



Appeal Decision

Site visit made on 11 January 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal Ref: APP/D0515/W/23/3322106

Land adj. to Allenby Farm, Broad Drove West, Tydd St Giles, Wisbech PE13 5NU

- 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 T Hopkin against the decision of Fenland District Council.
 - The application Ref F/YR22/0746/O, dated 1 June 2022, was refused by notice dated 10 February 2023.
 - The development proposed is up to two dwellings with detached garages.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline with all matters reserved. I have determined the appeal on this basis. A plan has been submitted as part of the appeal which indicates how two dwellings could be accommodated on the site. I have taken this plan into account for indicative purposes only.
3. On 20 December 2023, the Government published its revised National Planning Policy Framework ('the Framework'). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. I have had regard to the Framework in reaching my decision.

Main Issues

4. The main issues are 1) whether or not the appeal site is in an appropriate location for housing development having regard to development plan policy and the settlement strategy, 2) the effect of the proposed development on the character and appearance of the area, and 3) flood risk.

Reasons

Development plan policy and settlement strategy

5. The appeal site is located in an area of open countryside. It is not within a defined settlement boundary. Policy LP3 sets out that the overall strategy is for sustainable growth, including new housing. The focus for the majority of growth is in and around the four market towns. The policy includes the settlement hierarchy and that the location and scale of new development, will be taken on the basis of the Fenland Settlement Hierarchy.

6. Not being within a defined settlement, the location of the proposed development would fall under the 'elsewhere' category. Development in such locations is restricted to, amongst other things, that which is demonstrably essential to the effective operation of local agriculture, horticulture, forestry, outdoor recreation. Any such development will be subject to a restrictive occupancy condition.
7. Policy LP3, together with other policies, steers most new development to those larger places that offer the best access to services and facilities (both now and for the foreseeable future). This is to help reduce the need to travel, as well as making best use of existing infrastructure and previously developed land in built-up areas. The requirement is also outlined in Policy LP2 whereby development proposals should provide good access to health, leisure and recreation facilities.
8. Policy LP12 of the local plan concerns development policy in rural areas. The overarching policy for considering proposals for new dwellings in areas away from the market towns and villages is set out in Policy LP3. To determine such proposals, an applicant should provide supporting evidence as part of the application and explain (a) The existing functional need for the dwelling (b) The number of part time and full time worker(s) to live in the dwelling (c) The length of time the activity has been established (d) The financial viability of the enterprise (e) The availability of other suitable accommodation on site or in the area (f) How the proposed size of the dwelling relates to the viability of the enterprise.
9. There appears to have been some initial consideration of whether the dwellings would constitute rural workers accommodation. The local plan and the Framework outline that such homes may be appropriate in the open countryside where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside. In terms of demonstrating that the dwellings are for essential rural workers, with a necessity to live at, or close to the site, the submitted evidence is not robust or convincing.
10. The appellant has however clarified that the dwellings are intended for occupation by family members who wish to reside locally. The appellant has stated that their case is not based on functional or financial need in association with an agricultural enterprise.
11. The appeal site has poor access to local services and facilities. Future occupants would be required to travel to nearby towns and villages to access such facilities. There is no public footpath leading to the site and from my observations on my site visit, access to the site by means other than private car appears to be extremely limited. The reality is that future occupiers would use a car for most of their journeys. The Design and Access Statement states that future residents would be reliant on private modes of transport. This is the least sustainable option.
12. The proposed development would therefore not be in a sustainable location and would be in an inappropriate location for residential development. It would be contrary to Policies LP2, LP3 and LP12 of the Fenland Local Plan (2014) as outlined above and would cause significant harm to the Council's sustainable approach to housing delivery. It is also contrary to the Framework with regards to achieving sustainable patterns of development.

Character and appearance

13. The application is made in outline with all matters reserved, including appearance, layout, landscaping and scale. An indicative plan has been submitted with the application showing how the site *could* be developed for two detached dwellings. However, these plans are not part of the formal proposal and must not be treated as such. The key consideration is whether an acceptable development as described in the proposal could be carried out.
14. Although I share the same concerns as the Council in relation to the dwellings shown on the indicative plan, these cannot be elevated to be considered as a formal proposal. Even if such a form of development is the appellant's aspiration, it would be unreasonable to dismiss the appeal on the basis of plans that are not formally part of the appeal.
15. The appeal site is currently open. It makes a positive contribution to the open rural character of the countryside. The proposed development would inevitably create a significant change in the land that would harm this open rural character with any resulting dwellings being prominent and incongruous features.
16. In addition to the dwellings themselves, the proposed development would bring associated residential uses and paraphernalia to the site that would harm the rural character. There would likely be garden furniture, trampolines, play equipment, parked vehicles, formalised hard and soft landscaping that would cause harm to the character and appearance of the area. There would also be a noticeable degree of comings and goings of residents, visitors and delivery vehicles that would harm the tranquil rural character.
17. The development therefore would constitute a significant urbanising incursion into the open and undeveloped countryside in this location. This would seriously detract from the rural character and appearance of the appeal site and surrounding landscape.
18. I therefore find that the appeal scheme would have a significant adverse effect on the character and appearance of the area. As such, it would be contrary to Policy LP16 of the Fenland Local Plan (2014) which requires, amongst other things, that development makes a positive contribution to the local distinctiveness and character of the area, enhances its local setting, does not adversely impact, either in design or scale terms, on the landscape character of the surrounding area.
19. Additionally, there would be conflict with the Framework, which requires decisions to recognise the intrinsic character and beauty of the countryside.

Flood risk

20. The appeal site is located within Flood Zone 3 which is an area defined as having a high probability of flooding. In dealing with flood risk, Policy LP14 of the Local Plan sets out, amongst other things, that all development proposals should adopt a sequential approach to flood risk from all forms of flooding. Development in areas known to be at risk from any form of flooding will only be permitted following: (a) the successful completion of a sequential test (if necessary), having regard to actual and residual flood risks (b) an exception test (if necessary), (c) the suitable demonstration of meeting an identified need, and (d) through the submission of a site specific flood risk assessment,

demonstrating appropriate flood risk management and safety measures and a positive approach to reducing flood risk overall, and without reliance on emergency services. Footnote 59 of the Framework sets out that a site-specific flood risk assessment should be provided for all development within Flood Zone 3.

21. The Framework also outlines that development should only be allowed in areas at risk of flooding where, in light of the assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
22. The proposed development, comprising two dwellings, does not constitute an exclusion, as outlined in footnote 60 of the Framework, from the requirement to undertake a sequential or exception test. The appellant considers that the extant consent means that the proposed development satisfies the sequential test. I have considered the sequential approach as it relates to the fallback elsewhere in my decision.
23. The PPG states that the sequential test means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding, and secondly, that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.
24. The Council have set out that there are extant consents and sites reasonably available in the district within Flood Zone 1. This is not disputed by the appellant. In the language of the Framework, such sites would be sequentially preferable, however have not been considered.
25. I acknowledge that the Environment Agency in their consultation response stated that they had no objection to the proposed development. There is not, however, a reasoned analysis showing how this conclusion was arrived at, nor is there a stated consideration of the sequential or exception test as is required. The lack of objection therefore does not overcome the conflict with the requirements of both the local plan and the Framework identified above.
26. The proposed development therefore fails to pass the sequential test and would not comply with local or national planning policy which seeks to steer new development away from areas at the highest risk of flooding. The proposal would be contrary to Policy LP14 of the Fenland Local Plan (2014) where it seeks to minimise the impacts of and from all forms of flood risk, including by adopting a sequential approach.
27. In addition, it would fail to accord with the Framework where it states 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.

Other Considerations

28. The appeal site was granted planning consent in 2007 for the change of use of agricultural land and the erection of 2 x 2-bed holiday log cabins¹. Condition 2 of the consent states that the accommodation shall be used for holiday purposes only and should not be used as the main residence of any occupant. The reason for the condition is that the site is in an area where the erection of new dwellings is strictly controlled in the interests of countryside justification and the promotion of sustainable development.
29. The Council's evidence sets out the background to this consent insofar that a business case was made for two holiday log cabins aimed at tourists interested in wildlife, birdwatching and countryside activities. The evidence also sets out that the units are not intended for any permanent residential occupation, but only as tourist holiday lets. The Council outline how the scheme complied with rural tourism policies at the time of the decision.
30. The consent has not been fully implemented. Two concrete bases have been installed, onto which the log cabins would be sited. It is not in dispute between the parties that this would constitute commencement and therefore the consent is extant.
31. The appellant considers that the extant consent represents a fallback which justifies the granting of consent for the proposed development. They also do not consider that the condition preventing occupancy as a main residence to be reasonable.
32. The extant consent is as set out. It states that it is for two holiday log cabins and has a condition requiring them to be used as such, and not for a main residence. When taken with the condition, it clearly does not permit the use of the site for non-holiday purposes or main residential accommodation, and therefore it is not a directly comparable development to the appeal proposal. The evidence shows that the Council in making that decision did not consider the site to be suitable for dwellinghouses but were satisfied that the case was made that tourist accommodation complied with the relevant policies and was acceptable. Hence the restrictive condition was imposed.
33. The merits of the condition imposed on that consent are not before me in this appeal and there is nothing to suggest that it has been removed or that there is any extant lawful use of the site as unrestricted dwellinghouses. It would seem a reasonable approach in having considered that the site was unsuitable for unrestricted dwellinghouses, that a condition was imposed requiring their use as holiday accommodation only, given that this use was found to comply with policies relating to the provision of rural tourism.
34. The appellant suggests that the proposed development would have no greater vehicle movements than the fallback development. There is no substantive evidence to convince me that this would be the case. Although there is no restriction, holiday accommodation is often seasonal and is seldom always occupied. The nature, type and frequency of vehicle movements is likely to differ between the fallback and the proposal. Holiday accommodation would be unlikely to have the same deliveries, visitors, commuting, educational or

¹ Planning Application Ref F/YR07/0369/F

healthcare trips as a permanent dwelling. Even so, there is a clear policy conflict which would not be overcome.

35. The extant consent also pre-dates the current local plan and the Framework. Although the parties agree that the extant consent could be implemented, given that some 17 years have passed since it was granted, and the fact the appellant has pursued the development subject to the appeal, there appears to be a reduced likelihood of its implementation and thus reducing its weight in the appeal. I therefore give the extant consent limited weight in the matter of the consideration of the proposal against the development plan policy and settlement strategy.
36. The fallback is also pertinent in the consideration of the effect on character and appearance. The appellant suggests that one option for future development would be for a scheme to reflect the attributes of the extant consent. I have assumed this is in relation to any future reserved matters. It is within the confines of the appeal to consider whether or not a development could come forward that does not cause harm to the character and appearance of the area.
37. On the matter of character and appearance therefore, giving the extant consent appropriate weight, I consider that dwellings of the same siting, appearance, layout and scale, would significantly reduce the harm caused so that the development would have no greater impact on the character and appearance of the area than the fallback.
38. I acknowledge the Council's concern in relation to what they perceive to be the appellant's intentions. Had I allowed the appeal and granted outline planning permission, the indicative plans would have been of no status. It would have been within the gift of the decision maker, in relation to the determination of any future reserved matters, to refuse consent for any scheme they consider caused harm in terms of the character and appearance of the area, having regard to the fallback position as I have outlined above.
39. In terms of flood risk, the appellant considers that the development passes the sequential test due to the extant consent being in the same flood risk vulnerability classification² as the proposed development. The Framework and PPG set out when the sequential test does not need to be applied. Using Table 2 of the PPG the development being of the more vulnerable classification, in flood zone 3, requires an exception test.
40. The sequential test must be passed before the exception test can be applied. Therefore, even if I agreed with the appellant that the sequential test is passed, to pass the exception test it should also be demonstrated that: a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
41. The appellant suggests that the mitigation measures as set out in the Flood Risk Assessment, including the provision of housing constitute wider sustainability benefits to the community that outweigh the flood risk. I have found that the development is not sustainably located. I also do not consider that the provision of two dwellings would constitute a community benefit to

² Annex 3: Flood risk vulnerability classification – National Planning Policy Framework (2023)

outweigh the flood risk. Therefore, even though mitigation measures can be used to make the development safe, it does not meet both elements of the exception test as required.

42. Therefore, whilst there may be a fallback for holiday lodges, this does not obviate the need to pass the sequential and exception tests. It is also pertinent that the proposed development falls to be considered against a local plan and Framework that was not in place at the time of the fallback.
43. I acknowledge that the dwellings are intended to be occupied by the appellant's family members. This is nevertheless a matter of personal circumstance that seldom carries significant weight in the decision-making process that is primarily concerned with land use planning matters. I therefore give this limited weight in the appeal.
44. I acknowledge that comments were received in support of the proposal, and I have considered the benefits put forward in my decision. There are also some minor benefits in terms of landscaping and opportunities for biodiversity enhancement.

Planning Balance and Conclusion

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
46. The proposed development would result in a minor increase in the Council's overall housing number. It would also bring a small number of additional residents to the area who would contribute to the local economy and there would be an opportunity for further landscaping and biodiversity enhancements. I give these factors moderate weight in favour of the development.
47. However, I am not persuaded that an exceptional case has been made, as is required. The location of the proposed development outside a settlement would undermine the Council's plan-led approach in seeking that development should be sustainably located. When combined with the failure to ensure developments are sited in areas of lower flood risk, collectively, these matters attract significant weight that outweighs the benefits associated with the proposed development.
48. Although I have given weight to the fallback in terms of character and appearance, for the reasons set out, I give it limited weight in relation to the requirement to deliver sustainably located housing and to ensuring that development is directed away from areas at highest risk from flooding.
49. The proposed development would therefore conflict with the development plan and the Framework and there are no other considerations, including the fallback, that outweigh this conflict.
50. For the reasons given above, and having had regard to all other matters raised, I therefore conclude that the appeal be dismissed.

A M Nilsson

INSPECTOR