

Appeal Decision

Site visit made on 25 October 2021

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 November 2021

Appeal Ref: APP/V2635/W/21/3268386

32 Common Road, Walton Highway, Norfolk PE14 7DG

- 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 Richard Knight Homes Ltd against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 20/01841/F, dated 20 November 2020, was refused by notice dated 4 February 2021.
 - The development proposed is 5 new dwellings adjacent 32 Common Road.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. I have taken the name of the appellant in decision banner above from the submitted appeal form rather than the agent's details from the original planning application form.

Main Issues

3. The main issues in this appeal are:
 - (i) whether the site is a suitable location for residential development having regard to the spatial framework in the development plan and flood risk; and
 - (ii) whether the site should provide for affordable housing in accordance with the development plan.

Reasons

Spatial Framework

4. The appeal site is located at the periphery of the settlement of Walton Highway. It occupies a gap between newly constructed housing on an allocated site in the Site Allocations and Development Management Policies Plan 2016 (*the SADMPP*) to the north and a separate but small cluster of residential development at the southern end of Common Road North. The site is currently being used as a compound for the construction of the adjacent housing. Notwithstanding these circumstances, the site is outside of the adopted development boundary for Walton Highway identified on the Policies Map as updated upon adoption of the SADMPP. For the purposes of planning policy, the appeal site is in the countryside.

5. Notwithstanding the countryside location in policy terms, the proposed dwellings would not be isolated. In accordance with National Planning Policy Framework (*NPPF*) paragraph 79 they would assist in maintaining the vitality of Walton Highway as a rural community and would be within reasonable distance of bus stops on Lynn Road. These are factors that weigh moderately in favour of the appeal proposal.
6. On the other hand, the development plan is intended to meet identified development needs and to provide certainty to local communities and others as to where development is likely to be acceptable in-principle and those areas, such as the countryside, where development would need to be carefully managed. In respect of the Borough's identified housing needs, the LPA confirms that there is a very healthy supply of deliverable housing land, sufficient for nearly 8 years' worth of the annual housing requirement¹. Accordingly, the development plan's spatial strategy is delivering and should be regarded as being up to date. In these circumstances any social benefit of five additional houses at the appeal location would be no more than limited.
7. The spatial strategy, including the SADMPP has applied a positively prepared approach to Walton Highway. It allocated the site immediately to the north, but it did not take the opportunity to allocate the appeal site. The SADMPP allocation broadly reflects the pattern development opposite on Common Road North. The same does not apply at the appeal site which occupies a clear countryside gap between groups of housing on Common Road North, including a large, verdant open area immediately opposite to the east and open fields to the west. The appeal proposal would result in a conspicuous extension of development into the countryside and, notwithstanding the modest retained gap to Wildbrook Barn, it would harmfully consolidate what is currently a dispersed pattern of housing development at this rural edge of Walton Highway. In this regard I share the LPA assessment that there would be moderate harm to the character and appearance of the area. In terms of the extent of the frontage gap comprising the appeal site, I do not consider the appeal proposal would represent characteristic 'infilling' despite the current transient condition of the site as a development site compound.
8. The greater harm arises from the location of the appeal site outside of the adopted development boundary. This mechanism is intended to provide certainty in a plan-led system. The development boundary at the appeal location demarcates an appropriate limit to development from which to protect the intrinsic character of the Fens countryside and to ensure necessary focus of housing development in sustainable locations, including within identified development boundaries that have been robustly determined through the plan-making process. There is very little before me that confirms that the spatial strategy in the adopted development plan envisages further peripheral housing growth in Walton Highway following implementation of the adjacent housing allocation, other than appropriate windfall development within the development boundary and justified rural exception housing in the countryside. The appeal proposal does not comprise one of the exceptions identified in SADMPP Policy DM2. Overall, the harm arising from the conflict with the up-to-date development boundaries would be significant.

¹ Based on the 2020 Housing Delivery Test results

9. By virtue of the appeal site being outside of the development boundary identified in the development plan and in countryside where new development should be carefully managed it would not comprise a suitable location for residential development having regard to the spatial framework in the development plan. It would be contrary to Policies CS06 and CS08 of the Local Development Framework Core Strategy 2011 (*the Core Strategy*) which seek to promote sustainable patterns of development in rural areas including protecting the countryside beyond the villages and ensuring that all new development responds to the context and character of places in West Norfolk. It would also be contrary to Policy DM2 of the SADMPP which states that development will be restricted in countryside outside of development boundaries to a limited number of specific developments that may justify requiring a rural location.
10. The LPA provides evidence that it has a sufficient supply of deliverable housing land. On this basis, the spatial strategy, including the policies identified above are not out-of-date. Furthermore, the spatial strategy and the use of development boundaries is consistent with paragraphs 11a, 78, 79 and 80 of the NPPF which seek to secure sustainable patterns of housing development, including in the rural areas, principally through the certainty of a plan-led approach.
11. I have been referred to the emerging Local Plan which the Council is looking to submit for examination in the near future. The appellant submits that the emerging policy framework for rural villages such as Walton Highway (draft Policy LP02) would allow for limited growth in these villages including sensitive infilling of small gaps (draft Policy LP26). Be that as it may, these draft policies have yet to be submitted or examined. As such I give very little weight to the emerging Local Plan as a consideration in support of the appeal proposal. In any event I have reservations, based on my observations on site, that the appeal proposal would comprise the sort of infilling that would potentially accord with draft Policy LP26. Moreover, the starting point is that proposals should be assessed against the extant development plan, the relevant policies of which, for this appeal, carry full weight.

Flood Risk

12. The appeal site is within the Environment Agency's Flood Zone 3 and the development proposed is within the 'more vulnerable' classification. The submitted Flood Risk Assessment advises that the site, when taking into consideration the flood defences is at medium risk of fluvial flooding. Similar applies elsewhere in Walton Highway such that there are no other areas at lower risk of flooding in the village for housing development. Whilst the aim of the sequential approach should be to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) and other areas affected by other sources of flooding where possible, I accept in the circumstances, that the sequential test is passed.
13. The Planning Practice Guidance (PPG) identifies at Table 3 that as a 'more vulnerable' development in Flood Zone 3 the exception test is required. NPPF paragraph 164 confirms that to pass the exceptions test, it should be demonstrated that development would provide wider sustainability benefits to the community that outweigh the flood risk and the development will be safe for its lifetime and not increase flood risk elsewhere. Paragraph 165 of the

NPPF stipulates that both elements of the exception test should be satisfied to enable the development to be permitted.

14. The wider sustainability benefits of the appeal proposal are limited. On the social dimension of sustainability, housing needs are being adequately met by a robust deliverable supply elsewhere such that the benefit of five additional dwellings would be very limited. Additionally, the SADMPP has already positively allocated land in Walton Highway to support the vitality of the rural community. The construction of five dwellings would have some modest economic benefit during their construction, albeit the benefit would be relatively short term. Overall, the sustainability benefits of the proposed housing on an unallocated site in the development boundary would not outweigh the flood risk. As such I do not consider limb (a) of the exceptions test as expressed at NPPF paragraph 164 to have been passed.
15. I therefore conclude that the appeal site would not be a suitable location for residential development having regard to flood risk. It would be contrary to Core Strategy Policy CS08 which requires development proposals in high flood risk areas to demonstrate that the type of development is appropriate to the level of flood risk identified and where the development vulnerability type is not compatible with the flood zone it will need to demonstrate it contributes to the wider sustainability needs of rural communities. The proposal would also conflict with national policy on planning and flood risk at NPPF paragraphs 162-165 and the accompanying guidance in the PPG chapter on 'Flood Risk and Coastal Change'.

Affordable Housing Provision

16. The strategic development plan policy relating to affordable housing is set out at Policy CS09 of the Core Strategy which seeks to maximise the delivery of affordable housing across the Borough to meet prevailing needs. The policy seeks 20% provision on sites of 5 or more units in the rural areas with the expectation for on-site delivery other than in exceptional circumstances when a financial contribution will be sought. Policy DM8 of the SADMPP addresses affordable housing provision including development on windfall sites which the Council consider form part of a larger site thus triggering a requirement for a proportion (or contribution to) affordable housing. Policy DM8 sets out three criteria and states that where an application site satisfies one or more of the criteria it will be considered to be part of a larger site for the purposes of policy. Broadly, the three criteria tests are land ownership at the time the application is made, planning history or extensions to existing consented development granted within the last 3 years. Policy DM8 was prepared and adopted in the context of the NPPF and is therefore up to date.
17. As set out the appeal site directly adjoins the SADMPP allocation to the north, where 12 dwellings are being constructed by the appellant, who is using the appeal site as the associated construction compound. The evidence indicates the two adjoining sites are under the same ownership including at the time the planning application for the appeal proposal was submitted in November 2020. On this basis the first criteria in Policy DM8 of the SADMPP would be engaged. Consequently, the appeal proposal would result in a piecemeal approach to housing development in this part of Walton Highway that would circumvent development plan policy requirements. Given the identified need for affordable housing the missed potential to secure an appropriate proportion of provision

(either on-site or as a financial contribution) would result in significant social harm. I note the appellant alludes to potential viability matters, due to utilities and highway costs, but there is insufficient open book viability evidence for me to conclude that an affordable housing contribution would not be feasible.

18. I therefore conclude that the appeal proposal would fail to provide for affordable housing in accordance with the development plan by virtue of being directly adjacent to a housing development site in the same land ownership. It would be contrary to Core Strategy Policy CS09 and SADMPP Policy DM8 which seek to ensure housing developments, including conjoined (phased) development, make a proportionate contribution towards the significant need for affordable housing. It would also fail to accord with NPPF paragraphs 62 and 63 which clarify that the overall objective of the planning system to deliver a sufficient supply of homes includes the need to provide for different types of housing need including for those who require affordable housing.

Other Matters

19. The appeal proposal would generate Community Infrastructure Levy (CIL) payments. It would also likely require provision of a footway along the site frontage with Common Road North. The footway provision and the CIL payments would be primarily necessary to make the appeal development acceptable in planning terms in order to proportionately address the demands arising from future occupants of the proposed dwellings. As such I give them only very limited weight as a benefit arising from the appeal proposal.

Conclusion

20. The appeal proposal would be contrary to relevant development plan policies, which are up to date. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires decisions for planning permission to be made in accordance with the development plan unless material considerations indicate otherwise. I have had regard to all matters raised, including the emerging Local Plan, CIL payments, footway provision, Parish Council support and the additional contribution to the overall supply of homes, but these do not outweigh the substantial harm arising from the identified conflicts with an up-to-date development plan. As such they do not amount to material considerations to indicate a decision other than in accordance with the development plan. Consequently, the appeal is dismissed for the reasons given.

David Spencer

Inspector.