



Appeal Decision

Site visit made on 30 May 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Appeal Ref: APP/N2535/W/22/3313629

The Grove, 12 Caistor Road, Market Rasen, Lincolnshire LN8 3HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by T, R, & N Bradford against the decision of West Lindsey District Council.
 - The application Ref 144905, dated 6 May 2022, was refused by notice dated 29 June 2022.
 - The development proposed is the erection of one dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with appearance, landscaping, layout and scale reserved for subsequent consideration. I have considered the appeal on this basis.
3. The Council has advised that after their decision on this application was made the Central Lincolnshire Local Plan (CLLP) was adopted on 23 April 2023 and the earlier version of the same document referred to in their reason for refusal has been superseded. They have advised of the new relevant policies to the proposal. The appellant has had the opportunity to respond to the new policies in their final comments. Therefore, I have determined the appeal on this basis.
4. The appellant has submitted a flood risk sequential test with their appeal, the Council has had the opportunity to comment on this, and the appeal has been determined on this basis.

Main Issue

5. The main issue is the acceptability of the appeal site for the proposed development in terms of flood risk.

Reasons

6. The appeal site includes part of the large rear garden of 12 Caistor Road, a watercourse linked to the River Rase runs to one side of the application site.
7. Both parties identify the appeal site as being in Flood Zone 3. The Planning Practice Guidance (PPG) states that Flood Zone 3 has a 'high probability' of flooding.

8. Paragraph 159 of the National Planning Policy Framework (the Framework) requires inappropriate development to be avoided in areas at high risk of flooding and directs development away from such areas. To achieve this, the Framework requires that development in areas of a high risk of flooding should be sequentially tested, and paragraph 162 of the Framework specifically states development should be steered towards areas with the lowest risk of flooding. It goes on to say development should not be permitted in areas of high risk of flooding if there are reasonably available sites appropriate for the proposed development with a lower risk of flooding. Policy S21 of the CLLP also requires the application of the sequential test as outlined in the Framework.
9. There is dispute over the search area for the sequential test with the Council considering that the local authority area is necessary, whereas the appellants consider that a search area with a 10-mile radius of the appeal site is suitable.
10. Whilst I have not been directed to any policy or guidance which sets out the administrative area of the Council being necessary for the search area, the Planning Practice Guidance (PPG) states that the search area for the sequential test will be guided by local circumstances and the relevant catchment for the development type, but not be determined by landownership.
11. As the proposal is for a single dwelling, the appellants' approach to search area seems unduly restrictive, particularly given the exclusion of the larger settlement of Gainsborough for which Sustainable Urban Extensions are planned within the CLLP. Moreover, the appellants' search for other possible sites appears limited to an internet search of properties on the market, along with some rudimentary comments and limited information, as to why they were not appropriate for their proposal. The appellants did, however, undertake a search of the local area in terms of the Council's brownfield land register, they only found one possible site that they dismissed as it related to 3 no. dwellings. Even in the event I were to accept their narrower search area, the evidence provided is insufficient to justify why the appeal site is the only reasonably available and appropriate site for a dwelling with the lowest flood risk. Accordingly, the proposal does not pass the sequential test.
12. In reaching this conclusion I have had regard to the presence of a flood storage reservoir referred to be the appellants. The PPG is, however, clear that when undertaking the sequential test such flood protection measures should be ignored, particularly as the long-term funding, maintenance and renewal of this infrastructure is uncertain.
13. I note that the Environment Agency has recommended a condition regarding flood proofing measures and the appellants have also sought to justify how the proposal can be made flood resilient, however, without passing the sequential test, which is for me as the decision maker to determine, it is not relevant in this case to consider flood proofing or resilience measures. For the same reasons, it is not necessary for the Exception Test to be applied.
14. To conclude, it has not been demonstrated that there are no reasonably available sites appropriate for the proposal in areas with a lower risk of flooding and as such the proposal does not pass the sequential test. The appeal site is not in an acceptable location for the proposed development in flood risk terms and is contrary to Policy S21 of the CLLP and paragraphs 159 and 162 of the Framework, that amongst other things, collectively steer new development to

sites with the lowest risk of flooding unless there are no such other sites reasonably available and appropriate.

Other Matters

15. The site lies within the Market Rasen Conservation Area, (the CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
16. The Market Rasen Conservation Area Appraisal dated September 1984 (CAA), although somewhat dated, mentions The Grove, as a building of interest along with the positive contribution the trees within its curtilage make to the CA. The property is described as an attractive whitewashed property, possibly featuring a thatched roof originally, set within a landscaped setting, amongst other distinctive buildings near open areas.
17. Although the application seeks outline planning permission with only access to be considered, given the site's separation from The Grove, its landscaped setting, and other buildings nearby that are also located a similar distance from the road, it is likely that a scheme could be developed that is of a scale and design that would be consistent with the significance of this part of the CA. Accordingly, I am in no doubt that a suitably designed scheme would comply with both the duty in the Act¹ and the CAA.
18. The appellants have raised the presumption in favour of sustainable development referred to in paragraph 11 of the Framework, and the Council's 5 – year housing supply position, in support of their appeal. The Council has confirmed that they have a 5-year supply of housing. Even in the event they could not demonstrate this, the 'tilted balance' set out in paragraph 11 d) of the Framework would not be engaged in this case as the proposal conflicts with the planning and flood risk policies of the Framework which provide a clear reason for refusing the development proposed.
19. I note that it is stated the proposal would have a neutral effect upon heritage assets; have no adverse effect upon ecology; there are no highway safety objections; there would be no unacceptable archaeological impacts; it would have a soakaway surface water drainage scheme; it could be designed to prevent unacceptable overlooking of neighbouring properties; that it and The Grove would have good sized gardens; and its external materials would integrate into the local area. However, as these are all requirements of the development plan and national policy, they are neutral factors that neither weigh in favour or against the proposal.
20. The proximity of the site to local services and facilities; the access and parking for the existing property being maintained; that the proposal is accompanied by detailed reports and assessments; that no objections were raised by consultees during the consideration of the planning application; that the site could be developed with a no-dig cellular confinement system to protect the roots of nearby trees; and that the appellants are seeking a 1.5 storey property that is more manageable, which would respect the area are noted. However, these matters neither individually or collectively outweigh the in-principle

¹ Planning (Listed Buildings and Conservation Areas) Act 1990

conflict identified above with the development plan and the Framework in respect of flood risk. Furthermore, some of these points also relate to matters that the appellants have asked not to be considered at this outline stage.

Conclusion

21. For the reasons outlined above, the proposed development conflicts with the development plan taken as a whole and the Framework. There are no other considerations which indicate a decision other than in accordance with the development plan and the Framework. I therefore dismiss the appeal.

A Hunter

INSPECTOR