



Appeal Decision

Site visit made on 9 June 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2022

Appeal Ref: APP/Y2003/W/22/3293028

Land to Rear of 26 to 52 Chesswick Crescent, Keadby, North Lincolnshire

- 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 Liam Dexter against the decision of North Lincolnshire Council.
 - The application Ref PA/2021/479, dated 19 January 2021, was refused by notice dated 18 November 2021.
 - The development proposed is described as: 'Outline Planning Application with all matters reserved for Residential Development'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst the description of development in the banner heading does not specify a number of dwellings, it is clear from section 7 of the application form and the design and access statement that five houses are proposed.
3. The application is in outline form with all matters reserved for future consideration. I have dealt with the appeal on this basis, and I have treated the submitted plans as being illustrative only.
4. A similar application¹ to develop a greater portion of the land forming the appeal site and construct 15 dwellings was refused by the Council in 2019 and dismissed at Appeal² on the grounds of flood risk and highway safety.

Main Issues

5. The main issues are:
 - whether the proposed development would represent a suitable location for housing having regard to the development plan policies;
 - whether the proposal represents an acceptable form of development having regard to flood risk;
 - the effect of the proposed development on highway safety;
 - the effect of the proposed development on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance; and

¹ PA/2018/1307

² Appeal Ref: APP/Y2003/W/19/3229858

- the effect of the proposed development on the character and appearance of the area.

Reasons

Location

6. Policies CS1, CS2 and CS3 of the North Lincolnshire Core Strategy (2011) (NLCS) set out a sequential approach to development, focused on the main urban areas and the defined development limits of rural settlements with an emphasis on previously developed land. Policy CS3 sets out development limits, and states that development outside these defined boundaries will be restricted to that which is essential to the functioning of the countryside. The site lies outside of the defined development limits for Keadby and so it falls within the countryside. That the site abuts the limit has a minimal bearing under these policies.
7. Policies CS2 and CS3, along with Policy CS8 of the NLCS and saved Policy RD2 of the North Lincolnshire Local Plan (2003) (NLLP) generally resist development outside of development limits. Development outside these areas is limited to agriculture, forestry or a specific need associated with the countryside. The development of market housing does not accord with any of the types of development permitted under these policies.
8. I therefore conclude that the proposal would represent a clear conflict with the development plan and would not be in a suitable location for housing having regard to development plan policy. As such, in this regard, it would conflict with Policies CS1, CS2, CS3 and CS8 of the NLCS and saved Policy RD2 of the NLLP insofar as they relate to directing new housing development to locations within the development limits of existing settlements.

Flood Risk

9. The appeal site is identified in the Environment Agency Flood Maps as being within Flood Zone 3a. The Planning Practice Guidance (PPG) defines that zone as having a 'high probability' of flooding, second only in terms of potential vulnerability to the functional floodplain. In the Strategic Flood Risk Assessment (SFRA), the site lies within a combined Flood Zone 2/3a.
10. As such, in accordance with the PPG, a sequential test needs to be applied in order to justify 'more vulnerable development' including residential development. Paragraph 159 of the National Planning Policy Framework (the Framework) 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 NLCS supports development proposals that avoid areas of current or future flood risk, and which do not increase the risk of flooding elsewhere. The application was accompanied by a Flood Risk Assessment (FRA) which incorporated the results of the sequential test carried out on behalf of the appellant.

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 appellant's statement argues that the sequential test should only be considered against other sites within the settlement of Keadby, no local circumstances or any justification has been provided to endorse this particular search area.
12. No specific local need for housing within Keadby has been identified that would warrant limiting the search area to solely within this settlement. Whilst Policies CS1 and CS2 of the NLCS allow for development within the development limits of rural settlements they do not identify any specific local need for housing. As such, on the evidence before me, there would appear to be a logical basis for considering a greater area than the settlement of Keadby for the purposes of the sequential test. Indeed, no factors have been presented to me that the sequential test should not be applied across the whole of North Lincolnshire.
13. Notwithstanding the appellant's statement, the appellant's sequential test identifies 31 sites across North Lincolnshire, which are either within or outside the development boundary of several settlements. The Council argue that a number of these sites are comparable in size to the application site, are available and are at lower risk of flooding.
14. The appeal site measures 0.38 Ha. One of the two sites identified in Goxhill (Site 23) and a site in Crowle (Site 11) occupy 0.40 Ha. Both are mainly within SFRA Zone 1. To my mind these sites are therefore comparable in scale to the appeal site and certainly sequentially preferable in terms of flood risk. As such, from the information before me, it appears that there are other reasonably available alternative sites for the proposed development in locations where the risk is less. Given these findings, it is not necessary to consider the exception test.
15. I therefore conclude 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 NLCS, Policy DS16 of the NLLP and the provisions of the Framework which seek, amongst other things, to ensure new development avoids areas of current or future flood risk and does not increase the risk of flooding elsewhere.

Highway Safety

16. The appeal site would utilise the existing access immediately to the south of the row of properties that lie adjacent to the appeal site. The access passes between the end properties of two terrace blocks and forms a junction with the road along Chesswick Crescent. From my impressions on site this access is unlikely to be wide enough to allow two cars to pass comfortably.
17. The access is already in use by vehicles to access the rear of the properties that back onto the appeal site. Many of these properties have garages and I saw vehicles parked within the rear curtilage of several of these properties. The

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

access also serves the sewage works which is accessed through a bridge beneath the railway.

18. Given that the application is in outline form with all matters reserved including access, there is limited evidence with regard to the form that any proposed access would take and how the existing access would be improved. I am also mindful of the comments of the previous Inspector at appeal, who could not conclude that an acceptable access could be achieved. However, the proposal before me relates to a much smaller development of five dwellings rather than fifteen. Taking into account the frequency of use of the existing access, whilst it may not be suitable for fifteen dwellings, I am of the view that a safe and suitable access could be achieved for a development of five dwellings. In coming to this conclusion, I have had regard to the comments of the Highway Authority which suggest that an acceptable access could be achieved through the imposition of planning conditions.
19. The Council has raised concerns regarding the piecemeal development of the appeal site, and additional applications in the future which could represent the intensification of a sub-standard access. However, I am mindful of the provisions of Framework paragraph 110. b) which sets out that new development should ensure safe and suitable access for all users, and paragraph 111 which sets out that development should be refused if there would be an unacceptable impact on highway safety. Furthermore, I would note that all applications should be assessed on their own merits.
20. For the above reasons, I conclude that the proposal would not have an unacceptable effect on highway safety and as such would comply with Framework paragraphs 110 and 111, described above.

Living Conditions

21. The access is already in use by vehicles accessing multiple residential properties as well as those associated with the maintenance of the land and those accessing the sewage works. Therefore, the residential properties adjacent to the appeal site, including those either side of the access will already be subject to a degree of noise and disturbance from vehicles using the access. Whilst the proposal would represent an intensification of the access, to my mind, the noise associated with vehicles accessing five dwellings would not represent a significant increase in noise and disturbance to the extent that it would adversely affect living conditions of the occupiers of existing dwellings.
22. I have considered the Council's argument with regard to piecemeal development above and the potential for a future increase in the number of vehicles associated with a larger number of dwellings. However, as above, I would note that each application should be assessed on its own merits.
23. I therefore conclude that the proposal would not result in harm to the living conditions of the occupiers of neighbouring properties. The proposal would therefore comply with Policies H5 and H7 of the NLLP which together seek to preserve living conditions including from noise and disturbance arising from the movement of vehicles to and from the proposed development.

Character and Appearance

24. The appeal site is located to the rear of a row of terraced housing that lies on the edge of a residential area. The immediate area comprises of mainly blocks of two storey terraced housing of modest scale and height.
25. The appeal site comprises of the northern part of a roughly triangular shaped parcel of land lying between a railway line embankment and an access track running close to the rear of residential properties. The site is predominantly open scrubland containing a number of small trees and shrubs. The embankment and the aforementioned vegetation results in the appeal site being largely screened in views from the wider countryside.
26. The introduction of residential development would undoubtedly alter the character of the existing open scrubland, however, given the proximity of other dwellings and the site's secluded nature, in my view the proposal would be unlikely to represent a significantly harmful intrusion into the open countryside. In this regard, I consider that, in principle, whilst being mindful of the flood risk mitigation requirements, that development could be provided to a suitable scale, design and layout and accommodated on the appeal site without causing material harm to the character and appearance of the area. The proposal would comply with saved Policy H5 of the NLLP in this respect, which seeks, amongst other things, to ensure new housing development is in keeping with the scale and character of the settlement.

Other Matters

27. The processing of the application and the time taken to determination relates to the practical administration of the application rather than to the acceptability of the scheme. Whilst I have had regard to the appellant's concerns on this matter, I have nonetheless determined the appeal scheme with regard to its planning merits.

Planning Balance and Conclusion

28. The proposal would increase housing supply, including through the provision of affordable housing which would be a benefit. The proposal would also potentially reduce the instances of fly-tipping on the land, at least in the area of the appeal site. There would also be community benefits through the support of local services and facilities. Economic benefits would also arise during construction and through the spend of the future occupiers at local shops. Nonetheless, even when taken together, these benefits are relatively minor.
29. At the time the Council made its decision, it could not demonstrate a 5 year supply of deliverable sites in accordance with the Framework (5YHLS). The Council has subsequently published its Five Year Housing Land Supply Statement August 2021 which sets out that it can demonstrate a 5.64 year supply. This has not been disputed.
30. Nevertheless, even if that supply were not in existence, I would note the provisions of Paragraph 11 d) of the Framework. This sets out that where the policies in the development plan are out of date, including where the Council cannot demonstrate a 5YHLS, that permission should be granted unless the application of policies in the Framework that protect assets or areas of particular importance provide a clear reason for refusing the development. Footnote 7 indicates that land at risk of flooding is one such area.

31. As such, having regard to my conclusions in relation to flood risk above, there would be a clear reason for refusing the application in any event, and the presumption in favour of sustainable development would not apply even if the policies in the development plan were out of date.
32. In coming to my conclusion, whilst I have found the proposal acceptable in relation to living conditions, character and appearance and highway safety, the proposal is not acceptable having regard to the provisions relating to flood risk and it would not be in a suitable location for housing having regard to development plan policy. These matters are decisive and would not be outweighed by the comparatively minor benefits. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Paul Martinson

INSPECTOR