



Appeal Decision

Site visit made on 5 July 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/N2739/W/21/3272023

Land Adjacent to Friars Meadow, Selby Town.

- 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 Mrs Donaldina Ryan against the decision of Selby District Council.
 - The application Ref 2021/0003/OUT, dated 28 December 2020, was refused by notice dated 19 March 2021.
 - The development proposed is outline planning application for self-build development with all matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been submitted in outline with all matters reserved for future consideration. I have dealt with the appeal on that basis.
3. I have taken the description of the development and the site location from the planning appeal form, as I consider that these satisfactorily represent the proposal. The number of dwellings proposed is not specified in the description of development. However, the planning application form states that the proposal would consist of 1 residential unit.
4. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the comments made on the Framework in reaching my decision.
5. I visited the site in August 2018 as part of my consideration of a previous appeal¹, which has been referred to by the main parties. Whilst I have had regard to that previous decision, I have determined this appeal based on the evidence presently before me.

Main Issues

6. The main issues are whether the proposal represents a suitable site for residential development with regards to:
 - The character and appearance of the area;

¹ Appeal Ref: APP/N2739/W/18/3202126

- Local planning policy; and
- Flood risk.

Reasons

Character and Appearance

7. The appeal site is part of an enclosed plot of land which includes an access track to nearby residential properties. The submitted site plan indicates that the site does not project beyond a field boundary to the north east of the site. Indeed, based on the submitted plans and my observations on site, the appeal site is set back from this field boundary.
8. The site is an area of open land which extends beyond the building line established by nearby dwellings. At the time of my site visit, the open aspect to the north east of the site was also apparent as a positive contribution to the setting of the approach to nearby dwellings along the access track. This open aspect also enabled views of the site from Monks Lane, although the extent of these views were restricted by screening from trees. In effect, this plot of open land is an area of transition between the established extent of built development and the surrounding landscape, and as such makes a positive contribution to the character and appearance of the area.
9. Reference has been made to changes in the nature of the field boundary, including the removal of trees as well as further planting. At my recent visit I saw that this boundary provided a relatively open aspect to the site. At my visit in 2018, tree planting along this boundary was apparent as a strong edge to the extent of the settlement. However, the removal of established planting has diminished the contribution that this boundary makes to the visual separation of the site from the wider landscape. Whilst the site is separate from the fields to the north east, it is of an open, undeveloped, rural-edge appearance, as was noted by the Inspector in an appeal decision in March 2020².
10. The introduction of built development onto this plot would harm the contribution that the site makes as an area of transition between the built extent of the settlement and the rural landscape. This would particularly be the case in respect of users of the access track and the outlook from nearby dwellings. I also consider that the open aspect to the adjacent field would enable views of the development from Monks Lane. Within that context, the proposal would be viewed as obtrusive piecemeal development projecting onto an open site beyond the building line of nearby dwellings.
11. I conclude that the proposal would lead to unacceptable harm to the character and appearance of the area. The development would therefore be contrary to Policy ENV1 of the Selby District Local Plan 2005 (Local Plan), and Policy SP19 of the Selby District Core Strategy 2013 (Core Strategy) in respect of the effect on the character of the area and the surroundings of the site. These policies are broadly consistent with the Framework with regards to achieving well-designed places and recognising the intrinsic character and beauty of the countryside.

² Appeal Ref: APP/N2739/W/19/3234162

Planning Policy

12. The proposal is located outside of the defined Development Limits of Selby and is therefore considered to be within the open countryside in respect of development plan policy. In my consideration of character and appearance, I have concluded that the site is an area of transition between the built extent of the settlement and the rural landscape. However, given the open appearance of the site and its separate nature from existing residential development, I consider that the exclusion of the site from the defined development limit is logical and reasonable, and I accordingly give the development limit full weight.
13. Policy SP2A(c) of the Core Strategy limits development in the open countryside to proposals which meet specified requirements. The proposal would not meet any of the requirements of Policy SP2A(c) and would therefore conflict with local planning policy in that regard.

Flood Risk

14. The Environment Agency states³ that the site is within Flood Zones 2 and 3, with a medium and high probability of flooding from rivers and/or sea. A Flood Risk Assessment⁴ (FRA) submitted by the appellant states that the site lies entirely within Flood Zone 3a, and is therefore within an area identified as having a high probability of flooding. Notwithstanding the conflicting evidence in respect of the Flood Zone classification, the inclusion of at least part of the site in Flood Zone 3 requires that the appeal site is subject to the Sequential Test and potentially the Exception Test as set out in the Framework.
15. It is common ground between the main parties that the site passes the Sequential Test. Based on the evidence before me, I have no reason to disagree.
16. The proposal is therefore subject to the Exception Test. The Framework requires that for the Exception Test to be passed it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk, and that it will be safe for the lifetime of the development.
17. In relation to wider sustainability benefits, I have had regard to the benefits set out by the appellant within the FRA and other evidence. I acknowledge that the proposal would represent a self-build dwelling which would add to the mix and supply of housing in the area and would have sustainable access to services within Selby. Whilst these are factors which are encouraged by the Framework and other policies, the benefits arising from a single dwelling would be limited at most. Furthermore, the benefits would essentially be limited to the appellant and future residents of the dwelling, rather than wider sustainability benefits to the community.
18. The FRA specifies flood mitigation measures to make the development safe from flooding and which also concludes that it will not increase flood risk elsewhere. However, the Framework is clear that both elements of the Exception Test will have to be passed for development to be permitted.

³ Comments dated 25 January 2021

⁴ Flooding Risk Assessment Rev A: 19th March 2018

19. The appellant submits that there have been no flooding incidents that have affected the appeal site since 1947. However, the appellant also refers to a strategic flood risk assessment published in October 2020 and alterations to flood risk maps, which have not resulted in the site being removed from Flood Zone 3a. On that basis, the lack of recent flooding incidents does not negate the significant weight I give to the flood zone classification of the site.
20. The appellant contends that the inclusion of the site in Flood Zone 3a is a flood risk rating but not specifically a risk of flooding. However, the Planning Practice Guidance⁵ sets out that 'areas at risk of flooding' in respect of fluvial and sea flooding is principally land within Flood Zones 2 and 3, which would include the appeal site.
21. I conclude that it has not been demonstrated that the proposal would pass the Exception Test and in particular whether the development would provide wider sustainability benefits to the community that outweigh the flood risk. It would therefore not represent an acceptable form of development in respect of flood risk, having regard to its flood zone location and the provisions of the Framework. The Framework therefore provides a clear reason for refusing the development proposed.

Other Matters

22. The appellant emphasises the contribution that the proposal would make to the provision of self-build plots. The Framework requires that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies, including people wishing to commission or build their own homes.
23. However, the Council submits that the number of self and custom build homes permitted since 2016 significantly exceeds the number of names on the self-build register. More specifically, it confirms that there is only one name on the list which states that they are seeking a plot in Selby Town.
24. The appellant has provided a list of permissions based on a Freedom of Information request. The Council would appear to rely on minor housing development permissions as representing a self-build permission. However, this is not an appropriate approach, as there should be an assessment of whether a permission would in fact relate to a suitable self-build plot.
25. That said, consents for small windfall housing schemes may possibly represent a suitable development permission for self-build plots. Notwithstanding my previous comment on minor housing developments, I do not consider that only those permissions subject to a condition or an undertaking should be counted towards meeting the duty to grant planning permission for self-build plots. This would be too onerous a requirement, and could lead to the exclusion of self-build sites within development boundaries, which would conflict with the objective of promoting self-build as a means of meeting identified housing need. There are other factors which can indicate whether a permission qualifies as a contribution to self-build housing supply, and the appellant has not sufficiently addressed these factors.
26. In conclusion on the matter of the provision of self-build plots, I consider that neither the appellant's nor the Council's evidence is sufficiently robust.

⁵ Paragraph: 003 Reference ID: 7-003-20140306

However, even if I was to agree with the appellant's evidence, mindful of the identified planning harms in respect of character and appearance as well as flood risk, the benefits arising from a single self-build dwelling would be of limited weight at best. Whilst the Framework encourages the provision of self-build plots, planning decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.

27. The appellant contends that the appeal site represents previously developed land (PDL) as it has previously been identified as part of a residential curtilage. However, the site is currently distinctly separate from adjacent residential properties and is of an open nature which contributes to the character and appearance of the area. The Framework emphasises that it should not be assumed that the whole of the curtilage of PDL should be developed. Within that context, even if I was to conclude that the site is PDL, this should only carry very limited weight in favour of the proposal.
28. I am mindful that the appeal site would be sustainably located in respect of access to services. However, this can be said of many sites on the edge of this sustainable settlement. On that basis, and due to the limited benefits arising from a single dwelling, this matter does not carry any significant weight in favour of the proposal.
29. Reference is made to the 'tilted balance' of paragraph 11(d) of the Framework. However, I have found that the policies of the Framework in respect of areas at risk of flooding provide a clear reason for refusing the development proposed. On the basis of paragraph 11(d)(i) and Footnote 7 of the Framework, the tilted balance is therefore not engaged. I have had regard to the various appeal decisions referred to by the appellant in support of the application of the tilted balance. However, those appeals are not directly comparable to the appeal before me, including in respect of flood risk and the number of dwellings proposed.

Conclusion

30. The proposal would harm the character and appearance of the area, would not be suitably located in respect of planning policy, and would not represent an acceptable form of development with regards to flood risk. There are no material considerations of such weight that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR