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# Appeal Decision

Site visit made on 16 November 2021

**by K Savage BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22/12/2021**

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**Appeal Ref: APP/D2510/W/21/3278081**

**Land off Westville Road, Frithville, Boston PE22 7DT**

- 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 & Mrs C Parker against the decision of East Lindsey District Council.
  - The application Ref S/054/02216/20, dated 30 November 2020, was refused by notice dated 18 May 2021.
  - The development proposed is the construction of 2 no. dwellings.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The application was made in outline with the matter of access to be considered. I have therefore considered the appeal on that basis.

## Main Issue

3. The main issue is whether the proposal would represent a suitable location for housing, with particular regard to the risk of flooding.

## Reasons

4. The appeal site is located in the village of Frithville, a Medium Village under the settlement hierarchy for the district set out under Policy SP1 of the East Lindsey Local Plan Core Strategy (July 2018) (the LPCS). Policy SP4 sets out that, within Inland Medium Villages, the redevelopment of brownfield sites for housing will be supported subject to certain criteria, including where the site has been demonstrated not to be suitable for a community, economic or leisure use. The policy also supports housing in appropriate locations within the developed footprint of the settlement as infill, frontage development of no more than two dwellings. For the purposes of the policy, 'appropriate location' is defined as a location that does not conflict, when taken as a whole, with national policy or policies in the LPCS.
5. Frithville comprises linear development to either side of West Fen Drain. The appeal site represents a limited gap between dwellings and having seen the site, I am satisfied that the proposal would amount to infill development, and indeed frontage development, in accordance with the requirements of Policy SP4(2). The scale of the proposal at two dwellings would also meet the requirements of the policy. However, for the proposal to be considered an appropriate location, it must also accord with other relevant policies of the development plan, those relating to flood risk being relevant in this case.

6. The appeal site is located in Flood Zone 3 (FZ3), which is indicated to cover the whole of Frithville and much of the surrounding hinterland. The Framework and the Planning Practice Guidance (PPG) require a sequential, risk based approach to the location of development in terms of flood risk. The Framework indicates that the aim of the Sequential Test (ST) is to steer new development to areas with the lowest probability of flooding. It also indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG states that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within FZ2 and FZ3. Dwellings are categorised as 'more vulnerable' development, for which an Exception Test is required to be passed in addition to the ST.
7. For the purposes of the LPCS, the District is categorised as either 'coastal' or 'inland' in respect of flood risk. The appeal site lies within the inland zone, to which Policy SP16 applies. The supporting text of the policy sets out that the Council's broad strategy will be to guide housing development away from areas that are identified as being at risk as part of a sequential approach to identify location of potential sites, but it will support development for commercial uses in towns and large villages where commercial activity coincides with flood risk. Hence, the policy supports business, leisure or commercial uses in the first instance, subject to a ST, with housing supported subject to certain qualifying criteria, namely where a site is in need of regeneration and is not suitable for business, leisure or commercial use; where the site is brownfield and empty; and where attempts have been made to develop/market the site for business, leisure or commercial use for a minimum of 12 months. Although at least part of the site is previously developed, I have no evidence before me from the appellant to demonstrate that the site is not suitable for business, leisure or commercial use, nor any evidence of efforts to develop or market the site as such. This would be in conflict with the requirements of Policy SP16.
8. The PPG advises that, in applying the ST, the aim is to steer new development to FZ1, areas with a low probability of flooding. Only where there are no reasonably available sites in FZ1 should reasonably available sites in FZ2 (and then FZ3) be considered. If the ST demonstrates that it is not possible for development to be located in zones with a lower risk the Exception Test may have to be applied. The PPG adds that when applying the ST, a pragmatic approach on the availability of alternatives should be taken.
9. The appellant argues that the majority of the surrounding villages and the town of Boston lies within FZ3, and that the site is actually in a low risk area compared to these neighbouring areas. As such, the appellant's position is that a sequential approach is not appropriate in this case, and no assessment of specific sites has been undertaken. In contrast, the Council points to villages along the A16 corridor which have areas in FZ1, including the village of Sibsey some 3 kilometres away, as evidence of areas with potentially sequentially preferable sites. The appellant makes reference to the different approach of Boston Borough Council to the ST, but this is not relevant given it is a different local planning authority that, contrary to the appellant's claim, does not operate under the same development plan as East Lindsey.<sup>1</sup>
10. The Framework does not set specific parameters for the search radius to be used in conducting the ST, but the PPG advises that the area to apply the ST

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<sup>1</sup> The South East Lincolnshire Local Plan referred to by the appellant is jointly adopted by Boston Borough Council and South Holland District Council

across will be defined by local circumstances relating to the catchment area for the type of development proposed. The Council considers that a search area of 3-4 kilometres, taking in Sibsey, is reasonable. The area surrounding the appeal site is characterised by multiple small, dispersed settlements, many with only a handful of dwellings that would amount to very limited search areas if considered in isolation. Housing is also a form of development found across the whole district that, in general, does not have a need to locate in a flood risk area as might a commercial development. This is exemplified in the priority given to commercial development under Policy SP16 and the general approach to steer housing away from areas of greatest flood risk, in line with the aims of the Framework. Based on the evidence before me, I am satisfied that a search area taking in neighbouring settlements such as Sibsey would be reasonable in this case, particularly given these include areas within 3-4 km which are indicated to be within FZ1 that would be potentially preferable.

11. The appellant comments that any land within a lower flood zone in Boston, Sibley or other villages is likely to already be developed, under development, to have planning permission or to not be available. However, I have no evidence to substantiate these comments. No sites have been specifically identified and ruled out for any of these reasons. Therefore, I cannot be satisfied that there are in fact no sequentially preferable sites available in areas of lower flood risk, and, as a result, I find that the ST has not been passed.
12. In reaching an overall view, I have considered the appellant's Flood Risk Assessment (FRA) which states that the site is at low/medium risk of flooding from tidal, fluvial and groundwater sources, and that in the worst case scenario (1 in 1000 event), water levels would rise by 0.5 metres. The appellant proposes various flood resilience measures to address this risk, including raising floor levels of the dwellings 0.5 metres above ground level. I have also had regard to the comments of the Environment Agency (EA). However, implementation of mitigation measures does not obviate the need to pass the ST, the judgement of which lies with the local planning authority, and now me, and not the EA, who in any event do not make any comment on the ST.
13. I further note that the FRA points to the development passing the Exception Test. However, the PPG is clear that the Exception Test should only be applied following application of the ST. As I have found the proposal does not accord with the ST, it matters not whether it would pass the Exception Test, as this alone would not satisfy the requirements of the Framework and PPG.
14. I am also referred to planning permissions granted by the Council for housing in Frithville on land to the north-west that I saw was under development at the time of my visit. I understand these permissions were granted by the Council's Planning Committee against officer advice; however, I am not provided with the full particulars of these applications. In the absence of this information, including any evidence relating to flood risk or the ST, I cannot be certain that the issues in these cases were comparable to the appeal scheme before me. Therefore, I do not regard these other decisions as determinative and I have considered this appeal on its own planning merits.
15. In conclusion, the proposed development fails to accord with the ST in relation to development in areas at risk of flooding and it cannot be ruled out that the development could be located elsewhere in an area at lower risk of flooding. Accordingly, the proposal conflicts with the Framework and the PPG in relation

to development in areas at risk of flooding. Moreover, the proposal would conflict with Policy SP16 of the LPCS, which supports housing development in areas of Inland Flood Risk on brownfield land that is demonstrated not to be suitable for business, leisure or commercial use. Given this policy conflict, the appeal site would not represent an appropriate location for development under Policy SP4, and there would be further conflict with this policy, and with the overall settlement pattern for the district under Policy SP1.

### **Other Matters**

16. No objection was raised by the Council in respect of highway safety, access being a matter for consideration at this stage. Having observed the visibility and traffic levels at the site entrance, I have no reasons to find harm in this respect. An absence of harm in this matter would however be a neutral consideration weighing neither for nor against the proposal.
17. I note the support of Frithville Parish Council for the proposal. However, this does not alter my overall views on the main issue of the appeal.

### **Planning Balance and Conclusion**

18. The appeal proposal would add two dwellings to the housing stock which is a minor social benefit of the scheme. The proposal would also give rise to some limited benefits to the local economy through spending by future residents on goods and services, and in the construction of the dwellings themselves. There would also be minor benefits arising in terms of the somewhat unkempt appearance of the site being addressed by the development, and the infilling of the existing gap providing an improvement to the rhythm of the street scene.
19. However, I have found that the appeal proposal fails to satisfy the ST in respect of flood risk, and fails to meet the criteria for housing in Inland Flood Risk areas. Therefore, it has not been demonstrated that the dwellings would be sustainably located, notwithstanding the flood risk mitigation measures advanced by the appellant. The proposal would not accord with the environmental objective of sustainable development set out in the Framework, and the similar aims of the LPCS. I give significant weight to these conflicts. Moreover, given the conflict with the Framework policies relating to areas at risk of flooding, the presumption in favour of sustainable development under Paragraph 11 does not apply.
20. In my judgement, the benefits of the proposal, taken together, would not amount to material considerations which would outweigh the identified conflicts with the development plan and would not justify a decision being made other than in accordance with the development plan, taken as a whole.
21. Therefore, for the reasons set out, the appeal should be dismissed.

*K Savage*

INSPECTOR