



## Appeal Decision

Site visit made on 9 November 2020 by L Wilson BA (Hons) MA MRTPI

**Decision by Chris Preston BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2<sup>nd</sup> December 2020

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**Appeal Ref: APP/N2535/W/20/3257173**

**Land to the south of Lincoln Road, immediately to the East of Annrick, Torksey Lock, Lincoln LN1 2EL**

- 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 Arden against the decision of West Lindsey District Council.
  - The application Ref 140369, dated 20 November 2019, was refused by notice dated 6 February 2020.
  - The development proposed is described on the application form as a full planning application for a single dwelling and vehicular access on to Lincoln Road on land to the south of Lincoln Road and immediately to the east of an existing property known as "Annrick", Torksey Lock.
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### Decision

1. The appeal is dismissed.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Preliminary Matters

3. The appeal site's postcode differs on the application form to that used on the Council's decision notice. I have used the postcode cited on the decision notice as this correctly identifies the site.

### Main Issue

4. Whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding and, linked to that, whether there is an essential need for the dwelling in connection with the proposed holiday accommodation on the adjacent site, such that the sequential test should be limited to the consideration of sites within Torksey Lock, as opposed to the wider area.

### Reasons for the Recommendation

5. Paragraph 155 of the National Planning Policy Framework (the 'Framework') states that inappropriate development in areas of flooding should be avoided by directing development away from areas at high risk. The submitted Flood Risk Assessment (FRA) identifies that the site is located within Flood Zone 3 (area with a high probability of flooding).

6. In such cases the Council must apply the Sequential Test and the onus is on the applicant to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. I note that the Environment Agency highlight that before development can be considered appropriate in this location it must pass the flood risk Sequential Test and their response does not cover this aspect.
7. The Planning, Design and Access Statement (DAS) sets out the Sequential Test and states that it should only cover potential sites in the village of Torksey Lock, rather than across the district. The search area submitted by the appellant is extremely limited, as it would normally extend across a town or district area rather than one village.
8. Nonetheless, the Planning Practice Guidance (PPG) sets out that a pragmatic approach on the availability of alternatives should be taken. For example, in considering planning applications for extensions to existing business premises it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere<sup>1</sup>. The new dwelling relates to a holiday accommodation development granted planning permission in 2017, which also includes a restaurant and shops<sup>2</sup>.
9. Most of Torksey Lock is within Flood Zone 3. Hence, as well as the Sequential Test covering a small area, there is limited sites within a lower flood risk area. The Sequential Test identified two sites, outside the flood risk area. These sites were deemed inappropriate as the appellant considered the local development plan would not support housing in such locations. The sequential test therefore concluded that there are no other sites within the village which meet the appellant's essential need. The Council did not dispute those findings in respect of alternative sites within the village but does not accept that there is an essential need for the dwelling linked to the extant holiday accommodation permission.
10. The appellant states that the development is required to provide a permanent on-site manager accommodation to ensure the proper and safe operation of the holiday accommodation units, and an occupancy condition could be imposed. They set out that there is an essential need to house a manager for the neighbouring development. These needs relate to security, maintenance, customer care and welfare and impact on business matters. In addition, the appellant contends that the accommodation would help minimise the impact of predatory birds upon the adjacent fishing lake.
11. The manager's accommodation relates to a business which is not currently operating and there is a significant amount of building work to be undertaken before it would be able to open. However, I note that pre-commencement conditions have been discharged. The construction of a footway and footbridge has been completed, the appellant has also invested in a new electricity transformer and water supply.
12. The insurance company has stated that to insure the farm shop and glamping site, it seems reasonably practicable to employ a 'live in warden' to manage incidents. Having said that, the letter and email do not state that the dwelling is essential and that they would be unable to insure the approved development

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<sup>1</sup> Paragraph: 033 Reference ID: 7-033-20140306

<sup>2</sup> Reference: 134553

- or that there are no other means to ensure that it would comply with health and safety regulations and to provide appropriate security precautions.
13. The DAS states that having a dwelling within the development was considered inappropriate and would not meet many of the policies within the Central Lincolnshire Local Plan (2017) (LP). However, given that the holiday accommodation has been approved, the appellant has not fully explained why the manager's dwelling could not be accommodated within the neighbouring holiday accommodation site. The Council also consider that this option has not been explored. Although the holiday accommodation site is also within Flood Zone 3, a manager's dwelling within the site could utilise an approved building rather than introducing a further new building as proposed. It is not uncommon for staff or managers to be accommodated within holiday parks and it is not clear why there would be any inherent conflict between those living on site for management purposes and those staying for holidays.
  14. It is not clear whether the business would operate all year or would be seasonal. No evidence has been submitted to demonstrate that other measures have been considered, for example a temporary dwelling for a trial period, or that the business would be viable for the foreseeable future. Moreover, it is not clear whether shift arrangements for those working at the site have been considered such that an on-site presence could be maintained to assist holidaymakers or to deal with any emergency issues, without the need for a permanent dwelling.
  15. In addition, no satisfactory mechanism for tying the accommodation to the use of the adjacent holiday park has been put forward. The condition suggested would seek to limit occupation of the dwelling to those working as a site manager for the holiday park. However, if permission were granted, the dwelling could be erected in advance of the holiday park and there would be no obligation to complete the associated development. I am not satisfied that it would be enforceable or reasonable to seek to achieve the completion of the holiday park through a condition attached to any permission for the current appeal which relates to a different site. Moreover, whether a development is completed would depend on any number of factors, including viability.
  16. Consequently, that could lead to a situation where the dwelling is constructed in advance of the holiday park with no guarantee that the development would take place. Once the physical shell of the building was in place, it may be difficult or unreasonable to resist its use as a dwelling even though the original justification was no longer present. No satisfactory mechanism to avoid that situation or to tie the construction to the completion and use of the holiday park has been presented.
  17. Furthermore, how the appellant would effectively deal with predatory birds is ambiguous. The tenant of the fishing lake states that a manager on site would be able to scare the birds or inform them of their arrival. I am not convinced that this would be a feasible solution. The appellant would have to be monitoring the lake 24/7 to watch out for birds and if they phoned the tenant, by the time they arrive it is likely that the birds would have disappeared.
  18. In addition, the submitted site plan shows that the new dwelling would have limited relationship with either the holiday accommodation or the lake given the use of boundary treatment around the site and individual access. In terms of security, the proposed dwelling would have limited natural surveillance of

- the holiday accommodation given that it would not be integrated within the site.
19. Accordingly, based on the evidence submitted, I am not satisfied that there is truly an essential need for a manager's dwelling on the proposed site for the business to function properly. Thus, the Sequential Test has not been passed because the appellant has not justified the limited search area and as a result the submission does not adequately demonstrate that there are no suitable alternative sites in areas of a lower probability of flooding.
  20. The Sequential Test must be passed before the Exception Test can be applied. The purpose of the Exception Test is to allow necessary development to take place in situations where sequentially preferable sites are not available<sup>3</sup>. Given my findings above, my decision does not turn on whether the Exception Test has been passed.
  21. The appellant asserts that the site is protected by adequate flood defences which are well maintained by the Environment Agency. If the defences were taken into account then the risk of flooding would be equivalent to Flood Zone 2. I note that the presence of flood defences does not mean that an area is 'safe'. Only whilst the defence is maintained the risk is reduced and they could fail. The FRA acknowledges that flood defences reduce, but do not completely stop the chance of flooding as they can be overtopped or fail and therefore measures are required to protect the development.
  22. The FRA identifies flood resilient measures, which include a raised floor level and demountable defences. It goes on to state that the development would not cause any rise in the flood level in the immediate area. The PPG states that flood resistance measures should not be used to justify development in inappropriate locations<sup>4</sup>. In the absence of an appropriate Sequential Test being passed, the proposed development is unacceptable in principle. Therefore, it is not necessary for me to consider the detailed flood mitigation proposals or whether the scheme would increase the risk of flooding within the area.
  23. For these reasons, the proposal would not comply with local or national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Consequently, it conflicts with Policies LP2 and LP14 of the LP and the Framework which seek to promote, amongst other matters, sustainable growth within appropriate locations and to steer new development to areas with the lowest risk of flooding.

#### *Other Considerations*

24. Policy LP4 of the LP identifies that Torksey Lock in principle will be permitted to grow by 10%, in order to deliver its five year housing supply over the lifetime of the Plan. The appellant highlights that this equates to an additional capacity of 40 dwellings and there have been no new dwellings permitted since 2012.
25. Nevertheless, the supporting text of this Policy highlights that some areas have significant constraints, including flood risk. In these settlements, which includes Torksey Lock, whilst the growth level has not been altered to take account of these constraints, it is questionable whether development proposals will be

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<sup>3</sup> Paragraph: 023 Reference ID: 7-023-20140306

<sup>4</sup> Paragraph: 059 Reference ID: 7-059-20140306

able to overcome these constraints. It is therefore assumed, for the purpose of meeting growth targets, that a zero per cent increase in growth can take place in these locations. In addition, based on the evidence submitted the Council is able to demonstrate a five year supply of deliverable housing sites. Thus, this is not a matter that weighs in favour of the proposal.

### **Conclusion and Recommendation**

26. For the reasons given above I recommend that the appeal should be dismissed.

*L M Wilson*

APPEALS PLANNING OFFICER

### **Inspector's Decision**

27. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be dismissed.

*Chris Preston*

INSPECTOR