

Appeal Decision

Site visit made on 8 October 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2024

Appeal Ref: APP/Y2003/W/24/3345474

Collingwood Farm, Main Street, Gunthorpe, North Lincolnshire DN9 1BQ

- 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 Mrs C Platt against the decision of North Lincolnshire Council.
 - The application Ref is PA/2022/1985.
 - The development proposed is the demolition of an existing single storey masonry barn and replacement with a two storey (four bedroom) dwelling and associated garage.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mrs C Platt against North Lincolnshire Council. This application will be the subject of a separate decision.

Preliminary Matters

3. Outline planning permission is sought with all matters reserved for subsequent approval. A drawing has been submitted that includes details of layout and access, matters that are reserved for future consideration. I have therefore treated the drawing as illustrative in this regard and determined the appeal on this basis.
4. In response to the Council's second reason for refusal, the appellant submitted with their appeal a "Sequential and Exception Test" produced by HMS Town Planning, dated 30 May 2024. The Council and interested parties have had an opportunity to comment upon this information and therefore would not be prejudiced by its inclusion. I have therefore accepted the document.
5. During the consideration of the appeal, the Council withdrew their emerging Local Plan from examination and therefore is no longer a material consideration in the determination of this appeal. Both parties were provided an opportunity to comment on this matter. I have determined the appeal on this basis.

Main Issues

6. The main issues are:
 - a) the effect of contamination on the proposal;
 - b) whether the appeal site is in a suitable location for the proposal and whether future occupiers would be reliant on the private car; and
 - c) whether the appeal site is a suitable location for the proposal having regard to the risk of flooding.

Reasons

Contamination

7. The appeal site comprises an L-shaped parcel of land to the south of the farmhouse and outbuildings at Collingwood Farm. A single storey open-fronted brick barn set back from Main Street is located on it. It is proposed to demolish the barn and construct a detached dwelling.
8. I accept the proposal is for a sensitive end use, and the appeal site and barn may have been used in connection with a farm during its lifetime. However, the evidence before me does not suggest that the appeal site is known or strongly suspected as being contaminated.
9. The supporting text to Policy DS7 of the North Lincolnshire Local Plan, adopted 2003 ("LP") states that conditions can be imposed on a planning permission requiring a detailed site investigation by the developer before work commences and the implementation of measures to overcome contamination problems. Furthermore, the Council's Environmental Protection Team suggested the imposition of such conditions if the Council were minded to approve the planning application without first receiving a Phase 1 Assessment. The appellant has confirmed they would accept a pre-commencement condition regarding potential contamination and remediation.
10. From the information before me, I am not convinced that any potential contamination could not be remedied by conditions securing the submission of a Phase 1 Assessment and any necessary remediation measures, should I allow the appeal.
11. Accordingly, in reference to the first main issue, contaminated land would not have an adverse effect on the proposed development. It would therefore not conflict with LP Policy DS7 which, amongst other things, states that conditions will be imposed to secure the implementation of a suitable scheme of remedial measures at the appropriate time in the development process and to otherwise restrict and control the development. It would also comply with the National Planning Policy Framework ("the Framework") that seeks to ensure that a site is suitable for its proposed use taking account of any risks from contamination.

Suitable Location and Reliance on the Private Car?

12. Policy CS1 of the North Lincolnshire Local Development Framework Core Strategy, adopted 2011 ("CS") sets out the spatial strategy for the district. The appeal site is outside the development limits of Gunthorpe and therefore is within the countryside. CS Policies CS2, CS3 and CS8 resist development outside the defined development limits of settlements to that which is essential to the functioning of the countryside. While LP Policy RD2 provides a closed list of developments that would be granted planning permission in the countryside, provided several criteria are met.
13. The proposal is for one open market dwelling and therefore, it would not comply with any of the developments listed within LP Policy RD2. The proposal would therefore conflict with the development plan's spatial strategy.
14. The appeal site forms part of a ribbon of development along either side of Main Street. I have not been directed to any services or facilities within the ribbon of development other than a post box and two bus stops. However, the frequency

of the bus service is very limited and could not be relied upon to meet the day-to-day needs of future residents.

15. The Council assert the nearest settlement to the appeal site with a reasonable level of services and facilities is Owston Ferry. This has not been disputed by the appellant and there is nothing before me to come to a different view. Owston Ferry is over 2km north of the appeal site. The majority of the route between the appeal site and Owston Ferry has no pavements or street lighting and is subject to the national speed limit.
16. Due to the condition of local infrastructure between the appeal site and Owston Ferry and the significant distance involved, future occupants would likely find walking or cycling an unattractive option, particularly for those with young children or mobility issues, especially after dark or during inclement weather. Consequently, I find that future occupiers of the proposed development would be heavily reliant on the private car to meet their day-to-day needs.
17. I acknowledge that existing occupiers within the ribbon of development would be heavily reliant on the private car. However, it does not justify a new dwelling in a location that conflicts with the Council's spatial strategy and the development plan's aim to reduce the need to travel. The appellant asserts that the surrounding area has seen incremental housing growth over the last 20 years through infill developments and the conversion of agricultural buildings. I have not been provided with details of these examples to ascertain whether they are directly comparable to the appeal proposal. In any event, I must determine each case on its own merits.
18. In reference to the second main issue, the appeal site would not be in a suitable location for the proposal and future occupiers would be reliant on the private car. It would conflict with LP Policy RD2 and CS Policies CS1, CS2, CS3 and CS8 the content of which I have described above. It would also conflict with CS Policy CS25 which, amongst other things, seeks to reduce the need to travel and improve accessibility for all as part of all future spatial design within North Lincolnshire.
19. The Council's first reason for refusal also includes LP Policy T1. The proposal is for one dwelling which would not generate a significant volume of traffic movement. As such, this policy is not applicable to the proposal.

Flood Risk

20. The appeal site is within Flood Zone 3 on the Environment Agency's Flood Map for Planning, and within Flood Zone 3a according to the appellant's Flood Risk Assessment. Consequently, the appeal site is at a high risk of flooding. The proposal is for a "more vulnerable" type of development according to Annex 3 of the Framework. A "more vulnerable" development within Flood Zone 3a can be appropriate subject to passing the Sequential Test ("ST") and the Exception Test ("ET")¹.
21. Paragraph 168 of the Framework states that the aim of the ST is to steer development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The PPG defines '*reasonably available sites*' as those "*in a suitable*

¹ Planning Policy Guidance, Flood Risk and Coastal Change, paragraph 079 Reference ID: 7-079-20220825

location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development”.

22. For individual proposals subject to a ST, the area to apply the ST will be defined by local circumstances relating to the catchment area for the type of development proposed². The parties agree that the search area for the proposal's ST is the whole district. I have nothing before me to come to a different view.
23. The ST restricted its search to reasonably available sites of 0.07ha in size (the same size as the appeal site) which conflicts with established Case Law³. Notwithstanding this, the ST concludes that there are two reasonably available sites within the district that are at a lower risk of flooding: Brigg Road, Wrawby and Belton Park, Belton. The ST asserts that these sites do not offer the same environmental benefits as the appeal site as they are located in urban areas. However, this falls outside the scope of a reasonably available site.
24. I also dispute some of the reasons for discounting other sites within the ST as being unavailable, including where conditions would need to be discharged on a planning permission, or permission would need to be gained for a reserved matters application. Furthermore, the Council has clarified that the planning permission at Saxby All Saints has not expired, as asserted by the appellant.
25. Consequently, there are various reasonably available sites appropriate for the proposal within the ST search area that would be at a lower risk of flooding than the appeal site, notwithstanding the narrow search criteria used. The ST has therefore not been passed.
26. The ST must be passed before the ET can be applied. It is therefore not necessary for me to go on to consider the ET.
27. In reference to the third main issue, the appeal site is not a suitable location for the proposal having regard to the risk of flooding. It would conflict with LP Policy DS16 and CS Policy CS19 which, amongst other things, seek to locate development, where possible, on land that has a lower flood risk, and relates land use to its vulnerability to flood. It would also conflict with Chapter 14 of the Framework that seeks to meet the challenge of flooding.

Other Matters

28. The proposal would contribute to the Government's aim of significantly boosting the supply of homes. However, the benefit would be limited due to only one dwelling being proposed. I accept that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out quickly, and the proposal could make efficient use of under-developed land. However, this would not outweigh the harm I have identified, for which I attach significant weight.
29. The appellant asserts that the proposal would offer environmental benefits to the appeal site through the regeneration of part of a redundant farm. However, at the time of my site visit the appeal site and barn appeared well maintained. Furthermore, it is unclear what these environmental benefits would be, and I

² Planning Policy Guidance, Flood Risk and Coastal Change, paragraph: 027 Reference ID: 7-027-20220825

³ R (Mead and Redrow) v SoS LUHC [2024] EWHC 279 (Admin)

am not persuaded that environmental benefits could not be secured in a less harmful way.

30. The proposal's conformity with current Part L Building Regulations regarding energy efficiency standards would be a neutral matter. As would the proposal's lack of harm to the character and appearance of the surrounding area, highway safety, and the living conditions of occupiers of neighbouring properties.
31. Contrary to the appellant's assertion, the withdrawal of the Council's emerging Local Plan does not render the current development plan out-of-date. The Council can demonstrate a 5-year housing land supply of deliverable sites. Furthermore, while the development plan is dated, I do not consider it out-of-date simply because it was adopted prior to the publication of the Framework, as the policies most relevant to the determination of this appeal are consistent with it. Consequently, the presumption in favour of sustainable development is not engaged.
32. Even if the policies which are most important for determining the application were deemed to be out-of-date, the appeal site is in an area at risk of flooding, and I have found that it would not comply with the ST. Consequently, the application of policies in the Framework that protect areas of particular importance would provide a clear reason for refusing the proposal.
33. The now withdrawn emerging Local Plan proposed an extension to the development limits of Gunthorpe to include the appeal site. However, no weight can now be given to this matter due to its withdrawal. Even if the appeal proposal was included within the development limits of Gunthorpe, the proposal would still have to comply with the ST.

Conclusion

34. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR