



Appeal Decision

Site visit made on 13 September 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 October 2017

Appeal Ref: APP/N2535/W/17/3172031
Main Street, Torksey, Lincolnshire LN1 2EE

- 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 Stuart Kinch (John Kinch Builds) against the decision of West Lindsey District Council.
 - The application Ref: 131548, dated 30 June 2014, was refused by notice dated 9 February 2017.
 - The development proposed is a housing development for two pairs of semi-detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Central Lincolnshire Local Plan 2012-2036 (LP) was adopted on the 24 April 2017 after the application was determined and the appeal was submitted. Whilst the substantive reasons for refusal in this case have not changed, this is not the case for the wording of the relevant draft policies in the Council's decision notice. However, as the appellant has been given an opportunity to comment on these changes, I am satisfied that no interests have been prejudiced. This is the basis upon which this appeal has been determined.
3. The appellant has drawn my attention to an appeal decision¹ that supports the utilisation of infill plots in West Lindsey. Whilst I have paid careful attention to this decision the circumstances are not similar in all respects because the decision predates current policy and the National Planning Policy Framework 2012 (the Framework). Consequently, this appeal has been determined on its individual merits and the evidence before me.

Main Issues

4. The main issues are the effect of the proposal on the character and appearance of the local area, the archaeological remains and whether development in a high risk flood area is justified.

Reasons

5. The appeal site is a rectangular plot of land that fronts onto the eastern side of the A156 which runs through the centre of the small settlement of Torksey.

¹ APP/N2535/A/10/2130119

The plot is located within the settlement boundary, towards its northernmost extent. The eastern boundary of the site abuts a recent residential development, Abbey Park. A converted school house is situated immediately to the south, on the opposite side of Abbey Park road, whilst the curtilage of a large, detached house abuts the site immediately to the north. The River Trent lies in relatively close proximity to the west of the site. The proposed development would lead to the construction of two pairs of semi-detached dwellings that would be set back and front onto the A156. The main access, which would serve all four dwellings, would be via Abbey Park road. The dwellings would have a traditional, vernacular appearance with one pair comprising three bedrooms and the other pair comprising two bedrooms.

Character and Appearance

6. Although the scheme would have a similar grain to the more recent development to the rear of the site, this would not be the case for the established and more prominent pattern of development along the A156. This is because the majority of the properties on the northern approach have frontages that are set back from the road to a greater extent as well as a generally lower plot density. The looser grain of the immediate area is also reflected in the openness of the facing church yard and the significant space about the Hume Arms which lies a short distance to the south. Bearing in mind the extent of hard landscaping, as well as the massing of the proposed dwellings, I find that the proposal would lead to a cramped, overdevelopment of the site that would not be in keeping with the established pattern of development along the flanking A156 frontage, despite the use of sympathetic materials and an attractive design.
7. Given the above, I conclude that the proposal would cause significant harm to the character and appearance of the local area contrary to policies LP17 and LP26 of the LP that seek, among other things, to ensure that development positively contributes to the character and local distinctiveness of an area. As a result the proposal would not be in accordance with the development plan.

Archaeology

8. The second reason for refusal relates to the archaeological significance of the site. The village formed a major trading centre during the Saxon period which was strategically important due to the control it had over nearby river traffic. Evidence of Roman occupation is also present with pottery kilns found on the south side of Foss Dyke. The site itself has been subject to previous investigations which have variously identified it as possibly being of domestic origin, a market place or part of a wider monastic site associated with the former St Leonard's Priory.
9. Initial evaluation trenches indicated archaeological remains present at a depth of just 0.3-0.4 m below the existing ground level. These revealed pottery fragments dating from the 12th-13th century and some features dating from the 10th-11th century. Later occupation of the site is indicated by the presence of painted wall plaster and associated pottery from the 17th-18th century. Two medieval cist burials in stone coffins have been found immediately to the south of the site. More recently, the turf and topsoil have been stripped to the upper archaeological horizon which has revealed a greater extent of structural features with iron nails and green-glazed medieval pottery frequently encountered during the excavation. On the basis of the accumulated evidence,

the Council is of the opinion that the site is of regional or greater significance owing to the presence of features indicating medieval stone buildings.

10. The Planning Practice Guidance 2014 (as amended) (PPG) advises that non-designated heritage assets that are demonstrably of equivalent significance to scheduled monuments should be considered subject to the same policies as those for designated heritage assets. It goes on to advise that this includes those that are yet to be formally assessed for designation. However, in this particular instance I am satisfied that the site is not of national significance on the basis of the evidence before me and the proposal consequently falls to be considered under paragraph 135 of the Framework. This requires a balanced judgement that has regard to the scale of any harm and the significance of the heritage asset.
11. The appellant has suggested that the significance of the site could be protected through a combination of in-situ measures and preservation by record. The in-situ measures would raise the ground level with imported material to around 1 m and rely on the use of raft foundations. This would allow the services to be laid and foundations to be formed without direct intrusion into the archaeological horizon. The appellant has also indicated a willingness to undertake a full 'set-piece' excavation of the site to create a permanent record prior to any works taking place. I accept that this would lead to an enhanced understanding of the site which is unlikely to be otherwise gained. However, paragraph 141 of the Framework indicates that the ability to record evidence of our past should not be a factor in deciding whether such a loss should be permitted. As such, this has not been decisive in my decision making but nevertheless a material consideration.
12. The Council accept that it would be possible, in principle, to protect the archaeology in-situ by building up the ground level but is concerned that losses could occur during the construction and occupation phases through heavy machinery compaction and accidental intrusion into the archaeological horizon. I acknowledge these concerns but I am satisfied that suitably worded conditions could mitigate the adverse effects of the development. More specifically, the agreement of an appropriately supervised construction method statement and the removal of permitted development rights that might lead to any future uncontrolled intrusions. Whilst not decisive, any residual, minor damage would be mitigated by a suitable excavation condition that ensures preservation by record. This would also support better informed future decision making with regard to the site and its environs.
13. Given the above, I am satisfied that the proposal would not cause significant harm to the archaeological remains. It would satisfy the requirements of paragraph 135 of the Framework and would not conflict with policy LP25 of the LP that seeks, among other things, to ensure that archaeological remains are protected and, where possible, enhanced.

Flood Risk

14. The site is situated within Flood Zone 3a which is defined in the PPG as a high flood risk area with a greater than 1% annual probability of exceedance. The risk of flooding in this instance is associated with River Trent which is located approximately 170 m to the west of the site with associated flood defences at approximately 80 m.

15. Paragraph 100 of the Framework advises that inappropriate development in areas at risk from flooding should be avoided by directing development away from areas at highest risk. Paragraph 101 goes on to advise that a sequential, risk-based approach must be taken that steers development towards areas of lower risk that are inherently more sustainable. The Sequential Test (ST) should be applied in all areas known to be at risk from any form of flooding.
16. The Council have indicated that there are a significant number of alternative sites in Flood Zone 1 across the district which could accommodate the type of development that is being proposed. However, the appellant maintains that the area over which the ST should be applied is more restricted because the development would meet local housing needs, as indicated by confidential letters of support that were submitted at the time of the original application. The Council accept that there are no alternatives if the ST area is restricted to Torksey because the whole of the settlement is within Flood Zone 3a. Consequently, this matter turns on whether there is a substantiated local housing need for the development and how this would be secured.
17. I note that the Council has established that it has a deliverable 5-year housing land supply which has been found sound by the examining inspector of the recently adopted development plan. I place considerable weight on the fact that the allocations have now been tested and consequently find the circumstances of this appeal materially different to the appeals that were originally highlighted by the appellant². Furthermore, it is not for me to seek to carry out some sort of local plan process as part of determining an appeal under section 78 of the Town and Country Planning Act 1990 (as amended). Any such approach would, in any event, undermine a newly adopted plan which would clearly be unacceptable in planning terms.
18. The case officer's report contends that the housing need for the village comprises a single, two bedroom dwelling and six, socially rented bungalows for persons aged over 55. This has not been disputed by the appellant on appeal who maintains that the local need has been established by the support letters. However, I have no substantiated evidence before me beyond these letters that establishes any robust local need contrary to that which has been identified by the Council. As such, the development would fail to meet any identified need with the exception of a single, two bedroom dwelling.
19. The need to provide accommodation for specific key workers who are not capable of commuting from a lower risk area has not been established to my satisfaction on the basis of the evidence before me. Furthermore, there is no legal mechanism in place to ensure that the specific needs of individuals who live and work in the village would be met by the development or that any affordable homes would result from the scheme. In the absence of a planning obligation, I am satisfied that the development cannot be considered anything other than open market housing. Under these circumstances I do not find it reasonable to restrict the consideration of alternative sites to just Torksey.
20. The appellant has drawn my attention to more recent developments in the village and the alleged inconsistency of decision-making on the part of the Council given the widespread flood risk. However, I do not have the full facts of those permissions before me or exactly the same evidence that was before

² APP/N2535/W/15/3133902, APP/N2535/W/15/3103245, APP/N2535/W/16/3142624, APP/N2535/W/16/3145366, APP/N2535/W/16/3143053, APP/N2535/W/16/3147051,

the Council. Consequently this matter, as well as permissions that may have been granted in other villages, only carries limited weight in the balance of this appeal as each case must be determined on its individual merits.

21. The appellant has also drawn my attention to the fact that the Environment Agency (EA) withdrew its objection, subject to condition. However, as clearly indicated in its letter, it is for the Council to decide whether the terms of an ST have been successfully met. Consequently, the withdrawal of an objection from the EA does not infer that this matter has been satisfactorily resolved. Furthermore, the PPG clearly states that the ST must be passed before an Exception Test (ET) can be applied.
22. Given the above, I conclude that the ST has not been passed and that the proposed development would therefore be contrary to policies LP2, LP4 and LP14 of the LP that seek, among other things to ensure development in small villages is in appropriate locations that does not conflict with other policies, overcomes any flood risk constraint and is subject to an ST. As a result the proposal would not be in accordance with the development plan.
23. Paragraph 102 of the Framework indicates that an ET can be applied if it is not possible to locate a development in zones with a lower probability of flooding, as indicate by the ST. As the evidence before me has failed to meet the first test, the ET does not fall to be considered and the outcome of any test that has been applied cannot be determinative under such circumstances. In any event, I am not satisfied that a finished ground floor level of 7.40 m ODN would ensure the future viability of the development given the impact that a flood event would have on ancillary infrastructure. The disruption of foul drainage systems, resultant contamination of surrounding land and the physical barrier to movement caused by the flood water would, to all intents and purposes, make the houses uninhabitable until such issues are rectified.

Conclusion

24. For the above reasons and having regard to all other matters raised I conclude that, on balance, the appeal should be dismissed.

Roger Catchpole

INSPECTOR