
Appeal Decision

Site visit made on 29 November 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2022

Appeal Ref: APP/D2510/W/22/3298783

Tree Tops, Marsh Lane, North Somercotes LN11 7NT

- 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 I Topliss against the decision of East Lindsey District Council.
 - The application Ref N/132/02644/21, dated 21 December 2021, was refused by notice dated 17 February 2022.
 - The development proposed is outline application for three dwellings, including access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal scheme seeks outline planning permission with all matters reserved except for access. I have determined the appeal accordingly, considering the submitted layout as illustrative.

Main Issues

3. The main issues are whether the appeal site is an appropriate location for dwellings with regard to flood risk and the effect of the proposal on the character and appearance of the area.

Reasons

Whether Suitable Location

4. The appeal site is located within Flood Risk Zone 3 (FZ3), which has a high probability of flooding. Policy SP17 of the East Lindsey Local Plan Core Strategy (LP) (adopted July 2018) identifies North Somercotes as a settlement to which the Coastal Policy applies. In these areas, SP17 states that development will need to demonstrate that it satisfies the sequential and exception tests as set out in annex 2 of the LP. This is commensurate with paragraph 162 of the National Planning Policy Framework (the Framework), which advises that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
5. I have had regard to the submitted Flood Risk Assessment (FRA – Ross Davey Associates, Ref RD4927). Although this concludes that there are no alternative reasonably available sites at a lower flood risk than the subject site, there is no

evidence of this before me. Therefore, although Table 2 of the Planning Practice Guidance (PPG) section¹ on Flood Risk and Coastal Change states that an exception test is required for more vulnerable uses in Zone 3a, I have nothing before me to first satisfy the requirements of a sequential test.

6. Moreover, Policy SP18 of the LP states that support will be given to sites which meet the given criteria of that policy. I have not been made aware of an extant permission for housing on the site, while it is agreed that the site is not brownfield, nor is the site disused, empty or includes damaged buildings that are causing harm. Furthermore, there is nothing before me to provide affordable or specialised forms of housing for vulnerable or minority groups. Although parts 4 and 5 could be met regarding no ground floor accommodation and the submission of acceptable flood mitigation, such as warning systems, the other criteria of Policy SP18 have not been satisfied, bringing the proposal into conflict with that policy as a whole.
7. While the appellants state that the appeal site has not flooded in recent years, that does not guarantee that the site would not flood in the future despite the presence of defences. The proposal would result in planning permission for three additional dwellings within FZ3 and the Coastal Flood Hazard Zone, where policy restricts further dwellings subject to criteria which are not met by this proposal. Although the Environment Agency and Local Lead Flood Authority did not object to the proposal, I can only assess the development based on the evidence before me, which is lacking with regards to flood risk.
8. For the reasons above, I conclude that the appeal site is not an appropriate location for a dwelling with particular regard to flood risk. The proposal would therefore be contrary to Policies SP17 and SP18 of the LP as advised above. The proposal would also be contrary to the advice in paragraph 159 of the Framework with regards to directing development away from areas at highest risk of flooding.

Character and Appearance

9. The appeal site comprises the rear garden of the host dwelling, which covers a large area and includes numerous trees which are visible from the local area. Generally speaking, dwellings within North Somercotes front the various roads of the village, while along Marsh Lane and Cemetery Road properties are set in generous plots. The pattern of development and presence of large trees, hedgerows and large plots gives the area a spacious and verdant character.
10. Although submitted in outline form, the site layout plan (Drawing No. RD:4927 - 03) demonstrates how the site could be developed for three dwellings. This shows the dwellings would be laid out in a pattern which would not front a road and would be in a backland location. Despite the use of matching materials, this would run contrary to the established grain of development locally. Although the site layout is indicative, given the number of units proposed the configuration of the site would be limited in terms of alternative layouts and would likely result in the dwellings occupying much smaller plots than nearby properties which would compound the incongruity.
11. I take on board the point that a dwelling located adjacent the appeal site is also in a backland location. However, this is a single unit rather than three,

¹ Paragraph: 079 Reference ID: 7-079-20220825

while it also appears to be set in a generous plot which would reflect many of the nearby dwellings. In any event, I have assessed on the proposal on its own merits.

12. The proposal would also require the felling of a tree which is located at the site of the proposed vehicular access from Marsh Lane. This is demonstrated on the submitted site plan, where the tree that is shown on the existing plan has been removed. This tree is evidently protected under a Tree Preservation Order (TPO), as are others along Marsh Lane. Collectively and individually, these make a considerable contribution to the verdant character of the area and the removal of the tree in question would be harmful in this context.
13. I have had regard to the Arboricultural Report (Equans, Reference QU-680-21-ENGIE), which concurs that the site could be developed while protecting trees and that a formal method statement and protection plan should be undertaken. This further evidence is not before me. Although the appellant advises various conditions could be attached to a grant of permission at this stage to protect other trees, approval for access is being sought at this outline stage. As such, I have nothing to conclude that the access could be implemented without the TPO tree having to be removed or that it could be protected. Based on the above, the loss of this tree would be harmful to the character and appearance of the area.
14. I have had regard to other measures suggested, such as a replanting or landscaping scheme. However, these would take considerable time to mature and in the meantime the harm caused by the loss of mature specimens would be evident in the local area.
15. To conclude on this main issue, the proposal would harm the character and appearance of the area, contrary to Policies SP10 and SP24 of the LP. These seek, among other things, to ensure layout and density reflect the character of the surrounding area, and development which directly or indirectly leads to loss or harm to ancient woodland or aged or veteran trees, in exceptional circumstances, where the developer can demonstrate that the wider benefits of that loss clearly outweigh the protection of the trees. The proposal would also be contrary to the Framework, which advises in paragraph 130 that development should be sympathetic to local character, while paragraph 131 seeks to ensure existing trees are retained wherever possible.

Planning Balance and Conclusion

16. The Framework seeks to generally boost the supply of housing nationwide. The proposal would add three dwellings to the Council's existing stock. This would be worthy of some limited weight in favour of the proposal.
17. The appellant advises the homes are 'clearly needed' in the context of paragraph 78 of the Framework with regards to rural housing. However, the Council can evidently demonstrate a five-year supply of housing land. Although I agree that this is not a ceiling to further approvals, there is nothing substantive before me to indicate a clear need for this type of housing.
18. Moreover, although it is claimed that the houses would be cheaper to purchase than others nearby, there is no legal mechanism before me to secure this affordability. The Framework seeks to make effective use of land, although this is not limited to maximising the number of units on a development site and

includes in paragraph 119 improving the environment. Given the harm I have identified to the character and appearance of the area, this would not be an effective use of land. As such, these considerations taken together are not attributed any additional weight in favour of the proposal.

19. The creation of jobs during the construction phase and increased council revenue would be of some economic benefit. North Somercotes has a range of services and facilities in walking distance and the addition of three dwellings would equate to a modest boost in trade and use to these services. These considerations are worthy of some additional limited weight in favour.
20. There are no objections from consultees relating to highway safety, flood risk or ecology, while there was no harm identified to the living conditions of occupiers of neighbouring dwellings. Be that as it may, a lack of harm would be neutral in the planning balance rather than weighing in favour.
21. Conversely, I have found that the proposal would not be in a suitable location with regards to flood risk and would cause harm to the character and appearance of the local area through the site layout and loss of trees. The proposal therefore conflicts with SP17, SP18, SP 10 and SP24 in these respects. These policies are consistent with the Framework in achieving well-designed places and therefore, this conflict is attributed considerable weight against the scheme in this balance.
22. As a result, the proposal would conflict with the development plan taken as a whole. Therefore, there are no material considerations that indicate the decision should be made other than in accordance with the development plan. For the reasons given, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR