



Appeal Decision

Site visit made on 26 September 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/V2635/W/23/3316649

Ducks Nest, 189 The Drove, Barroway Drove, Norfolk PE38 0AL

- 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 Clive Shuttleworth against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/01327/O, dated 27 July 2022, was refused by notice dated 21 October 2022.
 - The development proposed is replacement of existing bungalow and outbuildings with two new detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal scheme is for outline planning permission with detailed approval sought for access. Matters relating to layout, scale, appearance, and landscaping are reserved for future approval. I have had regard to the outline plans and details as proposed (drawing 1139-02) but only as far as it provides an illustrative indication of the layout of the two dwellings.
3. The appellant has submitted an additional Flood Risk Statement with their appeal submission. As advised by the Procedural Guide to Appeals – England, the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what the Council determined the application upon, and on which interested people's views were sought. I cannot be certain that the views of interested parties would not be prejudiced if I were to consider the additional flood risk information as part of my determination of the appeal. As a result, my decision is based on the Flood Risk Assessment, dated July 2022, and the Revised Flood Risk Assessment, dated October 2022, upon which the Council determined the application and I have not taken the additional Flood Risk Statement into account.
4. The Council, in their decision notice have referred to Policy DM22 of the Site Allocation and Development Management Policies Plan, 2016 (SADMPP) and the appellant has queried the inclusion of this policy as it refers to protection of local open space. The Council has since confirmed that this was an error and do not intend to rely on Policy DM22. I have therefore not given it any weight in my decision.

Main Issues

5. The main issues are whether the proposed development:

- would provide a suitable location for housing having regard to the development strategy for the area and the character and appearance of the area; and
- would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Location of development

6. The appeal site is within Barroway Drove which is defined in Policy CS02 of the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy, 2011 (CS) as one of the 'smaller villages and hamlets'. This is the lowest category on the settlement hierarchy, and these are areas with little or no services. Policy CS02 aims to assist in the delivery of the Core Strategy objectives by directing development to sustainable locations. In the 'smaller villages and hamlets' development will be limited to specific identified needs in accordance with Policy CS06.
7. Policy CS06 of the CS, which is the policy for development in rural areas, amongst other matters, seeks to promote sustainable communities and patterns of development and focus new development in key rural service centres. The policy goes on to advise that in smaller villages and hamlets modest levels of development would be permitted to meet local needs and maintain the vitality of the communities, where it can be achieved in a sustainable manner and without detriment to the character of the surrounding area or landscape.
8. Policy CS01 of the CS, amongst other matters, seeks to ensure new development is directed to the most sustainable places, emphasises the redevelopment of brownfield land within towns and villages and also seeks to focus most new development within or adjacent to the Key Rural Service Centres. The policies within the CS, in summary, seek to promote the settlement hierarchy and limit development within the smaller villages, hamlets and countryside.
9. Policy DM2 of the SADMPP has set development boundaries around the larger settlements identified in the CS. Under Policy DM2 Barroway Drove does not have a development boundary and is considered to be, in planning terms, countryside where new development will be more restricted. Notwithstanding the appellant's assertion, the lack of a settlement boundary is relevant to the appeal as the proposal before me includes a new dwelling in the countryside.
10. DM2 advises that in the 'smaller villages and hamlets' infilling will also be permitted and links to Policy DM3 of the SADMPP. Policy DM3 seeks to deliver modest levels of growth in the Smaller Villages and Hamlets. The appeal proposal is not for any of the forms of development listed in the six bullet points in either DM2 or DM3. However, DM3 also allows for sensitive infilling of small gaps within an otherwise continuously built-up frontage, where the development is appropriate to the scale and character of the area.
11. The appeal site comprises a detached dwelling, a timber shed, which the appellant contends is a similar size to the dwelling, and other general storage. To one side of the site, opposite and to the rear are agricultural fields. On the other side is a grassed area which is part of McLatchie Farm but, at the time of

my visit, did not contain any farm buildings. The main part of the farm, and the industrial use buildings noted by the appellant, are on the other side of the grassed area. As a result, the appeal site is visually separated from any development on neighbouring land.

12. Barroway Drove is characterised by sporadic ribbon development, set along both sides of the road, in small groups resulting in clusters of built-up frontages. The linear development along the road is not continuous and there are some larger gaps between the clusters of houses and some individual properties. Policy DM3 seeks to limit the scale of development within the area by only supporting infilling of small gaps in frontages. This would ensure that any new houses continue the prevailing character of the area by adding to the small clusters and not filling in the larger gaps.
13. The existing dwelling and shed are surrounded by open land and the property is an individual dwelling set on its own between larger gaps in the built frontage. The site would not form a small gap in an otherwise built-up frontage and as such the appeal proposal would not comply with this policy as it would not constitute limited infilling.
14. I acknowledge that the Council has previously granted planning permission for a two-storey dwelling and garage on the appeal site. However, this was approved as a replacement dwelling under Policy DM5 of the SADMPP which allows for replacement dwellings in the countryside providing the design is of a high quality and preserves the character or appearance of the area. Although the replacement of the existing dwelling with one dwelling would comply with Policy DM5 the replacement of the shed with a dwelling would not and would result in a new dwelling in the countryside. As such the Council's inclusion of DM5 in the reason for refusal is justified and the proposal would not comply with this policy as it goes beyond a replacement dwelling.
15. I also accept that the appeal site is previously developed land (PDL), in accordance with the definition set out in Annex 2: Glossary of the National Planning Policy Framework (the Framework) and that there is support for redevelopment of brownfield land within Policies CS01 and CS08 of the CS. However, although CS01 supports redevelopment of PDL this support is for within towns and villages and in accordance with the settlement hierarchy.
16. Paragraph 119 of the Framework promotes effective use of land and seeks to make as much use as possible of PDL and, in that regard, Policy CS08 of the CS is in line with the Framework. However, the Framework supports redevelopment of PDL whilst also safeguarding and improving the environment and, therefore, Policy CS01 is also generally in accordance with the Framework. The appeal site is considered to not be a suitable location for development due to not complying with the infill criteria. Therefore, although the proposal is for redevelopment of PDL this would not outweigh the weight given to the conflict with policy DM3.
17. The Council's policies do not prevent redevelopment of PDL or, as asserted by the appellant, seek to afford the countryside more protection than Green Belt land. The policies, when taken together, would support the redevelopment of PDL, providing it complies with the other policies in the development plan. Furthermore, the support within Policy CS06 of the CS, for conversion of existing buildings to residential use, only seeks to ensure the conversion of buildings which make a positive contribution to the landscape. Therefore, any

other buildings, which do not make a positive contribution, may not be suitable for conversion. There does not need to be a policy to allow for the replacement of non-residential buildings with dwellings in the countryside as this would go against the settlement hierarchy and the sustainable development aims of the policies as a whole.

18. The appellant also asserts that the appeal proposal follows the construction of three dwellings on the opposite side of the road. Although, from the evidence before me, the development opposite was also not strictly an infill of a small gap in an otherwise built-up frontage, the appellant's statement comments that the site was allocated for housing development. Moreover, both parties confirm that the development opposite was approved at a time when the Council could not demonstrate a five-year supply of deliverable housing sites. The Council has also advised that the development constituted infill between an approved replacement dwelling (16/00286/F) and a plot with extant outline consent. The evidence before me, therefore, shows material differences between the approved development opposite and the current appeal.
19. The appellant has also drawn my attention to fifteen other sites in Barroway Drove and seeks to argue that the appeal site must therefore be a sustainable location. I viewed all fifteen sites during my site visit and, of the thirteen that are not replacement dwellings, two were for the same development site. Two of the sites (124 and 224 The Drove) are both part of a slightly wider gap but with built development close to all other sides. However, the majority of the other sites quoted by the appellant were clearly small gaps in otherwise built-up frontages and therefore complied with Policy DM3 of the SADMPP. I have, therefore, given limited weight to the other approvals in Barroway Drove quoted by the appellant.
20. However, the Council's reason for refusal does not include whether the site is in a sustainable location or not. The proposal is not an appropriate site for development as it would not constitute sensitive infilling of a small gap in an otherwise built-up frontage and, in that regard is similar to the two appeals quoted by the Council¹ and the other refusals the Council refer to in their statement of case. The identification of Barroway Drove as a 'smaller village and hamlet' in the CS accepts that there can be limited development in the area and, overall, the development plan does not seek to prevent all new housing development in these smaller settlements or the countryside.
21. In considering whether the proposal is appropriate to the scale and character of the area, as required by Policy DM3 of the SADMPP, the indicative layout shows two dwellings with a combined footprint which would be larger than either of the existing two buildings on the site, despite the appellant's assertion that the proposal would utilise the footprint of the existing built form. Moreover, as detailed in the Flood Risk Assessment, the ground level of the properties would need to be raised and the bedrooms would need to be at first floor. As such, although the layout is indicative any redevelopment of the site would be likely to increase both the footprint and massing of the built development on the site.
22. The layout, scale, appearance, and landscaping of the site are all matters which are reserved for later approval. However, given the scale and design of other dwellings approved in Barroway Drove, including the dwellings opposite the site, in my judgement it would be possible to design a development which

¹ APP/V2635/W20/3251741 & APP/V2635/W/18/3209959

would fit in with the scale and design of other houses in the area. However, the redevelopment of the site for two dwellings would, overall, have a harmful effect on the character of the area by reason of it not being sympathetic infilling and the proposal goes beyond the replacement of the existing dwelling.

23. I acknowledge that the existing dwelling is of some age, is small and may require lots of work. However, in my judgement, it is not dilapidated, as the appellant contends. Neither is the existing site untidy or unkempt to an extent that its appearance is harmful to the character of the area. Overall, the condition of the existing site and buildings would not justify the proposal for two dwellings. Moreover, contrary to the appellant's assertion, the redevelopment of the site would not visually improve the character of the area to a degree that would outweigh the harm.
24. For the above reasons I find that the proposal is not a suitable location for housing having regard to the development strategy for the area and the character and appearance of the area. Accordingly, the proposal would fail to comply with policies CS01, CS02, CS06 and CS08 of the CS which, taken together, seek to direct development to the most sustainable places, promote brownfield redevelopment in towns and villages, limit development in the smaller villages and hamlets, protect the countryside beyond the villages for its intrinsic character and beauty, and seek to ensure that developments maintain local character.
25. For the same reasons the proposal would fail to comply with Policies DM1, DM2, DM3 and DM5 of the SADMPP which, taken together, also promote sustainable development, seek to limit development outside development boundaries and only support development in smaller villages and hamlets where it relates to sensitive infilling of small gaps within an otherwise continuously built-up frontage, or where the proposal is for a replacement dwelling that reflects the scale and character of the surroundings.
26. The proposal would also be contrary to Chapter 2 of the Framework which promotes development which meets the needs of the area through a sustainable pattern of development, paragraph 8 of the Framework which seeks to protect the natural and built environment, and paragraph 130 which requires decisions to be made that ensure development adds to the overall quality of the area.

Flood risk

27. As detailed in the preliminary matters above I have not accepted the additional Flood Risk Statement submitted by the appellant and I have determined the appeal on the basis of the Flood Risk Assessment and Revised Flood Risk Assessment considered by the Council. However, while the site is protected by flood defences and the Environment Agency have indicated to the appellant that they would have removed their objection, the site continues to lie within an area identified as within flood zones 2 and 3a. As such the Sequential Test, as set out in paragraph 162 of the Framework, should still be applied. Contrary to the appellant's assertion, the flood risk of the site remains a matter for my consideration in determining the appeal.
28. Paragraph 159 of the Framework seeks to avoid inappropriate development in areas at risk of flooding. Policy CS08 of the CS advises that the Strategic Flood Risk Assessment outlines potential flood risk throughout the borough and

should be used to guide development away from areas of high flood risk. Policy CS08, in this regard, is similar to the Framework and the Planning Practice Guidance on Flood Risk and Coastal Change (the Flood Risk PPG).

29. In considering the Sequential Test, the Council has confirmed that it is not possible for the development to be located in areas with a lower risk of flooding as there are no other sites in the village or locally within a lower flood zone. The Sequential Test is therefore met.
30. Paragraph 163 of the Framework, in summary, advises that the Exception Test may have to be applied, depending on the vulnerability of the development. The development vulnerability type is "More Vulnerable" as set out in Annex 3 of the Framework: flood risk vulnerability classification, and is, in part, within flood zone 3a. The development vulnerability type is one where Table 2 of the Flood Risk PPG, which replaced PPS25 quoted in the policy, advises that the Exception Test is required.
31. The Exception Test has two requirements; the provision of wider sustainability benefits to the community that outweigh the flood risk, and that the development would be safe for its lifetime and not increase flood risk elsewhere.
32. Policy CS08 of the CS links to Policy CS01 of the CS, which acknowledges some development may be required in flood risk areas to deliver regeneration objectives and maintain the sustainability of local communities. Policies CS01 and CS08 are, in other words, setting the local element to part 1 of the Exception Test.
33. The main parties agree that the development would be safe for its lifetime and would not increase flood risk elsewhere. However, even though the proposal is for redevelopment of PDL and there would be general benefits which arise from all new housing, given the scale of the proposed development the benefits are limited and would not outweigh the flood risk in this instance. As such the Exception Test has not been satisfied and paragraph 036 of the Flood Risk PPG advises that planning permission should be refused.
34. A number of the other sites referred to by the appellant, which I have considered in greater detail above, were also in the same flood risk zones. I do not have sufficient detail of why the Council approved the other sites referred. However, each scheme must, in any case, be considered on its own merits.
35. As the Exception Test has not been met in this instance the proposal fails to comply with local and national planning policy, which seeks to steer new development away from areas at the highest risk of flooding. The development is, therefore, contrary to Policy CS08 of the CS.
36. For the same reasons, the proposal would not comply with paragraphs 159, 164 and 165 of the Framework.

Other Matters

37. The earlier application, in 2016, for two dwellings on the appeal site which was submitted at a time when the Council could not demonstrate a five-year supply of deliverable housing sites is not before me to consider. Had the appellant felt that the Council had not determined the 2016 application correctly they had the opportunity to appeal at that time. Both main parties now agree that the

Council can demonstrate a five-year supply of deliverable housing sites and as such the appeal should be determined in accordance with the development plan.

Planning Balance

38. There is no disagreement between the parties that the Council is, at the time of this decision, able to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 74 of the Framework.
39. The Council refused the application on the basis of CS01, CS02, CS06, CS08 of the CS and policies DM1, DM2, DM3 and DM5 of the SADMPP (policy DM22 has since been agreed as an error). The appellant contends that the most important policies are CS06 of the CS and DM2, DM3 and DM5 of the SADMPP and also contends that CS06, DM2 and DM3 are out of date.
40. As recognised by the Framework, the countryside is protected for its intrinsic character and beauty, and development should be sympathetic to the context and character of the area. As policies CS06 of the CS and policies DM2 and DM3 of the DMP are broadly consistent with the Framework, in this regard, I give the conflict with these policies substantial weight.
41. That these policies do not specifically provide for replacement of existing non-residential buildings with dwellings, or the redevelopment of PDL, does not make the policies out of date or make them more restrictive than the Green Belt section of the Framework, as contended by the appellant, for the reasons I have given above. As such, I have found the policies quoted to not be out of date and, therefore, paragraph 11d) is not engaged.
42. The Government's objective is, nevertheless, to significantly boost the supply of homes. The development would provide one additional house and one replacement dwelling and this weighs in favour of the scheme.
43. The proposed development would provide economic benefits, in the short term, through the provision of local jobs during the construction of the dwellings and the use of local materials, and, in the longer term, through supporting local services, facilities and businesses. From an environmental perspective, the proposed new dwellings would be likely to be of a higher standard of energy efficiency. However, given the small scale of the development the weight given to these benefits is limited, even considering the current economic climate and the need for recovery since the Covid pandemic.
44. That the development would not adversely affect the living conditions of the occupants of neighbouring properties, that there is no harm by way of waste, pollution, nor any negative effects on biodiversity and that the appellant is willing to accept a condition securing biodiversity net gain are all neutral considerations which could be achieved on a scheme which is sensitive infilling. Therefore, I have attached negligible weight to these matters.
45. There are bus stops within Barroway Drove that serve the community, however I have no compelling evidence before me that the bus stops would provide a genuine alternative to the use of the private car. Furthermore, I consider it is highly unlikely that the residents of the development would be likely to walk the two miles to Downham Market and I do not consider that the site is close to Downham Market, as contended by the appellant.

46. Furthermore, that no objections were received from statutory consultees, the Parish Council or third parties does not alter my decision on the main issues above.
47. Overall, I attribute limited weight to the benefits of the scheme and the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

48. The harm arising from the proposed development would therefore outweigh the benefits that would result from it. The proposal would, therefore, conflict with the development plan taken as a whole, and there are no material considerations to indicate that the appeal should be determined otherwise than in accordance with it.
49. For the reasons identified above, the appeal is dismissed.

K Townsend

INSPECTOR