
Appeal Decision

Site visit made on 18 November 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2024

Appeal Ref: APP/F2605/W/24/3345809

Land East of Banham Road, Kenninghall, Norfolk, Nearest postcode NR16 2ED

- 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 E T Larwood & Sons against the decision of Breckland Council.
 - The application Ref is 3PL/2023/0843/F.
 - The development proposed is erection of 5 Dwellings; 2 Highways Access; Garaging, Parking & Turning
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the site represents an appropriate location for the proposed development, having regard to access to services and facilities on foot;
 - whether the development would be at risk from flooding; and
 - whether the proposal would make adequate provision for affordable housing

Reasons

Location

3. The appeal site is located outside of the settlement boundary for Kenninghall, a local service centre.
4. Policy GEN05 of the Breckland Council Local Plan 2019 (LP) sets out defined settlement boundaries around larger settlements in order to recognise that those areas are those in which growth will be acceptable in principle. Outside of these areas development will be restricted to recognise the intrinsic character and beauty of the countryside. Development outside of the settlement boundaries will be permitted where it gains support from other policies within the LP.
5. Policy HOU03 permits housing outside of the settlement boundaries of Local Service Centres, such as Kenninghall, under certain circumstances and the parties agree that the site is immediately adjacent to the settlement boundary and therefore would be considered to accord with criteria 1, 2 and 4 of the policy.

6. Criteria 3 of Policy HOU03 requires the design to contribute to conserving and where possible enhancing the connectivity of communities. As the proposal does not provide a pedestrian link to the services within Kenninghall it would not enhance connectivity. Whilst it has been put to me that the policy merely requires designs to conserve connectivity, as the site is not currently connected to the existing community of Kenninghall, I can not conclude that the proposed development would conserve connectivity and as such it would not accord with or find support from Policy HOU03.
7. Furthermore, Policies TR01 and TR02 of the LP seek to promote sustainable transport and in particular requires development to provide a safe, suitable and convenient access for all users.
8. The route along which pedestrians would have to walk in order to access the services and facilities within Kenninghall is Banham Road, designated as a Local Access Route in the Norfolk County Council's adopted route hierarchy. It is subject to a 40mph speed limit for the majority of the site frontage.
9. Banham Road is bounded by low banks and hedges requiring pedestrians, and in particular those pushing buggies, wheelchairs or less mobile pedestrians to walk/remain in an unlit section of live carriageway as the embanked verges offer no refuge from the on-coming or passing traffic.
10. Furthermore, it is unlikely that anyone would choose to walk this route in inclement weather and given the lack of refuge, which may deter less confident cyclists and those with young children, it is more likely that occupiers would choose the convenience of a car in order to access day to day services.
11. In order for new housing to be sustainable it should be easily and safely accessible, on foot or bicycle or public transport, to local facilities and services, at any time of the day or night and whatever the weather, which the appeal proposal would not be. I have also no substantive evidence before me to indicate that the site is well served by public transport.
12. Therefore, I cannot conclude that the proposed dwellings would be located where it would enhance or maintain the vitality of rural communities as envisaged by paragraph 83 of the Framework and as such it would not be the sustainable development that the Framework seeks to promote in rural areas.
13. There would be negative environmental and social effects arising from the location in terms of the accessibility of local services as occupants would be reliant on the private car.
14. In conclusion, the introduction of the proposed development into the appeal site, would fail to adhere to the relevant policies relating to housing in rural areas. It would conflict with LP policies GEN05, HOU03, TR01 and TR02.

Surface Water Flooding

15. The Framework and the Planning Practice Guidance (PPG) indicate that residential development should be directed to areas of lowest flood risk. The use of a site for the intended residential use is classified as a more vulnerable development as defined within the PPG. It has been identified as being within an area at risk from surface water flooding and part of the site forms part of a major flow path.

16. The appellant's flood risk assessment concludes that the site is shown to be at very low risk of flooding from sewers, reservoir, and groundwater but is shown to potentially be at risk of surface water flooding during an extreme flood event.
17. However, the level of risk from surface water flooding has been quantified to be low. During the 3.3%, and 1.0% AEP flood events, no surface water flooding is identified on-site. During the 0.1% AEP flood event, pluvial flooding is identified in the north of the site, this is shown to be to a maximum depth of 0.15m, velocity of less than 2.0m/s, and have a hazard rating of low risk.
18. Paragraph 168 of the NPPF states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
19. The PPG sets out that a sequential test will not be required where the site is in an area at low risk from all sources of flooding, unless the Strategic Flood Risk Assessment, or other information, indicates there may be a risk of flooding in the future. Based on the evidence before me the appellant's flood risk assessment confirms that the site might be at risk of flooding in the future, if mitigation is not provided, and therefore this is other information which would appear to trigger the need for a sequential test.
20. The PPG goes on to explain that avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. Based on the information before me the need for a sequential test cannot be ruled out.
21. In the absence of a sequential test, the proposed development is in conflict with the sequential approach in the Framework, and therefore it is not necessary for me to consider any flood mitigation proposals. It is only if the appellant could demonstrate that there are no reasonably available sites in Flood Zone 1 that I would go on to consider any mitigation as part of the exception test.
22. The development would therefore conflict with LP Policy ENV09 which requires development to be located to minimise the risk of flooding and mitigate any such risk through design and implementing sustainable drainage principles.

Affordable Housing

23. Paragraph 65 of the Framework sets out that affordable housing should not be sought for residential developments, other than in designated rural areas, which are not major development. The glossary to the Framework confirms that for the purposes of the Framework major development is defined as where 10 or more homes will be provided or where the site area is 0.5 hectares or more.

24. Policy HOU07 of the LP repeats the requirements of the Framework with regard to when affordable housing will be sought and goes on to outline that 25% of qualifying development should be affordable housing, provided on site.
25. Whilst the appellant has directed me to a more detailed definition of major development, as set out in the Town and Country Planning (Development Management Procedure)(England) Order 2015, which only requires site area to be considered where the quantity of development is unknown, the glossary to the Framework only references this in relation to non-residential development.
26. Case law has established that many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment, and that the exercise of their judgment can only be challenged on the ground that it is irrational or perverse. Having regard to the requirements of the Local Plan policy, I am of the view that this applies both to the number of dwellings and site area.
27. The appeal site is for 5 dwellings on a site area of 0.9 hectares, as set out in the planning application form. Therefore, on the basis of the site area, affordable housing should be sought in accordance with the LP Policy HOU07.
28. The proposal does not make any provision for affordable housing either on site, or through an off site contribution. No case has been made to demonstrate that the site is not viable if affordable housing were to be provided.
29. In conclusion the development fails to make appropriate provision for affordable housing, contrary to policy HOU07 of the LP which sets out the requirements of affordable housing provision in light of the local need.

Other Matters

30. The appeal site falls within an area where recreational impact mitigation measures for The Brecks, North Norfolk Coast and The Broads as described in the Norfolk Green Infrastructure and Recreational Impact Avoidance Mitigation Strategy (GIRAMS) are required. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on designated sites are compliant with the Habitats Regulations.
31. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to complete Appropriate Assessments for this scheme. Therefore, whilst the appellant has submitted a draft unilateral undertaking in relation to these matters, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusion

32. The proposal conflicts with the development plan and the material considerations do not indicate that a decision should be made other than in accordance with the development plan.
33. For the reasons given above the appeal should be dismissed.

G Pannell

INSPECTOR