



Appeal Decision

Site visit made on 1 February 2023

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/N2535/W/22/3307418

Land at Sunny View, Lincoln Road, Torksey Lock, Lincoln LN1 2EH

- 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 JJLA Ltd against the decision of West Lindsey District Council.
 - The application Ref 144200, dated 24 December 2021, was refused by notice dated 23 March 2022.
 - The development proposed is the erection of a single detached family dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. There are two main issues. These are a) whether the proposed development would be at an unacceptable risk of flooding and; b) whether the proposed development would have an unacceptable effect on minerals with specific regard to safeguarding strategies.

Reasons

3. The appeal site is in flood zone 3 as it is defined by the Environment Agency's mapping. The highest risk area. The aim of the Sequential Test (ST), according to the National Planning Policy Framework (2021) (the Framework), is to steer new development to areas with the lowest risk of flooding from any source. Development should not be (in this case) permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The Strategic Flood Risk Assessment (SFRA) will provide the basis for applying this test.
4. I have not been made aware of a SFRA for the district or the county but accept the Council's logic that the scope of the ST for the proposed development be applied to the district given what it is and where it would be. That being a single open market dwelling on an otherwise undeveloped green field site. I am also mindful of the extent of the settlement, as one that the development plan considers has the potential to accommodate some limited growth, that is unavoidably within the highest flood zone. However, there is no compelling evidence before me as to why the dwelling needs to be in a flood zone and the highest one at that. There is limited information to sufficiently convince me that the development could not be, nor an exercise to show it has been, directed to an area at lesser or the lowest risk of flooding. I can therefore only conclude that the ST has not been passed.

5. The Framework goes on to state that 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 (ET) may have to be applied. The ET has two strands, and both need to be satisfied for a given development to pass. It requires it to be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
6. I have sufficient information set out in the appellant's site specific Flood Risk Assessment that the development could be safe for its lifetime and not increase flood risk elsewhere. I.e. that occupants could be sufficiently protected from a modelled flood event. The appellant has advanced a number of other matters in support of the scheme such as the contribution it would make to housing, the local economy in terms of employment and expenditure and the provision of energy efficient infrastructure to the building.
7. Whilst worthy of some weight though these matters may be, taken together, any would be tempered by the scale of the development as a single dwelling and the short term nature of the construction phase. I also have limited information pertaining to the viability of local services and thus how the appeal scheme would make a significant difference thereto or whether any are necessarily in danger from a lack of support. Environmentally sustainable construction methods and any retrofitted technology would obviously be welcomed but I don't have any precise details of the type or extent thereof to attach any more than limited weight thereto.
8. In this regard therefore, I have no compelling evidence before me to set out that the appeal scheme would provide wider sustainability benefits to the community that may outweigh flood risk. Even if the ST was satisfied then, the proposed development would not pass the ET. With this and the above in mind, the proposed development would be at an unacceptable risk of flooding. It would accordingly conflict with the aims of the Framework in that regard and Policy LP14 of the Central Lincolnshire Local Plan (2017) which defers to the Framework on matters of new development and flood risk, the sequential and exception tests specifically.

Minerals

9. Policy M11 of the Lincolnshire Minerals and Waste Local Plan sets out, amongst other things, that applications for non-minerals development in a minerals safeguarding area must be accompanied by a Minerals Assessment. Whilst one does not appear to have been submitted with the planning application or the appeal, I am mindful of M11's appreciation of minor development which would have a negligible impact with respect to sterilising the mineral resource. As a single dwelling on a contextually small site, it strikes me that this would qualify as such.
10. I am therefore satisfied that the extraction or safeguarding of minerals would not be adversely affected and, taking a common sense approach and the wording of Policy M11 on face value, a minerals assessment would likely reveal such. This would, theoretically speaking, address the requirements of Policy M11 so far as they are relevant to the proposed development.

Conclusion

11. Even if my findings in regard to the second main issue were to be the case, it would not address or make less the harm that I have found in regard to the first. I am also mindful of the lack of harm the appellant has set out in regard to other matters such as, but not limited to, character and appearance and the living conditions of existing and future occupiers. Being a lack of harm in each case, by definition, they cannot be used to weigh against it. The harm and development plan conflict I have found would attract substantial weight and, in the absence of any sufficiently weighty material considerations pointing me otherwise, leads to me dismissing the appeal.

John Morrison

INSPECTOR