



Appeal Decision

Site visit made on 27 March 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/D2510/W/22/3302577

**Plot 1, West of Birch View, Fold Hill, Friskney, Boston, Lincolnshire
PE22 8RG**

- 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 and Mrs James and Anna Gibson against the decision of East Lindsey District Council.
 - The application Ref S/053/02413/21, dated 3 November 2021, was refused by notice dated 17 January 2022.
 - The development proposed is construction of new detached house and detached garage on the side garden of Birch View (formally Edelwiess).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the site is a suitable location for a new dwelling having regard to i) flood risk and ii) access to services and facilities.

Reasons

Flood risk

3. The site is identified on the Environment Agency flood maps as being within flood zone 3a (high probability). The council's report confirms that the site is not identified as being located within the Coastal Hazard Zone and therefore the most relevant policy is Policy SP16 of the East Lindsey Local Plan Core Strategy (July 2018) (the CS). Paragraph 2 of this policy lists 3 criteria, all of which must be satisfied to enable new housing in inland flood risk areas to be supported.
4. As the site is not in need of regeneration, the first criterion is not met. The brownfield status of the site is questionable, particularly as the plot has been segregated from the remaining garden of Birch View and part of it extends further back from the road than the former garden boundary, into the fishing pond site behind. It has also not been demonstrated that the site is unsuitable for alternative uses that are less vulnerable to flood risk. Accordingly, the proposal fails to meet all 3 criteria of Policy SP16(2).
5. In addition to the above, the National Planning Policy Framework (the Framework) states that development should only be allowed in flood zone 3a, if it has been demonstrated by a sequential test that there is no other suitable land available on which the proposal could be located, which would be at lower probability of flooding, i.e., in flood zones 1 or 2. If the sequential test is

- successful, proposals for more vulnerable development in flood zone 3a, which this site is, must also satisfy the exception test.
6. The appellants have not submitted a sequential test as such, but in addressing this matter in their appeal statement have pointed out that the whole of Friskney is in flood zone 3a. As such there is no sequentially preferable land with a lower probability of flooding anywhere in the settlement.
 7. I have not been referred to any development plan policy or supplementary planning document setting out any guidance on matters such as the sequential test search area that should be applied to different types of development or to different parts of the district.
 8. My attention has been drawn to four allocated housing sites in Friskney. These sites are also in flood zone 3a and as such would not be sequentially preferable, bearing in mind the purpose of the sequential test is to steer development to sites in lower flood risk zones.
 9. Reference has also been made to an appeal decision¹ relating to a proposal for a single dwelling elsewhere in Fold Hill. As I was the Inspector that made that decision, I am aware that at that time, and as set out in paragraph 8 of that decision, the council was satisfied that the sequential test search area should be limited to Friskney and that as the whole of the settlement was in flood zone 3a, there could be no lower risk sites available. Accordingly, the sequential test was passed. As there is nothing before me to suggest that anything has changed since that time to justify a wider search area being imposed, I consider that the appeal site currently before me would also pass the sequential test.
 10. Turning to the exception test, this comprises two parts, both parts must be satisfied in order to pass the test. It is common ground that subject to suitable conditions and mitigation measures, the development could be made safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. Based on the evidence before me, Part b of the test can therefore be met.
 11. In relation to part a of the test, the appellants state that the proposal is in an accessible location and would provide a much needed family home in the local area, which could be delivered quickly and would help to support local services to remain open, particularly the school, which I am advised is currently at approximately half of its potential capacity.
 12. In addition, it is argued by the appellant that the CS identifies a need for housing in Friskney, which is not being delivered by the allocated sites. I am advised that of the four allocated housing sites in the settlement, only one has come forward to date, with an application for 23 modular dwellings for the over 55's. I accept that such dwellings would be unlikely to be occupied by school age children, and as such, that development would not support the future of the local school.
 13. However, the CS sets out policies for the growth of the district up to 2031 and whilst policies should be reviewed after 5 years, this is not a 5 year plan. There is no evidence before me to suggest that the allocated sites are no longer available or viable and will not be delivered during the plan period.

¹ APP/D2510/W/18/3217175 May 2019

14. Whilst I acknowledge that the allocated housing sites in Friskney are also in flood zone 3a, these would have been sequentially tested and strategically reviewed in accordance with a sustainability appraisal as part of the development plan process. Moreover, for the purposes of the exception test, these larger sites would be likely to result in greater public benefits than a single dwelling.
15. The proposed dwelling being wheelchair accessible and energy efficient in accordance with Building Regulations is a neutral matter that does not weigh in favour of or against the proposal. There is nothing before me to suggest that the proposed development would exceed the requirements of any other new home. Whilst setting the front boundary hedge back would improve visibility for future occupiers of the proposal, this is a technical requirement, and would have limited benefit for the wider community given the location of the site on the edge of the village. I note the appellants have suggested they would plant 50 native trees in the adjoining 10-acre woodland to the rear of the site, which they own and manage, but in the absence of further information I have afforded this suggested offsite biodiversity benefit modest weight.
16. The benefits of a single family dwelling to the school and other local services in the area would be very modest and this, together with the suggested off-site tree planting on the appellants private land, would not in my view constitute the wider sustainability benefits to the community that are necessary to outweigh the flood risk. Accordingly, the exception test fails.
17. I note that an appeal decision relating to four dwellings on adjacent land was not dismissed on flood risk grounds. In that case flood risk was not a matter in dispute between the parties and as such would not have been considered by the Inspector. I also note that the application subject to that appeal was refused prior to the adoption of the current development plan.
18. I therefore conclude on this matter that the site is not a suitable location for a new dwelling having regard to flood risk. The proposal would therefore be contrary to policy SP16 of the CS and paragraphs 164 and 165 of the Framework, which restrict new housing on non-allocated sites in inland flood risk areas to brownfield sites in need of regeneration and those which would result in wider sustainability benefits to the community that outweigh flood risk.

Access to services and facilities

19. The appeal site is located on the edge of Friskney and comprises land that last formed part of the side garden to the bungalow currently known as Birch View. The proposal would not extend any further beyond the edge of the village than the former side garden boundary of Birch View or than the two dwellings opposite the site, currently known as Willow Cottage and Hedwig House.
20. The submitted location plan, a land registry map dated 1987, does not show the continuous built-up frontage of linear development that now exists along Fold Hill, leading towards the village centre, much of which benefits from a public footpath to the front of it.
21. The proposed dwelling would be located approximately 100m from the start of the footpath into the village centre and approximately 50m from the first streetlight. Whilst this is not ideal, and no new footpath or lighting is proposed

along the frontage of the land in the appellants ownership, I note that the site is located within the 30mph zone, and that this village road is not busy. Moreover, the grass verges are generally well maintained and those stretches where it would be necessary to walk on the road or verges are relatively short, with good inter-visibility between drivers, cyclists and pedestrians. This visibility would be further improved by the proposed setting back of the boundary hedge to the front of the appeal site.

22. I observed during my visit that the nearest bus stops are approximately a 5-minute walk from the site. Walking from the site to the village centre (to the shop and school) takes just over 10 minutes, cycling would be less. In addition to the shop and school, the village also benefits from a public house which serves hot food, post office services in the shop, a village hall, a church, recreation areas and employment opportunities.
23. Although there are gaps in built development along Church Road, some of which are occupied by further village facilities such as play areas and playing fields, the footpath and street lighting is continuous. Such gaps are typical characteristics of rural villages and do not necessarily mark the start or end of a settlement. I have not been provided with any maps that identify any adopted development boundaries for the settlement.
24. I acknowledge that Fold Hill is not identified individually as a settlement in the CS. However, the appellant's Design and Access Statement refers me to the East Lindsey Settlement Proposals Development Plan Document (July 2018) (the DPD), in which the settlement of Friskney is described as having 3 elements: Friskney village, Eaudykes and Fold Hill. In the absence of any further evidence, it is my view that these 3 areas taken as a whole are what make Friskney a large settlement. Whilst I note that Eaudykes is also categorised as a small village in its own right, this area appears more detached from the centre of Friskney than Fold Hill. Given that the Fold Hill area has almost as many dwellings as the central area of Friskney, it is illogical to suggest that one area is a large village and the other is open countryside simply due to a gap in built development between the two parts. I also note that both areas fall within Friskney Parish.
25. I am aware of the 2018 appeal decisions² relating to nearby sites, where the Inspectors concluded that those sites were in the open countryside. However, Inspectors make their decisions based upon the evidence before them. As there is no reference in those decisions to the DPD, I cannot be sure that the Inspectors were made aware of the fact the DPD refers to Friskney settlement as comprising 3 parts, including Fold Hill.
26. Moreover, both of those decisions relate to sites that extend further out of the built-up area of the village than the site before me, and to sites which were of agricultural appearance.
27. In relation to the more recent appeal³ that I determined, on a site which was also separated from the core of the village by open land, there was no suggestion by the council that this area was a separate hamlet in the open countryside, where new housing would be inappropriate.

² APP/D2510/W/18/3203186 November 2018 and APP/D2510/W/18/3195454 June 2018

³ APP/D2510/W/18/3217175 May 2019

28. My attention is also drawn to a dwelling allowed in Fold Hill in June 2020. Whilst I am advised that this was a committee decision made against the officer recommendation, it is nevertheless the council's decision, and the council has not explained why that dwelling was considered appropriate in terms of its location in Fold Hill and why this site is not.
29. In any event, even if I were to treat Fold Hill as a separate settlement to Friskney, the proximity of the appeal site to local services would be the same. Consequently, the proposed dwelling would not be an isolated new home in the countryside and future occupiers of it would be able to safely access all of the services and facilities that Friskney has to offer, without undue reliance upon private cars.
30. My attention has also been drawn to paragraphs 78 and 79 of the Framework. Paragraph 78 relates to rural exception sites and affordable housing to meet identified local needs. This proposal for a single market dwelling would not fall within those categories. However, I consider that the proposal would accord with paragraph 79, in terms of locating rural housing where it will support local services including those in villages nearby.
31. I therefore conclude that the site is a suitable location for a new dwelling having regard to its access to services and facilities. Consequently, the proposal would not conflict with Policies SP1 and SP2 of the CS, which set out the settlement pattern that should guide future development and reflect the presumption in favour of sustainable development set out in the Framework.
32. I also find no conflict with paragraphs 7 and 80 of the Framework, which seek to secure sustainable development and to avoid isolated new homes in the countryside. Paragraph 12 of the Framework reiterates that the starting point for decision making is the development plan. I have dealt with the appeal on this basis. As there is nothing before me to suggest that paragraph 11d of the Framework should be applied, or that there is an adopted neighbourhood plan for Friskney, paragraph 14 of the Framework is not relevant.

Conclusion

33. The proposed development would be in a suitable location with regards to access to services and facilities. However, this does not outweigh the conflict with local and national planning policies that seek to direct new development to areas at the lowest risk of flooding. I have determined this case based upon the evidence before me and the national and local policy requirements in place at the time of making my decision. There are no other material considerations before me that would persuade me to make a decision other than in accordance with the development plan and national planning policy.
34. For the reasons given above and having had regard to all issues raised, the appeal is dismissed.

R Bartlett

INSPECTOR