



Appeal Decision

Hearing held on 19 April 2023

Site visit made on 19 April 2023

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

Appeal Ref: APP/A2525/W/22/3313330

Land North of, Sutton Bridge, Spalding, PE12 9RG

- 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 Loyd Homes Ltd against the decision of South Holland District Council.
 - The application Ref H18-0005-22, dated 6 January 2022, was refused by notice dated 28 June 2022.
 - The development proposed is residential development of 123 dwellings (including 34 affordable units), site access and associated external works - re-submission of H18-0824-20.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline form with details of access and layout for approval. Details of appearance, scale and landscaping are reserved for later approval.
3. The application was originally submitted on the basis of a scheme for 129 dwellings. During the application this was revised to a scheme for approval for 123 dwellings, to be accessed via Nightingale Way and Withington Street. Parts of the site are already the subject of three extant planning approvals¹ which allow for the erection of 76 dwellings. The remainder of the site would provide a further 47 dwellings. The parties do not dispute that the three approved sites are capable of implementation, and I was provided with no evidence to suggest that they will not be developed.
4. The parties do not dispute that the Council can currently demonstrate 5.9 years supply of housing land.
5. The site lies north of the settlement of Sutton Bridge on land designated as countryside in the South East Lincolnshire Local Plan 2019 (SELLP). It is also agreed that the site lies within Flood Zone 3.

¹ Land North of Nightingale Way - H18-1167-19 Reserved matters application for the erection of 60 dwellings and associated works – outline approval H18-0435-18

Land east of Chestnut Terrace – H18-0709-19 – Reserved matters application for the erection of 6 detached dwellings and associated works – outline approval H18-1167-16 (allowed on appeal) (approved October 2019)

Land north of Withington Street – H18-0692-19 Reserved matters application for residential development – Comprising 2 detached dwellings and 8 semi-detached (Outline Approval H18-1168-16) (approved October 2019)

6. The application is supported by a planning obligation which would secure affordable housing within the development along with a contribution towards healthcare in the district, a contribution towards education and a contribution towards the implementation for a travel plan for the site.

Main Issues

7. Accordingly, the main issues for the appeal are:
 - Whether the proposal is in an appropriate location having regard to the impacts of flood risk and whether future occupiers would be safe from the impacts of flooding, and
 - Whether the proposal would be in an appropriate location, having regard to the policies in the local plan which advocate restraint to development in a countryside location.

Reasons

Flood Risk

8. The South East Lincolnshire Strategic Flood Risk Assessment (SFRA) indicates that 74% of South Holland is within an area at risk of flooding (68% in Flood Zone 3 and 6% in Flood Zone 2). Moreover, many of the areas of land with a lower probability of flooding are in isolated locations, unrelated to settlements. Recognising that a number of the larger settlements in accessible locations are at risk of flooding, the Local Plan allocates development within settlements in flood risk areas with sites selected on the basis of, amongst other things, an assessment of which sites were sequentially preferable in terms of flood risk.
9. The appeal site lies within Flood Zone 3. Policy 4 of the SELLP requires that for new development within an area at risk of flooding a Sequential Test needs to be carried out. The policy directs that this should be carried out for major development schemes and should be based on a district wide search of alternative sites within settlement boundaries, unless it can be demonstrated that there is a particular need for the development in that location.
10. The Framework also aims to ensure that decisions on where development is located are taken with a view to directing development away from areas of flood risk. It requires that development which falls within an area at risk of flooding should be subject to a Sequential Test to identify whether such development could be carried out in an area at lower risk of flooding. If other sites are not available, the proposal must pass a further Exception Test to demonstrate that the sustainability benefits of the development would outweigh flood risk and that the site is safe from flooding for its lifetime.
11. Policy 4 is clear that the area of search over which a Sequential Test should be applied will normally be based on a district wide search area within settlement boundaries, unless it can be demonstrated that there is a particular need for the development in that location. The Council and appellant are both of the view that the area over which the test should be applied in this case is the settlement of Sutton Bridge. I have considered whether a restricted area of search would be appropriate in this case. The appellant has drawn my attention to the district's record in delivering affordable housing, including within Sutton Bridge which it is contended fails to meet identified needs in the district. Nevertheless, the Plan aims to provide affordable housing at a district-

wide basis and recognises that for reasons of viability it will not meet all of the identified need for affordable housing in the district. It seeks to provide much of the affordable housing in the district through contributions from larger sites allocated in the Plan, some of which will come forward further into the Plan period. Therefore, whilst I recognise that the number of affordable units delivered to date in Sutton Bridge is low, I am not persuaded that the Council's strategy for its provision is unsound, or that local housing needs represent sufficient grounds for restricting the area of search in the Sequential Test to Sutton Bridge.

12. Bearing in mind the proportion of the district at risk from flooding I agree with the appellant, that sequentially preferable sites in flood risk terms within the district may not meet other sustainable development objectives. In this regard, Policy 4 restricts the area of search to within settlement boundaries. The policy does not mention allocated sites. Nevertheless, national guidance² is clear that allocated sites within a plan should be considered as part of any Sequential Test and considered to be reasonably available. I would therefore expect in this instance for the exercise to include all residential sites allocated within the Plan, unless it was evident that such a site was not available.
13. The appellant did not carry out a comparative exercise of all available sites within Sutton Bridge. The SELLP allocates land for development within Sutton Bridge at Sub027- land south of Sutton Bridge and the allocation would provide 210 dwellings. The appellant's assessment compares flood risk at the allocated site with that at the appeal site and concludes that based on LIDAR mapping, the appeal site, including the portion which does not have an extant permission, is not at greater risk of flooding than the allocated site.
14. National planning guidance is clear that it is for the decision maker to apply the Sequential Test and that once development has been allocated in a Plan, it need not be subject to a Sequential Test provided there have been no significant changes to the known level of flood risk to the site. Whilst the appellant has provided more up to date evidence as to the level of flood risk at the appeal site, a similar analysis hasn't been carried out for all other sites in the settlement, including the allocated site. Whilst it would not be proportionate for the appellant to carry out such an assessment, neither is it reliable, without an equivalent assessment of the allocated site, to reach the conclusion that the appeal site is therefore sequentially preferable.
15. At the hearing the Council submitted evidence to demonstrate that the allocated site was still considered to be deliverable. I find this evidence persuasive and see no reason why the allocated site will not come forward within the plan period. Neither is there any compelling evidence to conclude that the site will not deliver at or around the anticipate yield of 210 dwellings for the site. I also note that the fact the site is not owned by the appellant is not sufficient grounds for concluding the site is not "reasonably available"³.
16. More to the point, the appeal site would not be a replacement site, but rather an additional site for development within an area at flood risk. The Framework seeks to reduce the number of new schemes coming forward in areas at risk of flooding. The Council can demonstrate a 5-year supply of housing land and furthermore, the Plan provides for reserve sites which will come forward if the

² National Planning Policy Guidance - Paragraph: 029 Reference ID: 7-029-20220825

³ National Planning Policy Guidance - Paragraph: 028 Reference ID: 7-028-20220825

Plan fails to deliver housing to meet the district's housing needs through allocated sites. Taking into account both national planning guidance and Sec38(6) of the Act, I am of the view that notwithstanding the provision of more up to date flood risk data, the allocated site should be considered sequentially preferable to the appeal site. Therefore, even if I were to restrict the area of search to Sutton Bridge, the proposed scheme would not pass the Sequential Test.

17. There is no dispute that the site can be made safe for its lifetime, but having failed the Sequential Test it is not necessary to apply the Exception Test. The wider sustainability benefits of the scheme would in any case not outweigh flood risk in this case. The Plan currently provides an adequate supply of housing for the district and I have no compelling evidence to reach the view that an additional site is required within the settlement to meet general housing need. Whilst there is an imperative to boost the supply of all housing, including affordable housing nationally, the additional housing that would be provided, does not provide adequate grounds for meeting a national need in an area at risk of flooding.
18. I was advised at the hearing that the approach taken by the appellant in relation to the Sequential Test was in part due to the nature and history of the site. The portion of the site at Nightingale Way which is subject to an outstanding consent was considered by the Council in 2019 to have passed the Sequential Test and so the appellant considered it reasonable to assume the remainder of the site, which was very similar in flood risk terms, be treated in the same manner. The Council advised that this previous decision to grant permission was made on the basis of the Council being unable to demonstrate a 5-year supply of housing land. Be that as it may, whatever the Council's reasons for reaching its decision at that time, I am not bound by their past reasoning in reaching my own views as to the current proposal.
19. On the first matter I therefore conclude that the proposal would fail to comply with both Policy 4 of the SELLP and with guidance in the Framework, which seek to firstly avoid development in areas at risk of flooding and secondly to only allow such development in exceptional circumstances where such development is demonstrated to be necessary.

Development in the Countryside

20. The site lies outside but directly adjoins the settlement boundary of Sutton Bridge. It therefore lies within land designated as countryside. Policy 1 of the SELLP sets out that development in the countryside will only be permitted where it is necessary to the location or where it can be demonstrated that it meets the sustainable development needs of the area. The spatial strategy set out in Policy 1 seeks to ensure that development in the district takes place within the boundaries of existing settlements and on allocated sites. By doing so it aims to ensure that new development is located in the most sustainable locations. It also recognises that in some circumstances development outside of settlement boundaries may bring wider benefits.
21. The Council have not raised any concerns in relation to the visual impacts of the scheme and having viewed the site I am satisfied that although the proposal would lead to a relatively small loss of agricultural land, it would not have a significantly harmful impact on the character or appearance of the countryside in this location. Similarly, the Council do not dispute that the

location of the site, adjacent to the settlement boundary, would provide appropriate access to available local services. However, these matters do not negate conflict with the strategy set out in the Plan, which advocates containment within settlement boundaries other than in selected cases.

22. I have no reason to consider that the proposal is necessary in the location proposed. In terms of the wider sustainability benefits of the scheme, although the scheme would deliver both affordable and market housing, in the context of a healthy 5-year supply in the district, and an allocated site with which to provide future housing within the settlement, additional housing does not represent a development need capable of forming an exception, as set out in the policy.
23. During the hearing it was also put to me that an alternative layout⁴ for the scheme could provide a softer edge to the settlement that would represent a visual improvement. Having regard to the appearance of the existing urban fringe, I am not convinced that such measures would represent a visual improvement and so would not be a discernible benefit.
24. It was also suggested that the measures set out in legal agreement, namely a contribution towards healthcare in the district, a contribution towards education and a contribution towards the implementation for a travel plan for the site, would represent benefits of the scheme. These contributions are intended to offset the development impacts arising from the new residents within the scheme. Although they may bring some wider benefits to the community, these have not been quantified and this limits the weight I attribute to them. Similarly, whilst I acknowledge that the scheme would be required to meet national targets for biodiversity net gain, this matter too is intended to mitigate the impacts of the proposal, and this diminishes the weight I attribute to it as a planning benefit.
25. Consequently, whilst the development would bring some benefits, these would be insufficient to justify an exception to the general policy of restraint set out in Policy 1. On the second matter I therefore find the development would conflict with Policy 1 of the SELLP which seeks a restraint on development outside settlement boundaries. Insofar as the development has not been found to meet the sustainable development needs of the district, the scheme would also conflict with the Framework.

Conclusion

26. Local residents have raised concerns in relation to the proposal on local services, including schools and medical provision in the village. The scheme includes contributions to local service provision through a legal agreement which I consider would provide appropriate mitigation for the effects of the development. This matter does not therefore add to my concerns.
27. I also note the views expressed in relation to the effects of the proposal on highway safety, and on the living conditions of adjoining residents. These matters do not alter my conclusions expressed above.

⁴ LH-SBM-20-001 Rev D: proposed block plan 1 of 2
LH-SBM-20-002 Rev F: proposed block plan 2 of 2
LH-SBM-20-003 Rev D: identifying extant permissions
LH-SBM-20-004 Rev C: site location plan
LG-SBM-20-010A: location plan showing allocated site

28. The proposal would conflict with Policy 4 of the SELLP, which seeks to avoid development in areas at risk of flooding. Insofar as the development would lie outside the settlement boundary, it would also conflict with Policy 1. The Framework is clear that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. The benefits of the scheme, as set out above, would not outweigh conflict with the development plan in this case.
29. Accordingly, having regard to all other matters raised, and for the reasons given above, I conclude that the appeal should be dismissed.

Anne Jordan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Mark Flood DipTP MRTPI	Insight Planning
Alan Brown BA (Arch)	Architect Alan Brown Development Services
Warren Alsop BEng (Hons)	SEA Consulting Engineers Ltd
Tim Rose BA (Hons) MCIHT MTPS	MEC Development Technical Consultants
John Langley	Loyd Homes Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Maxine Simmons MRTPI	Planning Officer, SHDC
Mark Simmonds MRTPI	Development Manager SHDC

Jeanette Kirby Fox	Local Resident
Susan Ambrose Simpson	Local Resident
Paul Johnson	Local Resident

DOCUMENTS

Revised list of conditions

Letter from appellant regarding affordable housing 12 April 2023