



Appeal Decision

Site visit made on 29 January 2018

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 27th February 2018

Appeal Ref: APP/A2525/W/17/3187557

Fourth Haven, 57 Station Road, Long Sutton, Spalding PE12 9BS

- 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 Mrs Jean Barton against the decision of South Holland District Council.
 - The application Ref H11-0074-17, dated 24 January 2017, was refused by notice dated 26 April 2017.
 - The development proposed is described on the planning application form as erection of single storey dwelling on rear garden land (outline).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development on the planning application form is as set out above. The proposal is described on the appeal form and the decision notice as erection of one and a half storey dwelling. The Council considered the application on that basis and I will consider the appeal in the same way.
3. The application is in outline only with all matters reserved for future consideration. The Revised Planning Application Drawing Ref 16/479/PA/002 shows one way in which the proposed building could be designed. I have taken the indicative plan into account only insofar as it is relevant to my consideration of the principle of the development on the appeal site.
4. The Decision Notice contains a single reason for refusal relating to the character and appearance of the countryside. Whilst recognising that the proposed dwelling, as amended during the course of the planning application, would have two storeys and raised floor levels to address flood risk, the Decision Notice did not specify risk of flooding as a reason for refusal.
5. However, the appeal site lies within Flood Zone 3 of the Environment Agency's Flood Zone Maps and in fluvial Flood Zone 1 of the South Holland District Council's Flood Risk Assessment Maps. The National Planning Policy Framework (the Framework) makes it clear that inappropriate development in areas at risk of flooding should be avoided. In relation to planning applications the Framework, together with the Planning Practice Guidance (the PPG) requires that a flood risk assessment (FRA) be carried out to the appropriate degree, together with the application of a risk-based Sequential Test. The Sequential Test was not addressed in detail in the initial evidence of the parties, who were

given the opportunity to provide further comment on this matter. I have taken the comments received into account in determining this appeal.

6. The Council is currently preparing the Draft South East Lincolnshire Local Plan (the emerging Local Plan). This plan is still at an early stage and has not yet been examined. Accordingly, its policies carry little weight in the context of this appeal. I am also told that preparation of a Neighbourhood Plan for Long Sutton has begun. However, this has not advanced to a point where it can be given weight in this appeal.

Main Issues

7. Taking the above into account the main issues for the purposes of this appeal relate to:
 - the effect of the proposed development on the character and appearance of the local area; and
 - whether the proposal would comply with planning policy which seeks to steer development away from areas at the highest risk of flooding.

Reasons

8. Planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise¹. The Framework is an important material consideration. The development plan for the area includes the South Holland Local Plan which was adopted in 2006 (the LP).

Character and appearance

9. The appeal site is outside, but adjacent to, the defined settlement limits for Long Sutton, as shown on the Proposals Map of the LP and is therefore in the countryside for the purposes of planning policy. Under the emerging Local Plan, the status of the appeal site would not alter in this regard. Although not referred to in the reason for refusal the parties agree that rural restraint policies apply and that the proposal would be contrary to LP Policy HS7 "New Housing in the Open Countryside including Other Rural Settlements."
10. Station Road is part of one of the main routes into Long Sutton from the A17. There is residential development on both sides for most of its length. In this part of Station Road development is predominantly linear in character. However, there are also some connecting roads leading off Station Road and some cul-de-sac developments, including Delphi Fields directly opposite No 57. Nearby dwellings are generally in large plots, set well back from the road frontage.
11. The appeal site is located behind the traditional bungalow, No 57 Station Road. Immediately to the north is No 55 Station Road. To the south of No 57 is a wide strip of grassland which provides an access to the arable fenland which lies behind the properties on Station Road. To the south of this strip is No 59 Station Road. These properties are detached and directly face Station Road. The open strip, together with the appeal site, provides a gap through which the fenland can be seen albeit it is not subject to any special designation. Other

¹ Section 38 of the Planning and Compulsory Purchase Act 2004

buildings forming the edge of Long Sutton can be seen in the further distance across the fields.

12. A boundary hedge separates the side boundary of No 57 from the grassed strip. The appeal site is a somewhat overgrown area of land separated from the cultivated garden of No 57, and from the side boundary with No 55, by hedges. It is open on the other boundaries to the field. The appellant states that the appeal site is garden land which has become too onerous to maintain. However, although the rear gardens of properties to the north extend eastwards as far as the eastern boundary of the appeal site, the rear gardens of houses to the south extend eastwards to a line similar to that of the hedge separating the cultivated garden of No 57 from the appeal site. There is little substantive evidence that the appeal site is/has been garden land and accordingly I give this matter little weight in the context of this appeal.
13. The proposal would introduce built development into currently open land. Owing to the location of the site within Flood Zone 3, a matter which I return to later, floor levels would need to be raised at least one metre above the prevailing land level, with accommodation required to be at first floor level.
14. Although No 57 is set back behind the line of the adjacent properties its side wall can be clearly seen from the road side as can the side elevations of Nos 55 and 59. The proposed dwelling would be particularly prominent and intrusive in that it would be significantly higher than No 57, even with dropped eaves as shown on the indicative plan. As a consequence, any dwelling on this site would be seen as unduly prominent in the local landscape, including from Station Road, and would harm the subtle transition from No 57 to the open fenland.
15. In order to prevent loss of privacy and an over-bearing effect for occupants of neighbouring properties, the indicative plan shows the proposed dwelling at an acute angle to the adjoining properties. This would be out of keeping with the dominant prevailing grain of local development along this part of Station Road, where properties generally directly face the street.
16. I acknowledge that the layout plan is indicative only. However, due to the constraints of the size and shape of the site, its relationship with adjoining properties and the necessary flood risk mitigation, there appear to be few, if any, feasible alternative ways of developing a dwelling on the site. Whilst acknowledging the varied edge to the settlement I conclude that the proposed development would result in an incongruous and over dominant visual intrusion that would be harmful to the character and appearance of the area.
17. The proposed dwelling would be accessed via a driveway through the front garden of No 57 adjacent to the boundary with No 55, and without a street frontage as such. Backland development in itself may not always be unacceptable. However, in this instance, for the reasons set out above, the proposed dwelling would have an incongruous and unsatisfactory relationship with the host and neighbouring properties.
18. Taking all the above into account, and recognising that appearance is a matter reserved for future consideration, I conclude that a dwelling with accommodation on two floors would have a harmful effect on the open character and appearance of the local area. It would be outside defined settlement limits and would not qualify as an exception for the purposes of planning policies. Accordingly the proposed development would be contrary to

Policies SG14 and HS7 of the LP which only support new housing within the countryside that is essential and makes a positive contribution to the visual quality of its surroundings and has an acceptable relationship with the character, form and scale of existing buildings nearby.

Flood Risk

19. The appeal site is located in Flood Zone 3 which has a high probability of flooding, ignoring the presence of defences. Housing development is classed as a 'More Vulnerable' use. Where such development is proposed within Zone 3, a Sequential Test needs to be carried out to demonstrate whether there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.
20. The submitted FRA for the site indicates it is in a Defended floodplain where the likelihood of the overtopping or failure of a flood defence is considered to be low. The site could be affected by floodwaters of between 1.00 and 1.60m should there be a breach or overtopping of tidal defences to the Wash and River Nene. The Council has indicated that the site is within an area identified as "Danger for Most" (not the most severe category) within the South Holland Strategic Flood Risk Assessment (SFRA), which is used by the Authority to apply the Sequential Test.
21. The Council considers there are limited other sites within the Long Sutton area that are both sustainable and sequentially preferable in flood risk terms. On this basis there may well be some other sites which are sequentially preferable in flood risk terms, although much of the land around the larger and more sustainable settlements in the District is at risk of flooding.
22. The appellant asserts that sites which are being considered as allocations in the emerging Local Plan are in areas identified as at risk of flooding. The provided SHLAA extract identifies a site also off Station Road, but further south, as one of the more suitable Preferred Housing Sites in Long Sutton. For Long Sutton site LOS 46 the SHLAA indicates that, by 2115, predicted flooding on that site could be as much as 0.5-1.0 metres in depth, which is less deep than for the appeal site before me. This indicates that there is one site sequentially preferable in flood risk terms.
23. If, after the application of the Sequential Test, it is not possible for development to be located in Zones with a lower probability of flooding, an Exception Test can be applied where the proposal is not in accordance with the development plan². This is aimed at helping ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.
24. The Framework and the PPG set out two elements to the Exception Test. First, proposed development is required to show that it will provide wider sustainability benefits to the community that outweigh flood risk, and second, that it will be safe for its lifetime without increasing flood risk elsewhere and, where possible, will reduce flood risk overall. In relation to the first part of the Test, the PPG advises that local planning authorities will need to consider what criteria they will use in this assessment having regard to the objectives of their

² ID 7-033-20140306

Local Plan Sustainability Appraisal framework (SA)³. If a planning application fails to score positively against the aims and objectives of the SA or policies of the LP, or other measures of sustainability, consideration should be given to whether conditions and/or planning obligations could make it do so. Where this is not possible the Exception Test has not been satisfied and planning permission should be refused. The available evidence does not enable me to conclude that the first part of the Exception Test has been passed.

25. The Environment Agency raises no objections subject to finished floor levels being raised one metre above existing ground level; flood resilient construction of 300mm above finished floor level; demountable defences to a minimum of 600mm; and the dwelling having more than one storey. These matters could be secured by condition, were the appeal to succeed, and I see no reason to doubt the conclusions of the Environment Agency that the development could be constructed to be safe for its lifetime without increasing flood risk elsewhere. Accordingly the second element of the Exception Test would be met.
26. Even had I been of the opinion that the Sequential Test was passed, as set out above, I am not convinced, in this instance, that the Exception Test has been passed. Accordingly I cannot conclude with any certainty that it has been demonstrated that the proposal would steer development to land with the lowest flood risk, taking into account both the probability and the potential consequences of flooding. Thus the proposed development would not be acceptable in terms of flood risk, since it would place a residential property within a high risk area where, on the basis of the evidence before me, it would seem that there could be safer locations for such purposes. The proposal therefore fails to comply with paragraphs 100 and 101 of the Framework, which seek to minimise flood risk by directing development to areas at lowest risk. I attach considerable weight to this.

Other Matters

27. Long Sutton is designated as an Area Centre⁴, a second tier settlement in the development plan. Such Centres provide a range of services, local employment opportunities and act as a focal point for local rural areas. The appeal site is immediately adjacent to the defined settlement boundary some 700m from the centre of Long Sutton⁵. Although this is beyond the acceptable walking distance as advised in the IHT⁶ it is less than the preferred maximum of 800m. The route would be along a level road with a footpath on at least one side and with street lighting. On balance I conclude that future occupants would have acceptable access to facilities and services without undue reliance on the private vehicle.
28. The Council considers that were this appeal to succeed it would create a precedent for further development in the countryside which would result in the unplanned advance of urbanisation thus eroding the rural character of the locality. On the other hand, the appellant considers that there would be limited opportunities for similar proposals nearby with the possible exception of at No 55. The appellant also refers to a number of instances of planning permissions for similar new dwellings in the area. From the submitted details in relation to

³ ID:7-037-20140306

⁴ A second tier Main Service Centre in the emerging Plan

⁵ Statement on behalf of the Council

⁶ Table 3.2 column 'Town Centres' Guidelines for Providing for Journeys on Foot Institution of Highways and Transportation 2000

H11-1114-15 and H06-0396-13 it appears that the proposed footprints in those cases would have a more similar grain to existing dwellings than is the case in the appeal before me. However, it is well established that each planning proposal falls to be considered on its own merits. I have reached my decision based on the planning merits of the proposal before me as set out above. Any application for residential development on other sites would fall to be considered on their own merits on the light of relevant considerations at that time.

29. The Government is actively seeking to increase the supply of custom and self-build housing. However, in this case, the evidence does not incorporate any means of ensuring that custom/self-build proposals would be constructed in this manner or show how the related matter of ownership for a period of three years would be secured. Accordingly I can give this matter little weight in the context of this appeal.
30. The appellant indicates that the emerging Local Plan contains a preferred option of some 580 houses for Long Sutton⁷. The appellant considers that the proposed allocations LOS 46 and LOS 15 would have a greater impact on character and appearance than the appeal proposal and that those sites would be less accessible from the town centre than the appeal site. Whilst I give no material weight to the emerging Local Plan for the purposes of this appeal, I am mindful that Local Plans need to be supported by a SFRA. In allocating sites, the authority will have applied the necessary tests pursuant to the SFRA. Whether or not those sites may have more impact in terms of character and appearance than the development the subject of this appeal, or may be less accessible, they are, it would seem, sequentially preferable in terms of flood risk and thus are not directly comparable to the current appeal scheme.

Planning Balance and Conclusion

31. The Council accepts that, for the purposes of this appeal, a five year supply of deliverable housing land, as required by the Framework, cannot be demonstrated. In such circumstances, Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered to be up-to-date. Paragraph 14 says that where development plan policies are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where specific policies in the Framework indicate that development should be restricted.
32. Examples of such specific policies in Footnote 9 include locations at risk of flooding. In essence, if specific Framework policies indicate that development should be restricted, that effectively disengages the so called 'tilted' Paragraph 14 balance, leaving the policies to be applied on their own terms on an unweighted basis.
33. The proposal would conflict with rural constraints policy in the development plan. I have found that there would be harm in terms of the impact of the development on the character and appearance of the area. The site is at risk from flooding and there insufficient evidence to demonstrate that the Sequential and Exception Tests have been passed in this regard.

⁷ The Grounds of Appeal refers to emerging Policy 11 allocations for Long Sutton

34. In terms of any benefits that may arise the development proposed would provide an additional house at a time of pressing need, in a location with acceptable access to services and facilities. It would support construction jobs and there would be social and economic benefits in terms of sustaining local services and facilities. Although the weight to be afforded to these benefits is tempered by the small scale of development, they nevertheless carry modest weight in favour of the proposal.
35. On a straightforward balance, the total of the benefits that I have identified do not outweigh the combined harms. The combined benefits do not justify making a decision in this instance that is contrary to requirements of the development plan and national guidance. I therefore conclude that the appeal should not succeed.
36. Even had the Sequential and Exceptions Tests been passed, such that the 'tilted' paragraph 14 balance applied, the adverse impacts that I have identified in terms of character and appearance significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole and the outcome of the appeal would be the same.

S Harley

INSPECTOR