



Appeal Decision

Site visit made on 5 April 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2022

Appeal Ref: APP/A2335/W/21/3289013

Land at the rear of cottages, Long Level, Cowan Bridge LA6 2HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Matthew Howson of Howsons Limited against the decision of Lancaster City Council.
 - The application Ref 21/00569/VCN, dated 5 May 2021, was refused by notice dated 20 September 2021.
 - The application sought planning permission for the erection of 2 dwellings with associated access without complying with a condition attached to planning permission Ref 18/01591/FUL, dated 26 April 2019.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: KL2794 02 B – Proposed site plan; KL2794 03 D – Proposed elevations and floor plans; KL2794 04 E – Proposed block plan; KL2794 05 – Location plan, or any amended plans subsequently approved in writing by the Local Planning Authority.
 - The reason given for the condition is: For the avoidance of doubt and to ensure a satisfactory standard of development.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 dwellings with associated access at land at the rear of cottages, Long Level, Cowan Bridge LA6 2HS in accordance with the application Ref 21/00569/VCN made on the 5 May 2021 without complying with condition No 2 set out in planning permission Ref 18/01591/FUL granted on 26 April 2019 by Lancaster City Council, but otherwise subject to the conditions in the attached schedule.

Preliminary Matters

2. Based on the submitted information and what I observed, construction of the dwellings and associated areas is at a very advanced stage. The addition to plot 2, which is the main element of this appeal scheme, has not been constructed.

Background and Main Issue

3. The appeal site is located approximately 40m to the south east of Leck Beck. Environment Agency flood mapping information identifies land adjacent to Leck Beck as a flood risk area. Part of the site is within the flood risk area. The original planning permission was granted following amendments to the scheme so that all of the built development would be located outside of the identified flood risk area. These amendments included the removal of a single storey garage to plot 2.

4. The appellant now wishes to amend the approved plans. The main changes relate to plot 2. In addition to some internal changes, the proposal includes an addition to the dwelling through the provision of an integrated garage with a bedroom above. This addition would bring the development into the flood risk area.
5. Taking the above background into account, the main issue is the effect that varying the condition would have on the appropriateness of the site for the development with reference to its vulnerability to flooding.

Reasons

6. Policy DM33 of the Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD adopted 2020 (the DMDPD) directs development to areas at the lowest probability of flooding following a sequential risk based approach. It also provides for the exception test, where applicable. The Council's Planning Advisory Note 6 advises that where 'hard' development is proposed to be located within flood zones 2 or 3, then the normal approach is that the whole site would be subject to the sequential test.
7. Section 14 of the National Planning Policy Framework (the Framework) advises that a sequential, risk-based approach is taken to avoid, where possible, flood risk to people and property. This should be done by applying the sequential test and then, if necessary, the exception test. Paragraph 162 of the Framework sets out that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the development in areas at a lower risk of flooding.
8. The appellant submitted a sequential test¹ and a flood risk memorandum (FRM)² with the application. The sequential test considered an alternative location within the site for the proposed addition to plot 2. The Council's position is that the sequential test should have assessed alternative sites at less risk of flooding within the entire district capable of accommodating the larger development that comprises the appeal scheme. It is not suggested by either party that it would not be possible to identify sites for two dwellings of the size now proposed in locations at lower risk of flooding.
9. The Environment Agency did not object to the proposal. However, this advice does not appear to consider the issue of alternative sites at lower risk of flooding. Besides, the Planning Practice Guidance (the PPG) advises that it is for the local planning authority, taking advice from the Environment Agency as appropriate, to consider the extent to which sequential test considerations have been satisfied.
10. I appreciate why the appellant considered only the site when undertaking the sequential test given the stage that the construction of the dwellings has reached. From what I observed, the two dwellings are at an advanced stage of construction, with roofs in place, windows and doors fitted and external areas laid out. I also appreciate that, once the dwellings are occupied, an application could be made for the same addition without the need for a sequential test. However, although the proposal is for a variation to the design of an approved scheme, the effect of the section 73 application, were I minded to allow the

¹ Sequential test, reference CNG/614/LL, 27 April 2021, Garner Planning

² Flood Risk Memorandum report, reference L9766/2020/01, 03/11/2020, Thomas Consulting

appeal, would be to create a new permission for two dwellings rather than a two storey extension. The two dwellings, as now proposed, would be subject to a sequential test with the requirement to consider potentially suitable alternative sites in the whole of the district.

11. Based on the information within the sequential test, I am unable to conclude that there are no other reasonably available sites appropriate for the proposal in areas with a lower risk of flooding. Nor can I therefore conclude that the proposal would accord with the requirements of Policy DM33 of the DMDPD and section 14 of the Framework, which seek to avoid flood risk by directing development away from areas at risk of flooding. This weighs against allowing the proposal.
12. The FRM identified that the Flood Risk Assessment submitted with the original application³ modelled the beck using the Environment Agency national generalised modelling product. Although flow and level data were not available, an estimate of flood levels was determined by overlaying flood extents on a topographical survey. The Flood Risk Assessment determined that a highly conservative design flood level, including a climate change allowance, would be 83.2m AOD, which equates to the ground level of the flood zone 2 extent.
13. The proposed site plan for the appeal scheme identifies the flood zone based on the Environment Agency Flood Map and the flood level of 83.2m AOD. This shows that the dwellings as approved do not lie within the flood zone based on the Environment Agency Flood Map. However, the proposed addition to the approved dwelling would fall within the flood zone. Nonetheless, the majority of the footprint of the dwellings, as approved, would be located within the flood level of 83.2m AOD, and this would include part of the proposed addition.
14. Based on the submitted information, which includes a more detailed site-specific consideration of flood risk, the dwellings as approved appear to be in a flood zone 2 extent. The proposed addition would slightly increase the extent of built development in this area, although would not include living accommodation at ground floor level.
15. Under the heading of '*who is responsible for deciding whether an application passes the Sequential Test*', the PPG advises that ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere. Paragraph 159 of the Framework states that where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The Environment Agency is satisfied that the development would be safe without exacerbating flood risk elsewhere if the proposed flood risk measures set out within the Flood Risk Assessment are implemented. These measures could be secured by condition and include having finished floor levels 600mm above the flood level.
16. In conclusion, the proposal does not pass the sequential test. On this basis, I cannot therefore go on to consider the proposal against the exception test as it may be possible to locate the dwellings in areas with a lower risk of flooding. However, the failure to pass the sequential test has to be considered in the context that the dwellings on the site are under construction already, including the dwelling at plot 2 which on my site visit appeared to be watertight. Had the

³ Application reference 18/01591/FUL

development at plot 2 been substantially completed and occupied then in essence the appeal addition would have been a householder proposal and, in accordance with paragraph 168 of the Framework, there would not have been a requirement for such development to be subject to the sequential test. In this case, I do not therefore afford significant weight to the fact that the sequential test is not passed.

17. In addition to the above, the findings of the site-specific assessment of flood risk are material considerations of sufficient weight to indicate that the appeal should be determined otherwise than in accordance with the development plan. The development would be made safe for its lifetime without increasing flood risk elsewhere, in accordance with paragraph 159 of the Framework. In this regard and given the stage at which the approved dwellings are constructed on the site, I conclude that these are material considerations of sufficient weight to outweigh the technical sequential and exception test conflict with parts of the development plan and the Framework.

Conditions

18. The PPG makes clear that decision notices for the grant of permission under Section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
19. Based on the submitted information and my own observations, the original development has been started. In this case, as the operative part of the permission would be the same, I do not need to re-impose the time limit condition.
20. The original permission, reference 18/01591/FUL, was granted subject to a number of conditions which require the submission of further details for approval, including prior to the commencement of development. The submitted information identifies that a number of these have not been discharged. Accordingly, I shall impose all those conditions that remain relevant, with amended wording as required to reflect that the development has commenced.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 19.22 – 16 Rev B - Proposed site plan; 19.22 - 15 – Plots 1 and 2 Floor Plans and Elevations; KL2794 05 - Location Plan.
- 2) No further development or occupation of the dwellings shall commence until a foul water drainage scheme and surface water drainage scheme (based on the hierarchy of drainage options in the National Planning Practice Guidance and evidence of an assessment of site conditions), including how these shall be maintained and managed after completion, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and be operational prior to the first occupation of the development, and shall be maintained and managed in accordance with the approved details at all times thereafter.
- 3) The development hereby permitted shall be carried out in accordance with the mitigation measures set out in section 6 of the Ecological Appraisal, carried out by Envirotech dated 28 August 2015.
- 4) The development hereby permitted shall be carried out in accordance with the following flood mitigation measures set out within the Flood Risk Assessment, reference KL2794/SA/ACP A:
 - Finished floor levels to be set at 83.80 metres AOD; and
 - Ground levels within flood zone 3 shall not be raised.

These measures shall be retained at all times thereafter.

- 5) No further development or occupation of the dwellings shall commence until the following details have been submitted to and approved in writing by the Local Planning Authority:
 - Details and sample of stone, including coursing and jointing, with a sample panel to be erected on site prior to the commencement of any stonework;
 - Details of render;
 - Details and sample of new heads, cills and any quoins;
 - Details and sample of slate;
 - Details of all external windows and doors including the design, material, and finish of the window frames and doors and the amount by which they will be recessed from the face of the outer wall;
 - Details of roof lights;
 - Details of rainwater goods;
 - Ridge, verge and eaves details;
 - Details of porch canopy;
 - Details of boundary treatments;
 - Details of all external surfacing materials;
 - Details of external lighting (with particular consideration to impacts on bats).

The development shall be carried out in accordance with the approved details and be retained as such at all times thereafter.

- 6) No further development or occupation of the dwellings shall commence until details of the soft landscaping of the site (including wherever possible the retention of existing trees and hedges) and its maintenance regime have been submitted to, and approved in writing by, the Local Planning Authority. The

approved scheme shall be implemented in the first planting season following completion of the development, or following first occupation/use, whichever is the earlier, and maintained at all times thereafter in accordance with the approved maintenance regime.

- 7) Prior to the first occupation of the dwellings hereby permitted, the following noise mitigation measures shall be implemented:
- Glazing construction of 12mm/16mm cavity/8.4mm acoustic laminate to be provided in bedrooms with acoustically attenuated ventilation systems/unit.
 - Glazing construction of 10mm/12mm/6mm glass to be provided in living spaces with acoustically attenuated ventilation systems/unit.
 - A close boarded acoustic fence, at least 1.8m high (or other appropriate approved boundary treatment), to be provided to the South Easterly boundary of plot 1, the precise details of which shall be approved through condition 6.

These measures shall be retained in accordance with the approved details at all times thereafter.

- 8) Prior to the first occupation of the dwellings hereby permitted, a 1.5 metre high stone boundary wall shall be erected to the west of the access road and to the rear of the gardens of the existing cottages to the north, in the location indicated on plan 19.22 – 16 Rev B. These shall be retained as such at all times thereafter.
- 9) Prior to the first occupation of the dwellings hereby permitted, the parking and turning areas shall be fully implemented, in accordance with the approved plans, and shall be retained as such at all times thereafter.
- 10) Notwithstanding the provisions of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extension or enlargement of the buildings, or the erection of any building or enclosure shall be carried out.