



Appeal Decision

Site visit made on 24 August 2021

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Appeal Ref: APP/Y2003/W/21/3271645

65 Marsh Lane, Barton Upon Humber DN18 5JD

- 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 Elizabeth Marrows against the decision of North Lincolnshire Council.
 - The application Ref PA/2020/545, dated 17 April 2020, was refused by notice dated 18 December 2020.
 - The development proposed is Erection of 34 dwellings following demolition of existing dwelling and outbuildings (Access and Layout to be considered only) (Resubmission of Planning Application PA/2019/1698).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline form with all matters of detail reserved for subsequent determination except for access and layout. The Council's decision notice refers to layout being reserved for subsequent consideration. However this does not reflect the application and appeal submission, and there is nothing before me to indicate an agreed change in description. I have therefore dealt with the appeal as set out on the appellant's submissions.
3. The appeal form indicates that the Inspector would need to enter the site, however the application form indicates that the site can be seen from public land, as does the Council's questionnaire. I was able to obtain sufficient views of the interior of the site, and did not feel it necessary to enter the site given that the main issues principally relate to surrounding land.
4. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. I have referred to the relevant paragraphs from the revised Framework where necessary in my decision.

Main Issues

5. The second reason for refusal relates to the location of the appeal site in an area of high flood risk, and the effect of the necessary levels on the character and appearance of the area. Numerous third parties have submitted comments relating to the adequacy of the flood risk assessment (FRA) and drainage strategy amongst other matters. Given the intrinsic links between the second reason for refusal and the FRA, I have included flood risk and drainage as a

main issue. The Council and appellant were given an opportunity to submit further comments in this respect and I am satisfied that there is no prejudice to any parties in this respect.

6. The main issues are therefore:

- The effect of the proposed development on highway safety, with particular regard to the suitability of Marsh Lane for additional traffic;
- Whether it has been demonstrated that the proposed development would be safe from flooding without increasing flood risk elsewhere, with particular reference to whether it has been demonstrated that a suitable and sustainable drainage scheme can be achieved; and
- The effect of the proposed development on the character and appearance of the surrounding area with particular reference to raised levels.

Reasons

Access and Highway Safety

7. The section of Marsh Lane between the fenced-off railway line and Butts Road is relatively narrow in width and in a variable condition with numerous areas of broken surfacing. It benefits from a continuous footway to one side. The opposite side of the road includes grass verges, some parts of which have been rough surfaced. I observed on my site visit (around midday on a weekday) a high amount of on-street parking along much of Marsh Lane, on both sides, largely outside the older terraced dwellings which do not have off-street parking provision. The parked cars provide an element of natural traffic calming. I appreciate that my site visit was a snapshot in time, nonetheless the conditions I observed reflect those put to me by the Council and third parties.
8. Together with a number of residential properties, accesses to recreational facilities (a football club and cricket club) are situated along this particular stretch of Marsh Lane. The new main vehicular access to the football club is now located on Pasture Road and consequently Marsh Lane no longer forms the principal vehicular access for football related traffic.
9. The Transport Statement (TS) indicates that the proposed 34 dwellings are predicted to generate some 18 two-way vehicle movements in the morning weekday peak hour period and 17 such movements in the evening period. The site lies in an accessible location where a range of the town's local services are within a short distance, including a railway station and bus services. There is no evidence before me to indicate that residual cumulative impacts on the wider road network including the junction onto Butts Road would be severe. Effects would be limited to this particular stretch of Marsh Lane, amplified by its existing parking issues and poor surfacing.
10. The local highway authority have not specifically objected to the proposals, and have recommended a range of conditions together with a contribution towards improvement works on Marsh Lane. The access and swept path plans¹ indicate that the proposed access could accommodate a refuse truck and that the splays would be wholly within the application site. I saw on my site visit that a footway already exists across the frontage of the recreation access and I am

¹ Appendix 3 & 4, Transport Statement September 2019

satisfied that matters of further detail of the access and internal road layout could be adequately dealt with by conditions.

11. Effects relating to construction traffic could also be adequately controlled by conditions, including a construction management plan. Nonetheless, it is evident that the condition of the road is likely to deteriorate further as a result of the additional traffic generated both during construction and when operational. Any further deterioration has the potential to adversely affect the safety of both non-motorised users and drivers of vehicles. The appellant has indicated that they would contribute £6,000 to improvements; one fifth of the estimated total costs.
12. However, I have a number of issues with this approach. Firstly, I have not been provided with any evidence which confirms whether the road including the verge forms highway land which the highway authority would have control over. Secondly, there is no legal agreement before me to secure such a contribution, therefore I am unable to conclude whether the content of the obligation would fully meet the relevant tests set out in the Community Infrastructure Levy (CIL) Regulations 2010. Furthermore, any highway safety issues related to on-street parking represent an existing issue which does not necessarily warrant mitigation by the appellant. Whilst there may be some scope for formalising parking bays for vehicles currently using the unmade verges, there is no evidence before me that any widening or formalised parking provision would take place as part of any improvement works.
13. Overall, I am satisfied that traffic arising from the development would not have a severe effect on the local road network, but I have concerns relating to the adequacy of Marsh Lane in terms of its condition and longer term effects on highway safety. However, in the absence of evidence relating to the type and extent of improvement works that would be necessary and a planning obligation to secure a contribution to such improvements, I am unable to conclude that the proposed development would not have an adverse effect on highway safety.
14. Consequently, the proposed development conflicts with North Lincolnshire Local Plan 2003 (NLLP) Policy H5 part f) which requires new housing developments to have an adequate and appropriately designed access which will not create any traffic or road safety hazard, and Policy T2 which seeks for all development to be provided with a satisfactory access. In turn, the proposed development would not fully accord with section 9 of the Framework, in particular paragraph 110 parts b) and d).

Flood Risk and Drainage

15. The Framework seeks to ensure that inappropriate development in areas at risk of flooding should be avoided and where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The submission includes a site-specific FRA with application of the sequential and exceptions tests. The FRA includes data from the Strategic Flood Risk Assessment for North and North East Lincolnshire 2011 (SFRA) which indicates that the site lies in FZ 2/3(a) with a high probability of flooding from the tidal Humber Estuary.
16. The area of search and range of alternative sites in the appellant's sequential test are somewhat limited. The SFRA indicates that there are large areas of the

town, further away from the Humber Estuary, which are at a lower risk of flooding. Nonetheless, the Council's committee report states that the sequential test is passed and in the absence of any evidence to the contrary regarding alternative sites, the exceptions test is applied.

17. The first part of the exceptions test is met by virtue of the site's accessible location within easy reach of shops and services within the town of Barton Upon Humber, together with other benefits including its contribution to boosting housing supply. In term of part b) of the exceptions test, habitable living accommodation would be provided only above 6.9m AOD as required by the Environment Agency. This demonstrates a place of safety for future residents. Furthermore, appropriate flood resilience and resistance measures set out in section 9 of the FRA and secured by condition no. 20 could help to ensure that the development would be safe for its lifetime.
18. However, the exceptions test also requires the development to not increase flood risk elsewhere and, where possible, reduce flood risk overall. I acknowledge that the proposed drainage scheme is not specified in the reasons for refusal. Nonetheless, in view of the aforementioned high flood risk and its intrinsic links to reason 2, concerns raised by interested parties and what appear to be outstanding issues set out in the consultation responses by the statutory drainage authorities, I have carried out a review of the proposed drainage scheme.
19. Paragraphs 167 c) and 169 of the Framework require major developments to incorporate sustainable drainage systems (SuDs) unless there is clear evidence that this would be inappropriate, including taking account of advice from the Lead Local Flood Authority (LLFA). The submission includes consideration of the hierarchy of surface water discharge options as required by paragraph 080 of the PPG, and infiltration testing of trial pits has demonstrated that soakaways would be an unsuitable method of drainage.
20. It is proposed to dispose of surface water via a main sewer connection, with use of a hydrobrake to restrict flow into the sewer to 5.0 litres per second. However, there is no evidence before me to demonstrate that the second level of the SuDs hierarchy has been considered as part of the drainage strategy, including why drainage to a surface water body or on-site attenuation has been discounted, despite contradictory information in the ecological reports² of an on-site SuDs retention basin. Furthermore, the drain running alongside the site known as Barton Haven does not appear to feature in the considerations.
21. Whilst the appellant suggests that a sustainable drainage design covering SuDs has been accepted by the LLFA, their most recent response indicates a number of outstanding issues including the need for a detailed surface water drainage scheme based on sustainable drainage principles, including consideration of outfall into the existing watercourse prior to the sewer in accordance with the surface water drainage hierarchy.
22. Anglian Water advise that the preferred method of surface water disposal would be to a SuDs with connection to sewer seen as the last option. Importantly, they note that desktop analysis has suggested that the proposed development will lead to an unacceptable risk of flooding downstream, and

² Section 9.8 and Appendix 9, Updated Preliminary Ecological Appraisal Report; and Section 4.3.1, Biodiversity Net Gain and Biodiversity Enhancements Report

highly recommend engagement with Anglian Water to develop a feasible drainage strategy.

23. The above consultation responses raise doubt that the proposed drainage strategy is either feasible or acceptable. Given that layout is a matter to be considered at this outline stage, I am not satisfied that this matter is one that can be left to reserved matters or to conditions given that the layout of the site would be affected by any on-site drainage attenuation.
24. Guidance set out in paragraph 038 of the PPG includes reference to access and egress, operation and maintenance, design of development to manage and reduce flood risk, resident awareness, flood warning and evacuation procedures and funding arrangements. Whilst appropriately worded conditions could cover some of these elements, there is a lack of evidence to cover factors such as safe access and egress within the appeal submission.
25. Whilst I am satisfied that the sequential test has been passed, there is insufficient information before me regarding the exceptions test. The feasibility of SuDs has not been adequately investigated and this fails to accord with the PPG, paragraphs 167 and 169 of the Framework as well as the Council's own guidance set out within section 8 of the SFRA. The proposed development conflicts with CS Policy CS19 when read as a whole, in particular part 3) in failing to demonstrate that the development will be safe, without increasing flood risk elsewhere by integrating water management methods into development, and the incorporation of SuDs to manage surface water drainage.

Character and Appearance

26. The site is relatively self-contained, being bordered by vegetation and tucked away to the end of the lane where it adjoins the railway line. It is largely surrounded by undeveloped land including public open space and the railway line. The most visible section of the site is where it fronts Marsh Lane, which comprises a range of house types and styles, including both two storey dwellings and bungalows. Despite its verdant appearance and undeveloped surroundings, the appeal site lies within the built up area of Barton Upon Humber and the principle of development in this location is not in dispute.
27. Appearance, scale and landscaping are matters which are reserved for future approval. This would include the height of the dwellings. It is necessary, for flood risk reasons, for living accommodation to be at a certain level, which would be at first floor and above. The indicative elevations and floor plans therefore show garages and non-habitable rooms at ground floor, and it would be reasonable to assume that the final design would include such features.
28. The appellant has directed me to a nearby approved planning application which also proposed the use of garages and non-habitable rooms on the ground floors of three storey dwellings, however it appears to be a much smaller development and I am unable to compare ground and floor levels. Furthermore, I note that the immediate surroundings are markedly different. Consequently the quoted decision has limited weight.
29. Nonetheless, the overall height of the dwellings and their design is not fixed at this outline stage. Only when the design of the dwellings is finalised, can the effects of the development on character and appearance be properly assessed. The matters which are before me, including layout and access, would not in

themselves result in any significant harm to the character and appearance of the area.

30. I am therefore unable to establish if the proposed development would be out of scale or domineering in relation to the surrounding area, and do not, at this outline stage, find conflict with CS Policy CS5 which seeks to ensure a high quality design including a respect for local context, nor NLLP policies H5 c) and e), H8 and DS1 i) and ii) which (amongst other criteria) seek to ensure that housing development is in keeping with the scale and character of the immediate environment and the settlement as a whole.

Other Matters

31. I have had regard to the Council's assessment as part of the Conservation of Habitats and Species Regulations 2017 and note the comments from Natural England. Given there is no evidence to the contrary I am satisfied that there would be no likely significant effect on the integrity of the Humber Estuary (Special Area of Conservation, Special Protection Area and Ramsar site).
32. However there are remaining concerns from both the Council's Natural Environment Policy Specialist and Tree Officer. A large number of trees have already been removed, and with the layout proposed there would be a lack of space for meaningful replacement green infrastructure, resulting in a net loss of habitat as demonstrated by the appellant's application of the Biodiversity Metric. There is a clear need to secure biodiversity enhancements in accordance with CS policy CS17, and paragraph 180 of the Framework. Whilst a condition could adequately secure the proposed on-site mitigation measures, the Council require a payment for delivery of off-site biodiversity enhancements. However there is no legal agreement before me to secure the necessary payment.
33. As well as the aforementioned contributions towards the cost of re-surfacing Marsh Lane and biodiversity enhancements, the officer report sets out the necessity for a range of other planning obligations including 20% affordable housing, off-site recreation, maintenance of on-site open space, primary and secondary education and a leisure centre contribution. However a completed Section 106 Agreement has not been submitted with the appeal. As such, I cannot give any significant weight to the benefits which such obligations would secure. As I am dismissing the appeal for other reasons I make no further observations on this matter, including whether the obligations would satisfy the tests in Regulation 122(2) of the CIL Regulations 2010.

Conclusion

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

Susan Hunt

INSPECTOR