

Appeal Decision

Hearing held on 9 February 2022

Site visit made on 9 February 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2022

Appeal Ref: APP/Z2505/W/21/3273641

Land to the east of Old Main Road, Fosdyke, Lincolnshire PE20 2BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Naylor against the decision of Boston Borough Council.
 - The application Ref B/20/0130, dated 3 April 2020, was refused by notice dated 24 November 2020.
 - The development proposed is described as a “residential development of 23 dwellings, including 6 affordable dwellings on land to the east of Old Main Road, Fosdyke (re-submission of B/19/0237)”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address for the appeal site in the banner above is taken from the Council’s decision notice.
3. At the hearing I was presented with a planning obligation (the planning obligation) pursuant to s106 of the Town and Country Planning Act 1990, to secure elements of the development as affordable housing, and financial contributions towards off-site open space, education, on-site open space and its maintenance. I was also provided with a copy of the Landscape Character Assessment of Boston Borough, July 2009 (LCA).

Main Issues

4. The main issues in this appeal are:
 - whether the location of the development is acceptable having regard to the development plan and its impact on the character and appearance of the area,
 - the effect of the development on flood risk, and
 - whether the development would secure appropriate contributions towards infrastructure provision.

Reasons

Location/Character and Appearance

5. Fosdyke is identified as an “other service centre” under Policy 1: C.1. of the South East Lincolnshire Local Plan 2019 (the LP). Development within the

- settlement boundary of other service centres will be permitted where it supports their role as a service centre, helps sustain existing facilities or helps meet the service needs of other local communities. However, it expects such developments to be limited to committed sites and infill.
6. The appeal site lies adjacent to, but beyond Fosdyke's identified settlement boundary and as such, is located within the countryside where development is restricted and limited to that which requires such a location, or where it can be demonstrated that it would meet the sustainable development needs of the area. Thus, as the development lies beyond the settlement boundary of Fosdyke, it would fail to meet the expectations of Policy 1 C. of the LP, with regard to areas of restraint and other service centres.
 7. The appeal site itself forms part of a larger field that is actively used for agriculture. An 'L' shaped belt of tall conifers lie on the western side of the site, adjacent to the A17 and extending east into the site and then south, shielding an existing property at Lloyds Farm. The appeal site forms part of the open and rural landscape and is quite wide at its southerly point, stretching from the belt of conifers and the A17 to the west to a bowling green to the east.
 8. The LCA places the appeal site within the Frampton to Fosdyke Settled Fen, with the area being generally flat with views across the landscape interrupted by existing blocks of development that are scattered across the area. This includes the existing built development within Fosdyke, with properties on Snaith Avenue dominating the landscape and clearly visible when looking north from the A17.
 9. Therefore, even taking into account the proposed landscaping and the degree of containment that currently exists at the site, most notably the belt of tall conifers, the development would be within an area that is identified within the LCA as having a moderate to high landscape character sensitivity. I accept that the LCA states that the location of development should be concentrated around existing settlements to prevent the loss of the rural landscape. However, it also states that developments should fit in with the areas distinctive character and it recognises that forces for change include the expansion of villages. Thus, the introduction of dwellings at this point would ultimately extend the village into the surrounding countryside and into an area of sensitivity.
 10. Furthermore, I am not persuaded that the built extent of the village extends to the bowling green or that the development would be seen as a logical conclusion to the village. The bowling green is an open area of land that contains low level buildings that are largely indiscernible in the landscape and read as part of the rural buffer that surrounds the village. Policy 1 of the LP also recognises¹ that recreation and tourism development within the countryside can also meet the broad sustainable objectives of the LP.
 11. It is evident that, notwithstanding the presence of existing landscaping in the vicinity, the residential development at Snaith Avenue is clearly visible and dominates the landscape when looking across the site from the A17. In my view, this marks the end of Fosdyke's built extent and although I acknowledge that the proposal is low density and includes a belt of landscaping, the construction of two storey dwellings across the width and depth of the site

¹ Paragraph 3.2.15 of the LP

- would extend the built area of the village into agricultural land which has a moderate to high landscape sensitivity.
12. The development would suburbanise the appeal site through the introduction of dwellings, along with hard surfaced areas, access roads, and other suburban features such as formal parking and gardens. It would be seen as an extension of the village into the surrounding open land, failing to relate with the largely linear form of development that prevails in Fosdyke. It would also erode the open qualities and contribution that the appeal site makes towards the rural setting of the village at this point. I am not persuaded that this harm could be sufficiently tempered through the introduction of additional landscaping across the southern part of the site, which, in any event, just seeks to shield inappropriate development from views. It is not good design as it only seeks to limit the immediate effect of the development.
 13. I also acknowledge that the appellant advances several benefits in support of the development, such as employing local trades during and post construction, and the maintenance of the site. It is also argued that occupiers of the dwellings are also likely to use local facilities and public transport options to travel to Boston. The development would also secure six affordable dwellings, in line with the expectations of the LP, and environmental benefits would also ensue. Thus, the appellant argues that there are demonstrable economic, community and environmental benefits associated with the development and as a result, it would accord with Policy 1. D of the LP.
 14. Although there are limited facilities within Fosdyke to serve the day to day needs of future occupiers, I accept that there are opportunities to access public transport to Boston. However, notwithstanding the appellant's assertions, there is nothing substantive before me to demonstrate that the economic, community or environmental needs of the area is not currently being met, that a local firm would indeed develop the site or that it would be developed out quickly.
 15. Moreover, although the development would secure six affordable dwellings, to which I would attach moderate weight given the limited number of units secured, open market dwellings is not a development type that specifically requires a countryside location. This is particularly relevant given that the Council can currently demonstrate a five year supply of deliverable housing sites, and its development plan contains a spatial strategy that sets out how housing needs will be delivered through development within defined settlements. Furthermore, I have also identified harm to the character and appearance of the area which, in my view, is serious and clearly outweighs the modest economic and social benefits of the development.
 16. Thus, the proposal would result in harm to the character and appearance of the area and conflict with the settlement strategy as set out within Policy 1 of the LP. It would be in conflict with Policies 1, 2 and 3 of the LP which seek, amongst other things, to ensure that developments maximise the opportunity to improve the quality and character of an area, and meets the demonstrable sustainable needs of an area.

Flood Risk

17. The appeal site lies within flood zone 3 as identified on the Environment Agency's Flood Zone Maps, which the Planning Practice Guidance (PPG) defines

as having a high probability of flooding. The National Planning Policy Framework (the Framework) sets strict tests to protect people and property from flooding. Where these tests are not met, national policy is clear that new development should not be allowed.

18. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Paragraph 162 states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source, and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding and thus, these areas would be sequentially preferable.
19. Paragraph 163 of the Framework sets out that only if it is not possible for development to be located in areas with a lower risk of flooding, taking into account wider sustainable development objectives, the exception test may have to be applied. Therefore, the exception test is the second stage of assessment and would only be applied if the sequential test is satisfied. Paragraph 167 requires that, where appropriate, applications should be supported by a site-specific flood risk assessment and development should only be supported where in light of that assessment, as well as the sequential and exception tests, the proposal would meet a number of criteria.
20. Policy 4: Approach to Flood Risk, of the LP echoes the Framework and supports development where it can be demonstrated that there are no other sites available at a lower risk of flooding. Moreover, it requires a sequential test (ST) to be based upon a district or borough wide search of alternative sites, unless it can be demonstrated that there is a specific need for the development in that location or, in the case of more vulnerable development in flood zone 3, the wider sustainability benefits to the community outweigh the flood risk.
21. The appeal scheme is supported by a Flood Risk Assessment² (FRA) which incorporates an ST and states that as the whole area around the appeal is within flood zone 3, it would be difficult to find a similar site for the development within Fosdyke that is in a lower flood risk zone. In addition, the FRA argues that most of the urban areas within the Borough have already been allocated and there are a limited number of sites available for residential development. Consequently, as there is a requirement for further sites to be brought forward, and taking account of the table at appendix B of the FRA, it is considered that the sequential test is passed.
22. At the Hearing it was confirmed that the appeal site has a predicted flood depth of between 500mm and 1000mm. The table at appendix B of the appellant's FRA identifies allocated sites within Boston Borough Council's administrative area and it is evident that there are a number of sites that are at a lower risk of flooding. Although the appellant's flood risk expert confirmed at the hearing that this was indeed the case, it was nonetheless argued that the Council had granted planning permission for residential developments in areas that were in a greater risk of flooding.
23. Whilst I accept that may be the case, I am not aware of the flood alleviation measures that have been provided for each site that has a greater risk of

² Flood Risk Assessment, Revision A, 27 March 2020.

flooding. Moreover, it was confirmed at the hearing that these sites have been through the local plan process and have been identified as suitable for residential development. Additionally, Policy 4 of the LP states that a ST would not be required for sites allocated in the local plan and it is evident that the appeal site has not been through this process.

24. Furthermore, the appellant has not provided a cogent reason why these sites have been discounted, other than they are not within Fosdyke and that there are sites in the borough that are at a greater risk of flooding. I do not find this to be a persuasive reason as there are clearly sites that have a lower risk of flooding.
25. Furthermore, the Framework is clear that an ST should seek to identify sites that are reasonably available at lower risk from flooding. Whilst the PPG advises that it should be a pragmatic approach, any ST must respond to the specific issues of the district and its development needs and not the developers' private interests, be it in ownership of the land or an ambition to deliver a precise number of dwellings. Moreover, flood risk should not be offset against housing need without very careful assessment of the risks and benefits.
26. Additionally, in accordance with Policy 4 of the LP, the appellant has not provided details of other sites within the borough that may also be suitable for the development and are at a lower risk of flooding. This may include the possibility of building out part of a larger site, or combining two or more smaller sites, including windfall sites, that have not been identified through the local plan process. Similarly, land that is allocated or has permission, but is not being brought forward could also be considered as a sequentially preferable option.
27. Likewise, I have not been provided with any compelling evidence to demonstrate that there would be wider sustainability benefits to the community that would outweigh the flood risk. As such, even allowing for a pragmatic approach, there has been no analysis of alternative sites beyond that the appeal site may be at a lower risk of flooding than some other sites in the borough. Therefore, it follows that the proposal fails the ST and as a consequence it is not necessary for me to consider whether the exception test is met for the purposes of making my decision.
28. Thus, the site would not be in an appropriate location for the development with regards to flood risk. It would be in conflict with the requirements of Policy 4 of the LP and paragraph 162 of the Framework, the specific requirements of which are specified above.

Infrastructure Contributions

29. The appellant has provided a completed planning obligation to secure financial contributions towards off-site open space, education, on-site open space and its maintenance, and to secure an appropriate level of affordable housing in accordance with Policies 1 and 6 of the LP. Given the policy requirements and the infrastructure needs arising from the development, I am satisfied that all of the above obligations are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. Thus, they would accord with paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

30. However, as the contributions for infrastructure provision secured through the undertaking would only be necessary to make the development acceptable in planning terms, this aspect is a neutral factor in the case rather than a benefit.

Other Matters

31. I acknowledge that the design of the dwellings is acceptable and that suitable materials would be employed. I also recognise that part of the field has permission for a development of five dwellings. However, the permitted development at the site would fill a gap between existing dwellings on Old Main Road and the property at Lloyds Farm. Therefore, it would have an appreciably less harmful effect upon the rural character of the area, than developing further southwards and extending the village into the adjoining field. Thus, I do not consider that this extant permission represents an irresistible precedent to find in favour of the development before me.

32. Moreover, having regard to the development at Puttock Gate³, the Inspector found that the proposal would largely follow the existing pattern of ribbon development close to the site and would relate well to the settlement in general. That is not the case before me. In any event, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.

Conclusion

33. Thus, I conclude that there are no material considerations of such weight as to indicate that a decision be taken other than in accordance with the development plan. Therefore, the appeal is dismissed.

Graham Wyatt

INSPECTOR

³ APP/Z2505/W/19/3222165

APPEARANCES

FOR THE APPELLANT

James Tipping MRTPI – Parker Planning Services
Kris Baxter – Studio 11 Architecture
Stuart Hemmings

FOR THE COUNCIL

Mark Simmonds – Boston Borough Council

DOCUMENTS

Planning Obligation dated 9 February 2022
Landscape Character Assessment of Boston Borough, July 2009