Planning Inspectorate

Appeal Decision

Site visit made on 15 August 2025

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 19 August 2025

Appeal Ref: APP/Z2505/W/25/3365591
40 Park Road, Boston, Lincolnshire PE21 7JP

- 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 K Farmer against the decision of Boston Borough Council.
- The application Ref is B/24/0491.
- The development proposed is 3 bedroom dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner above is duplicated from the Application Form. However, I have removed reference to the site address as this does not refer to an act of development.

Main Issues

3. The main issues are:

   - whether it has been demonstrated that there is a need for the development in this location and that sites at lower risk of flooding are not available; and,
   - the effect of the proposal on the living conditions of occupiers of 40 and 42 Park Road (Nos 40 and 42) and 13 Linley Drive (No 13), with particular regard to noise and disturbance, outlook, and privacy.

Reasons

Flood risk – sequential test

4. The appeal site is within Flood Zone 3. Policy 4 of the South East Lincolnshire Local Plan 2011-2036, March 2019 (LP) indicates that proposed development within Flood Zone 3 will be permitted where it can be demonstrated that there are no other sites available at a lower risk of flooding.

5. Furthermore, Chapter 14 of the National Planning Policy Framework (the Framework) states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It also sets out the sequential risk-based approach, which steers development to areas with the lowest risk of flooding and indicates that development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.

6. Planning Practice Guidance[1] (PPG) advises 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 onto explain that this could include being part of a larger site, if it would be capable of accommodating the proposed development.

7. Appended to the Flood Risk Assessment[2] is a sequential test undertaken by the appellant's consultant. An alternative site at Freshney Way has been identified but it has been dismissed as planning permission for residential development has lapsed. No explanation has been provided to explain why the permitted development was not constructed. Without evidence to the contrary, there is no reason a similar development, such as the appeal proposal, could not be permitted and constructed at that site. To be clear, a lack of planning permission would not lead me to conclude that a site would not conform with the definition of a 'reasonably available' site as defined within PPG.

8. On 6 January 2025, the appellant's consultant undertook a search on multiple websites for single plots, with planning permission, which were for sale and suitable for self-build within the Boston settlement area. No other sites were identified. As above, a site does not need to benefit from planning permission to be considered readily available. Also, it is not clear what is meant by suitable for self-build and how the search was limited in this regard. Moreover, regardless of the advice from the Council during the planning application, PPG is clear that reasonably available sites could form part of larger sites. Therefore, restricting the search to single plots may have meant that suitable alternative sites have not been identified. Consequently, it has not been demonstrated that reasonably available sites which are at a lower risk of flooding are not available within Boston.

9. There is no evidence of correspondence between the appellant and landowners or developers of land in the local area. As such, I cannot definitively conclude that no one would be willing to sell off part of their site.

10. Although large parts of Boston are within Flood Zone 3, this does not make the sequential test obsolete. Instead, it would restrict the suitability of potential alternative sites.

11. I conclude that it has not been demonstrated that there is a need for the development in this location and that sites which are at a lower risk of flooding are not available. The proposal would be contrary to LP Policy 4 and Chapter 14 of the Framework for the reasons given above.

Living conditions

12. The appeal site forms part of the rear garden of No 40. The proposed development would utilise the existing gravelled access between Nos 40 and 42 and would be sited close to the boundary with No 13. To address the flood risk, the ground level around and under the proposed dwelling would be raised by 1m.

13. The proposal includes the construction of a 2m high fence, close to the side elevation of No 40. Several ground floor windows would face toward the fence. However, most of these windows would be a moderate distance away and only one would be particularly close, approximately 1m. The window which would be

[1] Planning Practice Guidance – Flood risk and coastal change, Paragraph: 028, Reference ID: 7-028-20220825
[2] Flood Risk Assessment, Proposed Dwelling Land Rear of 40 Park Road, Boston, PE21 7JP, RM Associates, January 2025

closest to the fence is a smaller side window and there is a larger window within that room which faces toward the rear garden. As such, an alternative outlook would be available, and the fence would not appear overbearing to occupiers of No 40 when viewed from inside the property and that room in particular.

14. The proposal would lead to an intensification of use of the gravelled access. The increased number of vehicle movements would generate additional noise and disturbance, particularly in combination with the use of the access to 42A Park Road, which is backland development on the other side of No 42. Given the modest scale of development, the increase in vehicle movements would be limited.

15. During my site visit I observed that the noise of traffic was the most dominant noise source from within the appeal site. The limited amount of additional noise generated by the use of the access would assimilate with the existing background noise I observed. Nonetheless, I acknowledge that my observations represent a moment in time, which may not be characteristic of everyday circumstances. Regardless, a condition could be attached to any permission requiring the surface material of the access to be submitted to and agreed in writing by the Council, to reduce the amount of noise and disturbance generated by the proposal. On balance, the proposal would not have a harmful effect on the occupiers of Nos 40 and 42 with regard to noise and disturbance.

16. A ground floor window within the side elevation of No 42 looks directly over the access. This relationship would be maintained under the proposed development. As above, the proposal would lead to an intensification of use of the access, but only to a limited extent. Accordingly, the modest increased use of the access would reduce the amount of privacy enjoyed by occupiers of No 42, but not to a harmful extent.

17. Given the ground levels around and under the proposed dwelling would be raised, the proposed boundary treatments would not sufficiently screen views of No 13's rear garden, from within the proposed dwelling and on the patio. Nonetheless, a condition could be attached to any permission which would require details of the boundary treatments to be submitted to and agreed in writing by the Council. With an appropriate boundary treatment, occupiers of No 13 would enjoy acceptable levels of privacy within their garden. Also, given the distance between No 13 and its boundary, a taller boundary treatment would not appear overbearing to its occupiers.

18. Due to the ample separation between the proposed dwelling and No 13, occupiers of No 13 would not be overlooked within their property. Moreover, the proposed dwelling would cause a modest amount of additional shadowing of No 13's rear garden but not to an extent that would be harmful to the living conditions of its occupiers.

19. I conclude that the proposal would not have a harmful effect on the living conditions of occupiers of Nos 40 and 42, and No 13, with particular regard to noise and disturbance, outlook, and privacy. In this regard, the proposal would comply with LP policies 2, 3 and 30 which indicate development proposals will be permitted provided that sustainable development considerations are met, including in relation to the effect upon neighbouring land uses, amongst other matters.

Other Matters

20. A copy of a unilateral undertaking (UU) has been provided. The UU would ensure that the proposed dwelling would meet the definition of self-build and custom housebuilding as defined within the Self-build and Custom Housebuilding Act 2015. The provision of a self-build dwelling would be a benefit of the proposal, but the weight ascribed to it is somewhat limited as it has not been demonstrated that the Council is not meeting its statutory duty to grant sufficient permissions to meet demand for self-build and custom housebuilding.

21. The proposal would also make an effective use of the garden area of a property within the defined settlement of Boston. Services and facilities necessary for everyday needs are accessible from the appeal site by sustainable transport modes. In addition, the Framework indicates that small and medium sites can make an important contribution to the housing requirement of an area and supports the development of windfall sites. Consequently, the proposal would comply with LP Policy 1 and paragraph 73 of the Framework. Nonetheless, due to the scale of the proposal, I only ascribe modest weight to the overall benefits, which would not outweigh the identified harm.

22. The proposal not harming the character and appearance of the area, is a neutral factor which neither weighs in favour nor against the appeal proposal.

Conclusion

23. The proposal conflicts with the development plan, when considered as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

J Hobbs

INSPECTOR