
Appeal Decision

Hearing held in person on the 23 April 2024 and at a virtual event on the 6 June 2024

Site visit made on 23 April 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Appeal Ref: APP/E2001/W/23/3335708

Land off Ivy Park Road, Goole, DN14 6YG

- 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 Kremer/Surebay Properties Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref 23/01226/PFL, dated 19 April 2023, was refused by notice dated 15 September 2023.
 - The development proposed is 18 residential dwellinghouses and garages off new estate road.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made in writing by the Council against Kremer/Surebay Properties Ltd. This application is the subject of a separate Decision.

Procedural Matters

3. The above description of development differs to the original application form, which stated 16 dwellings. However, this was amended during the application process. I have considered this appeal based on the amended description.
4. Attention is drawn to an emerging development plan (the emerging plan). This plan is currently subject to examination. However, specific policies of that emerging plan have not been identified in this case. Also, related to this matter, attention was drawn, in the hearing sessions, to flood risk topic papers that are currently subject to consultation. Although the plan process is well progressed there are evidently matters that are not yet resolved. On this basis the emerging plan attracts limited weight in this appeal.

Main Issue

5. The main issue is whether the proposal would accord with local and national flood risk policy.

Reasons

6. The appeal site is a relatively undeveloped field at the edge of Goole. This settlement is identified in the East Riding Local Plan 2012-2029 Strategy Document (Local Plan) as a principal town. The topography of the site and its surrounds is flat, and the wider area is shaped by the circular meander of the River Ouse. This section of the River is influenced by the tidal flows of the Humber Estuary. With these features the site falls

in Flood Zone 3a which national guidance defines as having a high probability of flooding.

7. Policy ENV6 of the Local Plan indicates that the risk of flooding to development will be managed by applying a Sequential Test and is consistent with provisions of the National Planning Policy Framework- December 2023 (the Framework) in this regard. The Policy goes on to state that this test will, in the first instance, be undertaken on the basis of the East Riding of Yorkshire Strategic Flood Risk Assessment (SFRA) and the Environment Agency (EA) flood map. Where development cannot be steered away from Flood Zone 3, the sub-delineation, detailed within the relevant SFRA will be used, with preference given to reasonably available sites in the lower risk/hazard zones.
8. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at the highest risk. With regards national flood risk policy, dwelling houses are classified as 'more vulnerable'. In areas having a high probability of flooding, the sequential test should be applied first to guide development to the lowest flood risk areas. If it is not possible for development to be located in areas with a lower risk of flooding, the exception test may have to be applied. Development classified as more vulnerable should only be accepted in Flood Zone 3a if it passes the exception test. The Framework clarifies, in respect of the sequential test, development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. These provisions of national guidance are generally reflected in Policy ENV6.
9. The SFRA which informed the development strategy of the current Local Plan in Goole is East Riding of Yorkshire Council Strategic Flood Risk Assessment Level 2 – Goole July 2011 (SFRA 2011). The SFRA 2011 states that a substantial part of the town would be subject to flooding in the event of any breach(es) of the town's defences.
10. As most of Goole is in Flood Zone 3, the SFRA 2011 delineates the town into sub-zones to indicate, amongst other matters, potential flood hazard in the event of defence failures and overtopping along the Humber Estuary and River Ouse. As guided by Policy ENV 6, these sub-zones should inform sequential tests, with development steered to the lower flood hazard zone in the town. The sub zones for the SFRA 2011 include a Rapid Inundation Zone (RIZ), Danger to All, Danger to Most and Danger to Some. For the purposes of SFRA 2011, the appeal site is within 'Danger to Most' hazard zone, where the magnitude of hazard is considered to be significant.
11. It is understood that the appeal site was previously allocated in the Goole Hook Local Plan and Boothferry Local Plan. However, these plans have been replaced by the current Local Plan. This aside, the appeal site is included in the settlement boundary of Goole in the Local Plan. However, even though the site had outline planning permission for housing at the time the current Local Plan was being prepared, the site was not identified as an existing residential commitment on the Local Plan Policies Map and was not allocated for residential purposes. The evidence shows that this was to ensure consistency with the sequential approach taken in Goole in the Local Plan, whereby sites in significant and extreme hazard zones were not allocated.
12. The Council states that the Local Plan identifies sufficient land to meet the housing needs in Goole to 2029, and on this basis, it is likely that for proposals in Flood Zones 3, on non-allocated sites, there will be sequentially preferable sites. However, as highlighted in the Council's Flood Risk Sequential and Exception Test Supplementary

Planning Document (SPD) the housing requirement for the town has been set at 1,950 dwellings over the Plan period, and this requires suitable windfall applications to be supported.

13. The appellant's sequential assessment is generally limited to assessing housing site allocations of the Local Plan in the Goole area. Site allocation GOO-A has planning permission for over 600 dwellings and the Council considers the site is reasonably available and to be in a lower risk flood hazard zone than the appeal site, although this is contested by the appellant. This aside, much of the development permitted at that allocated site is currently under construction and as such those parts of the site do not appear to be available for this proposal.
14. It is understood that there is a small portion of GOO-A where full planning permission has been granted subject to a legal agreement, and construction has not yet commenced. The appellant states that that site would be unavailable due to ownership issues. It is also suggested that there are challenges related to developing this site. However, limited information has been presented to confirm that this is the case. Moreover, PPG advises that lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.
15. The appellant highlights that the Council's reason for refusal only references site allocation GOO-A. However, the appellant's Sequential Assessment did consider other allocations of the Local Plan. Site allocation GOO-F is currently being used as a Council Depot, so not immediately available for development to commence at this point. The time frame for that site coming forward for the proposed use appears to be in the control of the Council.
16. This said, no compelling evidence has been advanced that that site will not be made available for the use proposed during this Local Plan period. Nor has it been demonstrated that planning permission could not be secured for this use; or that there is not a reasonable prospect that the site is available to be developed at the point in time envisaged for the development proposed in this case. Also, while it is asserted that its commercial value exceeds site value for residential development, limited evidence has been presented in this appeal to establish this is the case.
17. It is asserted that site allocation GOO-E is small and should be considered a windfall site. However, the appeal site is also a relatively small windfall site. This aside, GOO-E is an allocated site, and there is limited information to establish that that site is not a reasonably available, preferable alternative for this proposal.
18. The submitted evidence suggests that only one former major industrial site has been redeveloped in the town. Also, at the hearing the appellant stated there are few redundant sites in this tightly drawn settlement. However, little information has been presented to establish whether the 'few sites' that may exist are not suitable for this use, are unavailable and are not in a preferable flood hazard zone.
19. The appellant highlights that the Council did not suggest any other potential sites that could be considered in the sequential assessment for this proposal, other than the Local Plan allocations. However, the Council's SPD identifies the Housing Position Statement as a source of information for identifying alternative sites in this context. The appendices of the Position Statement show that there are a number of sites in Goole with planning permission for housing. These permissions are for minor development and therefore different in this regard to the proposal before me. However, PPG advises that, in respect of what is a 'reasonably available' site for the purposes of the sequential test, this could include a series of small sites and/or part of

a larger site if it would be capable of accommodating the proposed development. There appears minimal evidence that this document has informed the appellant's Sequential Assessment.

20. PPG states that when applying the sequential test, a pragmatic approach on the availability of alternatives should be taken. However, even allowing for such an approach, it seems to me that in light of the above factors the appellant has discounted the allocated sites on very limited evidence. Moreover, the appellant has also failed to demonstrate that the current status of other potentially suitable windfall sites have been considered, and that these are not sequentially preferable to the appeal site and are not reasonably available for this proposal. Consequently, the appellant has failed to demonstrate, having regard to details of the SFRA 2011, that the sequential test has been passed.
21. The East Riding of Yorkshire Council Strategic Flood Risk Assessment Level 2 Goole 2020 (SFRA 2020) has been published since the adoption of the current Local Plan. The SFRA 2020 is informing the emerging local plan and is also referenced in the SPD. The findings of the SFRA 2020 suggest, whilst the defences currently protect Goole from a combined fluvial and tidal event, in the future, there will be an increased frequency of overtopping in some areas. Additionally, some defences which are not currently at risk of overtopping, will overtop in the future unless steps are taken to improve the defences in line with climate change. Consistent with SFRA 2011, the SFRA 2020 concludes that a substantial part of the town would be subject to flooding in the event of any breaches of the town's defences.
22. The SFRA 2020 also identifies sub-delineations of Zone 3a, stating, amongst other matters, in respect of development management recommendations, that the majority of Goole is shown as 'Danger to All'. The RIZ, in this latest SFRA, covers a significantly larger section of the town than was the case in the SFRA 2011, and the appeal site is within this expanded RIZ. The SFRA 2020 recommends that development should not be permitted in the RIZ, except if it is minor. As a major housing development, this proposal would not accord with this recommendation of the latest SFRA.
23. With regards flood hazard regions, the SFRA 2020 states that the RIZ is least preferable for development, with the Breach Zone being most preferable of the areas identified as being at a high risk of flooding. While a larger proportion of the town is covered by the RIZ than was the case in the SFRA 2011, significant areas of Goole fall within Overtopping Regions and Breach Regions in this latest SFRA. There are also areas of the town where development should be guided by the Level 1 SFRA, but this is a small amount. Therefore, according to the SFRA 2020, there are still potentially sequentially preferable sites in Goole.
24. The appellant states that there are fundamental flaws with the SFRA 2020. In particular, the appellant challenges the assumed water, ground and invert levels and contends the instantaneous nature of a breach is unrealistic. Also, they state there are inexplicable discrepancies between the Environment Agency's (EA) Upper Humber Flood Risk Mapping Study (2018) and associated EA model and the modelling used in the SFRA 2020. The appellant's RAA Technical Notes indicate radically different results to those of the SFRA 2020, with regards the extent of the RIZ. It is asserted, as such, the appeal site should be in the 'Breach Region' and consequently is in a preferable hazard region than parts of GOO-A and potentially other allocations of the Local Plan. However, it is not a matter for this appeal to anticipate how an SFRA may influence the emerging plan.

25. That aside, the conclusion of the Technical Notes is reached on the assumption that the existing ground levels of the appeal site is raised by 2.7m. While this may be the finished ground level generally required for housing development in the town, that is a matter which is usually determined following a site-specific assessment of a proposal once the sequential test is passed.
26. Moreover, while the figures in the Technical Notes show potential outcomes of flood breaches, this is only in a localised area, immediately surrounding the appeal site. This evidence is therefore relatively site-specific and limited, and in this regard, it does not show that the appeal site is currently preferable to the site allocations, which passed the sequential test as part of the Local Plan process. Nor does it show that the appeal site is preferable to other windfall sites in wider Goole. For this reason, even if errors in the SFRA 2020 are accepted, I find nothing that convinces me that the level of flood risk previously identified at the appeal site has significantly improved since the adoption of the Local Plan. As such, I am not persuaded that this evidence demonstrates that the appeal site is now sequentially preferable to allocated sites or other potentially suitable sites in the town.
27. The appellant highlights that there is a shortfall of housing delivery in the Goole area and that the delivery of housing in this area, during this plan period, has been slow. However, as already stated the Local Plan includes site allocations for future housing needs in Goole, and while the plan period is well progressed, it has not yet elapsed. Furthermore, other than the required amount and distribution of dwellings during this plan period, there does not appear to be a Goole specific delivery test in the policies of the Local Plan. Regardless, while the search area may be influenced by housing need in a particular area, the treatment of unmet need is not an input to the sequential assessment for identifying reasonably available alternative sites.
28. It is contended that the appeal site and Goole have never flooded. However, the evidence shows that flood risk from river, tidal and surface drainage sources have been a key issue in this town for many years, and this is reflected in the Local Plan. Indeed, as already stated the appeal site was found to be in a significant flood hazard zone, and this conclusion was drawn following the examination of the current Local Plan. Moreover, no compelling evidence has been presented that the level of flood hazard applicable to the appeal site, in respect of river and tidal sources, has significantly reduced since the adoption of the Local Plan.
29. In summary on the matter of the sequential test, even if I accept the criticism of SFRA 2020, for the reasons outlined above, the evidence advanced in this case has not demonstrated that the appeal site is at a lower risk than previously concluded in the SFRA 2011. Nor have I been persuaded by the evidence that there are no other sites in Goole that are sequentially preferable that could accommodate this development within the required timeframe. Consequently, I am not satisfied that there are no 'reasonably available sites' in the search area which have a lower risk of flooding than the appeal site. The sequential test has not therefore been passed.
30. The site-specific flood risk assessment (FRA) for this proposal comprises the RAA Technical Notes and the JBA Flood Risk Assessment 2013. Resilience and resistance mitigation measures proposed to be incorporated in the site's design, raised ground, finished floor levels and the removal of permitted development rights suggested in these documents and at the hearing could be secured by condition.
31. Also, the appellant asserts these submissions comply with the PPG FRA checklist and recommendations of the SFRAs and SPD, such that the two elements of the exception test have been satisfied. My attention is also drawn to the flood mitigation measures

for recently permitted development on allocated sites which the appellant contends, unlike this proposal, would not address this current guidance. Be this as it may, PPG clarifies that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The sequential test has not been passed and the exception test is therefore not applicable.

32. It is asserted with regard the previously mentioned planning permission, that the permission was granted following the publication of the SFRA 2011. It is stated that the development permitted under that permission was consistent with the recommendations of SFRA 2011 and with other flood risk studies including the Upper Humber Flood Risk Mapping Study.
33. However, that was an outline planning permission covering a wider site and was granted before the current Local Plan was adopted. While the reserved matters were approved in 2017, which the appellant contends was following the publication of the EA Upper Humber Study, that full permission related to a wider site and did not include the appeal site. It is highlighted that the outstanding drainage issues that prevented reserved matters of the outline permission being approved in relation to the appeal site are now resolved. This may be so, but the outline permission has now lapsed and so cannot be given any appreciable weight in my reasoning.
34. My attention is drawn to a housing site off Thorntree Lane, which was an undeveloped field close to the appeal site. The appellant states that the FRA submitted in support of that proposal, showed that, in the event of a flood breach, the water would not reach the appeal site. However, this was a site-specific FRA for a different site and proposal, and minimal evidence has been presented to allow detailed consideration of this matter.
35. Attention is also drawn to HOW-G High Level FRA by way of illustrating the appellant's concerns about the SFRA 2020. However, that relates to a proposed site allocation in a different town. These examples hold limited weight in this case for the reasons stated.
36. Examples of recent retail development in Goole have been highlighted. Also, attention is drawn to the Council's substantial funding of the leisure centre improvements, which the appellant suggests demonstrates the Council's lack of confidence in the SFRA 2020. However, these are distinctly different forms of development to that proposed in this case and those projects are not a determinative factor for this reason.
37. Concern is raised that major development, including housing and development important for regeneration, is being prevented in the town due to flaws in the SFRA 2020 and that the Council's focus on development at GOO-A is anti-competitive. However, the sub-delineation approach to sequential tests set out in local policy provides a framework for the delivery of acceptable development, with regards flood risk, in Goole. Suitable development is as such not precluded in this area.
38. Also, attention has been drawn to the fact that the SFRA 2020 is currently being examined as part of the evidence for the emerging local plan. This is consistent with national guidance, which requires all plans should apply a sequential, risk-based approach to the location of development and advises that a SFRA should be used, amongst other matters, to apply the sequential test when determining land use allocations.

39. This aside, even if problems with the SFRA 2020 are confirmed through the emerging plan examination process, the evidence relevant to this appeal has not persuaded me that the significant flood hazard risk applicable to the site, according to the SFRA 2011, has reduced since the adoption of the current Local Plan. Nor does the evidence provide confidence that there are no other sequentially preferable sites available for this development in Goole. This matter does not alter my findings on this issue for this reason.
40. In light of the above, I find that the sequential test has not been passed in this case. The proposal would therefore fail to accord with local and national flood risk policy. In particular, the proposal would conflict with Policies ENV6 and A4 of the Local Plan. These Policies collectively seek to ensure development is steered towards areas of lowest risk.
41. With regards this matter, the proposal would fail to accord with guidance set out in the SPD and provisions of the Framework and PPG relating to Flood Risk.

Planning Balance and Other Matters

42. The Council has not raised objections about highways matters, character and living conditions for existing and future residents, subject to conditions. The Internal Drainage Board and Yorkshire Water are also satisfied that drainage matters could be addressed by condition. However, this should be an expectation of all development such that these are neutral factors.
43. The main parties agree that the Council can demonstrate the required housing land supply. Be this as it may, this supply should not be seen as a cap. Indeed, the supporting text of Policy S5 of the Local Plan states the overall housing requirement is a minimum. The proposal would make a positive contribution to the Government's aim to significantly boost the supply of homes. Also, the proposal would support the aims of Policies S3 and S5 of the Local Plan with regards the provision of housing in this principal town. Windfall sites are identified in the Local Plan as an important factor in the supply of housing in the area. Eighteen new dwellings would make a moderate but nevertheless significant contribution to the supply and mix of much needed homes in the area. In turn, the supply of housing would support employment uses in the settlement. I attach considerable weight to these benefits.
44. It is stated that this development would help make properties in the area affordable. However, the new dwellings would be open market housing. That said, a legal agreement has been submitted with this appeal intended to secure a sum towards the provision of affordable housing in the district. Significant weight is attached to what is a relatively small sum.
45. The appeal site is a small to medium sized windfall site, such that the development could be built relatively quickly. The proposal would be an efficient use of land that is located in a built-up area close to a range of services and public transport options. There would be economic benefits resulting from the construction of the dwellings and future occupants of the dwellings would support local services and businesses.
46. It is intended that the dwellings would be energy efficient. Also, a landscaping scheme is proposed, and on-site biodiversity enhancements are identified as mitigation. These are benefits which could be secured by condition.
47. It is stated that open space has been gifted, but this benefit related to the adjacent site which is now constructed. This matter does not weigh in favour of this proposal.

48. The appellant asserts that the development would improve drainage in this area. However, even if I accept this as a benefit, it does not outweigh the harm arising from the failure to accord with the sequential test.
49. Furthermore, the adverse impacts, in respect of flood risk, would not be significantly and demonstrably outweighed by the moderate social, economic and environmental benefits identified above when assessed against the policies of the Framework taken as a whole. This would be so even if these benefits are considered together. Other material considerations presented in this case do not indicate that the proposal should be determined otherwise than in accordance with the development plan.
50. Concerns have been raised about engagement with the Council and EA during the application process. However, this is a matter between the respective parties.
51. The evidence draws attention to Policy S4 of the Local Plan. However, this relates to development in villages and the countryside and therefore not relevant in this case.
52. The appeal site is in the zone of influence of the Humberside Estuary Special Protection Area and Special Area of Conservation. The Council is concerned that this proposal, which would result in a net gain of residential units on this relatively undeveloped site could have likely significant adverse impacts on the integrity of these protected habitats, as a result of harmful recreational disturbance and/or loss of functionally linked land. This is disputed by the appellant. However, as I am dismissing on other grounds it is not necessary to consider this matter further.

Conclusion

53. For the reasons outlined above, having regard to the development plan and other material considerations, including the Framework, the appeal should be dismissed.

A J Sutton

INSPECTOR

APPEARANCES AT HEARING:

FOR THE APPELLANT

Mr Pullan Appellant

Mr Ponter Barrister

Mr Allitt RAA Consulting Engineers

FOR THE COUNCIL

Mr Rowley Planning Officer

Mrs Robson Policy Officer

Mr Southon WSP

FOR THE ENVIRONMENT AGENCY

Mr Piercy

Mr Miles

Richborough



Costs Decision

Site visit made on 23 April 2024

by A J Sutton BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Costs application in relation to Appeal Ref: APP/E2001/W/23/3335708 Land off Ivy Park Road, Goole DN14 6YG

- 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 for a full award of costs is made by East Riding of Yorkshire Council against Kremer/Surebay Properties Ltd.
 - The appeal was against the refusal of planning permission for 18 residential dwellinghouses and garages off new estate road.
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Decision

1. The application for costs is dismissed.

Reasons

2. The Planning Practice Guidance (PPG) sets out that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, in either a procedural or substantive way, which has directly caused another party to incur unnecessary or wasted expense in the appeal process. Examples of unreasonable behaviour include failure to produce evidence to substantiate reasons for refusal on appeal.
3. The PPG advises an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The Council asserts that the appellant has failed to co-operate at various stages throughout the appeal process. This is asserted with reference to documents being requested repeatedly and being received in a piecemeal manner. However, the appellant's evidence was made available to the Council in this appeal process and the deadline for the Council's statement was extended to take account of any delay.
5. The applicant has concerns with aspects of the appellant's evidence. However, the appellant's evidence focused on the Council's two main reasons for refusing permission. Moreover, the appellant's evidence addressed relevant planning issues and did not raise matters other than those that the Council had been made aware of through the application process.
6. The applicant also states that the appellant wasted the Council's time chasing information that was available on public record, and that the appeal evidence included information already being considered through the local plan examination process. However, the submitted evidence relates to relevant

matters in this Section 78 appeal case. As such, no unnecessary duplication has occurred in this regard.

7. Also, it is a matter for the appellant whether to appoint representatives to present their case. Moreover, this was an option open to the Council if it so wished. Indeed, the Council did employ external consultants to defend its main reason for refusing planning permission.
8. I agree with the Council's reasons for refusing planning permission in this case. However, for the reasons outlined above, I find no compelling evidence that the appellant's behaviour has been unreasonable or has acted in a way that has resulted in unnecessary wasted expense.

Conclusion

9. For the reasons outlined above, an award of costs is not justified in this case.

A J Sutton

INSPECTOR

Richborough