

Appeal Decision

Hearing Held on 23 & 24 April 2024

Site visit made on 24 April 2024

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/M2325/W/23/3334190

The Garden Place, Cropper Road, Westby with Plumpton FY4 5LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mike Bowman (Eden Land & Development) against Fylde Borough Council.
 - The application Ref 23/0469, is dated 23 June 2023.
 - The development proposed is Development of Neighbourhood Centre comprising single storey retail building (use classes E a) or E b) with area reserved for future community use, access from Cropper Road, car park, servicing area and landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. Prior to the Hearing an application for costs was made by Mike Bowman (Eden Land & Development) against Fylde Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has submitted a statement of case in relation to the appeal.
4. The statement sets out the putative reasons for refusal of the Council. These constitute the matters of disagreement with the appellant, and they therefore inform the basis of the main issues in this case, along with matters that have been raised by interested parties.
5. During the course of the appeal amended plans were submitted. These related to Highway alterations at the Cropper Road frontage, minor changes to internal layout for service vehicle tracking, addition of motorcycle parking and covering for the cycle store and EV charging. They also related to the removal of rear bin store for a landscaped buffer and the yard and plant area are shown to be outside of the main brick building and with a timber enclosure.
6. Given the limited extent of these changes, I accepted those amended plans for consideration and my determination of the appeal has been made on that basis.

7. There is a linked appeal for the erection of 62 affordable dwellings with vehicular access from Cropper Road, associated internal estate road, flood attenuation area and pedestrian/cycle links, Ref APP/M2325/W/23/3334188 (the linked proposal). This was considered at the same Hearing as this appeal was given that some of the main issues are relevant to both appeals but is the subject of a separate decision.

Main Issues

8. The first main issue is whether the development of the site would conflict with development plan policy with regard to flood risk including whether the site has been the subject of the sequential test. The second is the extent to which the proposed neighbourhood centre would meet the needs of the local community and accord with the development strategy for the area. The third is the effect of the proposal on Highway safety with regard to matters relating to access and parking.

Local plan/master planning context

9. The site comprises part of a site allocated for housing within the Fylde Local Plan to 2032 (Incorporating Partial Review) (2021) (FLP). The wider site is referenced as HSS5, Cropper Road West, Whitehills under Policy SL2 for 250 homes. The appeal site falls outside of a site identified for a local centre on the FLP policies map, dealt with under Policy EC5 of the FLP. That site allocated on the policies map broadly reflects the location of an existing garden centre on that site.
10. At the time of the Hearing, I was advised that whilst there were various live planning applications at various stages across the allocation for housing, no planning permission have been issued by the Council relating to permissions for housing under this allocation.
11. It is clear from the evidence that the master planning approach across the HSS5 allocation has been developer led to date and that the Council has been working with developers of other sites within the allocation on the basis of an ongoing and evolving masterplan. There seems little prospect of the master planning being Council led. I do not find that in principle there should be issue with the appeal site being master planned along the lines of such an approach.

Reasons

Flood risk

12. Parts of the appeal site fall within Flood Zones 2 and 3. The Framework¹ advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The proposal is a type of development which should be subject to the Sequential Test with regard to Flood Risk. It appears to be the case that much of the appeal site appears lower than the surrounding land.
13. Policy CL1 of the FLP states that planning decisions should follow the sequential, risk based approach to the location of development as required by the Framework. The supporting text indicates that the application of the sequential test will be required.

¹ National Planning Policy Framework 2023.

14. The overall aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This is regardless of the recommendations of the Flood Risk Assessment which includes recommendations for flood risk mitigation measures and site specific hydraulic modelling which suggests the whole of the site is within Flood Zone 1.
15. In coming to those conclusions however the report addresses the Exception test having considered that the requirements of the sequential test have been met. That could be the case had the site been subject to the sequential test at the plan making stage, however the evidence indicates that the site was in Flood Zone 1 at the time of its inclusion within the local plan allocation in the earlier version of the local plan and there is no evidence before me that the sequential test was applied at the plan making stage. The approach to flood risk is fundamental to provision of such developments and is in place to ensure that development is directed away from areas at highest risk. Given the approach that has been undertaken with regard to that matter and this site, I cannot be assured that this is the case.
16. To conclude on this matter, it has not been demonstrated that the Sequential Test has been applied as required by the development plan and the Framework and it is not known whether there are any available alternative sites at lower risk of flooding. There is therefore conflict with Policy CL1 of the FLP and the Framework which aim to steer development to areas at lowest risk of flooding.

Development strategy for the area/community need

17. The development site relates to a much smaller land area than that identified on the FLP policies map. That map appears to indicate a fixed site for the Whitehills local centre whilst marking another two local centres elsewhere in the district as indicative. However, Policy EC5 of the FLP appears to contradict the policies map and indicates that all three of those local centres are identified indicatively on the policies map.
18. The Council have offered little evidence to justify the size of the proposed local centre allocation at Whitehills, other than the allocation broadly reflected the existing retail use on site. On the basis of the information before me, on the basis of the Policy a more flexible approach to the size of the local centre when set against the policies map is justified.
19. The application includes proposals for a retail unit and a smaller adjoined café unit. The appellant has provided detailed supporting evidence reflecting the commercial realities of what type of commercial uses could be successful at the site. Whilst the Council disagreed with the way in which the appellant carried out their calculations, there is nothing firm from the Council as to what size of commercial premises could be more suited. I therefore conclude that the commercial offering which would serve Whitehills with usable retail facilities constitutes a reasonable approach.
20. However, the application would provide for no other community facilities, other than appearing to set aside an area for potential community use subject to viability/demand. Amongst other matters, the Framework at part 8 states that planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between

people who might not otherwise come into contact with each other – for example strong neighbourhood centres. Further, it advises that planning decisions should plan positively for the provision and use of community facilities.

21. The Whitehills area already hosts a significant number of dwellings and there is the potential for further dwellings were those under the HSS5 allocation and other sites to progress. There do not appear to be any of the type of community facilities advocated by the Framework within easy access. Such facilities are not secured against this application and the retaining of a space for such a use is a wholly unsatisfactory manner in which to attempt to address this issue and there appears to be no guarantee such a facility would come forward. The proposal therefore conflicts with the Framework with regard to the provision of community facilities.
22. Whilst I do not disagree with the principles of a developer led masterplan approach, this issue does not appear to have been properly addressed under the current approach given that Policy M1 of the FLP states that masterplans should amongst other things meet criteria including that an appropriate level of leisure/ social/ cultural/ community facilities should be provided that meet local needs of the residents of the development. There would therefore be conflict with this Policy.

Highway safety

23. The proposal includes provision for 24 parking spaces. This would be short of the requirement of 33-34 spaces indicated within the SPD². I accept that there is some differentiation between dwell times for convenience and larger retail which may not be reflected in that guidance and that many local customers may walk or cycle to the site. However, it is common ground that although working on that basis the parking need for the retail store could be met, only a proportion of the need for the non-food retail/café would be met.
24. On the basis of the evidence, a condition to limit dwell time at the units would neither meet the tests of reasonableness or enforceability given that no proper system of management of this arrangement was put forward at the Hearing. Further, no account appears to have been taken for any parking demand that would be likely to be associated with the potential community use on the site, the requirement for which could well coincide with the demand for the retail on the site.
25. Taking this into account, there could be a severe shortage of parking at the site. I was advised that any impact on highways safety could, in part, be limited by lining on the nearby road network to protect junctions. However, the extent of what such a scheme would involve is very unclear. There can be no certainty that a suitable provision for on street parking would be available. There is a risk that the parking provision is so far short that visitors become frustrated and ignore the lining or other restrictions, potentially involving parking close to existing junctions around the site.
26. It is therefore likely on the basis of the evidence before me that allowing the proposal would harm highway safety in the area through the deficient level of parking proposed. There would therefore be conflict with Policies T5 and GD7 of

² Fylde Council – Provision of Parking on New Developments – Supplementary Planning Document – 2023.

the FLP which amongst other matters state that car parking should, wherever possible, be provided on site so as to ensure there is no detrimental effect on highway safety.

Other Matters

27. The design of the units proposed would be entirely acceptable, whilst the limited depth of front boundary planting at one end of the site would have no significant adverse impact on the character or appearance of the area. I therefore find no harm in this regard.
28. Were I minded to allow the appeal, there is nothing to indicate that in theory, appropriate visibility splays could not be provided at the site access. There would therefore not be conflict with Policy GD7 of the FLP with regard to this specific matter.
29. It is also the case that a suitable surface or foul water drainage scheme could be provided given the land required for that is outside of the site but within the same ownership meaning that a condition would be an option. I have not therefore identified conflict with policies CL1 or CL2 of the FLP with regard to this specific matter.
30. The proposal has the potential to have significant effects on the Ribble & Alt Estuaries Special Protection Area, Ribble & Alt Estuaries Ramsar site and the Ribble Estuary Site of Scientific Interest. However, as the proposal is unacceptable for other reasons, I have not undertaken an appropriate assessment or considered this matter further.
31. The evidence indicates that peat present at the site would be difficult to restore due to the layer of made ground on top. Given this, Natural England have no objection to this proposal in relation to deep peat and I have no reason to disagree with that position.

Planning Balance and Conclusion

32. The scheme would provide useful and practical commercial services to the area and would provide social and economic benefits and demonstrates biodiversity net gain. However, the benefits of the scheme would not outweigh the harm identified.
33. The proposal would conflict with the development plan. There would be conflict with the Framework, a matter which weighs against the proposal. There are no material considerations which indicate a decision should be made otherwise than in accordance with the development plan. The appeal is therefore dismissed.

T Burnham

INSPECTOR

Documents submitted at Hearing

Highways Statement of common ground

Shadow Habitats Regulations Assessments

Most recent site masterplan

List of potential planning conditions

Local Authority Rebuttal to appellants claim for an award of costs

Transcript of interested party verbal comments at Hearing

Documents submitted after Hearing

Unsigned Unilateral undertaking

Signed Unilateral undertaking