



Appeal Decision

Site visit made on 14 December 2021

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2022

Appeal Ref: APP/Y2003/W/21/3281413

White House Farm, Main Street, Ealand DN17 4JG

- 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 Terry Milner against North Lincolnshire Council.
 - The application Ref PA/2020/613, dated 8 April 2020, was refused by notice dated 26 February 2021.
 - The development proposed is 6 residential building plots
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the banner heading above from the application form. In doing so I have removed words that are not acts of development.
3. The application was submitted in outline with appearance, landscaping and scale reserved for subsequent consideration. I have considered the appeal on this basis.
4. A similar application¹ for 6 dwellings at the appeal site was refused by the Council in 2019 and dismissed at Appeal² on the grounds of an unacceptable effect on existing drainage and increased risk of flooding.

Main Issue

5. The main issue is the acceptability of the proposal in respect of flooding and drainage.

Reasons

6. It is proposed to construct 6 dwellings on the appeal site which lies within the settlement boundary for Ealand. Ealand is termed a rural settlement for the purposes of the North Lincolnshire Core Strategy (2011) (the CS).
7. The Environment Agency Flood Maps identify the vast majority of the site as being within Flood Zone 3a. As defined in the Planning Practice Guidance (PPG) that zone is defined as having a 'high probability' of flooding, second only in terms of potential vulnerability to the functional floodplain. In the Strategic Flood Risk Assessment, the site lies within a combined Flood Zone 2/3a.

¹ PA/2017/1006

² Appeal Ref: APP/Y2003/W/18/3212859

8. The application was accompanied by a Flood Risk Assessment (FRA). I cannot be satisfied that this has correctly assessed flood risk as it consistently refers to the NPPF Technical Guide which was superseded by the PPG in 2014. The FRA also does not identify that the site is within the Environment Agency Flood Zone 3a. Similar concerns were expressed by the Inspector at the earlier appeal.
9. Although I have had regard to the North Lincolnshire Development and Flood Risk Guidance Note, this has equally been superseded by revisions to the National Planning Policy Framework (the Framework) and the PPG. Therefore, I give the approach in Government Guidance, as the latest iteration of the Government's position on this matter, significant weight in the determination of the case.
10. Framework paragraph 159 states that inappropriate development should be avoided by directing development away from areas at higher risk of flooding. Framework paragraph 162 seeks to steer new development to areas with the lowest risk of flooding, and states that development should not be permitted if there are 'reasonably available sites', appropriate for the proposed development, in areas with a lower risk of flooding. Similarly, Policy CS19 of the CS supports development proposals that avoid areas of current or future flood risk, and which do not increase the risk of flooding elsewhere
11. The PPG³ guides that the area to apply the sequential test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases, it may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration. Whilst the sequential test provided by the appellant includes a search area with a radius of 3 miles, which takes the search area into the nearby market town of Crowle, no local circumstances or any justification has been provided to endorse this particular search area.
12. No specific local need for housing within Ealand or a 3 mile radius of the site has been identified that would warrant limiting the search area to these locations. Whilst Policies CS1 and CS2 of the CS allow for development in the settlement boundaries of rural settlements they do not identify any specific local need for housing. Furthermore, being a rural settlement which does not have a specific growth target, the appeal proposal would contribute towards the overall housing growth of North Lincolnshire. As such, on the evidence before me, there would appear to be a logical basis for considering a greater area for the sequential test.
13. Indeed, as highlighted by the previous Inspector, I note that no factors have been presented to me that the sequential test should not be applied across the whole of North Lincolnshire. I would note in this regard that the onus is principally on an applicant to provide appropriate information in support of their proposal (section 62(3) of the Town and Country Planning Act 1990 as amended).
14. The Environment Agency has recommended a condition related to minimising vulnerability to flooding if the development were to be approved. However, as

³ Paragraph: 033 Reference ID: 7-033-20140306

they note in their consultation response and based on the PPG, it is the decision-taker's responsibility to consider if the sequential test has been satisfied, informed by evidence provided by the developer.

15. I therefore find that the proposal has failed to meet the requirements of the sequential test. As such I cannot be certain that there are no other reasonably available alternative sites for the proposed development at locations where the risk is less. Given these findings, it is not necessary to consider the exception test.
16. With regard to drainage, the Council has highlighted local knowledge of drainage issues where drains have backed up and properties have experienced flooding from foul sewerage. They state improvements to drainage may be required to accommodate additional dwellings. I have also been provided with similar concerns from the occupiers of neighbouring properties.
17. The appellant has provided a drainage strategy with a reasonable level of detail that includes sustainable urban drainage systems in the form of filter drains and water tanks, a culvert, ditch improvements to the drainage ditches to the west of the site and a new connecting drain to these improved ditches. I note that reinforces the vulnerability of the site to flooding by stating that: 'shallow ground water was encountered at less than 1m below ground level. Subsequently infiltration drainage is not considered a practical solution'. With regard to foul drainage, by raising the ground levels at the site it states that the whole development can drain to the existing foul sewer within Main Street via gravity. A plan is provided which shows a storage tank within the garden of Plot 1.
18. I have had regard to the suggested conditions referred to by the Lead Local Flood Authority. Were the scheme otherwise acceptable a detailed drainage scheme, which makes appropriate provision on site for surface and foul water drainage associated with the impacts of scheme, could be secured. However, that would not, in itself, reduce flooding vulnerability (I note the drainage strategy states that it is designed to address flows 'generated by the development of the site').
19. Nevertheless, I have found that the proposal is not acceptable having regard to the provisions relating to risk of flooding. It does not accord with Policy CS19 of the CS which seeks, amongst other things, to ensure new development avoids areas of current or future flood risk and does not increase the risk of flooding elsewhere, nor the advice in the Framework.

Other Matters

20. Both parties agree that the Council cannot demonstrate a deliverable 5 year housing land supply and as such the presumption in favour of sustainable development should apply. However, I have had regard to footnote 7 to paragraph 11 d) i. which sets out policies in the Framework which provide a clear reason for refusing the development proposed and includes areas at risk of flooding. As such, the presumption in favour of sustainable development does not apply in this instance.

Conclusion

21. For the reasons given above, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR