



Appeal Decision

Hearing held on 10 December 2024

Site visit made on 10 December 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2025

Appeal Ref: APP/P2365/W/24/3350235

Land off Boundary Lane, Hesketh Bank PR4 6AJ

- 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 Applethwaite Homes Ltd against the decision of West Lancashire Borough Council.
 - The application Ref is 2023/0730/FUL.
 - The development proposed is the demolition of an existing bungalow and the erection of 34no. adaptable and accessible bungalows for over 55's with associated infrastructure,
 - landscaping and car parking.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by West Lancashire Borough Council against Applethwaite Homes Ltd. This application is the subject of a separate decision.

Preliminary Matters

3. At the Hearing, the appellant submitted an explanatory note named surface water flood map overlay with topographical survey. The overlay plan included in this note used the topographic survey of the appeal site and the Environment Agency's (EA) mapping of surface water flooding. Both sources of information were submitted as part of the planning application, and the rest of the note explains the site's ground levels in three areas at medium risk of surface water flooding. My consideration of the note would not prejudice either party or materially alter the proposal, so I have had regard to this document in reaching my decision and considered the parties submissions at the Hearing in doing so.
4. An interested party submitted photographs of the local area at the Hearing. After confirming the location of each photograph and their approximate age, the parties were given the opportunity to respond to them at the Hearing. I have therefore taken the photographs into account also as they do not cause prejudice to either party.
5. The revised National Planning Policy Framework (the Framework) was published on 12 December 2024. I sought the parties' comments on the Framework, and I have taken their responses into account in reaching my decision.

Main Issues

6. The main issues are a) whether the appeal site is a suitable location for the proposed development, having regard to the development plan; b) whether future occupants of the proposal would be safe from the risk of flooding; and c) whether future occupants would have adequate living conditions, having regard to amenity space provision.

Reasons

Suitable location

7. Policies SP1, GN1 b) and RS1 b) of the West Lancashire Local Plan 2012-2027

Development Plan Document (Local Plan) set the development strategy for the Borough. They seek to direct the majority of development to settlements listed in the Hierarchy to deliver development and growth yet reinforce the distinction between urban and rural, to provide protection of the natural environment, support local agriculture, and enable economic and social growth of key settlements, and to maintain the character of the area.

8. The appeal site lies outside of the settlement boundary of the Key Sustainable Village of Tarleton with Hesketh Bank and within an area of land designated as Protected Land. Local Plan Policy SP1 explains that all new built development in the Borough will take place within settlement boundaries as defined by Local Plan Policy GN1, except where a specific need for development for a countryside use is identified that retains or enhances the rural character of the area.
9. Local Plan Policy GN1 b) states that development on Protected Land will only be permitted where it retains or enhances the rural character of the area, for example, small-scale, low-intensity tourism and leisure uses and forestry and horticulture related uses. Further, small-scale 100% affordable housing schemes (i.e. 10 units or fewer)...to meet an identified local need may be permitted on Protected Land, provided that a sequential site search has been carried out in accordance with Local Plan Policy GN5. This is also reflected in Local Plan Policy RS1 b).
10. The proposed development is not small scale, as it would be major development and involve over three times the number of units that Local Plan Policies GN1 b) and RS1 b) describe. The development would be laid out around an access leading to Boundary Lane, and it would replace the existing bungalow behind 29 and 31 Boundary Lane. However, due to the proposal's scale, a sequential site search is not required by Local Plan Policies GN1 b) and RS1 b), but this does not change the proposal's conflict with those policies and Local Plan Policy SP1 due to the site's location and the scale of development.
11. Local Plan paragraph 5.5 explains that Protected Land was previously Open Land on the Urban Fringe in an earlier development plan. This land is said to generally be unsuitable for development and inappropriate to incorporate into settlements in the Local Plan. Protected Land forms a buffer between the built-up area and the Green Belt, which in this location lies a short distance away to the south and west.
12. The proposal would use land previously used for agriculture. The site is next to commercial greenhouses to the east, with further greenhouses also to the south. The proposal would also sit in amongst a wider area of land that lies to the rear of properties on Moss Lane to the north, the eastern side of Boundary Lane to the west, and properties off Fermor Road to the south. The area of Protected Land continues to the west of Boundary Lane and includes further greenhouses and the dwellings that line both sides of Boundary Lane. However, collectively, the proposal would not retain or enhance the rural character of the Protected Land that it forms part of.
13. Local Plan Policies GN1 b) and RS1 b) constrain the type and scale of development considered suitable on Protected Land. The Framework does not have a Protected Land classification, but as this land is not in the urban area and not in the Green Belt, it is better aligned with the countryside. This is also borne out by the types of uses that Local Plan Policy GN1 b) refers to along with retaining or enhancing the rural character of the area.
14. Framework paragraph 187 b) refers to recognising the intrinsic character and beauty of the countryside. Paragraph 88 refers to uses similar to those stated in Local Plan Policy GN1 b). Isolated homes in the countryside should also be avoided unless in one or more of the circumstances apply (paragraph 84).
15. So, while the wording of Local Plan Policies GN1 b) and RS1 b) differ from the Framework, their objectives are broadly consistent with the uses that the Framework is supportive of. The Framework does not express a scale of development, but that does not mean a local approach is inherently inconsistent with the Framework, given that it seeks to promote a sustainable pattern of development and to make effective use of land in urban

areas. The Framework does aim to significantly boost the supply of homes, but that does not mean that Local Plan Policies SP1, GN1 b) and RS1 b) are inconsistent because they direct development towards settlements unless for certain reasons, and they are not supportive of the development that is proposed here.

16. Those policies are clearly written and unambiguous in terms of how a decision maker should react to development proposals, and they do not duplicate provisions within the Framework. They are also written with the objective of contributing to achieving sustainable development in the Borough by directing development to suitable locations. In this regard, I consider Local Plan Policies SP1, GN1 b), and RS1 b) are consistent with the objectives of the Framework.
17. However, the settlement boundaries in the Local Plan, adopted in October 2013, are based on a housing requirement that was, at the time of a Local Plan review in December 2019, greater than the Local Housing Need (LHN) figure. That is now not the case and there are decision-making consequences that I shall come onto later. The LHN figure has now risen considerably and will be the starting point for an update to the Local Plan, though that could take some time to get in place. Given the number of homes required using the LHN figure it is unclear whether the existing settlement boundaries can accommodate the number of new homes.
18. For the reasons set out, I conclude that the appeal site is not a suitable location for the proposed development, having regard to the development plan. As such, the proposal would conflict with Local Plan Policies SP1, GN1 b) and RS1 b). These policies jointly set the development strategy for the Borough. The harm arising from that conflict is moderate given the uncertainty about the existing settlement boundaries and the spatial strategy generally being able to accommodate the higher LHN figure now applicable.

Risk of flooding

19. Local Plan Policy GN3 seeks to ensure development does not result in unacceptable flood risk or drainage problems by requiring development to: take account of the Council's Strategic Flood Risk Assessment along with advice and guidance from the Lead Local Flood Authority, the EA and the Framework; and satisfy the sequential test as set out within National Guidance. Local Plan Policy GN5 outlines that sequential tests will be required for proposals at risk from flooding.
20. The Framework seeks to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk. The sequential risk-based approach should be taken in individual applications for areas known to be at risk now or in the future from any form of flooding. 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.
21. The appeal site lies in Flood Zone 1, but parts of the site have been assessed as being susceptible to low and medium risks of surface water flooding. The development proposed falls into the 'more vulnerable' classification according to annex 3 of the Framework.
22. The appellant's sequential test has an area of search of available sites between 1 and 2 hectares in size within 5 miles of the appeal site, covering part of the borough and part of the neighbouring local authority, South Ribble. The appellant contends that this area of search relates to the need for the type of housing proposed in the appeal site's locality and cites Local Plan Policy GN5, which says that the area of search will usually be the settlement, ward, or parish where the site lies but could also include and in adjacent settlements, wards, parishes, or boroughs. However, the policy also explains that the area of search for major development proposals and those at risk from flooding will be wider and may include the whole borough.
23. There is an agreed need for this type of housing across the whole borough, which extends mainly to the south of the appeal site and covers a considerable area. The evidence

underpinning that assessment is detailed compared to the appellant's population extrapolation, which seeks to say there is an identified need based on a certain number of people who are aged 55. To my mind, this evidence is assertion and does not show that those persons are in 'need' for the proposed housing now or in the future. It is only a maybe, despite the appellant's experience in other schemes. Therefore, confining the area of search based on a need case that is founded on potential only does not indicate to me that a more constrained area of search should be preferred, especially when there is a borough-wide need and sites at a lower risk of flooding should at least be considered first.

24. So, while I have no reason to disagree with the findings of the appellant's sequential test, it is based on an area of search that does not reflect the proposal's scale. Hence, a wider assessment of other sites likely to be at a lower risk of flooding has not been carried out, and there is also no evidence to suggest that they do not potentially exist.
25. Although a site-specific flood risk assessment has been submitted, there would be two, maybe three houses, their hardstanding's, and gardens within the proposed site layout that would be located on areas that would be at medium risk of surface water flooding. In addition, there would be several other of the proposed homes within areas of the site at a low risk of surface water flooding. It is fair to say that the levels of risk could be greater or lesser than those mapped by the EA. However, given the site's topography, it is a reasonable basis to work from. For example, Area 1 (Document 1) relates to depressed ground levels compared to land not identified as having a medium risk of surface water flooding. Furthermore, even if Area 2 is not accurate based on the site's topographic levels, then it is unclear whether land to the southwest of Area 2 would be affected to a greater degree instead, given that it, along with other parts of the site, is affected by a low risk of surface water flooding. Overall, built development within the site boundary would be located in areas of the site that would be at risk of surface water flooding now. Conflict would therefore arise with Framework paragraph 175.
26. The appellant considers that there is no opportunity to reconfigure the site, and it should not be necessary to reduce the number of units because there would be no residual risk arising from the development due to compliance with Framework paragraph 181 a) to e). However, the sequential test has not been passed in this case even if I were to consider that the proposal would comply with Framework paragraph 181 a) to e), setting aside my finding that up to three dwellings would be in areas of the site with a medium risk of surface water flooding. Given this, the proposal would not accord with Framework paragraph 181, and I am not satisfied that the development would be directed to land at the lowest risk of flooding as sought by local and national policy.
27. Photographs submitted at the Hearing by an interested party show localised flooding near to the appeal site, but on the public highway. The images show a pre-existing situation and although they are the real-life experiences of residents near to the site, I have found the appeal scheme to be unacceptable on this issue for other reasons.
28. Accordingly, I conclude that future occupants of the proposed development would not be safe from the risk of flooding. The proposal would not accord with Local Plan Policies GN3 and GN5 as well as Framework paragraphs 170, 173, 174 and 175. Jointly, these seek, to steer new development to areas with the lowest risk of flooding from any source unless there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Living conditions

29. Proposals for development should, according to Local Plan Policy GN3, create reasonable levels of amenity and sufficient garden/outdoor space for occupiers of the proposed properties. The Design Guide Supplementary Planning Document (SPD) explains that as a general guide, the minimum rear garden depth will generally be 10 metres unless the particular merits of the case, in terms of the character of the setting, can be proved to warrant a reduction in this requirement. The SPD goes on to explain that this figure is for guidance only and that in some cases the distance standards may vary.

30. Around 55% of the proposed plots would have a private garden in accordance with the 10 metre depth stated by the SPD. Six of the plots would have garden depths within 0.5 metres of the guidance, five of the plots would be within a metre of the guidance, and four plots would be between 1.1 and 1.7 metres shy of the guidance.
31. Gardens sizes vary in the surrounding area. Anecdotal measurements were given at the Hearing but the predominate character in the area is one of a good-sized, accompanying garden to the rear of each house. Some of the gardens associated with properties on Carr Heyes Drive, Hawthorn Close, and Alder Close do appear to be shorter than other properties in the area, but they are not universally so across these roads either. Even so, looking at the width of several of the proposed gardens, I consider that the overall garden size would, with the exception of five of the plots, broadly accord with the character of the site's setting. Therefore, future occupants of most of the properties proposed would have a reasonable level of amenity and sufficient garden/outdoor space even if they do not wholly accord with guidance in the SPD.
32. Plots 1, 4, 10, 23, and 33 are shy of the 10 metre depth but they would also be narrow. The combination of both would result in small garden spaces that would affect their usability, especially when boundary treatments and built form are also accounted for. For these plots, future occupants would not have a reasonable level of amenity and sufficient garden/outdoor space. Even if some future occupants were to wish for a manageable and maintainable garden space, not every future occupant may do so, and I consider the proposed gardens at plots 1, 4, 10, 23, and 33 would cause harm to their living conditions.
33. I conclude, on this issue, when the proposal is taken as a whole, future occupants would not have adequate living conditions, having regard to amenity space provision. Consequently, the proposal would conflict with Local Plan Policy GN3 as several plots would not result in the creation of reasonable levels of amenity and sufficient garden/outdoor space for occupiers. The proposal would also not accord with Framework paragraphs 135 f) or 139.

Other Matters

34. A bat roost was identified within the existing bungalow after surveys were undertaken. As the bungalow is occupied, a license was granted by Natural England (NE) to close the bat roost, and no compensation measures are required. The roost has now been closed and NE and the Merseyside Environmental Advisory Service have reviewed the ecological information submitted and do not now raise concerns. The Council confirmed that no planning conditions are necessary to secure a license from NE given that no harm will arise to bats. That said, the parties agree that it would be necessary to impose a planning condition to secure bat box provision to provide further habitat. There would be no conflict with Local Plan Policy EN2.
35. I have had regard to the planning obligation submitted. This agreement secures the maximum affordable housing contribution that the appeal scheme can afford, a management and maintenance scheme for the communal amenity space, an offer for the roads and footpaths to be offered for adoption, and the delivery of specialist housing proposed. Hence, they would satisfy the tests in CIL Regulation 122, and Framework paragraph 58, namely that they are all necessary to make the development acceptable, directly related, and fairly and reasonably related in scale and kind. As such, the obligations are material considerations in this appeal, and the proposal would accord with Local Plan Policy RS2 and Framework paragraph 64 in this regard.

Planning Balance

36. For the reasons set out, the proposed development would conflict with Local Plan Policies SP1, GN1 b), RS1 b), GN3 and GN5. These are the most important policies in this case. The proposal would not accord with the development plan as a whole, and this is a matter that counts significantly against allowing the appeal.

37. However, after the Framework was published, the Council reviewed its housing land supply position. The Council now considers that it can demonstrate a 2.49 year supply of deliverable housing sites, taking into account the appropriate buffer. The appellant concurs with this change and puts the supply position at no more than 2.5 years based on a five-year housing requirement of 2,951 dwellings and a five-year supply of 1,480 dwellings (best available data). As a result, the development plan policies that are most important for determining the appeal are out-of-date, having regard to footnote 8, and so paragraph 11 d) of the Framework is engaged.
38. The provision of housing, and specifically to address an accepted identified need for older persons, would contribute to the supply of housing and specifically a form of housing in the borough that will not be addressed in the immediate future. This would accord with the Framework's objectives, and so would the associated social, economic, and health benefits of providing this form of housing. Given the appellant's willingness to expedite the delivery of the appeal scheme, a planning condition could be imposed with a reduced commencement period. This would help this small/medium-sized site meet the housing requirement in the borough.
39. The economic spending relating to the construction of the houses and future occupiers spending in the local economy would accord with the Framework, as would the construction jobs that would flow from the proposal. The affordable housing contribution that the scheme can afford would help towards the provision of this type of housing elsewhere in the borough and so is a benefit.
40. The proposal would be a relatively low-density scheme, but given the intended occupiers and the site's surroundings, it would be an effective use of land. The design and nature of the land for the proposed development mean that those considerations carry no more than neutral weight given the aims to achieve well-designed, attractive, and healthy places and the harm identified in respect of several of the proposed gardens. The appeal site is not isolated, is accessible to a range of facilities and services, and there would be no adverse highway effects subject to the imposition of planning conditions.
41. The planning application was submitted before the introduction of mandatory Biodiversity Net Gain (BNG) requirements. That said, a planning condition could be imposed to secure a mitigation scheme for off-site biodiversity to counteract the likely loss of 69% of BNG on-site. This would be suitable because the assessments show that the BNG Mitigation Hierarchy has been followed and that BNG credits could be purchased so that the proposal achieves an overall BNG. This would be a positive aspect of the proposal.
42. Despite the scheme's benefits, the sequential test undertaken in respect of flooding relies on a smaller area of search than is suitable for the scale of development proposed. Given parts of the site are at low and medium risk of flooding and having regard to the proposed site layout, I am not satisfied that the development would be directed to land at the lowest risk of flooding or that the most vulnerable development, i.e. two or three houses with older persons living in them, would be in areas of lowest flood risk. The reasons put forward in relation to Framework paragraph 181 do not change the absence of a satisfactory sequential test and given the clear direction to direct development away from areas of flooding, this provides a strong reason for refusing the proposed development. As such, the presumption in favour of sustainable development does not apply.

Conclusion

43. The proposal would conflict with the development plan and the material considerations, including the Framework do not indicate that the appeal should be decided other than in accordance with it.
44. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

James Corbet Burcher, Counsel

Matthew Wyatt, PWA Planning

Andrew Davies, Sutcliffe

Iain Warner, Tetlow King Planning

Andrew Gardner, Envirotech

FOR THE LOCAL PLANNING AUTHORITY:

Kate Jones, Development Control Manager

Nicola Cook, Principal Planning Officer

Town McGowan, Strategic Planning Officer

INTERESTED PARTIES:

Ian Eccles

Kate Maughan

John Tyreter

DOCUMENTS

1 – Surface water flood map overlay with topographical survey

2 – Three photographs of Boundary Lane and its junction with Fermor Road and Boundary Meanygate