



Appeal Decision

Site visit made on 2 October 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/A2335/W/24/3345311

Pheasantfield Farm, Borwick Road, Borwick, Lancashire LA6 1AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr N Taylor against the decision of Lancaster City Council.
 - The application reference is 23/01011/FUL.
 - The development proposed is the conversion of barn into 2no. dwellings, conversion of outbuildings to garage/store and erection of one new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. There is an extant consent for the conversion of the existing agricultural buildings at the appeal site to three dwellinghouses, under the provisions of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO'), reference 23/00169/PAA. This, the appellant considers to constitute a 'fallback scheme.'
3. Because the appellant has already obtained consent for the fallback scheme, there is a greater than theoretical possibility of this being implemented. In determining this appeal, I have considered the proposal on its merits and also had regard to the fallback scheme based on the information before me.

Main Issues

4. The main issues are whether:
 - The appeal site is in a suitable location for the proposed development having regard to local and national policies and access to services and facilities; and
 - The location of the development is appropriate having regard to the impacts and risks of surface water flooding, including the application of the sequential test.

Reasons

Locational Suitability

5. Policies SP1 and SP2 of the "*Local Plan for Lancaster District 2011-2031, Part One: Strategic Policies and Land Allocations 2020*" (LP1) sets out the Council's spatial strategy and hierarchy of settlements. LP1 Policy SP1 advises that the Council will take a positive approach to development proposals reflecting the presumption in favour of sustainable development contained within the

National Planning Policy Framework (the Framework). The supporting text to which advises that development should be well related to the existing urban forms of settlements to help protect the open countryside and the landscapes contained within it.

6. LP1 Policy SP2 states that rural villages will accommodate development that meets evidenced local needs only. *"A Local Plan for Lancaster District 2011-31 Part Two: Development Management Development Plan Document 2020"* (LP2) Policy DM4 states that housing development outside of the main urban areas should reflect sustainable patterns of development and should enhance the vitality of the local community, meeting an identified and specific local housing need. These policies are intended to ensure housing is located in areas which are accessible and sustainable.
7. The appeal site is formed of a former farmyard containing a range of redundant buildings and structures. It is adjacent to the Leeds to Carnforth railway line and is bounded on one side by a substantial retaining structure carrying the railway line. Although houses and farms are situated sporadically along Capernwray Road towards Borwick village, it is approximately 1km from the centre of the village along an unlit lane with no footway. Facilities are extremely limited in Borwick confined only to a church and village hall located some distance out of the village on the road between Borwick and Priest Hutton. The nearest sustainable settlement is Over Kellett approximately 3.2km from the appeal site. Carnforth is approximately 4.5km away.
8. From information before me, bus routes close to the appeal site are restricted to scholars' services only. Therefore, to access services and bus stops in the village occupiers of the proposed dwellings would need to walk or cycle for some distance. As such, public transport would not be a realistic alternative to the private car and therefore significant car dependency is likely to be required to access shops and services further afield. As a result, the environmental and social impacts arising from the proposal would be negative rather than positive aspects.
9. Whilst the Council accept that the proposal would help meet a district wide need for housing in that it would contribute to the supply of homes generally no evidence has been provided to demonstrate that the proposal would meet a specifically evidenced local need, such as rural workers dwellings or affordable housing. Consequently, the proposal does not accord with Policy SP2 of the LP1 or Policy DM4 of the LP2.
10. I have scant details of the fallback scheme before me, however, from evidence submitted by both parties it is for the conversion of the existing barn, which I saw on my site visit, to three dwellings. Under the provisions of Class Q of the GPDO, it would largely utilise the existing form of the barn, whereas the appeal scheme would convert the barn to two dwellings with the addition of a detached new build unit located in the approximate position of the partially dismantled portal framed barn.
11. For significant weight to be afforded to the fallback scheme, there needs not only to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme. In this instance, prior approval under Class Q of the GPDO was granted in April 2023, therefore there is a reasonable possibility that the permission could be implemented within the statutory timeframe. The Council, however, state that the

application site for the fallback scheme differs from that of the scheme before me and therefore they are not directly comparable.

12. The new-build element of the appeal proposal would be located some distance from the barn conversion element of the proposal. It is therefore more than a theoretical possibility that both the fallback scheme and the appeal scheme could both be implemented. In the absence of a legal mechanism to prevent this from occurring, I am not convinced that a greater quantum of development would not result on the site which would be more harmful than the Part Q scheme or the appeal scheme on their own.
13. The appellant states that the appeal scheme would see the site "better utilised in terms of providing more suitable, fit for purpose accommodation within the barn as well as a better car parking and gardens arrangement". However, I have no substantive evidence to support these assertions or what 'better' means in practical reality. Furthermore, I have no evidence before me that the Class Q permission would not provide adequate living conditions or would result in substandard parking or amenity spaces. The farmyard in its current condition may be unsightly, but it has not been explained how or why the scheme before me or the Part Q scheme are the only ways in which this could be improved. I am not therefore convinced that the implementation of the fallback scheme would lead to a development which is more harmful than the appeal scheme. Therefore, I only attach moderate weight to the fallback scheme. Consequently, the justification for the proposed development does not exist.
14. For the above reasons, I conclude that the appeal site is not a suitable location for the development proposed, having had regard to the development plan and national planning policy. The principle of the proposed development would be unacceptable and would conflict with LP1 Policies SP1 and SP2 and LP2 Policy DM4. There would also be conflict with LP2 Policy DM60 which seeks ensure development is located where sustainable travel plans can be achieved and would fail to achieve the aims of sections 2 and 5 of the National Planning Policy Framework (the Framework) with regards delivering a sufficient supply of homes in sustainable locations. The presence of a fallback position does not, for the reasons set out, persuade me of the appeal schemes merits.

Flood Risk

15. The appeal site lies within Flood Zone 1 indicating a low risk of fluvial flooding. However, it has been identified as being at medium to low risk of surface water flooding from an overland flow route.
16. Although the wording of the Framework remains unchanged, the Planning Practice Guidance (PPG) is now explicit and confirms that the sequential test (ST) now applies to all sources of flood risk, including areas at risk of surface water flooding. The aim of an ST is to steer new development to areas with the lowest risk of flooding from any source and to ensure that areas at little or no risk of flooding, from any source, are developed in preference to areas at higher risk.
17. Representations received indicate that the site has never been subject to flooding and although the majority of the site would not be anticipated to flood in a 1 in 100-year flood event, the whole of the appeal site must pass

the ST in order for it to be considered suitable for development. That the development could be carried out on parts of the site which are at lower risk or could be made safe for the occupiers of the proposed dwellings, would not meet the ST requirements as set out in the Framework and the PPG. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the ST still needs to be satisfied.

18. I have been provided with an ST which considers a range of sites of a comparable size listed in the Council's Strategic Housing and Employment Land Availability Assessment 2018 (SHELAA) and sites on the market with local estate agents. The search was restricted to sites of a size within 10% of the site area of the appeal site, an approach which was promoted by the Council in an advice document¹ which has been subsequently withdrawn.
19. The PPG is clear that 'reasonably available sites' are those in a suitable 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. It goes on to advise that these could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. The PPG also confirms that an absence of a five-year housing land supply is not a relevant consideration. Furthermore, the sustainability in terms of location of the alternative location is not a matter for consideration in the ST process which is confined to flood risk matters.
20. The Council is concerned that a site referred to by the appellant as 'the Bay Horse Site' which has permission for the conversion of a barn to 3 dwellings but does not include a new-build element has not been included in the ST, which they are of the opinion would be a sequentially preferable site. The appellant states that the site in question does not meet the criteria for the proposed development and is therefore not comparable. Nevertheless, it appears to me that other sites which were not directly comparable with the appeal site were listed and assessed in the ST.
21. From the limited information I have before me it would appear that the Bay Horse site is sufficiently comparable to the appeal site and therefore should have been included in the ST. Arguably, the omission of a suitable alternative site from the ST means that a robust conclusion has therefore not been reached as to whether a suitable alternative site which is at lower risk of flooding exists. Notwithstanding the omission of a potentially suitable alternative site, even if I were to accept that the ST was robust, this would not overcome the harm that I have found on the locational suitability of the appeal site for the proposed development.
22. I recognise that the ST approach to flood risk may hinder development, nevertheless, flood risk is an issue of national importance, for which policy and guidance clearly sets out the requirements and the reasons for it. I also recognise that the Council's PAN guidance was withdrawn from circulation shortly after the determination of the planning application, however, I am obliged to determine that appeal on the basis of the evidence before me and

¹ PAN06 Planning Advisory Note 06: Application of the Flood Risk Sequential Test and Exception Test

in the context of local and national planning guidance, of which the PAN does not form part.

23. Nevertheless, I conclude that the appeal site is not a suitable location for housing having regard to application of the sequential test in relation to the risk of surface water flooding. The proposal would therefore conflict with LP2 Policy DM33 which requires proposals to minimise the risk of flooding by taking a sequential approach to direct development to areas of lowest risk of flooding. There would also be conflict with section 14 of the Framework in this regard.

Other Matters

24. From the evidence before me the appeal site is a former farmyard previously used in connection with agricultural activities. It has been suggested by the appellant that it forms previously developed land (PDL). However, the Framework definition of PDL specifically excludes land that was previously used for agriculture. Consequently, the appeal site would not constitute PDL and would not benefit as such from this status.
25. I acknowledge that the council have noted that the number of applications for small developments has declined in the past year of which the appeal site is an example, and these types of developments can contribute positively to housing supply. These are not factors which weighs in favour of allowing the appeal and do not diminish the harm that I have found on the main issues.

Planning Balance and Conclusion

26. The Council acknowledge that they cannot demonstrate a five-year housing land supply. Paragraph 11d) of the Framework requires that planning permission be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Planning permission should therefore be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The policies referred to in this part of the Framework are set out in footnote 7 and include areas at risk of flooding.
27. In this case, the appeal site is within an area at risk of flooding. I have found that the proposal has failed the ST and that there is insufficient information to show that the proposal would provide adequate means of surface water drainage. Consequently, there is a clear reason for dismissing the appeal and, therefore, the presumption in favour of sustainable development as set out in paragraph 11d) of the Framework does not apply.
28. The proposal would provide three new dwellings that would contribute towards the district's housing. These would support the Government's objective of significantly boosting the supply of new homes. The development would also contribute to the local economy during the course of construction, and upon occupation of the proposed dwellings. Nonetheless, given that the fallback scheme would also deliver the same number of dwellings with some associated benefits. I, therefore, afford any additional benefits arising from the proposal limited weight.

29. Hence, when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. As the presumption in favour of sustainable development does not apply, the appeal should be dismissed.

KL Robbie

INSPECTOR