



Appeal Decision

Hearing Held on 23 & 24 April 2024

Site visit made on 24 April 2024

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/M2325/W/23/3334188

The Garden Place, Cropper Road, Westby with Plumpton FY4 5LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Andrew Garnett (Breck Homes and Eden Land & Development) against Fylde Borough Council.
 - The application Ref 23/0476, is dated 23 June 2023.
 - The development proposed is Erection of 62 affordable dwellings with vehicular access from Cropper Road, associated internal estate road, flood attenuation area and pedestrian/cycle links.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. Prior to the Hearing an application for costs was made by Mr Andrew Garnett (Breck Homes and Eden Land & Development) against Fylde Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has submitted a statement of case in relation to the appeal.
4. The statement set out putative reasons for refusal. These constitute the matters of disagreement with the appellant, and they therefore inform the basis of the main issues in this case, along with matters that have been raised by interested parties.
5. During the course of the appeal amended plans were submitted. These related to the alteration to original side elevations of plots 24 and 31 and the identification of the underground pumping station location. Given the limited extent of these changes, I accepted those amended plans for consideration and my determination of the appeal has been made on that basis.
6. There is a linked appeal for the development of a Neighbourhood Centre comprising single storey retail building (use classes E a) or E b) with area reserved for future community use, access from Cropper Road, car park, servicing area and landscaping, Ref APP/M2325/W/23/3334190 (the linked

proposal). This was considered at the same Hearing as this appeal, given that some of the main issues are relevant to both appeals. That appeal however is the subject of a separate decision.

Main Issues

7. The first main issue is whether the development of the site would conflict with development plan policy with regard to flood risk including whether the site has been the subject of the sequential test. The second is the effect of the proposal on the character and appearance of the area and the living conditions of future occupiers with regard to the site layout and design and the proposed open space provision. The third is whether the housing would be sustainably located having regard to access to services and facilities, including with regard to the availability of any public transport options and links with other nearby existing/proposed residential development. The fourth is whether the proposal would make appropriate financial contributions towards highways infrastructure, affordable housing, health care facilities and primary school provision.

Local plan/master planning context

8. The site comprises part of an area allocated for housing within the Fylde Local Plan to 2032 (Incorporating Partial Review) (2021) (FLP). The wider site is referenced as HSS5, Cropper Road West, Whitehills under Policy SL2 for 250 homes. The site also includes a site referenced as a local centre on the FLP policies map and dealt with under Policy EC5 of the FLP. At the time of the Hearing, I was advised that whilst there were various live planning applications at various stages across the allocation for housing, no planning permission have been issued by the Council relating to permissions for housing under this allocation.
9. It is clear from the evidence that the master planning approach across the HSS5 allocation has been developer led to date and that the Council has been working with developers of other sites within the allocation on the basis of an ongoing and evolving masterplan. There seems little prospect of the master planning being Council led. I do not find that in principle there should be issue with the appeal site being master planned along the lines of such an approach.

Reasons

Flood risk

10. Large parts of the appeal site fall within Flood Zones 2 and 3. The proposal is for more vulnerable development. The Framework¹ advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The proposal is a type of development which should be subject to the Sequential Test with regard to flood risk. It appears to be the case that much of the appeal site appears lower than the surrounding land.
11. Policy CL1 of the FLP states that planning decisions should follow the sequential, risk based approach to the location of development as required by the Framework. The supporting text indicates that the application of the sequential test will be required.

¹ National Planning Policy Framework 2023.

12. The overall aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This is regardless of the recommendations of the Flood Risk Assessment² which includes recommendations for flood risk mitigation measures and site specific hydraulic modelling which suggests the whole of the site is within Flood Zone 1.
13. In coming to those conclusions however the report addresses the Exception test having considered that the requirements of the sequential test have been met. That could be the case had the site been subject to the sequential test at the plan making stage, however the evidence indicates that the site was in Flood Zone 1 at the time of its inclusion within the local plan allocation in the earlier version of the local plan and there is no evidence before me that the sequential test was applied at the plan making stage. The approach to flood risk is fundamental to provision of such developments and is in place to ensure that development is directed away from areas at highest risk. Given the approach that has been undertaken with regard to that matter and this site, I cannot be assured that this is the case.
14. To conclude on this matter, it has not been demonstrated that the Sequential Test has been applied as required by the development plan and the Framework and it is not known whether there are any available alternative sites at lower risk of flooding. There is therefore conflict with Policy CL1 of the FLP and the Framework which aim to steer development to areas at lowest risk of flooding.

Character and appearance/living conditions

15. Although noting the tenure of the scheme and that it would provide sole provision for affordable housing, the layout of the scheme would result in a rather bland, uninteresting and car dominated street scene. This situation would arise firstly as a result of extensive parking provision to the front of the dwellings. Secondly, the impact of this would be compounded by building lines which while marginally differentiated would be viewed within the street scene as being very similar. Thirdly, the hard surfaced areas for parking to the frontages would only be broken up to a limited extent by the occasional front garden where car parking is provided to the side of those properties.
16. The layout in this respect represents poor design, which would cause harm to the character and appearance of the area. There would be conflict with the National Design Guide (MHCLG) which states that well-designed parking is attractive, well landscaped and sensitively integrated into the built form so that it does not dominate the development or the street scene. There would also be conflict with Policy GD7 of the FLP which states that development will be expected to be of a high standard of design.
17. I note that the area intended as public open space would be in excess of the amount required under Policy ENV4 of the FLP. However, that area would be largely occupied by a balancing pond, and the area of the balancing pond would not have public access. I consider that the area would have very limited visual benefit in amenity terms and would only really be publicly visible for most at the development in very brief views if using the intended links through to possible other residential development outside of the site boundary. The open

² Flood Risk Assessment Final Report V1.2, Weetwood, August 2021.

space would therefore have very little benefit to future occupiers at the site and no children's play facilities are proposed.

18. Regardless of the definition of open space within the Framework³, the FLP at Policy ENV4 which relates to amenity open space requires schemes of this size to provide amenity open space with facilities for children's play, which at a minimum should be accessible and high quality. Whilst noting the presence of a nearby play area, no facilities for children's play are provided. The open space would be inaccessible and would not be of a high quality. The proposal in this respect would harm the living conditions of future occupiers and would subsequently conflict with Policy ENV4 of the FLP.
19. There is no evidence to indicate that living conditions of occupiers on the development would be unreasonably disturbed by any operations that could take place were the proposals for a neighbourhood centre under the linked proposal to come forward. This is because the rear service area for the retail units under that proposal would be backing onto the side elevation at plot 46 rather than the front or rear elevations which would contain the principle openings. I am also mindful that the Council's Environmental Protection Team had no observations to make and that conditions could be imposed to ensure the development was appropriately developed in this regard were I minded to allow the appeal.

Whether site sustainably located

20. Whilst noting the linked proposal which offers the potential for some retail and café services adjacent to the site, the surrounding highways infrastructure within the area would make it rather challenging for pedestrians to access other services and facilities within the wider area. Further, the evidence does not indicate that there is any existing bus service that could conveniently serve the development such that future occupiers would not be largely reliant on use of a car to access any services and facilities. The provision of a bus service would significantly increase the accessibility of the site for future residents.
21. I note that the appellant intends to provide a public transport contribution of £140,000. However, that would not in itself appear to be sufficient to fund the provision of a bus service. The additional funding and provision of the service would be dependant upon funding from other nearby development and there can be no guarantees at this stage that they and the additional funding that would be required will be forthcoming.
22. Therefore, if not served by any convenient bus service and regardless of the outcome for the linked proposal, the site would have poor access to services and facilities that would undermine the sustainability of the site.
23. The proposal would therefore conflict with Policy GD7 and T4 of the FLP which amongst other things state that all development proposals will need to show that appropriate provision is made for public transport services. It would appear possible to suitably link the site for walking and cycling purposes to other potential nearby residential development.

³ National Planning Policy Framework 2023.

Financial contributions

24. It is common ground between the parties that a planning obligation should provide for, and therefore secure the provision of the scheme as affordable housing, as well as provide financial contributions in the form of an education contribution, a health contribution and a transport contribution (including travel plan monitoring).
25. The evidence indicates that the undertakings within the signed planning obligation are necessary to make the development acceptable in planning terms. They are directly related to the development and fairly and reasonably related in scale and kind to the development. The obligation therefore meets the tests within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and at Paragraph 55 of the Framework.
26. The evidence therefore indicates that the proposal (assuming the apparently incorrect appeal referenced on page 2 of the document could be corrected) would make appropriate financial contributions towards highways infrastructure, affordable housing, health care facilities and primary school provision were I minded to allow the appeal.

Other Matters

27. The proposal has the potential to have significant effects on the Ribble & Alt Estuaries Special Protection Area, Ribble & Alt Estuaries Ramsar site and the Ribble Estuary Site of Scientific Interest. However, as the proposal is unacceptable for other reasons, I have not undertaken an appropriate assessment or considered this matter further.
28. The evidence indicates that peat present at the site would be difficult to restore due to the layer of made ground on top. Given this, Natural England have no objection to this proposal in relation to deep peat and I have no reason to disagree with that position.

Planning Balance and Conclusion

29. The scheme would provide NDSS compliant homes some of which would be wheelchair adaptable which would contribute towards housing supply and would have economic and social benefits arising from construction spend and employment and spend associated with occupation of the dwellings. The scheme demonstrates biodiversity net gain. The scheme would also provide affordable housing throughout.
30. However, even were I to afford the same weight to the affordable housing as the appellant, the benefits of the scheme would not outweigh the harm identified.
31. The proposal would conflict with the development plan. There would also be conflict with the Framework and the National Design Guide, matters which weigh against the proposal. There are no material considerations which indicate a decision should be made otherwise than in accordance with the development plan. The appeal is therefore dismissed.

T Burnham

INSPECTOR

Documents submitted at Hearing

Highways Statement of common ground

Shadow Habitats Regulations Assessments

Most recent site masterplan

List of potential planning conditions

Local Authority Rebuttal to appellants claim for an award of costs

Transcript of interested party verbal comments at Hearing

Documents submitted after Hearing

Unsigned Unilateral undertaking

Signed Unilateral undertaking

Richborough

Costs Decision

Hearing Held on 23 & 24 April 2024

Site visit made on 24 April 2024

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Costs application in relation to Appeal Refs: APP/M2325/W/23/3334188 & APP/M2325/W/23/3334190

The Garden Place, Cropper Road, Westby with Plumpton FY4 5LB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew Garnett (Breck Homes and Eden Land & Development) and Mike Bowman (Eden Land & Development) for a full award of costs against Fylde Borough Council.
 - The appeals were against the refusal of the Council to grant planning permission for the erection of 62 affordable dwellings with vehicular access from Cropper Road, associated internal estate road, flood attenuation area and pedestrian/cycle links and the development of Neighbourhood Centre comprising single storey retail building (use classes E a) or E b) with area reserved for future community use, access from Cropper Road, car park, servicing area and landscaping.
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Decision

1. The application for the award of costs is refused.

Reasons

2. Irrespective of the outcome of an appeal, Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The evidence indicates that the claim for costs is submitted due to the consequences of the dysfunctional approach of the Council to the determination of the planning applications at the sites, over a sustained period since August 2021 and its response to the present appeals.
4. Much of the claim is made in relation to handling of the planning applications which the appeals referenced above relate to, and reference is made to two previous applications of a similar nature, which remain undetermined by the Council.
5. The appeals to which the claim for costs relate were made under section 78 of the Town and Country Planning Act 1990 against failures to give notice within the prescribed period of decisions on those applications for planning permission. It therefore needs to be borne in mind that the Council have not determined the applications nor issued formal refusal reasons.

6. The Council has provided limited reasoning for not reaching a decision within the relevant time limit but have alluded to high workloads and staffing constraints.
7. At appeal, the Council did offer thorough explanation as to why permission would not have been granted for both of the proposals had the applications been determined within the relevant period by offering putative reasons for refusal and providing evidence claimed in justification for those reasons.
8. In line with PPG¹ a Local Planning Authority's handling of the planning application prior to the appeal could lead to an award of costs if an appeal in such cases is allowed. However, both of the appeals which are the subject of this claim for costs have been dismissed.
9. It is therefore likely to have been the case that even had the Council determined the applications, they would likely have refused them, and the claimant would have likely had to engage with the appeal process on similar grounds as they have had to do. There are therefore no grounds on which an award of costs is justified with regard to the handling of the planning applications by the Council.
10. Even if it were the case that the Council failed to advise the appellant or myself of correspondence from the Highways Authority, it is not clear to me how that or any other behaviour of the Council has directly caused unnecessary or wasted expense in the appeal process. Further, with regard to concerns over the requirements of the parking SPD, the evidence indicates that the parking SPD was published prior to the submission of the appeal and therefore is a matter outside of the appeal process.

Conclusion

11. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

T Burnham

INSPECTOR

¹ Paragraph: 048 Reference ID: 16-048-20140306.