequential Test must be passed before the Exception Test can be applied. It is therefore not necessary for me to go on to consider whether the Exception Test is met.
 11. I have noted that the EA and the Council's Land Drainage Team have no objection to the conclusions of the FRA that suitable mitigation measures can be incorporated and could be the subject of appropriate conditions. I have also had regard to the photographs of a previous flooding event which did not affect the appeal site. The appellant suggests that these factors should be given greater weight in decision making. However, the fact that the site has not flooded previously is not evidence that it could not flood in the future. Moreover, that the development could be made flood resilient and resistant, does not negate the need to firstly pass the Sequential and Exception tests set

¹ by Mason Clarke Associates, dated 21 May 2020

out in national and local planning policy to establish whether the proposal is acceptable in principle on flood risk grounds.

12. The appellant has provided correspondence with the EA which indicates that there is updated flood modelling for the area programmed for release in 2022-2023. However, as set out in the procedural matters above, until this is finalised and formally published, I must make a decision based upon the current EA flood risk classification. Should this position change in the future it would be open to the appellant to consider whether or not to submit a new planning application to the Council based upon a change of circumstances.
13. I therefore conclude that it has not been demonstrated that the appeal site is a suitable location for the proposed development having regard to the risk of flooding. The proposal would conflict with the requirements of Local Plan Policy ENV6 and paragraphs 155 and 158 of the Framework, which seek to steer new development to areas with the lowest probability of flooding.

Relationship with a protected tree and outlook and privacy

14. I appreciate that the form of the development is indicative, but it is still reasonable to consider whether an acceptable development as described in the proposal could be achieved.
15. The appeal site is part of the front garden of Burgundenau. Neighbouring properties also lie to the north and south with boundaries formed by conifer hedging. At the front of the site is a large Copper Beach tree, which is protected by a Tree Preservation Order. The tree has a wide and dense canopy which attractively overhangs the garden down to the ground.
16. I have had regard to the appellant's arboricultural reports. The developable area of the site is clearly influenced by the need to avoid conflict with the Root Protection Area of the protected tree. This would inevitably push the location of the dwelling towards the middle of the site and in close proximity to the existing dwelling. Whilst the internal layout and window positions could be carefully designed to avoid views between habitable windows, close overlooking of the rear garden from the upper floor windows of the existing dwelling would be unavoidable. I acknowledge that there would likely also be a garden area at the front of the site. However, the tree canopy and shading would limit its attractiveness and useability as a main garden space, and would not therefore adequately compensate for the poor level of privacy that would be experienced within any rear garden space.
17. The Council has also raised concerns over the effect of the protected tree on the outlook and ambient light to any west facing windows. The size and location of the tree is such that these concerns are understandable, particularly as the constraints posed by the boundary hedge and windows in neighbouring properties mean this is likely to be a primary elevation. Even if not affecting trees directly, development layouts may not be acceptable if they would result in pressure for felling or unsightly, heavy pruning of retained trees in the future. Indeed, the appellant confirms that consent has already been granted to lift the crown of the tree. Whilst this may assist in improving the outlook and available light to the dwelling initially, it would have to be carried out on a regular basis. Moreover, even with such pruning works and other means of introducing light to affected rooms, the tree would still be a dominant presence within the front of the site. The shape of the site means that the potential to

move the dwelling further within the site to avoid the outlook being significantly compromised by the tree is very limited.

18. Overall, I am not satisfied that an acceptable form of development could be achieved on the site, with particular regard to its relationship to a protected tree and implications for the outlook and provision of adequate private garden space for its occupiers. This would be detrimental to the living conditions of the occupiers of the development.
19. Therefore, notwithstanding the outline nature of the application, I find conflict with Local Plan Policy ENV1 in so far as it seeks to ensure development has regard to the amenity of existing or proposed properties. It would also be contrary to paragraph 127(f) of the Framework, which requires a high standard of amenity for existing and future users.

Conclusion

20. I have come to my conclusion having regard to the importance that the government places on boosting the supply of housing, locating and building sustainably, and making effective use of land. I have also had regard to third party representations made in support of the proposal. However, the public benefits would be limited by the modest scale of the proposed development and would not outweigh the identified harm and conflict with the development plan and the Framework when taken as a whole.
21. Accordingly, and for the reasons given above, I conclude that the appeal should be dismissed.

A Caines

INSPECTOR