

Appeal Decision

Site visit made on 1 August 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/D2510/W/24/3343480

The Old Dairy Yard, Mablethorpe Road, Theddlethorpe LN12 1NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Rick Howell against the decision of East Lindsey District Council.
 - The application Ref is N/180/02247/23.
 - The development proposed is erection of 2 no. detached dwellings including the construction of a new vehicular access on site of an existing agricultural building which is to be demolished.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site consists of a large brick building set within a wider site which was part of a dairy yard. The Council's officer report sets out that this former agricultural building is not in use although the surrounding yard is used as a storage area, and this reflects my observations on my visit. Prior Approval has previously been granted for the Class Q conversion of the building to 2 dwellinghouses, and I give significant weight to this as a realistic fallback scheme.
3. On that basis, the main issues in this appeal, with due regard to the fallback scheme, are:
 - The effect on the character and appearance of the area;
 - Flood risk; and
 - Whether the appeal site is an appropriate location for housing in respect of development plan policy.

Reasons

Character and Appearance

4. The appeal site consists of a large building set within a larger plot. The disused building is of an understated utilitarian appearance, and when viewed in association with the surrounding storage use the appeal site in its

current condition is relatively unattractive. However, the building is of an appearance which is not unusual in the countryside, albeit not of an overtly traditional rural character.

5. The appeal proposal would involve the demolition of the building and its replacement with 2 detached dwellings, one of which would be within the footprint of the original building. Although the appellant submits that the dwellings would cover a smaller footprint than the existing building, they would be higher and would lead to a projection of built development beyond that of the existing cluster of buildings which include the appeal site.
6. The appellant submits that the design of the proposal is representative of modern farm buildings and uses materials typical of this area. Reference is also made to the agro-industrial nature of the landscape including bulky agricultural and commercial buildings.
7. However, the design of the proposed dwellings is an awkward mix of agricultural and residential elements, and of a scale which would exacerbate their incongruous appearance. The houses would express a contortion of two different architectural languages, including agro-industrial elements such as the scale of openings, the overall height and materials of an agro-industrial character jarring with a residential arrangement of openings and familiar domestic forms.
8. Even within the context identified by the appellant, the proposed dwellings would appear as obtrusive and contrived designs which do not reflect the appearance of buildings within the wider landscape. They would also jar with the understated character and smaller scale of residential buildings in the vicinity. Due to the incongruous scale and design of the dwellings, the proposal would lead to significant harm to the character and appearance of the area.
9. The Class Q conversion would also change the character of the building to a residential nature. The conversion would retain the understated scale and appearance of the extant building, and would improve the appearance of the site by bringing the building back into an active use and removing the unsightly external storage. However, despite the introduction of a residential use and curtilage, the conversion would not lead to a development of the same massing or unacceptable design as the appeal proposal. Consideration of the fallback scheme does not therefore negate my conclusions of the harm to character and appearance arising from the appeal proposal.
10. The Council refers to the large gardens of the proposal and the adverse effect on the open countryside. However, based on the submitted evidence, the Class Q Conversion also includes gardens of a similar scale, and this matter does not therefore weigh against the appeal. Nevertheless, this does not negate my conclusions on the harm arising from the design and scale of the dwellings.
11. I conclude that due to its scale, design and layout, that the proposal would lead to significant harm to the character and appearance of the area. The proposal would therefore be contrary to Policy SP10 of the East Lindsey Local Plan Core Strategy 2018 (the Local Plan) which seeks well-designed development which reflects the character of the surrounding area.

Flood Risk

12. The appeal site is within Flood Zone 3 and the proposed residential use falls within the More Vulnerable flood risk classification. The form of development proposed is not of a type that is exempt from the Sequential Test as set out in the Planning Practice Guidance¹ or the Framework². Policy SP17 of the Local Plan also requires that development will need to demonstrate that it satisfies the Sequential Test.
13. The Flood Risk Assessment submitted by the appellant suggests that the Sequential Test is not applicable in this instance as the approved Class Q conversion provides for 2 dwellings on the site, and the appeal proposal is in effect seeking permission for 2 replacement dwellings. However, the appeal proposal cannot be considered to be for replacement dwellings as the Class Q permitted dwellings have not been created, even if that was a justification for not applying the Sequential Test.
14. Although the Class Q permission establishes the principle of 2 dwellings on the site, this was for a change of use rather than new-build development. The Framework sets out that applications for some minor development and changes of use should not be subject to the Sequential Test. Whilst that may apply to the Class Q conversion, it does not apply to the appeal proposal.
15. It is therefore clear that the appeal proposal should be subject to the Sequential Test in respect of flood risk.
16. Furthermore, the appeal proposal would lead to a material increase in the amount of accommodation, as it relates to 5-bedroomed dwellings compared to the 3-bedroomed dwellings of the Class Q conversion. This would lead to an increase in the number of residents on the site, which emphasises the importance of a sequential approach to the location of this more intensive form of development.
17. In conclusion on the issue of flood risk, it has not been demonstrated that the proposal complies with the Sequential Test, and it therefore conflicts with Policy SP17 of the Local Plan and the Framework in respect of the requirement for that test.

Location of Housing

18. Policy SP3 of the Local Plan specifies that Theddlethorpe St Helen is a settlement within the Coastal Zone, and Policy SP18 sets out specific criteria for coastal housing.
19. Policy SP18(1) states that the Council will support sites which already have planning permission for housing if they come forward with improved layouts, designs or flood mitigation. It is common ground between the main parties that the appeal proposal would give some improvement over the flood safety measures that could be provided in the Class Q conversion. Although the appeal proposal would include some improved flood safety measures, they do not outweigh the harm arising to character and appearance from the layout and design of the appeal proposal.

¹ Paragraph: 027 Reference ID: 7-027-20220825

² Paragraph 174 and Footnote 60

20. Policy SP18(2) relates to open market housing on sites in medium villages, subject to a number of criteria. The Council's Officer Report refers to the village of Theddlethorpe St Helen, which is a dispersed village made up of disparate clusters of development. The Officer Report indicates that, in the case of the appeal site, nearby development does not form a cluster and is fairly spread out and that the site therefore relates to the countryside rather than the village.
21. However, the appeal site is associated with a distinct cluster of development, including a number of dwellings and commercial buildings. Given its limited extent, in many circumstances this could be considered to represent sporadic development in the countryside rather than a settlement. I have also had regard to the definition of the 'developed footprint' of a settlement in Policy SP3. But mindful of the character of Theddlethorpe St Helen as set out by the Council and based on my own observations, viewed objectively and in context I consider that the appeal site is associated with a distinct cluster of development of more than a minor extent, and is therefore within the village.
22. However, although I have concluded that the appeal site is within the village, it has not been demonstrated that the site meets the criteria of Policy SP18(2). The Framework excludes land that is occupied by agricultural buildings from the definition of previously developed 'brownfield' land. The site has also not been actively marketed for a community, economic or leisure use for an appropriate period, and it has not been demonstrated that it is not viable for such a use. All that said, the provisions of Policy SP18(2) are in effect moot as the fallback position of the Class Q conversion has established the principle of residential development on the site.
23. The proposal would comply with Policy SP18(4)&(5) as it would not include ground floor sleeping accommodation and would meet the advice of the Environment Agency.
24. But given that I have concluded that the proposal would not meet the requirement of Policy SP18(1), the lack of practical effect of Policy SP18(2) due to the fallback scheme and compliance with other criteria of the policy does not mean that the appeal should be allowed.
25. Drawing the above together, although I have concluded that the appeal site is within the village, the appeal proposal would conflict with Policy SP18 of the Local Plan when read as a whole due to the harm arising from the layout and design of the proposal; and consequently it would conflict with Policies SP1, SP2 and SP3 in respect of the sustainable location of housing growth. This is the case even allowing for the effect of the fallback of the Class Q conversion and benefits in respect of flood risk.

Other Matters

26. I am mindful of the benefits of the proposal. It would add to the supply and mix of housing in the area, but the benefits arising from 2 dwellings would be limited. Furthermore, 2 dwellings could be provided by the Class Q conversion which further reduces the weight given to the contribution of the proposal to the supply of housing, even allowing for the increase in accommodation.

27. The proposal would bring an unsightly site into a productive use. However, this benefit would also arise from the Class Q scheme and this matter therefore only carries limited weight in favour of the appeal. Indeed, for the reasons given previously the appeal proposal would harm the character and appearance of the area.
28. I note the comments of the Parish Council which support the removal of the extant building. However, as stated previously, I consider that the building is of an appearance which is not unusual in the countryside, and that the proposed dwellings are not in keeping with the area.
29. The appellant refers to services in the area and the number of bus stops. However, the nature and frequency of public transport in the area has not been set out and the range of services within walking distance are of a limited degree. Based on the evidence before me, I consider residents would be likely to rely on the private vehicle to access services and employment. Nevertheless, I acknowledge that this would also apply to the Class Q scheme, albeit with a smaller amount of accommodation.
30. I have had regard to the biodiversity gains arising from the appeal proposal, and which may represent a betterment compared to the Class Q scheme for the reasons set out by the appellant in relation to the limitations of the scope of that proposal. However, while these are welcomed, these carry limited weight as a benefit due to the limited scale of the works proposed.
31. The appellant refers to a planning permission for a site at Evergreen Farm elsewhere in the district, which was in Flood Zone 3 and where the Council did not apply the Sequential Test for a new dwelling where there was the fallback of a Class Q scheme. That was the case even though the Council had referred to the lack of a Sequential Test and that the proposal was unlikely to pass it. I have some sympathy with the appellant's concerns on the Council's consistency on this issue. However, the Council's conclusions on that proposal were on the basis of a balancing exercise referring to the significant benefits of the scheme. In this case, I have concluded that the proposal would lead to significant harm and would conflict with policies of the development plan even allowing for the fallback scheme. The Council's conclusions on the Evergreen Farm application do not lead me to a different conclusion based on what I have seen and read.
32. The appellant has also referred to an appeal decision which they consider is analogous with the situation of the appeal site. However, that appeal related to a change of use where it was common ground that the proposal was not subject to the Sequential Test. The Inspector also specified that there would be no material difference in terms of the amount of accommodation provided, which is not the case here. The circumstances of that appeal are therefore materially different to the one before me.
33. On 30 July 2024 the Government published a consultation on proposed reforms to the Framework and other changes to the planning system. A direction of travel has been outlined within the Written Ministerial Statement (WMS) 'Building the homes we need', which carries significant weight as a material consideration.

34. I am mindful that the consultation includes proposed changes to the method of calculating local housing need as set out in the Draft Framework, and that this may have a significant effect on the Council's housing land supply. However, the Draft Framework is still being consulted on. As such its wording could change and draft revisions in respect of the calculation of housing need amongst other things could be revised further. I therefore cannot be certain of the exact circumstances arising from potential revisions to the Framework at this time. On that basis, I cannot attribute more than very limited weight to the draft revisions of the Framework, and this is not a determinative matter in this appeal.
35. Furthermore, as I have found harm in respect of the lack of a sequential test in an area at risk of flooding, the 'tilted balance' of paragraph 11(d) of the Framework does not apply. However, even if the tilted balance did apply, the harm arising from the impacts on character and appearance and lack of a sequential test in respect of flood risk would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The WMS and the proposed reforms to the Framework do not negate my conclusions on this appeal.

Conclusion

36. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR