



Appeal Decision

Site visit made on 9 April 2019

by **Rachael A Bust** BSc (Hons) MA MSc LLM MInstLM MCMI MEnvSci MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2019

Appeal Ref: **APP/F4410/W/18/3213988**

'San Lorenzo', Armthorpe Lane, Barnby Dun, Doncaster DN3 1LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jason Taylor against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 18/00638/FUL, dated 10 May 2017, was refused by notice dated 31 May 2018.
 - The development proposed was originally described as "detached 4 bed dwelling with detached garage."
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Jason Roy Taylor against Doncaster Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. Section E of the appeal form indicates a different description of development to that which was used on the planning application form. I have used the original description in my determination of this appeal as that was the description for which planning permission was sought.
4. The Technical Note produced by JBA Consulting is dated August 2018 and therefore post-dates the Council's decision. This represents new information, I am mindful that the appellant on their appeal form did not indicate that they were submitting any new information at the appeal stage. The 'Procedural Guide: Planning Appeals - England' makes it clear that 'the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'.
5. Within this context I am very conscious of the Wheatcroft Principles derived from *Bernard Wheatcroft Ltd v SSE* (1982) which are further explained in the Procedural Guide: Planning Appeals - England. It is my firm view, in the interests of fairness, that this appeal must be determined on the basis of the information on which the Council made its decision and which have been subject to consultation. Given the technical nature of this additional

information it is clearly a matter on which consultation would need to be undertaken with interested parties, including the Environment Agency. To take this into account in the determination of this appeal would unacceptably prejudice the interests of consultees and/or interested people who may have observations to make. I have therefore assessed the appeal on the basis of the proposal and its supporting material as considered by the Council.

6. I note that the appellant is in discussions with the Environment Agency regarding the geographical extent of the Flood Zones in the area. Any alterations to the Flood Zone Mapping is a matter for the Environment Agency and outside of the scope of this appeal. In determining this appeal I must have regard to the published evidence of the Flood Zones currently contained in the Flood Maps produced by the Environment Agency and the flood zone identified in the Strategic Flood Risk Assessment.
7. The Council's decision notice makes reference to Saved Policy ENV25 of the Doncaster Unitary Development Plan (UDP). However, the Council has confirmed that its inclusion was an error. As such I have not taken it into consideration in the determination of this appeal.
8. Since the appeal was submitted an updated revised National Planning Policy Framework (the Framework), was published on 19 February 2019. However, the amendments have not had a direct bearing on the issues within this case, it was not therefore necessary to consult the main parties.

Main Issues

9. The main issues in this appeal are:
 - whether the proposed development would be acceptable in respect of the risk of flooding, having regard to the advice of the Framework and Planning Practice Guidance (PPG);
 - the effect of the proposed development on trees; and
 - whether the appeal site would represent an appropriate location for new residential development.

Reasons

Flood risk

10. There is some dispute between the parties whether the site lies within Flood Zone 2 or 3a. The Council states that the latest Environment Agency Flood Map indicates that it is Zone 3. It is understood that in this area it is not functional floodplain and as such constitutes the classification of Flood Zone 3a. Neither party has provided me with an extract of the Flood Risk Maps, in the absence of any evidence to the contrary I have determined on the basis that the site lies within Flood Zone 3 as the Council has identified. In any event, based upon the current identified flood zones in the area, flood risk is a determinative matter for this appeal.
11. On the basis that the appeal site currently falls within Flood Zone 3a, having regard to the Environment Agency Maps. Table 2 of the PPG indicates that dwelling houses are deemed to be a 'more vulnerable' use and Table 3 of the PPG is clear that for the appeal proposal to be acceptable with regard to flood risk both the sequential test and exceptions test are required to be passed.

12. The Framework and the PPG require a sequential, risk-based approach to the location of development. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. It also indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG states that for the purposes of applying the Framework, the 'areas at risk of flooding' are principally land within Flood Zones 2 and 3. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
13. The PPG advises that, in applying the Sequential Test, the aim is to steer new development to Flood Zone 1, these being areas with a low probability of flooding. Only where there are no reasonably available sites in Flood Zone 1 should reasonably available sites in Flood Zone 2 be considered. If the Sequential Test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding the Exception Test may have to be applied. As such national policy on flood risk is concerned with ensuring the location of development is appropriate in principle before considering flood resilience and flood mitigation measures.
14. Although the appellant initially contended that the appeal proposal should not be subject to either the sequential or exception tests, I note that within the final comments in paragraph 14 this requirement has now been accepted.
15. The submitted Flood Risk Assessment contains what the appellant describes as "a rudimentary sequential test" which was based upon a search for available residential land within Barnby Dun. Notwithstanding the results of this search which were not included within the flood risk assessment, the Council has adopted local guidance¹ to help applicants understand the area of search required to demonstrate the sequential test. Paragraph 5.19 indicates that the area of search will normally apply to the whole borough. I have no details before me to indicate that an alternative area of search had been agreed or is appropriate in this case.
16. The submitted Flood Risk Assessment does not provide substantive evidence to demonstrate that there are no other sequentially preferable sites. The appellant has only considered sites within Barnby Dun. However, in the particular circumstances of this case, I consider that such an area of search is unnecessarily restrictive. It is the aim of national and local planning policy to steer new development to areas with the lowest risk of flooding.
17. Based upon the evidence before me Barnby Dun is not specifically identified as a settlement with a specific growth target. As such the appeal proposal is seeking to contribute towards the overall housing growth of the Borough of Doncaster. Therefore, a wider area of search would be more reasonable given that no factors have been presented to me to demonstrate that the sequential test should not be applied across the whole Borough in line with the provisions of the adopted local guidance. Consequently, I find that the proposal has failed to meet the requirements of the sequential test.
18. The sequential test must be passed before the exception test can be applied. I have therefore not applied the exception test as set out in paragraph 160 of the Framework.

¹ Development and Flood Risk Supplementary Planning Document (SPD), adopted October 2010

19. Notwithstanding that the letter from the Environment Agency in March 2019, as appended to the appellant's final comments, indicates that a possible revised Flood Map for Planning covering the appeal site may be published in July 2019. Until this is finalised and formally published, I must make a decision based upon the current flood risk classification. Should this change in the future the appellant could of course consider whether or not to submit a new planning application to the Council based upon a change of circumstances.
20. Whilst I note that the Environment Agency has not raised concerns regarding the proposed mitigation measures contained within the appellant's Flood Risk Assessment, this does not overcome the need to firstly pass the sequential and exception tests to establish whether the appeal proposal is acceptable in principle on flood risk grounds. Taking all matters into consideration on this first main issue, the proposal would not be acceptable in respect of the risk of flooding.
21. Accordingly, the proposal is in conflict with Policy CS4 B) of the Doncaster Council Core Strategy (CS), which requires developments within flood risk areas to pass the sequential and/or exception tests.

Trees

22. The appeal site contains a substantial area of existing trees. Although the Council's appeal questionnaire suggested that there is a Tree Preservation Order (TPO) within the site, on page 4 of the Council's appeal statement, it states that no on-site trees are protected in this way. In the absence of any evidence to the contrary, I have therefore determined this appeal on the basis that none of the trees within the appeal site are subject to a TPO.
23. The existing trees within the appeal site adjoin other trees on adjacent land such that they collectively provide a woodland setting for the site and surrounding area. In this respect the trees on the appeal site make a positive contribution to the character and appearance of the site and surrounding area. It is not disputed that trees require appropriate management, but no specific measures have been put forward for consideration as part of this appeal.
24. The proposed siting of the new dwelling would be within close proximity of the existing trees and the proposed garage would require the removal of a silver birch tree.
25. The submitted Tree Report provides a general commentary and some useful general advice in relation to future management of the existing trees. However, it does not provide a thorough survey which evaluates the trees with reference to the relevant British Standards classifications. Furthermore, without an accurate tree survey the relationship between the existing trees and the proposed development cannot be properly assessed. The evidence before me does not demonstrate that the proposed siting of the new dwelling and garage would not interfere with the canopy spread or fall within any of the root protection areas of existing trees.
26. I share the Council's concern with regard to the proximity between the existing trees and the side (west) elevation of the proposed dwelling which contains 6 large glazed openings at ground floor level and 5 rooflights at first floor level. Close proximity between new development and trees can lead to future pressure for the removal of the trees due to impacts including overshadowing and the potential for nuisance arising for example from leaf deposition. In my

judgement, the submitted Tree Report does not provide sufficient specific information upon which I can conclude that the appeal proposal would not result in an unacceptable impact on the existing trees.

27. The Council's Development Guidance and Requirements Supplementary Planning Document (SPD), adopted July 2015, identifies in section 8.5 that a 15-metre buffer zone would normally be required between a woodland edge and development. It also states that development layouts should be designed to ensure that retained and newly planted trees have sufficient space to flourish and mature and deliver their full range of environmental benefits without causing harmful nuisance. Trees, which are poorly related to buildings, can cause structural problems, distress or financial loss to occupants. Even if not affecting trees directly, development layouts may not be acceptable if they would result in pressure for felling or unsightly, heavy pruning of retained or key proposed trees in the future.
28. I note that the appellant suggests that as the trees are not protected they could be felled at any point. Be that as it may, I find that the existing trees make a positive contribution and consideration of the impacts upon them is clearly set out in development plan policies. It is a developer's responsibility to demonstrate that the impact on the existing trees is acceptable through the submission of an appropriate Arboricultural Report and Tree Survey. The submitted Tree Report does not meet the requirements for assessing trees set out in section 8.5 of the SPD.
29. Therefore, the appeal proposal fails to accord with Saved Policies ENV 21 and ENV 59 of the UDP, which seek, amongst other things, to protect and conserve existing trees, by steering development away from trees and woodlands. It would also be contrary to Policy CS16 D) of the CS which seeks, amongst other things, to retain and protect appropriate trees.

Location of development

30. The appeal site is located outside of the existing settlement boundary for Barnby Dun and within the Countryside Policy Area (CPA) as defined in the UDP. Saved Policy ENV 4 of the UDP sets out the types of development that would be permitted within the CPA, none of which are relevant to the appeal proposal. Policy CS3 B) of the CS indicates that the countryside will continue to be protected through a Countryside Protection Policy Area (CPPA) as indicated on the Key Diagram.
31. It is understood that the existing settlement boundary runs along the rear boundaries of the properties on Parkwood Rise. From my site visit this boundary together with the existing area of trees provides a visual transition in character to the appeal site. The appeal site is formed from part of the land associated with 'San Lorenzo', an existing dwelling which is not within the settlement boundary and as such it already has a residential character.
32. I note that the appellant makes reference to 'San Lorenzo' having been granted planning permission since the UDP. Be that as it may, and whilst I note that Policy CS3 criterion B)2 indicates that minor amendments to settlement boundaries may be appropriate it does not set out any clear mechanism as to how this will be undertaken. In any event, the definition of settlement boundaries would be a matter for the Council's plan making process.

33. Given that the appeal site is outside of the settlement boundary there is conflict with Saved Policy ENV 4 of the UDP and the proposal is not one of the examples cited as being acceptable in Policy CS3 B)4. Whilst the appeal proposal conflicts with Saved Policy ENV 4 which weighs against it, as no details of any evaluation of the quality or value of sites and land within the CPA have been presented to me, it cannot be considered to be up-to-date. Accordingly, I therefore can attribute limited weight to the conflict with this policy. Furthermore, having regard to the recent decision by the Secretary of State², I note that the updating of this policy designation is expected to form part of the emerging development plan. I understand that the emerging plan is at an early stage of preparation and as such can only carry limited weight in decision making at this time.
34. The appellant contends that the appeal proposal constitutes 'infill development' under criterion b) of Saved Policy ENV 4. I have not been provided with any definition of infill development from the adopted development plan. The Council indicate that a definition was previously contained within Policy ENV9 (infill development) of the UDP. However, as this was not a saved policy it has no development plan policy status today. It seems to me that criterion b of Policy ENV4 of the UDP was entirely dependent upon Policy ENV9 of the UDP, which was not saved. As such it is a criterion that effectively no longer exists. Even if a contrary view were taken, criterion b was intended to address settlements that were washed over by the CPA and not settlements such as Barnby Dun that have been removed by virtue of having a settlement boundary defined. As such it would not be relevant to the appeal proposal in any event.
35. The site is presently part of the generous garden area to 'San Lorenzo'. From my visit the nature of the access with security barrier and the limited built development present beyond the settlement boundary result in a change of character from that of the more formal layout of the properties on Parkwood Rise and within the settlement boundary.
36. The introduction of built development on the appeal site would represent an extension of built development into the countryside in strict terms. However, given the relative proximity of the settlement boundary to the siting of the 'San Lorenzo' dwelling and the building associated with the golf centre the appeal site would not be isolated. In my view, the appeal site represents an area of transition between the existing settlement boundary and the countryside. By this analysis the appeal site is not clearly part of the open countryside in its character or appearance.
37. Consequently, I find that development on the appeal site would not introduce an unacceptable spatial change to the character and appearance of the site and its surroundings which would offend the countryside area as a whole. Given the general enclosed nature of the appeal site I see no conflict with the broad objective of protecting the countryside as contained within Policy CS3. Furthermore, Policy CS3 does also set out some criteria for assessing proposals that are outside development allocations. Against these criteria, the appeal proposal would not be visually detrimental or result in highway or amenity problems. In relation to Policy CS3 C)4 reference is made to preserving openness, however, it seeks to address this in relation to both Green Belt and the CPPA. It would not be appropriate to apply the strict interpretation of openness used for Green Belt to the CPPA. Having regard to the general

² APP/F4410/W/17/3169288, dated 5 February 2019

enclosed nature of the appeal site, I see no conflict with the broad policy of objective of keeping the countryside open to value its intrinsic beauty.

38. Having carefully considered whether the proposal would be an appropriate form of development in this location, on balance, I find that the site would represent an appropriate location for new residential development. Although in strict terms there is conflict with Saved Policy ENV4 of the UDP, I attribute limited weight to this conflict. Moreover in this case there is some support to be found within Policy CS3 of the CS. These policies seek, amongst other things, to protect the countryside from inappropriate development.

Other matters

39. The appellant has referred me to another planning permission³. From the details presented to me there are some similarities with the appeal scheme as set out by the appellant. I do recognise the need for consistent decision making. However, this referenced planning permission passed the sequential test and was also located within an area for general growth. Neither of these aspects are consistent with the appeal proposal and as such the circumstances are not directly comparable with the appeal scheme at the time of my decision. In any event each application and appeal must be assessed upon its own evidence and merits and that is what I have done in this case.
40. There is no dispute regarding the proposed design or the various environmental measures incorporated into the specification for the intended self-build dwelling which as a single dwelling would make a negligible contribution to the general housing supply. These aspects do weigh in favour of the proposal and I have carefully considered these benefits in my assessment. I have also taken note that there have been representations in support of the proposed development. Whilst I appreciate the preference of the appellant to be close to relatives, personal circumstances rarely provide a compelling justification for a proposed development.
41. I note that the appellant is also seeking to engage paragraph 11 of the revised Framework. However, footnote 6 to paragraph 11(d) sets out specific policies in the revised Framework which provide a clear reason for refusing the development proposed, including development in areas at risk of flooding. Given my findings on flood risk, the presumption in favour of sustainable development does not apply in this instance.

Conclusion

42. Having taken all matters into consideration, for the reasons given, I have found that the appeal proposal has failed to provide substantive evidence to demonstrate that the appeal site is the most sequentially preferable site in flood risk terms and that there would no harm to the existing trees. Consequently, I find that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against national and local policies of the development plan when taken as a whole, therefore the appeal must be dismissed.

Rachael A Bust

INSPECTOR

³ Planning permission reference 15/01306/FUL, dated 17 November 2017