



Appeal Decision

Site visit made on 10 July 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2023

Appeal Ref: APP/F2605/W/22/3301662

Land to the West of Rayners Way, Mattishall, Dereham NR20 3NQ

- 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 Ms Anna Loake of Hall View Developments Ltd against the decision of Breckland Council.
 - The application Ref 3PL/2022/0143/O, dated 3 February 2022, was refused by notice dated 29 March 2022.
 - The development proposed is the erection of 4 new single storey dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline form, with all matters other than access reserved for future consideration. As matters relating to landscaping, layout, scale and appearance have been reserved for future consideration, the submitted plans can only be taken as being indicative at this stage, other than where they relate to access.
3. The appeal is accompanied by a Unilateral Undertaking made under section 106 of the Town and Country Planning Act 1990. I will return to this later in my decision.

Main Issues

4. The main issues are:
 - whether or not the development is acceptable in respect of flood risk having regard to national and local policies and guidance, and;
 - the effect of the proposed development upon biodiversity and protected species.

Reasons

Flood Risk

5. The National Planning Policy Framework ('the Framework'), in relation to flood risk, sets out a sequential, risk-based approach to the location of development. Paragraph 162 of the Framework advises that this approach aims to steer new development to areas with the lowest risk of flooding from any source, and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Planning Practice Guidance ('PPG') highlights that avoiding flood risk

through the sequential test is the most effective way of addressing flood risk, and even where it can be shown that development can be made safe through its lifetime without increasing risk elsewhere, that the sequential test still needs to be satisfied.

6. It is not disputed by the main parties that the site has a low probability of flooding by fluvial means and lies within Flood Zone 1 in this respect. However, the Environment Agency ('EA') surface water flooding maps contained within the flood risk assessment ('the FRA') indicate that whilst much of the appeal site is at low risk from surface water flooding, the remainder is at high risk. The site is indicated as lying within an overland flow path. Even though the EA mapping indicates that for a low-risk event, that surface water flooding depth would be below 300mm across the appeal site, it indicates that the site is nevertheless at risk of surface water flooding in the future.
7. Accordingly, even though the modelled hazard to development is considered to be low and measures to retain flood water on site are proposed to mitigate flood risk, the sequential approach requires that other sites, with a lower risk of flooding, be considered for the development. The evidence before me does not indicate that alternative sites have been considered.
8. The appellant has provided a Hydraulic Modelling Report (HMA) relating to a development on a site close to the appeal site undertaken in 2016. The HMA considered the potential for surface water flooding at that site, and included modelling of the site to which this appeal relates.
9. I accept that the EA acknowledges that its data has limitations when considering site specific issues, and that data within the HMA is likely to have been produced more recently and to a higher resolution. Nevertheless, the modelling in the HMA is now itself around 7-years old, and the physical and topographical constraints that informed it at that time may now have changed. Furthermore, the modelling was not produced as part of a site-specific assessment for the current appeal site, and I am therefore unsure as to the level of consideration of specific constraints, input data or detail that the HMA had regard to in relation to the appeal site, as it was primarily focused on a separate area.
10. I am not, therefore, persuaded that in comparison to the EA mapping data that, at the present time, the HMA can be relied upon to any greater degree in relation to this appeal. Nor, having regard to the Framework, which indicates that the consideration of flood risk from all sources, along with sequential tests should be informed by site-specific flood risk assessments that support applications, is it the responsibility of the Council to demonstrate that the site is at risk of flooding.
11. In any event, even if I were to agree that the modelling within the HMA was preferable to that used in the initial FRA, it still indicates that the appeal site is at risk from surface water flooding, albeit to a lesser extent, and accordingly, the sequential approach would still apply. Furthermore, whilst there may be no record of the appeal site having flooded in recent years, assessing flood risk requires consideration of potential future events, including accounting for climate change. Therefore, the absence of previous flooding events is not a reliable indication as to whether flooding may, or may not, occur in the future.

12. Ultimately, without up-to-date modelling in specific relation to the appeal site and proposal before me to demonstrate otherwise, I am led to the indication provided by the EA data that the site is at risk from surface water flooding, and that a sequential approach to development should be undertaken in order to establish whether the development could take place at location with a lower risk of flooding.
13. The appellant has referred me to an appeal decision at site to the west of the appeal site. However, I have not been provided with any details of this decision, or the evidence that was before that Inspector in relation to flood risk. It is not, therefore, determinative in my conclusions on this issue and I give it little weight.
14. I therefore conclude that the development would not be acceptable in respect of flood risk. It would therefore be contrary to Policy ENV09 of the Breckland Local Plan (BLP) and Policy ENV9 of the Mattishall Neighbourhood Plan (MNP) which together state that development will be located to minimise the risk of flooding, and that consideration should be given to surface water drainage. It would also be contrary to the advice set out in the Framework, which I have set out above.

Biodiversity

15. A Preliminary Ecological Appraisal ('PEA') has been provided, and since the Council made its decision, further survey work in the form of an Ecology Survey Report ('ESR') has also been carried out.
16. The PEA concludes that the appeal site has the potential to accommodate roosting bats and to shelter reptiles, and that ponds, including some of average or good suitability for hosting breeding Great Crested Newts ('GCN'). It also identifies that the site also supports optimal terrestrial habitat for this species. The PEA recommends further work in relation to these matters prior to development occurring.
17. The ESR summarises further survey work carried out in relation to bats and GCN and concludes that no bats were confirmed as using trees within the site for roosting purposes, and that eDNA analysis of nearby ponds has confirmed that GCN are also unlikely to be present on the site. However, it offers no further evidence in relation to the potential for reptiles to be present on the site.
18. These documents have been produced by a suitably qualified individual, and I have no reason to disagree with the conclusions reached within them. However, there remains uncertainty with regard to the potential of the site to provide habitat to reptiles, and with recommended additional survey work having not been carried out.
19. Accordingly, I am unable to conclude that the proposed development would not adversely affect protected or priority species and habitats. Therefore, the proposal would be contrary to BLP Policy ENV02 and MNP Policy ENV7 which together seek to maintain and enhance biodiversity, and require development proposals that may affect species or habitat to be accompanied by an assessment of the effects of the proposal on flora and fauna, demonstrating how have effects have been considered and where necessary, mitigated. It

would also conflict with advice within the Framework which states that planning decisions should minimise impacts on biodiversity.

Other Matters

20. I am aware that the appeal site lies within the Zone of Influence of the Broads Protection Area, and the River Wensum Special Area of Conservation which are European designated sites. I am also aware that the site lies within an area of sensitivity in relation nutrient neutrality. The Conservation of Species and Habitat Regulations 2017 require the Competent Authority to consider whether the proposal could adversely affect the integrity of the protected sites, either alone, or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
21. The appellant has provided a unilateral undertaking to provide a payment to mitigate impacts on the designated sites in accordance with the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy.
22. Had I mind been minded to allow the appeal, it would have been necessary to carry out an appropriate assessment in order to establish whether the proposal, on its own, or in combination with other projects would be likely to have significant effects on the integrity of the European designated sites, and also whether any proposed mitigation would be appropriate and sufficient.
23. However, as I have concluded that the proposed development would be otherwise unacceptable, it is not necessary for me to pursue this issue further, as a finding that the proposal would not have an adverse effect on the integrity of European designated sites, with or without mitigation, would be only a neutral factor in the planning balance.

Conclusion

24. The appeal proposal would lead to the provision of four additional dwellings within an existing settlement. Paragraph 60 of the Framework sets out the Government's objective of significantly boosting the supply of homes. Accordingly, the modest boost to the housing supply that the appeal proposal would provide is a factor which weighs in favour of the proposal, and to which I afford moderate weight.
25. However, the proposed development would not be acceptable in respect of flood risk, and I am unable to conclude that it would not lead to harm to protected or priority species and habitats. It would conflict with the development plan as a whole, and I afford this conflict significant weight.
26. Section 38(6) of the Planning and Compulsory Purchase Act states that a decision must be taken in accordance with the development plan, unless material considerations indicate otherwise. No considerations have been identified that would outweigh the harm and conflict with the development plan that I have identified.
27. For the reasons given, I conclude that the appeal should be dismissed.

C Harding

INSPECTOR