



Appeal Decision

Site visit made on 22 November 2018

by D Guiver LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 December 2018

Appeal Ref: APP/N2535/W/18/3209303

East View Farm, Main Road, Laughterton, Lincoln LN1 2JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Peter Wright, Bell Wright & Co against the decision of West Lindsey District Council.
 - The application Ref 137400, dated 14 February 2018, was refused by notice dated 6 April 2018.
 - The development proposed is residential development of up to 5 dwellinghouses including one replacement dwellinghouse.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline with all matters save access reserved for future consideration. Drawings submitted with the application showing a potential site layout are described as indicative and I have determined this appeal accordingly.
3. Since the date of the Council's decision, the National Planning Policy Framework 2018 (the Framework) has been published and has effect. The parties have had the opportunity to make representations on the effect of the Framework on the application and I have taken all comments into consideration in this decision.

Main Issues

4. The main issues are whether the proposal would be in an acceptable location having regard to:
 - a) flood risk; and
 - b) the minerals safeguarding area.

Reasons

5. Laughterton is a small village where development is controlled by Policy LP2 of the Central Lincolnshire Local Plan 2017 (the Local Plan). The Policy seeks to ensure that developments are small in scale, usually limited to around four dwellings, and are in appropriate locations. Appropriate locations are defined as those where development would not conflict with Framework and Local Plan

Policies taken as a whole and would retain the settlement's core shape and not harm its character and appearance.

6. The appeal site comprises a bungalow set 40 metres or so back from the highway in a plot of land approximately 0.3 hectares in size within the developed footprint of the small village of Laughterton. Access to the site would be taken off Main Road and would run along the southern boundary of the site. The proposed development would not alter the core shape of the village. The proposal is for the demolition of the existing bungalow and outbuildings on the site and the erection of up to five dwellings, which is a net gain of four homes, so would be a small sale development.

Flood Risk

7. Policy LP14 of the Local Plan and Framework Policies seek to direct development away from areas at highest risk of flooding. Schemes in areas at risk of flooding should apply the sequential test and, if necessary, the exceptions test. Proposals should demonstrate that there would be no unacceptable increased risk of flooding and that appropriate mitigation measures have been considered. Policy LP4 of the Local Plan sets a target of 10% growth for Laughterton but recognises that a different level of growth might be appropriate due to flood risk in the village.
8. The site is located in Flood Zone 2. Laughterton has parcels of land in Flood Zones 1, 2 and 3 with the majority of the settlement area in Flood Zones 2 and 3. The site benefits from some local flood defences but if these were to fail there would likely be some shallow flooding on part of the site as a result of a 1 in 100 year flood. Ground levels on the remainder of the site would be a little less than half a metre above the likely high water level from such a flood. In the event of a 1 in 1000 year flood the site would be inundated to between 0.39 and 1.39 metres.
9. The appellant has undertaken a sequential test initially restricted to the village itself but subsequently widened to include the village of Kettlethorpe, which together with Laughterton make up the parish of Kettlethorpe. The sequential tests concluded that there were no suitable reasonably available alternative sites with a lower probability of flooding available in the search areas.
10. The Planning Practice Guidance (PPG) advises that in the first place it is for the local planning authority to determine if the sequential test is satisfied and for housing the test will often extend across a town or district area. The Council's default position is for the sequential test to apply to the whole of the district. However, the PPG also advises that the area may be more narrowly defined by reference to local circumstances, for example around school catchment areas, and that a pragmatic approach should be taken.
11. The appellant has referred me to a number of planning and appeal decisions where the decision-maker determined that the appropriate area for the application of a sequential test was to be narrowly construed to the settlement in which the development was to be located. Two of these decisions relate to sites in close proximity to the appeal site before me. The first was an appeal from 2003¹, since which time there has been a significant change in the understanding of specific climate events. The second was a decision from

¹ APP/N2535/A/03/1114653

2015² made at a time when the Council was unable to demonstrate a five-year supply of deliverable housing sites and a specific need was demonstrated under the then applicable local development plan.

12. In an appeal from 2016³ the development site was in Derbyshire and there was a dispute as to whether the site was in Flood Zones 1, 2 or 3 and the area was at least partially surrounded by Green Belt. Finally, a decision from 2016⁴ concerned a site in Newton upon Trent, which was also during a time when the local development plan was considered to be out of date.
13. I note that in each case the proposal was for a single dwelling. The scheme before me is for up to five dwellings, being one replacement and four new buildings. Four additional dwellings would have a significantly greater impact on ground conditions than a single additional dwelling and therefore none of the decisions referred to are comparable to the circumstances of this case.
14. It was also a theme of some of these decisions that the proposal would support or ensure the viability of local services. There are few services if any in Laughterton other than a local pub and a development would offer little if any support. Services in neighbouring villages might be supported but could be supported by development elsewhere. I do not have before me the evidence upon which the Inspectors or planning officers made their decisions and must determine this appeal on its own merits. I have also been referred to a number of appeal decisions by the Council but none of these was similar to the appeal before me in relation to scale, location or flood zone, as the case may be, and I therefore attach limited weight to them.
15. Given the flood risk and the maximum number of dwellings in the proposal, together with the lack of local services, the application of the sequential test to the narrow confines of the parish of Kettlethorpe is insufficient. Without justification for a narrower catchment, a broader, district-wide sequential test would be required to support this proposal.
16. Therefore, the proposed development does not accord with Policy LP14 of the Local Plan or the requirements of the Framework with regard to Flood Risk.

Minerals Safeguarding Area

17. The appeal site lies within a wind-blown sand mineral safeguarding area and sand and gravel mineral safeguarding area (the Mineral Safeguarding Areas). Policy M11 of the Lincolnshire Minerals and Waste Local Plan Core Strategy and Development Management Policies 2016 (the Minerals Plan) requires proposals for developments in the Mineral Safeguarding Areas to be accompanied by a minerals assessment. The Policy also seeks to ensure that mineral resources of current or future economic importance are protected from permanent sterilisation by other development.
18. The Policy provides for planning permission to be granted where development would not sterilise mineral resources or prevent future minerals extraction on neighbouring land, or where a developer can demonstrate that prior extraction of the mineral would be impracticable, and that the development could not reasonably be sited elsewhere.

² 132876 dated 2 September 2015

³ APP/M1005/W/16/3155384

⁴ 134992 dated 22 November 2016

19. Since the date of the Council's decision the appellant has provided a minerals assessment. The assessment concludes that the estimated volume of relevant minerals beneath the site would not be economically viable to extract. Moreover, as the proposed development is consistent with the current land use and that of neighbouring properties development would not have a significant impact on the volume of minerals available for extraction.
20. The Council has considered the assessment and concludes that it is acceptable and no longer wishes to rely on the second ground of refusal. Therefore the proposal would accord with Policy M11 of the Minerals Plan. However, compliance with this Policy would not overcome the risk or flooding and want of an adequate sequential test.

Other Matters

21. A number of interested parties have objected to the proposed development on the ground of the impact on privacy. The proposal is for outline permission and scale, design, orientation and boundary treatments would all be required to demonstrate there would be no unacceptable impact on privacy. As these are matters for future determination I attach limited weight to this argument. Further objections were raised regarding loss of value to neighbouring dwellings and existing buildings containing asbestos. These are not proper planning considerations though any asbestos in buildings to be removed would be a matter for the Council to address under other regulatory powers.

Conclusion

22. For the reasons given and taking account of all other material considerations I conclude that the appeal should be dismissed.

D Guiver

INSPECTOR