



Appeal Decision

Site Visit made on 20 July 2021

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2021

Appeal Ref: APP/G2713/W/21/3272960

Land off Yarm Lane, Great Ayton

Easting: 455427 Northing: 510468

- 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 I Khalil against the decision of Hambleton District Council.
 - The application Ref 20/02484/FUL, dated 3 November 2020, was refused by notice dated 17 February 2021.
 - The development proposed is a dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Hambleton District Council against Mr I Khalil. This application is the subject of a separate decision.

Procedural Matter

3. During the course of the planning appeal, the Government published the revised National Planning Policy Framework (the Framework), which came into force on 20 July 2021. The Framework sets out the Government's planning policies for England and how they should be applied.
4. Accordingly, and in light of the reference made to the previous iteration of the Framework within the submitted evidence, the parties have been provided with a further opportunity to make submissions in respect of the publication.

Main Issues

5. The main issues are (i) whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the Framework and the development plan; and the effect of the proposed development on: (ii) the character and appearance of the area, including the Great Ayton Conservation Area; and, (iii) the living conditions of the occupiers of 1 Yarm Lane, with particular regards to privacy.

Reasons

Flood Risk

6. The appeal site comprises a parcel of land off Yarm Lane, ringed by mature trees and bound by the River Leven to the south and Yarm Lane to the north. An open field is located to the west and a residential property to the east. I saw

at the site visit that there are a number of residential properties accessed off Yarm Lane in this edge of settlement location.

7. The Council's report details that "the Environment Agency Flood Map for Planning indicates that the whole of the site is within Flood Zone 3", reference is made to a small part of the site that is a functional floodplain (Flood Zone 3b). The appellant's 'Flood Risk Assessment' (the FRA) confirms that the site is within Flood Zone 3, having previously been in Flood Zone 2 when an application was first made.
8. Policy CP21 of Core Strategy (the CS) and Policy DP43 of the Development Policies DPD (the DPD) set out the Development Plan basis for addressing flood risk and managing the risk of flooding to development by the application of the sequential and exception tests.
9. The Framework sets out at paragraph 159 that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future), and where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere. The national Planning Practice Guidance (PPG) section on Flood Risk and Coastal Change states that the Framework sets strict tests to protect people and property from river and sea flooding and that where these tests are not met new development should not be allowed.
10. Paragraph 161 of the Framework highlights that the sequential risk-based approach to the location of development is a two-stage test, which for a specific development proposal might involve applying a Sequential Test and then, only if this is passed, an Exception Test. Paragraph 162 sets out the aim of the sequential test to steer new development to areas with the lowest risk of flooding, with development not permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The requirements to undertake the second stage – the Exception Test – are addressed in paragraph 163-165. In these respects, I am satisfied the Local Plan policies are broadly consistent with the more recently published Framework.
11. Turning to the Sequential Test, the PPG advises that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability) be considered. The appellant has not provided any substantive or detailed analysis or specific evidence related to alternative sites or searches, simply stating that no others are available.
12. By way of justification, the appellant refers to their desire to build a home in Great Ayton, the suitability of the site to accommodate the proposed house and that the appeal site is already in the ownership of the Appellant. It is my planning judgement that such considerations do not justify the wholly inadequate Sequential Test put forward by the appellant in the FRA.
13. On the basis of the evidence before me, I find that it has not been demonstrated that there are no more sequentially preferable sites to accommodate the proposed development.
14. Even if this were not the case, the evidence provided by the appellant regarding the Exception Test is also inadequate and fails to demonstrate that the appeal scheme would be safe for its lifetime taking into account the

vulnerability of its users, flood risk elsewhere and the absence of substantive wider sustainability benefits to the community that outweigh the flood risk.

15. Therefore, for the reasons detailed above, I find that it has not been demonstrated that the proposal represents an acceptable form of development having regard to its flood zone location and as such is contrary to the provisions of the Framework, the guidance set out in the PPG and Policy CP21 of the CS and Policy DP43 of the DPD.

Character and Appearance

16. The site is sited immediately adjacent but outside of both the development limits to Great Ayton and the Conservation Area of Great Ayton (the CA). As a result of proximity and the visual relationship I saw at the site visit, the site lies within the setting of the CA. Submissions from the Council confirm that Great Ayton and correspondingly the CA is an attractive rural village that has developed over a long period, set around the River Leven and the bridges that cross it, based on the evidence before me and my own observations I agree.
17. The appeal site forms part of the approach to the settlement from Yarm Lane and the transition from a predominantly rural area to the built form of the settlement.
18. The appeal scheme is shown on the submitted plans as being a substantial and imposing dwelling, and while some traditional design features are incorporated in the elevations of the dwelling, the overall character is overwhelmingly of a modern dwelling. The scale and appearance of the appeal scheme is at odds with the surrounding modest dwellings that define the character and appearance of the area. The modest screening afforded by the existing trees to the boundaries would not significantly mitigate this harm.
19. Consequently, the appeal scheme would appear as a discordant feature harming the character and appearance of the area, including the CA.
20. In relation to the test concerning the level of harm as it applies to designated heritage assets under the Framework, based on the reasons I have set out above, 'less than substantial' harm to the significance of the CA would arise. There are no public benefits that have been put to me that would outweigh this harm.
21. The appeal scheme would not comply with Policies CP1, CP4 and CP16 of the CS and Policies DP9 and DP28 of the DPD that amongst other matters seek high quality development and to protect and enhance Conservation Areas.

Living Conditions

22. The appeal scheme incorporates a number of balconies to the first-floor level of the rear elevation of the proposed dwelling that would look towards the neighbouring property, No.1 which I saw at the site visit is also referred to as Low Garden House. The Council's report details that the dwelling is situated approximately 28m from the rear elevation of the proposed dwelling.
23. The separation distance is significant, but as a result of the first floor location of the proposed balconies and in the absence of substantive intervening landscaping, the balconies would create views into the otherwise secluded rear garden area of No.1.

24. The appellant has stated that they are willing to omit both the balconies and rear facing dormer windows from the proposals. However, no such proposals are before me and I am not satisfied that a condition could reasonably omit these details.
25. For the reasons detailed above I find that the appeal scheme would harm the living conditions of the occupiers of 1 Yarm Lane, with particular regards to privacy and as such is contrary to policy DP1 of the DPD that amongst other matters seeks to ensure that new development adequately protects privacy.

Other Matters

26. The appellant refers to paragraph 55 of the Framework as allowing dwellings of exceptional design to be built in the countryside. Paragraph 80 of the Framework makes provision for homes in the countryside where “the design is of exceptional quality”. The evidence before me does not demonstrate that the appeal scheme has achieved the truly outstanding and highest standards in architecture required by paragraph 80.
27. There would be some general economic benefits associated with the appeal scheme in terms of additional expenditure in the area and support for local services. Furthermore, the appeal scheme would provide an additional dwelling, contributing to the supply of new housing in the area. The contribution of this scheme is limited by its very nature but nonetheless these are material considerations that weight in favour of the appeal scheme but do not outweigh the harm I have identified previously

Conclusion

28. For the reasons given above I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR