



Appeal Decision

Hearing held and site visit made on 6 December 2011

by **Peter J Golder Dip TP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 December 2011

Appeal Ref: APP/V2635/A/11/2153564

Kenfield Farm, 254 Main Road, Clenchwarton, Kings Lynn PE34 4AF

- 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 Mr Danny Thorpe - Viking Developments Ltd against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 10/01675/OM, dated 28 September 2010, was refused by notice dated 6 December 2010.
 - The development proposed is the residential development of a brownfield site.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Procedural matters

3. While the amount of the appeal site which can be designated brownfield is in dispute, as agreed at the hearing I have omitted the word "former" from the description of the development.
4. The planning application is in outline form with all matters to be reserved for future consideration. However as Circular 01/2006 makes clear a basic level of information will always be required. In the absence of a separate planning statement setting out the minimum requirements listed in the circular I regard the Design and Access Statement (DAS) as fulfilling that function in addition to its principal purpose.
5. Therefore in summary I take the proposal to be one for 35 two-storey dwellings of traditional construction of which 20% (7 units) are indicated to be social rented housing. The layout indicates how the dwellings might be accommodated on the site with access provided by a single junction with Main Road (C80). A substantial open space/wildlife corridor would be provided beneath overhead power cables which run diagonally across the site. I have taken this information into account in the determination of this appeal.
6. At the time the planning application was determined the development plan comprised the East of England Plan and the saved policies of the Norfolk Structure Plan and the King's Lynn and West Norfolk Local Plan 1998. The Core Strategy (CS) has now been adopted (July 2011). It supersedes the

policies of the structure plan and much of the local plan. The CS forms the principal consideration against which this proposal should be determined.

Main Issues

7. The main issue in this appeal is whether the proposal, having regard to national and local planning policy, comprises sustainable development which would not have an adverse effect upon the character of the countryside and which would bring wider sustainable benefits to the community sufficient to outweigh its location within an area at risk of flooding.

Reasons

The policy background

8. The CS makes clear sustainable development is at the heart of its spatial strategy and the settlement hierarchy. The strategy for rural areas is to promote sustainable communities and patterns of development, focus most new growth in the rural areas in Key Rural Service Centres and to protect the countryside for its intrinsic character (policy CS06). Clenchwarton is classified as one of 24 Key Rural Service Centres (RSC); villages which are seen to meet the day-to-day needs of the wider rural community. Policies CS02 and CS06 provide for limited housing growth within or adjacent to village development limits
9. The appeal site lies in an area designated as countryside on the 1998 Proposals Map and some distance from the defined village development area boundary. I am advised that the 1998 boundary will be retained for consideration through the preparation of the Site Specific Allocations and Policies DPD (SSAP) and will be used as guidance until the SSAP process has been completed towards the end of 2012. The consultation draft of the SSAP shows a much reduced village development boundary for Clenchwarton which focuses upon the core of the village and excludes more isolated pockets of development to the east and west. While the draft SSAP can carry little weight at this time the essential thrust of its provisions are informed by the vision for sustainable growth established in the CS and can be taken as indicative of the way in which the Council sees the wider spatial strategy being implemented. Notwithstanding the draft status of the SSAP it is right that I have regard to this broad direction of travel in reaching my decision.

Impact upon the countryside

10. The appeal land clearly falls within the countryside. While from certain directions it is seen against a backdrop of other housing, principally that in Station Road, it is physically and visually divorced from the built form of the settlement. The accumulation of run down buildings, machinery, equipment, building materials, timber and other assorted storage together with the overgrown conifers presents a scene somewhat at odds with the open fen landscape hereabouts. Nonetheless much of what is on the land has become partially assimilated into the vegetation on and around the site, particularly in more distant views along Main Road from both directions and across the open land from Station Road. In large measure the locality retains its strong and prevailing rural character and appearance.
11. Notwithstanding the present untidy condition of the land and the uses to which it is put, housing of the quantum, scale and form proposed would be a much

more prominent and dominant feature in the characteristic fenland landscape of the area. The development would appear as an isolated group of houses in the countryside bearing little if any relationship to the principal built form of the village and wholly at odds with the rural character of their location. The result would be a significant erosion of the intrinsic character of the countryside, not just within the more immediate vicinity of appeal site but also of the wider rural setting of the village to the west. Consequently the proposal would conflict with that part of policy CS06 of the CS and national policy in PPS7 which seeks to protect the countryside and not cause detriment to the character of the surrounding area or landscape.

12. In reaching this conclusion it is acknowledged that Clenchwarton, in addition to the main focus of development as identified in the SSAP, also comprises a number of other clusters of housing development. Many form satellite areas within the 1998 village development limits; the boundary being tightly drawn around such areas. Nevertheless this approach reflects the past evolution of the village rather than providing any justification for similar isolated locations being regarded as appropriate for future growth in accord with the recently adopted spatial strategy.

Sustainable location

13. Notwithstanding the scattered form of the village as a whole, facilities and services in Clenchwarton, albeit limited, are centred in the broad vicinity of the Hall Road/Main Road junction. Here they are well located to serve the main focus of housing development to the north and south. By contrast the appeal land is located well to the west. The site is put at about 1.4km from the heart of the village. As a one way distance this is less than the 2km advisory walking distance in PPG13, however in terms of a round trip either taking a young child to the primary school, visiting the surgery or local shop this distance would be exceeded. Certainly the distance to the centre of the village falls well outside the concept of a walkable neighbourhood as set out in Manual for Streets. Also the propensity to walk is influenced by the quality of the walking environment as well as distance. Similar considerations, albeit to a lesser degree, apply to cycling. While there is a footpath and the highway is or could be subject to a 30 mph speed restriction Main Road is a relatively busy highway. Both the distance and quality of the route is most likely to encourage a greater reliance upon the use of the private car for meeting day to day needs.
14. While the development could bring some additional footpath provision and extend the 30 mph speed restriction to the west this would do little to aid the integration of the development into the village and its community. The appeal land is poorly related to the main part of the village and even with these measures would not result in the accessible, inclusive and locally distinctive sustainable development required of policy CS08 or the requirements of PPS1 in respect of good design, in particular those directed at ensuring successful, safe and inclusive villages.

Flood Risk

15. The Council's Strategic Flood Risk Assessment (SFRA) – allowing for climate change - shows the appeal site along with all of Clenchwarton and extensive tracts of surrounding land as falling within Flood Zone 3 and at high risk from tidal flooding. While the appellant seeks to question the conclusions of the SFRA with largely anecdotal evidence based on local observation of past

events, its basis as a firm foundation for the spatial strategy of the CS is given particular commendation by the Inspector reporting on the examination of the CS DPD. It provides the most satisfactorily consistent and technical basis for ensuring that flood risk is fully taken into account in determining the location of new development. The SFRA is used to inform the ongoing site selection process in SSAP preparation. The SSAP Issues and Options consultation does not include any proposals for allocating sites in Clenchwarton. All sites put forward as part of the Strategic Housing Land Availability Assessment have been rejected for failing the sequential test when set against SFRA. The appellant points to the Parish Council's concerns at this conclusion.

16. A site specific FRA for the appeal site confirms that the proposal passes the sequential test and can be made safe. It therefore provides an opportunity for housing provision of an appropriate scale to serve the village. Notwithstanding this the Council considers the site fails the exception test because the proposal does not provide wider sustainability benefits that outweigh flood risk. A number of benefits are claimed in support of the scheme.
17. The land is available and there is no evidence to suggest that it is not developable. The extent to which the site is brownfield is in dispute. The situation is complicated by uses being carried out which the Council say are not authorised and are the subject of further investigation. In the absence of detailed information I do not take issue with the Council's assessment that about 25% of the land should be regarded as previously developed in accordance with the latest definition in PPS3, the remainder either being former agricultural or nursery land or residential curtilage. Therefore the extent to which the development would benefit from using brownfield land is limited. Furthermore as PPS3 makes clear there is no presumption that previously developed land is necessarily suitable for housing. I have already concluded that the location of the site fails to satisfy the policies of the CS in this respect and the extent which the brownfield element is limited reinforces this conclusion.
18. The supporting information includes provision for 7 affordable homes. A draft S106 agreement was submitted at the application stage. It contained significant errors and was not progressed by the appellant. While the number and mix of units was acceptable to the Council there is no mechanism in place to secure their provision. While the progress of other affordable housing schemes in the village now looks doubtful, without an agreement in place the proposal brings no benefits in this respect and would be in conflict with policy CSO9. In these circumstances it is not an aspect of the scheme which can be afforded any weight.
19. The case made in support of the scheme places a particular emphasis upon the degree of congestion around the primary school in the mornings caused by children being dropped off and buses picking up older children for the St Clements High School. The appellant says further development in this vicinity would only exacerbate the present difficulties. My observations do not support the degree of potential danger claimed by the appellant but even allowing for greater local knowledge I am not persuaded that the proposed development would bring any material benefit to the situation in the vicinity of the primary school. There is every prospect that children from the new development would increase rather than reduce the number of cars arriving at the school thereby adding to the congestion. Further an additional bus stop at the appeal site

would be most unlikely to replace that in the centre of the village. No details were provided of the likely use of a bus stop here or explanation given as to why it could not be provided in the absence of the development in any event.

20. As to the claim that the appeal site is well located to allow use of Station Road to gain access to the A17, I accept that this is so. However it is an advantage which emphasises the separation of the site from the village and its locational disadvantages in terms of enhancing and sustaining an inclusive village community and its facilities. It is a consideration which derives little if any benefit from the proposal.
21. CS policy CS08 recognises that to achieve a sustainable distribution of development in the rural areas some building may be required in flood risk areas. In such circumstances it will be necessary to demonstrate that the development makes a contribution to the wider sustainability needs of rural communities. The proposal would bring few if any wider sustainable benefits to Clenchwarton. Therefore while being partially on brownfield land and meeting the sequential test, the proposal fails to satisfy the requirements of the exception test as established in PPS25 and the need to guide development away from areas at risk of flooding now or in the future incorporated into policy CS01. No compelling justification has been established for setting aside the well established flood risks associated with the site as demonstrated in the SFRA.

Conclusion

22. In being poorly related to the main part of the settlement the development would fail to promote a sustainable community or a sustainable pattern of development. It would also fail to protect the intrinsic character of the countryside. Furthermore it would result in development in an area designated as being of high flood risk without any wider sustainability benefits for the community. Consequently the proposal is fundamentally at odds with national planning policy and important provisions of the recently adopted Core Strategy.
23. The Council's position that a 5 year housing supply for the Borough can be demonstrated has not been challenged. The SSAP process is ongoing. The SFRA Flood Hazard assessment points to the potential scope for other significantly more sustainably located sites than the appeal land coming forward through the SSAP process following more detailed investigation. There is no evidence to the effect that housing needs in the village are so pressing that the proper planning for site specific housing allocations should not proceed as programmed. Therefore the lack of specific housing provision for Clenchwarton at this particular time does not amount to a consideration so material as to justify setting aside the very compelling objections to the scheme.

Other Matters

24. At the time the planning application was being considered the County Council indicated that it would object to the proposal if certain infrastructure requirements were not satisfactorily dealt with in a legal agreement. An agreement was not forthcoming and no further action was taken on the part of the appellant. Precise calculations were not possible because of the outline nature of the scheme. The local primary and high schools are at capacity and

contributions would be sought towards such facilities. A contribution is also sought to increase library capacity.

25. The County Council's comments were made in December 2010 and only valid for six months. There has been no updating and no subsequent negotiation between the parties. The comments are also insufficiently specific to establish a clear relationship between the development and the need for the contributions, the precise purpose of the contributions and how and when they would be used. For these reasons I am unable to be satisfied that they would meet the tests set out in Circular 05/2005 or the statutory requirements of CIL regulation 122. Were my decision on this appeal to turn on this matter it is one to which I would attach little weight on the basis of the information before me.
26. On a similar matter of cross funding the appellant points to the benefits of the residential scheme providing finance to enable a 65ft lighthouse style wildlife observatory to be built close to the Wash. While the potential economic and tourism benefits of the scheme are acknowledged there is no direct relationship between the two developments which would satisfy the necessary policy tests and indeed the appellant offers no mechanism to secure cross funding. Albeit an interesting scheme and one which has the benefit of planning permission I attach no weight to it in support of the housing proposal.

Overall Conclusion

27. For the reasons set out above the proposal is unacceptable. In arriving at this conclusion account has been taken of all of the other matters raised in the representations made in writing and at the hearing, including what is said about other housing sites in the village, the village referendum and criminal damage at and, thefts from, the site. However I find none of these matters, either on their own or collectively to be of sufficient substance to outweigh the significant planning objections to the proposal which justify this appeal being dismissed.

Peter J Golder

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Danny Thorpe	Viking Developments Ltd - Appellant
Mr Ian Bix	Ian H Bix Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mr Keith Wilkinson	Planning Officer with Council
Mr Alan Gomm	Planning Officer with Council

INTERESTED PERSONS:

Mr David Whitby	Local Councillor
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DOCUMENTS

- 1 Core Strategy – adopted July 2011
- 2 Site Specific Allocations and Policies Consultation Sept 2011
- 3 Site Specific Allocations and policies – appendix 1
- 4 Draft S106 agreement – submitted with application
- 5 Letter + attachments dated 2 Dec 2010 from NCC re contributions
- 6 Observations of Clenchwarton PC on SSAP consultation
- 7 Flood Risk pro-forma completed by Council
- 8 Appellant's written comments – Appeal Procedure/Strategy
- 9 Council cost's application written submission

PLANS

- A Clenchwarton – Inset 77 – KL+WN Local Plan 1998
- B SHLAA for Clenchwarton
- C Appellant's drawing showing estate development in village
- D SFRA – Existing Situation
- E SFRA – Climate Change
- F SFRA – Hazard Zone

