



Appeal Decision

Site visit made on 14 April 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/D2510/W/22/3310724

Plot 6, Tulip Way, Conisholme Road, North Somercotes

- 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 Andrew Clover against the decision of East Lindsey District Council.
- The application Ref N/132/00493/22, dated 14 March 2022, was refused by notice dated 1 September 2022.
- The development proposed is erection of 1 no. house with attached garage.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site is located within a wider linear development of five dwellings granted permission in 2019, which are largely complete on site. A Section 73 application in 2022 permitted a change to the approved scheme involving the removal of garages from the two affordable units, Plots 4 and 5, along with an amended parking layout and drainage strategy for the site. The layout on site at my visit reflected that granted under the Section 73 application.
3. The proposal seeks to erect an additional dwelling in the space between Plots 3 and 4 which is presently undeveloped following the omission of the garage to Plot 4 and a swale/field access originally proposed between the dwellings.
4. Having regard to the reasons for refusal, the main issues are i) whether the proposal would represent an acceptable location for residential development in respect of flood risk, and ii) the effect of the proposal on the character and appearance of the area.

Reasons

Location for Housing/Flood Risk

5. The appeal site is located in the village of North Somercotes, a Large Village under the settlement hierarchy for the district set out under Policy SP1 of the East Lindsey Local Plan Core Strategy (July 2018) (the LPCS). The site also lies within the defined Coastal Zone within the LPCS, and within Flood Zone (FZ) 3 and identified as a 'danger to most' hazard area. Under Policy SP3, housing growth in the Coastal Zone will be constrained to the existing settlements and subject to the criteria set out in Policies SP17 and SP18.
6. Policy SP17 sets out that development within the Coastal Zone will need to demonstrate that it satisfies the Sequential and Exception Test at Annex 2 of

the plan. These tests reflect those set out in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG).

7. Policy SP18 sets out support for open market housing on sites in towns, large and medium villages which satisfy a number of criteria, including that the site is brownfield; it has become disused or empty and is causing harm; it has been actively marketed for a community, economic or leisure use for a period of 12 months and shown that the site is not viable for one of these uses.
8. The aim of the sequential test is to steer new development to areas with the lowest probability of flooding, these being within FZ1. The Framework is clear that the sequential test should consider flooding from any source. Only where there are no reasonably available sites in FZ1 should reasonably available sites in FZ2, and then FZ3, be considered. If the sequential test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding, then the exception test may have to be applied, which is the case for residential development. The PPG adds that when applying the sequential test, a pragmatic approach on the availability of alternatives should be taken.
9. The appellant points to the wider site having been granted permission and there being no objections to that scheme or this one from the Environment Agency (EA) in terms of flood risk. In respect of the sequential test, it is argued that as North Somercotes falls within the coastal zone, there are no allocated development sites within the village or sites within a less vulnerable flood zone. The Council argues that the sequential test should take in a wider search area than North Somercotes.
10. The Framework does not set specific parameters for the search radius to be used in conducting the sequential test, but the PPG advises 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. Housing is a form of development found across the whole district that, in general, does not have a need to locate in a flood risk area. The approach of the aforementioned development plan policies recognises this and seeks to limit development within the most at risk areas.
11. Ultimately, I have limited evidence of a genuine attempt to conduct a sequential test. The appellant's evidence does not clearly set out where the nearest areas within lower flood risk zones are; no search area has been clearly defined and justified, and no sites have been identified and ruled out to show there are no sequentially preferable sites within the search area. I understand the circumstances of the scheme as argued by the appellant, but the fact that five dwellings have been granted permission on the wider site does not mean that this proposal, which is a standalone application, is not required to demonstrate that it passes the sequential test. In the absence of basic evidence, I cannot be satisfied that there are no sequentially preferable sites available in areas of lower flood risk, and, as a result, I find that the sequential test has not been passed.
12. I have had regard to the appellant's evidence that the EA has not objected to the proposal; that there have been no flooding incidents on the site or in the area, and that the dwelling would provide refuge at first floor level such that its level of danger would fall between Low Hazard and Danger for Some. I also note the intention to raise the internal finished floor levels of the dwelling to 1000mm above ground level and to incorporate a number of other mitigation

and flood resilience measures into the dwelling's construction. However, implementation of mitigation measures does not obviate the need to pass the sequential test, the judgement of which lies with the local planning authority, and now me, and not the EA, who in this case have not actually made any comment on the sequential test.

13. Moreover, although the proposed mitigation measures would be considerations in the exception test, the PPG is clear that the exception test should only be applied following application of the sequential test. As I have found the proposal does not accord with the sequential test, it matters not whether it would pass the exception test, as this alone would not satisfy the requirements of the Framework and PPG.
14. Therefore, the proposal fails to accord with the sequential test in relation to development in areas at risk of flooding and it cannot be ruled out that the development could be located elsewhere in an area at lower risk of flooding. Accordingly, the proposal conflicts with Policy SP17 of the LPCS, the Framework and the PPG in relation to development in areas at risk of flooding.
15. The appellant argues that the proposal would accord with Policy SP18 as the site is brownfield, and the requirements to firstly market it for community, economic or leisure use and secondly show it is not viable for such uses are not relevant given the size of the site and its position between newly built dwellings. I accept that a number of these criteria may not be directly applicable to the proposal given its particular site circumstances; however, the Council argues that the site is not brownfield as under the approved plans it forms part of the garden of Plot 4 and contained a swale. Having regard to the Framework definition of previously developed land, which is defined as land which is or was last occupied by a permanent structure and excludes land in built-up areas such as residential gardens, I am not persuaded that all of the appeal site falls within this definition, particularly the land proposed as a swale with field access. As such, I find that the proposal would not satisfy all of the relevant criteria of Policy ST18 to support development in the coastal zone.
16. Given this policy conflict, and the failure of the proposal to pass the sequential test, the appeal site would not represent a suitable location for housing with respect to flood risk. This would further conflict with Policy SP3 and with the overall settlement pattern for the district under Policy SP1.

Character and Appearance

17. The proposed dwelling would sit within the linear pattern established by the approved dwellings. The plot width reflects that of the semi-detached pair, Plots 4 and 5, under the Section 73 layout. The dwelling would be narrower in width than the detached dwellings on Plots 1, 2 and 3, but all of these are slightly different in size, shape and detailed design, meaning there is not a uniform pattern that the proposed dwelling would upset. Conversely, this variation in form would allow the infill dwelling to integrate into the development despite it not exactly matching any of the other dwellings.
18. Moreover, despite the Council's view that the development would be cramped, the plans show the separation space between the proposed dwelling and its neighbours to either side would be comparable to the spaces between Plots 1, 2 and 3, with the lower garage to one side also a consistent design element with Plot 3 that would provide a greater degree of separation at the first floor

level. From my observations, the proposed dwelling would not appear cramped but would sit comfortably within the development. The use of similar materials and design elements would further its integration.

19. Viewed from Conisholme Road, the dwellings are screened by roadside trees, such that the row does not stand out as a prominent development on approach from either direction. Given this, the casual observer would not readily notice the different size and form of the proposed dwelling but would glimpse a consistent run of dwellings that would reflect the wider linear pattern of development along Conisholme Road.
20. Therefore, I conclude that the proposal would preserve the character and appearance of the area, in accordance with Policy SP10 of the LPCS, which supports well-designed development which maintains and enhances the character of the district's towns, villages and countryside, by the use of high quality materials and appropriate layout, scale, massing, height and density.

Other Matters

21. The Council did not refuse the application in respect of neighbours' living conditions. The front and rear elevations of the dwelling would align with those of the dwellings to either side and, having observed on site, I have no reasons to disagree with the Council's assessment.
22. The approved scheme included the delivery of two affordable housing units (Plots 4 and 5), which have been constructed on site. However, this is a separate application for a market dwelling, and therefore there would be no benefit arising under this proposal in terms of providing affordable housing.

Planning Balance and Conclusion

23. The addition of one dwelling to the housing stock would be a minor benefit of the scheme, as would the limited economic activity generated by its construction and subsequent engagement by residents with local businesses.
24. However, the proposal fails to satisfy the sequential test in respect of flood risk and fails to meet the criteria for housing in the coastal zone. Therefore, notwithstanding the flood risk mitigation measures advanced by the appellant, it has not been demonstrated that the dwelling would be sustainably located. The proposal would not accord with the environmental objective of sustainable development set out in the Framework, and the similar aims of the LPCS. I give significant weight to these conflicts. Moreover, given the conflict with the Framework policies relating to areas at risk of flooding, the presumption in favour of sustainable development under Paragraph 11 does not apply.
25. Overall, the benefits of the proposal, taken together, would not amount to material considerations which would outweigh the identified conflict with the development plan and would not justify a decision being made other than in accordance with it. Therefore, for the reasons set out, the appeal should be dismissed.

K. Savage

INSPECTOR