
Appeal Decision

Hearing Held on 16 March 2022

Site visit made on 16 March 2022

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2022

Appeal Ref: APP/D0515/W/21/3270781

Land north of the former Rectory, Whittlesey Road, Benwick

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Jon Green and Mr Denis Rimmer, Ely Diocesan Board of Finance and Chorus HA against the decision of Fenland District Council.
 - The application Ref F/YR20/0760/PIP, dated 14 August 2020, was refused by notice dated 8 October 2020.
 - The development proposed is permission in principle for up to 3 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. As such, I have regarded all detailed elements of the submitted drawings as indicative only.
4. Directly linked to those 'in principle' parameters outlined for assessment, there are also more specific matters in dispute, which require regard to the provisions of the development plan and other material considerations. I have therefore reflected this in my reasoning and the subsequent subheadings used below.
5. A signed and dated legal agreement by way of Unilateral Undertaking (UU), under Section 106 of the Town and Country Planning Act 1990, has been provided as part of the appeal. It includes obligations relating to the provision of affordable housing at the appeal site were planning permission to be granted at technical details consent stage. A deed of variation to this UU was submitted

¹ PPG Paragraph: 012 Reference ID: 58-012-20180615

following the Hearing. The Council has had the opportunity to provide comments on this matter. I shall return to this later in my decision.

6. The Government published a revised National Planning Policy Framework (the Framework) in July 2021. The main parties had the opportunity to address this matter in their appeal submissions. All references to the Framework in this decision relate to the updated document.

Main Issue

7. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development.

Reasons

Location – spatial strategy and character and appearance

8. In order to further sustainability objectives and in the interests of protecting the countryside, Fenland Local Plan 2014 (LP), under Policy LP3 sets out the spatial strategy for the district. Among other matters, development proposals are to be assessed in accordance with the identified settlement hierarchy, which has 'market towns' at the top. Benwick is designated as a 'small village' in the fourth tier, where development will be considered on its merits but will normally be of a very limited nature and will be limited in scale to residential infilling.
9. Notwithstanding that the appeal proposal would not amount to residential infilling, which is defined in the glossary of the LP as development of a site between existing buildings, there is, nevertheless, dispute between the parties whether or not the appeal site is situated within the village of Benwick. The LP does not rely on defined settlement boundaries but rather requires a physical assessment to be made to determine whether or not a site is within a village for the purposes of Policy LP12. A footnote to this policy confirms that the developed footprint of a village is defined as the continuous built form of the settlement and excludes, among other things, gardens and other undeveloped land within the curtilage of buildings on the edge of the settlement where the land relates more to the surrounding countryside than the built-up area of the settlement.
10. This results in a situation where a site could be considered in general terms to be part of the village but not be in the village for the purposes of the spatial strategy. I consider this to be the case with the appeal site. Irrespective of the historic beginnings of the village, it is apparent on the ground that the village, as it now exists, lies on the opposite side of the river to the appeal site.
11. The appeal site has the appearance of an overgrown paddock, bound in part by post and rail fencing and hedgerow and is separated from the former Rectory, now a dwelling, by close boarded fencing and a mature tree line. The site is largely flat and sits below the level of the road (the B1093). The pattern of development in the vicinity of the site is of a dispersed nature, where some dwellings front the river to the southwest, accessed via driveways from the B1093. They are not obvious in the street scene and are separated from the appeal site by a burial ground and a parcel of land, formerly allotments.

12. To the opposite side of the B1093 a grass verge and mature hedgerow bounds agricultural land which extends to the northeast and northwest. Agricultural style buildings are present opposite the site alongside the river and further to the northwest. The area consequently has a spacious, rural edge of settlement character and appearance, to which the undeveloped nature of the appeal site makes a positive contribution.
13. Crossing the river from the appeal site marks the commencement of a far tighter and more concentrated pattern of development, where modern dwellings are arranged in cul-de-sac formation alongside the B1093 until it joins Doddington Road. Here, mixed residential properties follow a more linear pattern in both directions. However, a greater concentration of built form and what appears to be the core of the village, is found to the southern side of the western end of Doddington Road, both alongside and off the High Street and Lilyholt Road. There is, therefore, a marked difference in character from one side of the river to the other.
14. Consequently, and notwithstanding references by the Council to nearby sites being in the village, including development at Nene Parade and an extension to the burial ground, I consider that the appeal site corresponds more to the countryside to the north and west of the river than to the continuous built form of the settlement across the river and is therefore not within the village for the purposes of the spatial strategy.
15. I do not accept that this amounts to inconsistency in decision making as the circumstances of the permissions to which I have been referred are not directly comparable to the appeal proposal. The Nene Parade site was considered as previously developed land and was determined under policies of an earlier Local Plan. The burial ground permission was for an extension to an existing burial ground, not residential development, and the Ramsey Road site, although not infill, was considered to have greater connectivity to the residential land beside it than to the countryside, a view with which I concur having seen this development, and it was also considered to be previously developed land with extant commercial use. I therefore find these permissions to be of limited relevance in this case.
16. The site is therefore within an 'elsewhere' location for the purposes of Policy LP3. In 'elsewhere' locations development is limited to that which is demonstrably essential, where Policy LP12 sets out the circumstances in which new dwellings in the countryside or 'elsewhere' will be permitted. The appeal scheme is not for any types of development supported and is therefore in direct conflict with LP Policies LP3 and LP12.
17. Although development at the site would not be isolated, the provision of between one and three dwellings would alter its character and appearance. In addition to a new dwelling, or dwellings, the formation of a formal access and the provision of driveways, gardens, boundary treatments and domestic paraphernalia associated with residential occupation would be inconsistent with the prevailing loose and spacious pattern of development. It would have a urbanising effect on the rural landscape which would be visually harmful. The consideration of a technical details consent application at a later point where specific designs could be considered would not overcome my concerns.
18. I conclude, having regard to the spatial strategy and the effect of the proposal on the character and appearance of the area, that the appeal site does not

represent a suitable location for the proposed development. Thus, the proposal would conflict with LP Policies LP3 and LP12.

Location - flood risk

19. The Framework sets out a sequential, risk-based approach to the location of development. The Planning Practice Guidance (PPG) indicates that the aim of this approach is to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) where possible. The appeal site lies within Flood Zone 3 according to the Environment Agency's (EA) flood risk mapping. Land within this zone has a high probability of flooding.
20. Consistent with the Framework, LP Policy LP14 sets out that development in areas known to be at risk from any form of flooding will only be permitted following, in the first instance, the successful completion of a sequential test, having regard to actual and residual flood risks.
21. The aim of the sequential test is to steer new development to Flood Zone 1. Where there are no reasonably available sites in Flood Zone 1, such sites in Flood Zone 2 should be considered. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
22. The Framework 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. The PPG states that the area to which the test should be applied will be defined by local circumstances relating to the catchment area for the type of development. Thus, neither specifies the area of search for alternative sites which should be used.
23. The appellants undertook a flood risk assessment (FRA) which includes the application of the sequential test. The area of search applied is the village, the vast majority of which is situated within Flood Zone 3. The FRA sets out that it is necessary for applicants to follow the process set out in the Cambridgeshire Flood and Water Supplementary Planning Document 2016 (SPD) to be able to satisfy the requirements of the sequential test and if necessary, the exceptions test. The FRA also acknowledges that 'Stage A' requires applicants to agree with the Council the geographical area over which the test should apply. The SPD is clear that this should happen before undertaking the search and that a justification should be provided at the start of the report.
24. However, the FRA indicates that no specific agreement was reached with the Council before undertaking the search. Instead, it refers to the Council having agreed, when considering other unrelated planning applications, that the search area for development proposals within a 'small village' should be the settlement itself. Whilst this point itself is not contested, the FRA presupposes that the appeal site is located within a 'small village' and concludes, under 'Stage A', that because the level of development proposed under this appeal is similar to one of the permissions to which it refers, that it is reasonable to consider that the search area for the appeal proposal should be the village of Benwick.
25. This approach is fundamentally flawed given the acknowledged requirements of the SPD and because the SPD states that the search area is usually over the entire local planning authority (LPA) area and may only be reduced in

discussion with the LPA because of the functional requirements and objectives of the proposed development (e.g. catchment area for a school, community facilities, a shop, a public house, appropriate land use areas and regeneration zones etc.) and because there is an identified local need for that type of development.

26. It is also clear, from an earlier refused application at the appeal site, that the Council do not consider the site to be within the village and had previously advised the appellants that, because of this, the appropriate geographical area for application of the sequential test was the whole of the district. It therefore appears reasonable to me that this information should have been considered, discussed with the Council and any departure from it justified, when carrying out the FRA and its sequential test.
27. Consequently, the area of search for alternative sites used is too narrow and it has not been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Thus, the proposal fails the sequential test. As this is the case, it is unnecessary for me to proceed to consider whether the exception test is met.
28. The appellants have referred me to planning permissions granted in the vicinity of the appeal site for an extension to the burial ground and residential development at Nene Parade by way of support for their application of the sequential test. As set out earlier in my decision, I do not consider these permissions to be directly comparable to the appeal proposal in the determination of whether or not the site is situated within the village. It follows that these examples do not alter my findings in relation to the sequential test, which for the burial ground permission was not, in any case, required.
29. I conclude that the appeal site would not be a suitable location for the proposed development with regard to flood risk. It would be contrary to LP Policy LP14, the SPD and the Framework, which seek amongst other matters, to direct development to areas of lowest flood risk.
30. Overall, I therefore find that the site is not suitable for residential development, having regard to its location, the proposed land use and the amount of development.

Other Matters

31. I acknowledge that a degree of flexibility is provided within LP Policy LP3 by the inclusion of the word 'normally' in relation to development being 'limited in scale to residential infilling'. However, given my finding that the appeal site is not within the village, I do not consider this matter provides support to the appeal proposal.
32. The former Rectory has been identified by the Council as a non-designated heritage asset (NDHA). Paragraph 203 of the Framework requires that the effect of an application on the significance of a NDHA should be taken into account in determining an application. In this case, the effect on the NDHA is difficult to assess at this stage. However, this is a matter that would fall to be considered fully at technical details stage and is not, given my findings on the main issues, determinative in this appeal.
33. I have been directed to other decisions of the Council where it has referred to Benwick as being 'identified for growth', being a 'growth village location' and

that the development proposed in those cases would support the 'growth of Benwick'. The evidence also refers to the growth threshold for Benwick being 42 dwellings of which 24 have been committed, such that there remains a requirement for growth. Although this evidence appears to conflict with the designation of Benwick as a 'small village' rather than as a 'growth' or 'limited growth' village, which are higher order locations in the settlement hierarchy, I do not consider it provides support to the appeal proposal because any capacity for growth, such as it may be, is required by the LP to be within the village.

34. It is undisputed that the provision of affordable housing is one of the key aims of the LP and that the Council is considerably behind on its delivery. I acknowledge the appellants' intention to provide two affordable homes at the site, with a stated preference for these to be First Homes, and how this would contribute to the work of the 'Commission of the Archbishops of Canterbury and York on Housing Church and Community' as set out in its report 'Coming Home – Tackling the Housing Crisis Together'. In this regard the appellants have provided a UU as referred to earlier. However, the PPG is clear that planning obligations cannot be secured at permission in principle stage. Nevertheless, I give consideration to the potential benefits of affordable housing below.

Planning Balance

35. The proposal would conflict with LP Policies LP3 and LP12, undermining the Council's plan led approach, contrary to Paragraph 15 of the Framework. There would be harm to the character and appearance of the area. The appeal site is in an area at risk of flooding and the sequential test has not been satisfied contrary to LP Policy LP14. Consequently, there is conflict with the development plan when read as a whole.
36. Both parties have suggested that Policy LP3 is somewhat superseded by Paragraph 79 of the Framework, which states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, Policy LP3 seeks to focus housing in the most sustainable settlements. This is broadly consistent with the aims of the Framework which indicates that the purpose of the planning system is to contribute to the achievement of sustainable development. The Framework does not preclude development in rural areas, but it does indicate that great weight should be given to the benefits of using suitable sites within settlements for homes and therefore supports the general thrust of the LP in terms of location of housing. I therefore attribute significant weight to LP Policy LP3 and the proposal's conflict with it in determining this appeal.
37. The appellants contend that the Council cannot demonstrate a five year supply of deliverable housing sites and have provided a recent appeal decision² to support their argument that the Council's spatial strategy and housing requirement is out of date. That appeal decision was concerned with the provision of 175 dwellings in a different Council area and, unlike the appeal proposal before me, the Housing Delivery Test result in that case indicated that sufficient housing had not been delivered over the past three years. The circumstances of that case are not, therefore, directly comparable to the appeal proposal and it has not been determinative in this appeal.

² APP/V0510/W/21/3282449

38. Furthermore, in accordance with Paragraph 11 d) i) of the Framework, the application of policies of the Framework that protect areas or assets of particular importance, which includes areas at risk of flooding, provide a clear reason for refusing permission. Accordingly, even if I were to conclude that there is a shortfall in the five year supply of deliverable housing sites on the scale suggested by the appellants, the presumption in favour of sustainable development or the so called 'tilted balance' is not engaged in this case.
39. The proposal would result in economic and social benefits including through additional spend in the locality and by the provision of additional housing choice. There would be the potential for provision of one or two affordable houses (subject to being secured at technical details consent stage). These benefits, although important, would be modest, limited by the scale of the development proposed. Moreover, I am mindful that until technical details consent is granted to achieve a planning permission, any permission in principle, for any number of houses, is incapable of meaningfully contributing to the five year deliverable housing land supply position.
40. Overall, the modest weight that I can afford to the benefits associated with the proposed development do not outweigh the harm that I have identified and the resultant conflict with the development plan. The proposal would conflict with the development plan and there are no other considerations, including the Framework, of sufficient weight to indicate that permission in principle should be granted.

Conclusion

41. For the reasons given above the appeal is dismissed.

S Tudhope

Inspector

APPEARANCES

FOR THE APPELLANTS:

Dr Robert Wickham, Agent

Mr David Buttery

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Rowen, Fenland District Council

Mr Gareth Martin, Fenland District Council

DOCUMENTS SUBMITTED AT THE HEARING:

1. Unilateral undertaking dated 11 March 2022
2. Appellants' Closing Notes