



## Appeal Decision

Site visit made on 24 October 2017

**by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC**

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

**Decision date: 13 December 2017**

---

**Appeal Ref: APP/N2535/W/17/3178775**

**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 Mrs Paula Wraith against the decision of West Lindsey District Council.
  - The application Ref 132283, dated 23 December 2014, was refused by notice dated 30 January 2017.
  - The development proposed is the erection of 13 dwellings including associated hard and soft landscaping works and minor relocation of existing vehicular access point.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Although Part E of the Appeal Form stated that the description of development has not changed nevertheless a different wording has been entered to that on the application form, the latter referring to 15 dwellings. However, it is clear that the application was amended during its consideration and that the Council made its decision on the basis of a scheme comprising 13 dwellings. I have therefore used this description in the heading above and considered the appeal on that basis.
3. Since the Council made its decision the Central Lincolnshire Local Plan 2012-2036 (LP) has been adopted. Its Introduction confirms that it replaces all saved policies from the West Lindsey Local Plan (WLLP), and therefore this includes those cited by the Council in its refusal reasons. I have therefore determined the appeal on the basis of the Local Plan forming part of the development plan and made no further reference to the WLLP policies which carry no weight.

### Main Issues

4. The main issues raised by this appeal are: i) whether the site would be a suitable location for housing development with regard to development plan policy, ii) whether the development would accord with national and local planning policy which seeks to steer new development away from areas at highest risk of flooding, iii) the effect the development would have on highway safety, and; iv) the effect the development would have on an undesignated heritage asset.

## Reasons

### *Suitability of location for housing*

5. The site is a field lying on the northern edge of the village, situated between a former railway embankment and existing dwellings, and adjoining open land to the east. The development would provide a mixture of detached and semi-detached houses in a cul-de-sac arrangement. Based on the appellant's assessment of facilities in the village and the frequency of bus services serving it is likely that many future occupiers of the development would rely on private motor vehicles for many of their day to day needs in accessing employment, services and entertainment.
6. The LP seeks to concentrate growth in main urban areas and their supporting settlements, using a hierarchy approach. The thirteen dwellings proposed would considerably exceed the small scale development, limited to around 4 dwellings, that LP Policy LP2 establishes for Small Villages such as Torksey in its settlement hierarchy. As the site is not promoted via a neighbourhood plan and there is no demonstration of clear community support (including from the Parish Council), circumstances which might indicate an exception to LP Policy LP2's approach do not exist.
7. The number of dwellings would also exceed LP Policy LP4's growth level of a 10% increase in dwellings in the village during the plan period which, according to the Council's figures, equates to 7 dwellings taking into account extant planning permissions. In any event this growth rate includes the caveat that the whole settlement's location in a flood risk area means "it is questionable whether development proposals will be able to overcome these constraints." The proposal would therefore be contrary to LP Policies LP2 and LP4 and not represent the sustainable development LP Policy LP1 presumes in favour of.
8. The proposal would nominally meet LP Policy LP11's 20% affordable housing requirement. The appellant contends that LP Policy LP2's 4 dwelling limit means that market led development schemes could never be required to provide affordable housing given LP Policy LP11's requirement for affordable housing to be provided on sites of 11 dwellings or more. However, LP Policy LP11 also includes a provision for rural affordable housing that may be permitted as an exception to other LP policies including the consideration of local support and whether a limited amount of market housing to facilitate delivery would be required, amongst other factors.
9. The Council consider that there is a requirement in Torksey for 8 socially rented bungalows and one two bedroom house. In principle the proposed provision of three affordable units would address part of the need but, given their size and configuration, two of the affordable homes would presumably serve a wider need rather than that of Torksey.
10. Nevertheless, no planning obligation to secure the provision of affordable housing has been provided. The appellant considers that on-site affordable housing could be delivered by way of a negatively worded condition. The PPG<sup>1</sup> advises that such an approach is unlikely to be appropriate in the majority of cases. The development proposed could not reasonably be considered to be of the more complex and strategically important type that the PPG considers may

---

<sup>1</sup> Paragraph: 010 Reference ID: 21a-010-20140306.

justify an exception to this approach. The circumstances do not support an attempt to secure affordable housing by condition. Both the appeal decisions<sup>2</sup> referred to by the appellant in support of her position related to significantly larger schemes than that before me and those Inspectors found that the development proposed in those cases to be of strategic importance to housing land supply, materially different circumstances to this case.

11. In the circumstances that there would be no appropriate mechanism to secure affordable housing, this is not a benefit I can take into account in support of the proposal and it would be contrary to LP Policy LP11.

#### *Flood risk*

12. The site's Flood Zone 3 location is one which has a high probability of flooding and Dwellings are identified in the national Planning Practice Guidance (PPG)<sup>3</sup> as development which is More Vulnerable to flooding. There are flood defences alongside the River Trent to the west of the village. LP Policy LP14 requires proposals to be considered in light of application of a Sequential Test which follows the National Planning Policy Framework's (the Framework) requirement that development in flood risk areas should be avoided by directing development away from areas at highest risk, making it safe if development is necessary. Given the caveat in LP Policy LP4 it cannot be automatically assumed that a sequential test is not necessary for development in Torksey.
13. The Appellant considers that the development would be considered a necessary one in a flood risk area as it includes affordable housing. Notwithstanding my findings above on affordable housing, the site would provide three bedroom houses which in theory might reasonably address the need for the single family affordable home in the village of the format the Council consider is required. Considered on that basis it could in theory be considered to be necessary.
14. However, this conclusion could only apply to a single dwelling and the PPG advises that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. Therefore, limiting the area of search for the Sequential Test to Torksey and its immediate hinterland is too restricted an area to conclude that the market housing development of the size proposed, or indeed the affordable housing which would not be addressing a need as localised as Torksey's, could not be accommodated on a site elsewhere at lower risk of flooding. In light of the recently adopted LP there is insufficient evidence to support the Appellant's initial assertion that there are no other sequentially preferable housing sites in a reasonable area of search. It has not been demonstrated that the development considered as a whole would meet the Sequential Test and I note that the Environment Agency (EA) support the Council's reason for refusal in this regard. The development would be contrary to LP Policy LP14.
15. The appellant's Flood Risk Assessment concludes that, with its recommend mitigation including raising floor levels above predicted inundation levels, the development would meet the Exception Test and would provide protection to occupiers against flooding on the site, although given levels along Main Street should a flood event occur occupiers would have to remain in their properties

---

<sup>2</sup> APP/N2535/W/16/3144855 and APP/N2535/W/15/3129061.

<sup>3</sup> Table 2: Flood Risk Vulnerability Classification, Paragraph: 066, Reference ID: 7-066-20140306.

rather than have a safe egress route from the area. However, such measures would not overcome the requirement to meet an appropriate Sequential Test. Taking into account the appeal decisions<sup>4</sup> the Council have referred me to I do not consider that the constraint of flooding to have been satisfactorily overcome in the context of LP Policy LP4's conditional housing allocation.

#### *Highway safety*

16. The proposed access road would have a slightly narrower secondary spur road running perpendicular to it. The Council's objection focuses on the absence of a turning head to enable refuse and service vehicles to turn around and leave this spur road in forward gear. The Officer's Report notes that this was a technical issue which could be resolved through an amendment and that subject to the requirement being met there would be no highway safety harm.
17. Whilst no drawings of how an appropriate turning head may be added have been supplied I can appreciate that there would be likely to have to be material changes to the proposed disposition of dwellings and swales on the site. Given its likely location relative to existing dwellings, adjoining occupiers would not have been given the opportunity to consider such a change if it were to be dealt with by way of a condition. In these circumstances I agree with the Council that the knock on effects of such a modification mean that it would not be reasonable to rely on a condition to secure the change.
18. The implications of not providing a turning head would in all likelihood be limited to the ability of a refuse or larger delivery or service vehicles to enter and leave the spur road in forward gear. Such vehicles would either have to reverse into or out of the narrower spur road, but this a manoeuvre they would presumably have to do in some form in order to leave the proposed estate in forward gear in any event.
19. Given the limited number of dwellings, relatively short length of the spur road and slow speeds and care with which refuse and other large vehicles are normally required to operate within residential areas I consider it unlikely that any material harm to highway safety would arise in its proposed form. I cannot therefore conclude that the appeal fails on this matter and the proposal would not conflict with LP Policy LP26 in this respect.

#### *Heritage asset*

20. The appellant's Interim Archaeological Evaluation Report points to Torksey's significance as a former port which had a number of former ecclesiastic establishments, the location of three of which remain unknown. It goes on to note that that evidence found during excavations indicates that the appeal site was close to the centre of the late Saxon and Medieval Torksey. Nevertheless, the appellant's subsequent archaeological report concludes that there is currently not enough information to determine if the remains within the proposed development area (and earthworks to the east) are of schedulable significance. Preservation in situ would not appear to be a feasible option and comprehensive excavation and preservation by record, whilst increasing knowledge and understanding of the site, the area and the eras represented in finds, would result in what significance the site has being largely destroyed in the process.

---

<sup>4</sup> APP/N2535/W/17/3172031, APP/N2535/W/16/3152072 and APP/N2535/W/17/3173175.

21. However, the appellant has indicated a willingness to undertake a full topographical survey and a 'set piece excavation', in light of which, and following an agreement with the County Archaeologist, the Council advise that that they would be amenable to an appropriately worded condition. In light of these circumstances and in the absence of a dispute between the main parties about the approach to archaeology on the site, the proposal would accord with the archaeology provisions of LP Policy LP25.

### *Overall balance*

22. In light of my findings above, highways and archaeology matters weigh neutrally in the planning balance, as does the absence of harm in other respects. The proposal would result in social and economic benefits through the provision of new housing, including that arising from construction and ongoing occupation including support for those services and facilities are available in the village. The Framework aims to boost significantly the supply of housing and delivering increased numbers and choice of, and widening opportunities to own, housing is a key element of the Housing White Paper<sup>5</sup>. The Appellant considers that the development would respond to a need in Torksey for smaller more affordable family housing.
23. However, these benefits need to be weighed against the conflict with development plan's approach to the scale and location of new housing and the strong development plan and national policy aim of steering new development away from high flood risk areas. It has not been demonstrated that the exceptions to locational or flood policies would be engaged in this case. Furthermore LP paragraph 3.4.6 acknowledges that the LP's growth targets assume no growth in villages including Torksey in light of the uncertainty from factors such as flood risk. Housing delivery in the plan area is not therefore dependent on development in Torksey which means that the weight the housing delivery benefits of the development would only be moderate. I cannot afford the notional affordable housing any weight.
24. The Framework's presumption in favour of sustainable development at paragraph 14 does not apply as the proposal conflicts with the LP, a development plan where relevant policies are not out of date, absent or silent. Indeed paragraph 12 of the Framework states that development that conflicts with an up to date Local Plan should be refused unless other material considerations indicate otherwise. I have afforded the conflict with the development plan and national policies in respect of scale, location and flooding considerable weight and I do not consider that the scheme's benefits would outweigh it. Consequently material considerations do not indicate that a decision other than in accordance with the development plan should be taken.

### **Conclusion**

25. For the above reasons, and having had regard to all other matters raised, the development would not accord with the development plan in respect of the suitability of the location for housing development or flood risk. The appeal is therefore dismissed.

*Geoff Underwood*

INSPECTOR

---

<sup>5</sup> Fixing our broken housing market, 2017.