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## Appeal Decision

Site visit made on 18 October 2018

**by D Guiver LLB (Hons) Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 November 2018**

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**Appeal Ref: APP/N2535/W/18/3202824**

**Land to the rear of 7 Mill Lane, Morton, Gainsborough DN21 3BW**

- 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 Mark Smith against the decision of West Lindsey District Council.
  - The application Ref 137020, dated 13 November 2017, was refused by notice dated 4 January 2018.
  - The development proposed is new dormer bungalow.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. 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.
3. In its decision notice the Council describes Mill Wood to the north of the appeal site as 'protected woodland' and there is indeed a tree preservation order dated 4 March 1985 (the TPO) in force which creates an area designation for trees in Mill Wood. However, while the description in the Schedule to the TPO refers to 'mixed hard and soft woods', the attached plan limits the scope of the TPO to 'the several horse chestnuts, pine and silver birch in the area'. Where there is a discrepancy between the schedule and the plan, the relevant regulations<sup>1</sup> provide that the plan should prevail and therefore the TPO appears only to protect the named species.
4. There are two trees within Mill Wood close to the boundary with the appeal site whose root systems and canopies sit within the projected footprint of the building on the appeal site and would be affected by the proposed development. However, these trees are identified as common ash and therefore are not specifically protected by the TPO. Any effect of the proposal on these trees falls to be considered under the general requirements of planning law and the contribution trees make to the character or appearance of an area.

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<sup>1</sup> Regulation 3(4) of the Town and Country Planning (Tree Preservation)(England) Regulations 2012

## **Main Issues**

5. Therefore, the main issues are:
  - a) whether the proposed development is in a suitable location with regard to the potential for flooding; and
  - b) the effect of the proposed development on the character and appearance of the area, including its effect on trees.

## **Reasons**

6. The appeal site comprises a parcel of land within the rear garden of 7 Mill Lane close to the boundary with Mill Wood. The surrounding area is predominantly residential with a relatively recent development off Granary Close which lies adjacent to the appeal site. The proposal is for the construction of a dormer bungalow on the site close to the boundary with the wood. Access would be off Granary Close close to the corner of the site furthest from the existing dwelling at No. 7.

### *Flood Risk*

7. Policy LP2 of the Central Lincolnshire Local Plan 2017 (the Local Plan) provides a spatial strategy and settlement hierarchy for development in the Council's administrative area and identifies Morton as a medium village. The Policy seeks to ensure that development in medium villages is limited in scale and occurs only in appropriate locations. In summary, appropriate locations are defined as locations where development would not conflict with other national or local policies and would retain the shape and character of a settlement. Policy LP4 of the Local Plan suggests that, given its size and key facilities, Morton could accommodate approximately 15% growth. However, this figure is subject to a caveat in paragraph 3.4.5 of the Local Plan that questions whether proposals would be able to overcome constraints in the village, specifically identifying flood risk as a concern. Policy LP14 requires that all development proposals in flood risk areas apply the sequential test and, if necessary, the exceptions test set out in the Framework.
8. The appellant provided a Flood Risk Assessment (the FRA) which identified that the village of Morton, including the appeal site, was within Flood Zone 3. The FRA concluded that the risk of fluvial flooding was medium and other flood risks were low or not present. The appellant stated that because the whole of the village was within Flood Zone 3 the sequential test required by the Framework was satisfied.
9. The appellant referred to two appeal decisions<sup>2</sup> for development proposals in the village where the question of the sequential test was considered. In each case the Inspector referred to the need for the sequential test to consider a wider area than the village because of the scale of the developments proposed, namely 37 dwellings and 9 dwellings respectively. The appellant appears to infer from this that a smaller scale development such as the current proposal could properly limit the scope of a sequential test to within the settlement boundary.

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<sup>2</sup> APP/N2535/W/16/3152072 and APP/N2535/W/17/3172910

10. I do not have before me the evidence upon which the Inspectors reached their conclusions but accept that the scope of a sequential test should take into consideration the scale of a development, with larger proposals requiring a wider area for consideration. However, there is no compelling argument before me to justify limiting the scope of the sequential test to the village alone. While a district-wide approach might be excessive when proposing a single dwelling, there is no explanation why the test should not consider other nearby settlements, including the town of Gainsborough which lies just to the south and is contiguous with the village.
11. The decision to limit the scope of the sequential test to the village without compelling reason appears to be an artificial and arbitrary approach. In the absence of an articulated reason for such a limitation I must take a precautionary approach and conclude that the sequential test provided does not satisfy the requirements of the Framework as there might be sequentially preferable sites within a reasonable area for the application of the test.
12. However, even if the sequential test was adequate and there were no sequentially preferable sites available, it would then become necessary to satisfy both arms of the exceptions test. The second arm of the test requires that the development be safe for its lifetime and would not increase flood risk elsewhere. Mitigation measures proposed in the FRA would be likely to satisfy this element and there is no compelling evidence that the scheme would increase flood risk elsewhere.
13. However, the first arm of the test states that it must be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk. While the FRA assesses risk from fluvial flooding as medium the development would offer only a single additional dwelling. Neither party has suggested that the Council is unable to demonstrate a five-year supply of deliverable housing sites and therefore a single additional residential unit would present an extremely modest benefit that would not outweigh the potential flood risk.
14. Therefore, the proposal would not be in accordance with Policy LP14 of the Local Plan, notwithstanding the identification of Morton as potentially suitable for growth in Policies LP2 and LP4 of the Local Plan.

#### *Character and Appearance*

15. The ash trees in Mill Wood on the boundary between the wood and the appeal site are relatively mature and valuable examples of such trees. One of the trees stands close to the proposed site entrance off Granary Close. This is a large tree with a trisected trunk whose roots form a visible mound 100mm or so above ground level that slopes down and reaches ground level on one side within a very short distance of the boundary fence with the appeal site. The root system is likely to continue for some distance just beneath the surface at this point. The proposed vehicle access to the site and one corner of the proposed building would occupy the space above the likely location of the root system.
16. The canopy of this tree overhangs the appeal site and over the proposed location of the dwelling by four metres or so. The canopy is relatively low hanging and it occupies a prominent position close to Mill Wood's boundaries

- with the appeal site and Granary Close. The tree makes an important contribution to the character and appearance of the area.
17. The second ash tree is further back from Granary Close and stands closer to the rear of the footprint of the proposed house but is still in a relatively prominent position. The tree appears smaller and less mature than the first tree but is still an important and valuable tree in its own right. The root system and canopy would also be affected by the proposed development.
  18. The appellant's tree survey proposes a number of measures to protect the roots of these trees during construction including giving options for the building foundations and the access road. Although no firm proposal has been made at this stage, a condition could require the appellant to submit firm plans to the Council for approval before the development begins.
  19. However, the survey also proposes significant reduction of the trees' canopies over the footprints of the building (at circa 8.5metres to the front and five metres to the rear) and the access road (at 4.5metres). The trimming of the canopies by such an extent would have a marked and detrimental impact on the appearance of the trees and, given their prominence, on the character and appearance of the area, including the character and appearance of Mill Wood.
  20. Therefore, while the trees' roots might be protected, subject to approval of details, the harm to the canopies would not accord with Policies LP17 and LP21 of the Local Plan which seek to ensure that developments protect and enhance habitats and sites of local importance and protect and enhance the character and appearance of the natural landscape.

### **Other Matters**

21. While not forming a reason for refusal, I am mindful of my statutory duty, arising under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to have special regard to the desirability of preserving listed buildings or their settings when considering the grant of planning permission. Setting is defined in the Framework as the surroundings in which a heritage asset is experienced and is more than simply the view of an asset. The site notice referred to the proposed development being within the setting of a Grade II listed building, namely the Mill at Gainsborough Laundry, which is a tall slope-walled mill topped with a wooden dome.
22. However, the building has been surrounded by a small modern housing estate and the setting is now defined by reference to that housing. The proposed development would not differ materially from the other, closer housing and therefore would not have any appreciable impact on the listed building or its significance as a heritage asset.
23. The Council stated that the parking provision identified in the proposal would be inadequate but did not specify this as a reason for refusal. The proposal would provide an integral garage and an exterior driveway that could be used for vehicle turning or as an additional parking space. Given the scale of the proposed development the parking provision would be adequate. I note that the Council did not provide any detailed clarification for the statement that the provision was inadequate and that the highway authority did not object to the proposal on any highway or parking grounds. However, while the parking provision would be adequate this would not be sufficient to overcome the

concerns about flood risk or the significant harm to the character and appearance of the area by the proposed tree-trimming.

**Conclusion**

24. Therefore, for the reasons give above and taking into account all other material considerations, I conclude that the appeal should be dismissed.

*D Guiver*

INSPECTOR