



Appeal Decision

Site visit made on 18 June 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2024

Appeal Ref: APP/Z2505/W/23/3331457

La Vern, Washdyke Lane, Kirton Meeres, Boston, Lincolnshire, PE20 1PP

- 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 Mr John Burton against the decision of Boston Borough Council.
 - The application Ref is B/23/0112.
 - The development proposed is erection of a two-storey dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address in the banner heading above is taken from the application form. However, the appeal site is located on grass land to the rear of this address, which is accessed from Drainside North.
3. The application was submitted in outline form with details of access, scale, layout, appearance and landscaping all reserved for subsequent approval. I have therefore treated the submitted drawings as being for indicative purposes only.

Main Issues

4. The main issues are whether the appeal site is a suitable location for a new dwelling having regard to national and local planning policies that seek to direct new development to the most sustainable locations and to areas at the lowest risk of flooding.

Reasons

Suitability of location

5. The appeal site lies outside of the defined settlement boundaries of Kirton and Kirton End and is therefore located in the countryside. Policy 1 of the South East Lincolnshire Local Plan 2011-2036 (local plan), outlines the spatial strategy for the area. It states that development in the countryside will only be permitted where it requires such a location or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits. The proposal for a single market dwelling would not meet these requirements.
6. Policies 2 and 3 of the local plan require that new development complies with sustainable development considerations including, amongst other things, vehicle generation levels and accessibility by a choice of travel modes. Due to

the location of the site, future occupants would be required to travel to nearby towns and villages to access services and facilities. There is no public footpath or street lighting along the 60mph roads leading to the site and I have not been advised that there is any regular public transport. Based upon my observations of the site and the information before me, access to the site by means other than private car appears to be extremely limited. Future occupiers of the proposed dwelling would therefore use a car for most of their journeys, which is the least sustainable option.

7. I acknowledge that people living within built up settlements will also use cars, particularly in areas such as rural Lincolnshire, and that people living in the countryside will walk and cycle, particularly for leisure purposes. I also note that the site is within walking and cycling distance of the services and facilities in Kirton, which are approximately 1.5 miles away. However, those living close to facilities such as places of work, school, shops, and medical centres, are more likely to walk or cycle to them than those living in the countryside. It is not practical or convenient to carry shopping or to take children to school by foot or cycle along rural roads that are unlit and have no pavements, particularly during winter months, hours of darkness and inclement weather.
8. I therefore conclude the site is not a suitable or sustainable location for a new dwelling. Consequently, the proposal would be contrary to Policies 1, 2 and 3 of the local plan and would undermine the Council's sustainable approach to housing delivery. It would also be contrary to the National Planning Policy Framework (the Framework) with regards to achieving sustainable patterns of development.

Flood risk

9. The site is identified on the Environment Agency flood maps as being within flood zone 3 (high probability). In line with the Framework, Policy 4 of the local plan states that development should only be allowed in flood zone 3, if it has been demonstrated by a sequential test that there is no other suitable land available on which the proposal could be located, which would be at lower probability of flooding, i.e., in flood zones 1 or 2. It confirms that sequential tests should be based on a Borough or District wide search of alternative sites within defined settlement boundaries, unless the site is allocated for development in the local plan or has a specific need to be in a different location.
10. The flood risk assessment states that due to large parts of the Borough being in flood zone 3 there are limited opportunities to undertake the development on an alternative site that is at lower risk of flooding. The supporting planning statement advises that a search for sequentially preferable sites was undertaken using a variety of online websites such as Rightmove and Zoopla, and that no sites were identified. No details of the area of the search undertaken or its findings have been submitted as evidence. Nor has any evidence of any potential sites that were considered and ruled out been provided. Whilst the supporting statement confirms that the appellant is aware of a site with planning permission, no details of this site or of any attempts to contact the owner have been submitted. I am simply advised that no plots were available on the open market on that site at the time the application was submitted.

11. The Council has also not provided any evidence to support its own case, such as a register of reasonably available sites in suitable locations in flood zones 1 or 2, as suggested by National Planning Practice Guidance. However, given that it has a relatively recent local plan and more than a five-year supply of housing land, it is reasonable to assume that there are alternative sites available.
12. Based upon the very limited evidence before me, I am not persuaded that there is not a plot of land available that could accommodate a single dwelling in the whole of the borough that would not be at lower risk of flooding than the appeal site. Accordingly, the sequential test is not passed.
13. Even if the sequential test had been passed, proposals for more vulnerable development, which includes new dwellings in flood zone 3, must also satisfy the exception test. This comprises two parts, both of which must be satisfied in order to pass the test. I have no reason to doubt that subject to suitable conditions and mitigation measures, the development could be made safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. Accordingly, that part of the test can therefore be met.
14. However, the provision of a single family dwelling in an unsustainable countryside location, would not in my view deliver the wider sustainability benefits to the community that are necessary to outweigh the flood risk. Accordingly, this part of the test cannot be met, and the exception test also fails.
15. I therefore conclude on this matter that the site is not a suitable location for a new dwelling having regard to flood risk. The proposal would be contrary to Policy 4 of the local plan and section 14 of the Framework, which restrict new development on non-allocated sites in flood risk areas unless the sequential and exception tests have been passed.

Other Matters

16. My attention has been drawn to numerous planning permissions that have been granted by the Council. However, based upon the limited information before me I cannot be certain that the sites and proposals in those cases are directly comparable to the one before me or that there were not different material considerations that outweighed their conflict with relevant planning policies. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise.
17. It has been suggested that numerous issues could be addressed at reserved matters stage. The only matters that can be considered and conditioned at that stage are those that are reserved i.e. access, layout, appearance, scale and landscaping. Matters such as flood risk, drainage and biodiversity are not reserved for subsequent approval and must be satisfied, and conditioned where necessary, at the outline planning permission stage.
18. Whilst I agree it was unnecessary for the Council to seek clarification on boundary treatments at this stage, which could have been controlled by planning conditions, that does not alter my findings on the main issues.

Conclusion

19. The proposal conflicts with the development plan for the area and with national planning policy. There are no material considerations before me that indicate a decision should be taken other than in accordance with these. Accordingly, for the reasons given above, the appeal is dismissed.

R Bartlett

INSPECTOR