



Appeal Decision

Site visit made on 15 September 2022

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2022

Appeal Ref: APP/E2530/W/22/3292848

74 The Royal Oak, Main Road, Long Bennington NG23 5DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ian Newman of REL 2 Ltd and Hawthorn Leisure Limited against the decision of South Kesteven District Council.
 - The application Ref S21/1990, dated 5 October 2021, was refused by notice dated 9 December 2021.
 - The development proposed is erection of 6 no. dwellings at land east of The Royal Oak.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Ian Newman against South Kesteven District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant's statement included evidence relating to a sequential test for flood risk and an updated flood risk assessment, which the Council and third parties have had the opportunity to comment on and I have had regard to the comments received.

Main Issues

4. The main issues are:
 - whether the location of the proposed development is appropriate, having regard to the spatial strategy on the location of housing and national policy;
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Location

5. Long Bennington is identified as a larger village as set out under Policy SP2 of the South Kesteven District Local Plan 2011-2036 (2020) (LP). Residential

development is supported in such villages where the development proposals 'will not compromise the settlement's nature and character'. Two further policies follow from this settlement hierarchy. Policy SP3 of LP supports infill development, while Policy SP4 supports proposals for residential development on the edge of a settlement. Both policies then set out a series of criteria which need to be satisfied for a proposal to be considered policy compliant.

6. I have had regard to the appellant's case that the site is previously developed land. Whilst the front part of the site is developed, comprising the buildings and hard surfacing, from my observations the rear part of the site cannot be considered as previously developed land as it is unkept grassland and its appearance disconnected from any existing dwellings or buildings nearby. Even if I was to accept that the remainder of the site had been previously developed it is clear that it has now blended into the landscape and would not constitute previously developed land under the definition found in the National Planning Policy Framework (the Framework). The site is therefore mixed in this regard.
7. In assessment against Policy SP3, the LP does not define 'main built up part of the settlement'. From my observations, whilst the proposed access would be within a built up frontage on what is previously developed land, the majority of the site would fall outside of this area set further back into the site from the existing pattern of built development on Main Road on what is largely undeveloped land and would thereby extend the built pattern of development contrary to criteria a., b. and d of Policy SP3.
8. As the reasons above suggest, I consider that the development would be on the edge of the settlement for the purposes of LP Policy SP4. Policy SP4 allows for development on the edge of settlements, subject to criteria a-f being met. The wording of which is definitive, each test 'must' be met.
9. The Council's case, while accepting the appeal proposal accords with a number of the criteria of Policy SP4 is that the development ultimately fails as it is not compliant with criteria a. and e.
10. In relation to criteria a. the Council provides advice on what might be a proportionate consultation exercise, to seek the views of the local community. I have been provided with limited details on what information was provided as part of this exercise. Nevertheless, the Council officer report does not make reference to any expressions of support from individuals for the proposal nor does the appellant's statement provide any letters of support. From the evidence before me, there have only been objections to the appeal proposal from neighbours, other local residents and the Parish Council with no indication of wider community support. As a result, there is no evidence before me to indicate that there is substantial support for the proposal from the local community as required by criteria a. of Policy SP4.
11. In respect of criteria e. of Policy SP4, housing development, must meet a proven local need for housing and seeks to address a specific targeted need for local market housing. From the evidence before me, this had not been provided as part of the appeal scheme. Even if I was to agree with the appellant that it is not reasonable to provide a Local Housing Needs Assessment (LHNA) for a small site the proposal would still conflict with criteria a. and thereby Policy SP4 as a whole.

12. I conclude that the development proposed would not accord with the plan led strategy for the location of new dwellings set out in the LP and there are no exceptions or identified policies that would permit additional dwellings in this location. As the appeal site would not represent an appropriate location for housing, it would conflict with Policies SP3 and SP4 of the LP, Policy LB2 of the Long Bennington Neighbourhood Development Plan 2016-2026 (NP) and the Framework.

Character and Appearance

13. The appeal site comprises an irregular-shaped and elongated parcel of land to the side and rear of the Royal Oak public house located off Main Road. There is variety to the design and style of surrounding properties which are located in a loose-knit organic pattern of cul-de-sacs off the more linear pattern of properties and buildings on Main Road. The entrance area to the appeal site is occupied by single-storey outbuildings with the sides of the site located between properties on Orchard Park and Sparrow Lane before opening onto undeveloped land and trees.
14. The existing boundary of built development in Long Bennington is at one of its narrowest points behind the Royal Oak and to the eastern and south-eastern area are well-established areas of trees and open undeveloped fields leading to the River Witham. Given, the lack of built development and transition between the settlement edge and the countryside there is a verdant appearance and character to much of the appeal site.
15. Given the low-level buildings to the side of the Royal Oak views of properties on Sparrow Lane can be glimpsed from Main Road. Plots 1 and 2 would be sited close to Main Road and Sparrow Lane and would appear as part of the existing built settlement pattern subject to appropriate scale and materials which could be controlled through conditions. Whilst the Council's statement does not specify specific plots it is noted their objection relates to properties to the north-east part of the site and this would match my findings in relation to Plots 1 and 2.
16. Nonetheless, the appeal site through the introduction of the remaining plots and associated access road would extend back beyond the established built form, which would alter the visual character of the site. The existing site boundaries of trees to the east and south-east of the site would provide some screening and softening of the proposed development. However, the introduction of a number of dwellings into this location would significantly alter and erode the site's largely open and undeveloped character as a result of the scale of the development and the amount of projection into the open countryside beyond the established built form of Long Bennington.
17. Consequently, the proposed development would have a detrimental effect on the character and appearance of the surrounding area. This would be contrary to Policies SP3, SP4 and DE1 of the LP and LB1 and LB2 of the NP. These seek, among other matters, to ensure developments are of good quality design and in keeping with the character of the area. The proposal would also conflict with the provisions of paragraph 130 of the Framework, which seeks to ensure that development is sympathetic to local character.

Flood Risk

18. Policy EN5 of the LP states that, development should be located in the lowest areas of flood risk, in accordance with the South Kesteven Strategic Flood Risk Assessment. Where this is not possible the sequential approach to development will be applied. Policy EN5 also requires a Flood Risk Assessment on sites known to have experienced flooding from any flood source.
19. Environment Agency's Flood Map for Planning identifies the site as being in Flood Zone 1 having a low probability of river and sea flooding. Nonetheless, although not covering the whole site and of varying risk levels, parts of the appeal site are shown to be within the Environment Agency's Surface Water Flood Risk Map. Additionally, there is also evidence in the officer report and from the Parish Council that there have been flooding incidents in close proximity to the site in recent years.
20. Planning Practice Guidance (PPG)¹ and the Framework² aim to steer development to areas with the lowest probability of flooding through a sequential test. The aim is to steer new development to areas with the lowest risk of flooding.
21. The appeal scheme does not meet the definition for minor development in PPG to be exempt³. Additionally, whilst in Flood Zone 1 a sequential test is required as a source of flooding has been identified. Consequently, planning applications, such as the appeal proposal, are required to apply a sequential test to establish whether there are other reasonably available sites for the proposed development in areas with a lower probability of flooding.
22. PPG refers to sequential test areas being defined by local circumstances relating to the catchment area for the type of development⁴. PPG goes on to state, the planning authority will need to determine an appropriate area of search, based on the development type proposed and relevant spatial policies⁵.
23. The Council's position is that no evidence of local need has been provided and the catchment area for the proposed scheme could be considered to be the whole district. To which the Council identify settlements of equal or higher tier in the settlement hierarchy of Policy SP2 of the LP being the appropriate area of assessment.
24. There has been no convincing case that the scheme would meet an identified local need or have to be located at the appeal site. On the individual circumstances of this case and from the evidence presented, I see no reason why the sequential search should be limited to Long Bennington. Therefore, I cannot be certain that the search has considered all reasonably sequentially preferable locations and that there are no other sites elsewhere in the District that could accommodate the proposed development in areas of lesser flood risk.

¹ Paragraph: 023 Reference ID: 7-023-20220825

² Paragraph 162

³ Paragraph: 051 Reference ID: 7-051-20220825

⁴ Paragraph: 027 Reference ID: 7-027-20220825

⁵ Paragraph: 029 Reference ID: 7-029-20220825

25. The appellant as part of their evidence has provided updated reports on flood risk and drainage. The Council maintain that land as part of mitigation requirements lies outside of the ownership of the applicant the required works may not be achieved. I have not been supplied with any information on a mechanism for how this would be secured. Nevertheless, even if this had been provided, the starting point to avoid flooding is locating development away from areas at risk of flooding of any sort. Consequently, there has been no compelling evidence presented to me as to why the development could not be located elsewhere. On the basis of the information before me, the proposal does not pass the sequential test.
26. Therefore, the proposal would not comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. The proposal would be contrary to Policy EN5 of the LP and Policies LB1 and LB9 of the NP which seek, in part, to avoid increasing flood risk and apply a sequential test to development in flood risk areas. It would also fail to accord with the Framework which states that development should be steered to areas with the lowest risk of flooding and should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Other Matters

27. The development would offer potential benefits in terms of providing 6 new dwellings to the Council's housing stock. It would also have economic benefits through employment opportunities during the construction phase of the development, and spending in the local area by future occupants. I have attached some weight to these factors. However, given the modest scale of the development, the weight attributable to these matters is limited and is not sufficient to outweigh the harm that I have identified and the conflict with the policies I have referred to.
28. I acknowledge the appellant's comments in relation to 'presumption in favour' and the requirement for community support 'geared to resist development'. However, I find the development plan is up-to-date and there are no conflicts with the Framework. Accordingly, I have based my finding on the development plan as there are no material considerations that indicate otherwise.
29. The appellant has drawn my attention to decisions by the Council at 67-69 Main Road and 33 Church Street both of which are in Long Bennington. Whilst I do not have full details of these schemes, I note the example on Main Road was for 2 dwellings and is on the opposite side of the road and some distance from the appeal site. The example on Church Street is located on a different road and is not seen in connection with the appeal site. In this regard, these developments are materially different to the appeal proposal and therefore I cannot draw any direct comparison that weighs in favour of the proposal.
30. An appeal reference⁶ has been provided by the appellant. Whilst I acknowledge the findings of the Inspector in regard to Policy SP3 I have no evidence to demonstrate that the site or surroundings are comparable to this appeal. In any event, I have undertaken my own assessment and found harm for the reasons set out.

⁶ APP/E2530/W/20/3260872

31. The Design and Access Statement submitted by the appellant makes reference to application ref: S17/2110. Whilst I note Policy SP1, I have not been supplied with the other policies referenced to understand how those policies are comparable to the relevance to the scheme before me or why they would weigh in support of the appeal scheme.
32. The appellant makes reference to the emerging Design SPD. I have not been supplied with a copy. However, I note it has not been through consultation and have therefore attached no weight.
33. I note the appeal scheme has reduced the number of dwellings in relation to a previous scheme on the appeal site. However, I have found harm in relation to the appeal proposal before me. Additionally, the appellant states the Council did not raise matters relating to the sequential test. I do not however have anything before me to show the appellant sought to engage with the Council to establish if this was required.
34. While I appreciate the size of the site and the that it is largely underused in association with the public house. This does not weigh in favour of the proposal as the site currently makes a positive contribution to the character and appearance of the area.
35. A number of local objections have been submitted concerning, in addition to the above matters, ecology, and highway safety impacts. However, it is not necessary for me to reach conclusions on these issues as they would not alter my findings in relation to the above matters.
36. I appreciate that there are no concerns raised by the Council relating to design or space standards. However, these considerations do not outweigh the harm and conflict with the development plan I have identified. There is no evidence before me that any CIL contributions or affordable housing would be provided by the scheme.
37. The appellant's evidence indicates nearby listed buildings⁷ as such, I have had special regard to the desirability of preserving their setting and any features of special architectural or historic interest. The significance of these buildings lies, in their traditional appearance and modest proportions being set back from Main Road by front gardens. The Council have not detailed any specific concerns in their evidence or in the decision notice in relation to harm to the setting of the buildings and I do not find any harm in this regard either.

Conclusion

38. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
39. Therefore, I conclude the appeal should be dismissed.

A Hickey INSPECTOR

⁷ Jasmine House Grade II listed, Witham Bank Grade II listed, 64 Main Road Grade II listed and Bryn Grade II listed.