



Appeal Decision

Site visit made on 3 April 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2024

Appeal Ref: APP/V2635/W/23/3332601

Land rear of 220 The Drove, Barroway Drove, Downham Market, PE38 0AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Orna's Construction Limited against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 23/00537/O.
 - The development proposed is outline planning for residential development of up to five dwellings with matters committed in respect of access only.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline form and included details of access. Appearance, layout, scale and landscaping were reserved for subsequent approval. Any details relating to the reserved matters on the submitted drawings have been treated as being indicative only.

Main Issues

3. The main issues are whether the site is a suitable location for new residential development having regard to i) national and local planning policies, ii) the effect of the development on the character and appearance of the area, and iii) flood risk.

Reasons

Location

4. The appeal site comprises a parcel of employment land located within Barroway Drove, which is defined by Policy CS02 of King's Lynn and West Norfolk Borough Council Core Strategy 2011 (the CS) as a smaller village or hamlet with no development boundary. The nearest services and facilities are in the town of Downham Market, which is over 3 miles away from the site, and is only accessible via country roads that are mostly unlit, with no footpaths, and speed limits of at least 40mph. Whilst there is a bus stop close to the site, I have not been provided with any details as to the frequency or nature of services that operate to and from this.
5. Policy CS02 directs most new development to the towns and larger settlements. It states that development in smaller villages and hamlets will be limited to specific identified needs in accordance with Policy CS06. Policies CS06 and CS10 both give priority to retaining local business sites, unless it can

be clearly demonstrated that continued use of the site for employment is economically unviable or cannot overcome an overriding environmental objection. As a mixed use is not proposed, that part of these policies is not relevant to this case.

6. Policy DM2 of the King's Lynn and West Norfolk Borough Council Site Allocations and Development Management Policies Plan 2016 (the SADMP) states that areas outside of development boundaries, which are not allocated for development, will be treated as countryside. It restricts new housing in such areas to rural exceptions affordable housing and to houses required to support the operation of a rural business. In addition to this, in smaller villages and hamlets, Policy DM3 supports the sensitive infilling of small gaps within an otherwise continuously built-up frontage and, in exceptional circumstances, small groups of dwellings of particularly high quality that would provide significant benefits to the local community.
7. The site does not appear to have been in active commercial use for some time. My attention is drawn to a planning permission for a new commercial use. However, that permission has lapsed and there is no evidence before me to suggest that it was lawfully implemented. Moreover, in granting that permission regard would have been had to its effect on the living conditions of nearby residents and I am advised that mitigation measures were conditioned. As such the potential for the site to generate unacceptable levels of traffic, noise or odour is unlikely. I have also not been provided with any evidence that the existing or past use of the site has been subject to complaints.
8. The proposal relates to general open market housing, and it is not disputed that it would not represent limited frontage infill development. I have not been made aware of any exceptional circumstances that would apply in this case or provided with evidence that the houses would be of higher quality than that required by normal planning and building regulation requirements, or that there would be any significant benefits to this very small local community. Given that there are no local services or facilities, the proposal would not contribute to the vitality or viability of these.
9. I therefore conclude that the site is not a suitable location for new dwellings. As such, the proposal would not accord with Policies CS02, CS06 and CS10 of the CS or Policies DM2 and DM3 of the SADMP, which seek to protect existing employment sites and to direct most new housing to larger settlements except for affordable and rural workers housing or linear frontage infill. The proposal would also conflict with the National Planning Policy Framework (the Framework), which requires new housing in rural areas to be located where it would enhance or maintain the vitality of rural communities.

Character and appearance

10. The site comprises a large open area of hardstanding occupied by a large steel shed with a curved roof, similar to that typically found on rural farmsteads, together with a static caravan, two portacabin style buildings and a small steel framed shed. Except for the larger shed, the existing buildings are of a small temporary nature. The buildings are also relatively low level and located adjacent to the site boundaries, maintaining a sense of openness in views across the site. The majority of the site, beyond the rear of the adjacent frontage dwellings, is bound by steel palisade fencing. The tall conifer trees around the site are located outside of the fence, except those to the front of

the large shed. There are steel framed, timber clad gates at the site entrance and timber fencing along the boundaries with the gardens of 218 and 220 Barroway Drove.

11. There is residential ribbon development, comprising a mixture of two storey houses, bungalows and dormer bungalows, along either side of Barroway Drove, which is intersected by fields and small commercial premises on former farmsteads. The wider surroundings are open arable fields.
12. The proposal would utilise the existing means of access and whilst matters of layout, scale, appearance, and landscaping are reserved, it is nevertheless appropriate to consider how the development of the site will affect the rural character and appearance of the area. In this case the evidence submitted with the application confirms that due to the site being in a high flood risk area, it would be necessary for the finished floor levels of any new dwellings to be a minimum of 1.4m above the existing ground level. Moreover, as bedrooms would not be permitted at ground floor level, the dwellings would need to be at least two storeys high, albeit the first floor could be within the roof space.
13. Whilst I acknowledge that the size of the site could comfortably accommodate a cul-de-sac comprising five detached dwellings with associated garages, parking and gardens, this form of development would not be in keeping with the rural character and linear appearance of other residential development in this area. Although the site is partially screened by large conifer trees, the long-term future and existence of these cannot be guaranteed. There are also clear views into the site across the fields and the garden of No.218 and from the site entrance and over the bungalow and garden of No.220. New landscaping, which would be agreed at reserved matters stage, would take a considerable time to become effective.
14. I therefore conclude that a backland residential development of up to five dwellings in this location would harmfully detract from the rural character and appearance of the area. As such it would not accord with Policies CS06 and CS08 of the CS, Policy DM3 of the SADMP, or the Framework, which require amongst other things that new development is appropriate to its surroundings.

Flood risk

15. The site is in an area that is defined by the Environment Agency as flood zone 3a, and therefore has a high probability of flooding. The Framework is clear that development should not be permitted in such areas if there are reasonably available sites appropriate for the proposed development in areas at lower risk of flooding. Whilst I have not been provided with any details of the sequential test search area, the main parties are agreed that the sequential test is passed. Accordingly, I have not considered this further. However, for more vulnerable development, including new dwellings, in flood zone 3, it is also necessary to pass the exception test.
16. The exception test comprises two elements, both of which must be demonstrated: a) that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) that 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. The main parties are agreed that part b of the test has been met.

17. With regard to part a of the test, the purported sustainability benefits to the community are the replacement of a commercial use, that could potentially cause harm to the living conditions of occupiers of adjacent properties in terms of traffic, noise and odour with residential use, and the contribution that the proposal would make to the housing land supply, utilising previously developed land. Planning Practice Guidance (the PPG) provides examples of wider sustainability benefits to the community, which include the re-use of suitable brownfield land as part of a local regeneration scheme, an overall reduction in flood risk to the wider community and the provision of multi-functional sustainable drainage systems that integrate with green infrastructure and significantly exceed national policy requirements for sustainable drainage systems.
18. Although the proposal would utilise brownfield land, I have already concluded that the site is not in an appropriate location for new housing. There is no evidence before me that the wider community are or have been adversely affected by the commercial use of the site and the development plan gives priority to such uses in rural areas. As such, I am not satisfied that the proposal would deliver sufficient sustainability benefits to the wider community that would outweigh the risk of flooding.
19. I therefore conclude that the flood risk exceptions test has not been passed and as such the proposal would not accord with Policy CS08, which requires development that is not compatible with the flood zone it is in, to demonstrate that it contributes to the regeneration objectives of King's Lynn or the wider sustainability needs of rural communities. The proposal would also conflict with the Framework in respect of flood risk.

Other Matters

20. I acknowledge that the means of access to the development would be as existing and would be acceptable. However, this is a neutral matter and does not weigh in favour or against the scheme.
21. Whilst the proposal would make a modest contribution to the supply of housing land in the borough and would utilise previously developed land, these modest benefits would not outweigh the conflict with local and national planning policies.
22. The site lies within the Zone of Influence for one or more European designated sites. There is no evidence before me to demonstrate that this has been addressed in accordance with the Habitat Regulations and no mechanism to secure any necessary mitigation. However, as I am dismissing the appeal on other matters, it is not necessary for me to seek further clarification on this or to undertake an appropriate assessment.

Conclusion

23. For the reasons given above, the appeal is dismissed.

R Bartlett

INSPECTOR