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## Appeal Decision

Site visit made on 17 January 2017

**by John Dowsett MA DipURP DipUD MRTPI**

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

**Decision date: 14<sup>th</sup> February 2017**

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**Appeal Ref: APP/M2325/W/16/3158103**

**Coppice Farm Land, West Moss Lane, Westby with Plumpton, Lancashire, FY8 4NH**

- 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 outline planning permission.
  - The appeal is made by Coppice Farm LLP against Fylde Borough Council.
  - The application Ref: 16/0148, is dated 1 March 2016.
  - The development proposed is the demolition of the existing agricultural buildings and the erection of a residential development comprising 10 detached houses.
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### Decision

1. The appeal is dismissed and outline planning permission for the demolition of the existing agricultural buildings and the erection of a residential development comprising 10 detached houses is refused.

### Preliminary matters

2. The development proposal was submitted in outline with all matters reserved for future approval with the exception of access. A number of drawings were submitted which show ten dwellings laid out around a cul-de-sac access road with an area of open space within the development; floor plans and elevations of a number of house types; and the position of a number of passing places on West Moss Lane. I have also been provided with a drawing showing landscaping and mounding on the appeal site boundary. As matters relating to appearance, landscaping, layout and scale are reserved for future approval I have treated these drawings as indicative only.
  3. Although this appeal is against the failure of the Council to give notice of its decision on the application within the prescribed period, I received as part of the Council's submissions a statement of case which sets out that, had the Council been in a position to make a determination on the planning application, it would have refused planning permission for reasons relating to (1) the location for housing in respect of access to services, facilities and employment opportunities; (2) the effect of the development on the character and appearance of the surrounding landscape; (3) effect of the proposal on nearby protected sites and over-wintering birds; and (4) compliance with national planning policy in respect of flood risk. I have therefore considered the appeal on this basis.
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## **Main Issues**

4. The main issues in this appeal are:
- Whether the appeal site is a suitable location for housing in respect of its access to services, facilities and employment opportunities; and
  - The effect of the development on the character and appearance of the area and the surrounding landscape.
  - The effect of the proposal on nearby protected sites with particular regard to overwintering birds; and
  - Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

## **Reasons**

### *Whether the appeal site is a suitable location for housing*

5. The appeal site is a former pig farm located in an area of countryside to the north of Lytham. It is accessed from the unclassified roads, West Moss Lane and Moss Hall Lane. The appeal site is not within any existing settlement or built up area.
6. Policy SP2 of the Fylde Borough Local Plan 2005 (the Local Plan) states that in countryside areas development will not be permitted unless it is essentially required for the purposes of agriculture, horticulture or forestry; or other uses appropriate to a rural area; or it comprises the rehabilitation and re-use of permanent and substantial buildings which are structurally sound. The proposal does not meet any of these criteria and is therefore contrary to Policy SP2. However, as Policy SP2 seeks to constrain the development of land in the countryside for housing, it is a relevant policy for supply of housing. The Council concedes that it only has a deliverable housing land supply of 4.8 years. As a result of the absence of a five year supply of deliverable housing sites, Policy SP2 cannot be considered up to date.
7. The fact that a relevant policy is not up to date does not mean that it can be disregarded. Rural restraint policies encourage development in existing settlements and help protect the intrinsic value and character of the countryside which is in line with the objectives of sustainable development. In addition, although neither party has submitted substantive evidence in respect of projected housing deliver, the shortfall in housing land supply is not substantial. Consequently, moderate weight can still be given to Policy SP2.
8. Policy HL2 of the Local Plan sets out general criteria for residential development including, among others, that new housing is in a sustainable location having regard to the local availability of shops, schools, employment sources, public transport and other community facilities.
9. I have also been referred to a number of policies in the Draft Fylde Local Plan (Submission Version) 2016. However, whilst this plan has been submitted for examination, this has not yet occurred and as such the policies in it may be subject to change. I can, therefore, only give limited weight to these emerging policies.

10. The site is approximately 3 kilometres from Lytham, where there is a good range of shops, services and employment opportunities. However, there are no shops or facilities and no public transport services within walking distance of the site. Whilst it would be possible to access Lytham by cycle, I saw that the routes to the town from the site were either narrow unlit roads, or a busy main road which is also unlit for much of its length leading to the town. Although a public right of way runs along Moss Hall Lane, this is unlit and poorly surfaced. As such I do not consider that these would be an attractive option for cyclists, particularly during the winter months. As such the occupants of the new dwellings would be largely dependent on the private car for their everyday transport requirements.
11. I have had regard to the appellants' point that planning permission has been granted for a commercial use on the site that would potentially generate greater traffic movements. However, the transport requirements for a commercial development are markedly different from the transport needs of full time residential occupation of the site and, consequently, I can attach little weight to this point. I also note the appellants' point that there are houses at Higher Ballam to the east of the appeal site and other small scale groupings of houses in the vicinity, nonetheless, I saw on my site visit that the houses at Higher Ballam are of some age and were clearly built before policies in respect of locational sustainability were in widespread use. I therefore do not consider that these existing established developments can justify the development of the appeal site for housing.
12. The proposed development is contrary to Local Plan Policy SP2, which, although not up to date, can still be given moderate weight; and is in a location where the future occupiers would be dependent on the private car for their day to day transport requirements.
13. I therefore find that the appeal site is not a suitable location for housing in respect of its access to services, facilities and employment opportunities and would be contrary to Policies SP2 and HL2 of the Local plan which seek to protect the countryside from development and ensure that new development is well located with having regard to the local availability of shops, schools, employment sources, public transport and other community facilities.

*Character and appearance*

14. When read together Policies HL2 and EP11 of the Local Plan seek to ensure that new development is compatible with nearby and adjacent land uses; would be in keeping with the character of the locality and the character of the surrounding landscape; and has regard to its context in terms of materials and design. Policy SP2 of the Local Plan refers to types of development which will be permitted in the countryside. Whilst this policy contains a criterion in respect of the visual characteristics of development that is essentially required for the continuation of an existing enterprise, it does not relate to new residential development of the type proposed by the appeal scheme and, as a result, I do not consider that it is directly relevant to this issue.
15. Policy EP20 referenced in the putative reason for refusal relates to development on the open coastline and, consequently, I do not consider that it is relevant to this case.

16. The landscape around the appeal site is open countryside that is essentially flat and comprises small to medium sized fields with occasional small areas of woodland and scattered groups of farm buildings. Narrow lanes form a network of routes linking to the more major roads. Outside of the built up areas, small groups of houses are located on the main roads. Approximately 350m to the east of the appeal site on West Moss Lane is the small, linear settlement of Higher Ballam. Immediately to the north of the appeal site is the former farm house for Coppice Farm and some associated outbuildings. Although the appeal site is located within a short distance of an urban area it, nevertheless, has a distinctly rural character.
17. As noted above, the application is in outline only. I have had regard to the appellants' point that the development would be low density development and that the current buildings on the appeal site are unsightly. However, the location of the site in relation to the existing development in the vicinity is such that the proposal would result in development in depth to the south of West Moss Lane which is uncharacteristic of the linear form of development along existing roads that is evident elsewhere in the surrounding area.
18. I have also noted the appellants' point that the proposed dwellings would be designed in a rural style and utilise materials which are appropriate to the rural area. Nonetheless, the development would introduce a markedly urban form of development with the accoutrements of domestic occupation which would be distinctly different from the current agricultural character of the site and of the other groups of buildings away from the through routes. The supporting indicative drawing, whilst only illustrative, demonstrates the likely type of layout, given the size and shape of the site, and reinforces my view.
19. Due to the flat and largely open nature of the countryside surrounding the appeal site, the development would appear as an incongruous feature within the landscape which would be harmful to its character.
20. I am mindful that planning permission has previously been granted for the use of the site for commercial purposes, however, these permissions either involved the use of the existing buildings on the site or were for the erection of new light industrial buildings which would have a similar form and massing to the existing agricultural buildings and consequently a similar character.
21. I therefore find that the proposed development would cause harm to the character and appearance of the area and the surrounding landscape. It would be contrary to the relevant requirements of Policies HL2 and EP11 of the Local Plan which seek to ensure that new development is compatible with nearby and adjacent land uses and has regard to its context.

*The effect of the proposal on nearby protected sites*

22. The appeal site is close to, but not within, the Ribble and Alt Estuaries Special Protection Area (SPA) but as the surrounding land has been identified to provide mitigation of Likely Significant Effects from another development elsewhere, it is considered to be functionally linked to the SPA. The principal interest feature of the SPA is the use of the area by overwintering bird species.
23. Some information in respect of the effect of the proposal on species using the SPA and associated land has been provided, along with some mitigation

proposals. This concludes that the proposed development would not have any significant adverse effects on the SPA.

24. I note, however, that Natural England and the Council's own ecological consultant have commented that there is insufficient information within the appraisal to allow it to be considered robust. In particular, Natural England and the Council's ecology consultant state that the in-combination assessment does not take into account all the surrounding plans/projects which could have a possible effect, and potentially together have a significant effect on the designated sites and functionally linked land. I do not have full details of the Queensway development or the mitigation proposals associated with it, nor do I have any substantive evidence in respect of other schemes which may also need to be taken into consideration.
25. In the light of this, and adopting a precautionary approach, on the balance of the evidence I am not able to conclude that the proposed development will not cause harm to the nearby protected sites, with particular regard to overwintering birds.
26. Paragraph 118 of the National Planning Policy Framework requires that when determining planning applications, a decision maker should aim to conserve and enhance biodiversity by applying the principle that if significant harm resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. As I have found that the avoidance and mitigation of harm is not demonstrated, the appeal must fail on this ground.

#### *Flood risk*

27. The appeal site is located in an area that is identified as being within Flood Zones 2 and 3 as defined by the Environment Agency, with the greater part of the site being within Flood Zone 2. The Framework seeks to steer new development to areas with the lowest probability of flooding by applying a Sequential Test. The planning application was also accompanied by a site specific Flood Risk Assessment.
28. There is some dispute between the parties as to whether the extent of the area covered by the sequential assessment is appropriate or not. The appellant sought guidance from the Council prior to undertaking the sequential assessment and carried out the assessment on the basis of that advice. Subsequently, the Council has adopted a different position stating that, as housing is a strategic matter, the sequential assessment should cover the whole local authority area as opposed to particular housing market sub-areas.
29. Whilst noting the Council's point in respect of the potential strategic aspect of housing development, at ten dwellings, the appeal proposal is not a large scheme. A scheme of this size would not, in my view, have either strategic implications or have potential to significantly compromise the Council's development strategy. The Planning Practice Guidance (the Guidance) states that when considering planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the area to apply the sequential test across will be defined by local circumstances relating to the catchment area for the type of development proposed. The Guidance therefore contemplates sequential testing to be applied to different

sized areas dependant on the circumstances. Within this context, it is not unreasonable to confine the sequential test for this proposal to a smaller area, such as that originally suggested by the Council to the appellant.

30. The sequential test that was submitted with the application identifies fifteen alternative sites which were subsequently discounted. Although some of these sites had previously been discounted by the Council as part of their Strategic Housing Land Availability Assessment, this does not undermine the purpose of the sequential test to determine whether there are any available, sequentially preferable sites, within the relevant area. The Council suggests that there are identified sites in sustainable locations on the edges of settlements at various locations throughout the borough which are not at risk of flooding. However, I do not have any evidence in respect of where these sites are located in relation to the appeal site. Whilst noting the Council's point that there are allocated sites in its emerging local plan, this has not yet been subject to formal examination and consequently may be subject to change. As such I can give only limited weight to this point.
31. It is not suggested that the appeal proposal is required to pass the Exception Test required by the Framework. However, I note that a site specific flood risk assessment was submitted with the application which sets out a number of mitigation measures and that, on this basis, the Lead Local Flood Authority has no objections to the proposal.
32. From the evidence before me, I conclude that the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

### **Other matters**

33. The appellant suggests that as the Council does not have an identified deliverable five year supply of housing land the proposal should be considered in the context of the presumption in favour of sustainable development as required by Paragraph 49 of the Framework. It is common ground between the parties that as the proposal affects land which is functionally linked to the SPA that an appropriate assessment under the Habitats Directive is required. The Framework confirms in paragraph 119, that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. The presumption in favour of sustainable development is therefore not engaged in this case.
34. Although the proposed development would have some small scale economic benefits arising from the investment in its construction, would make a small contribution to providing additional housing in the area and would remove a small area of dereliction within the countryside, these small scale benefits do not outweigh the other harm that I have previously identified.
35. Some concerns have been raised in respect of additional traffic using West Moss Lane to access the proposed development. Although the road is narrow, it is very lightly trafficked and I consider that the additional vehicle movements that would be generated by the development could be accommodated. I also note that the Council have not raised this matter as an issue.

## **Conclusion**

36. I have found that the proposal would comply with national policy in respect of directing new development away from areas at the highest risk of flooding. However, I have found that the appeal site is not a suitable location for housing with regard to access to services and facilities, and that the development proposed would cause harm to the character and appearance of the surrounding landscape. In addition it has not been demonstrated that the proposed development would not have significant adverse effects on the interest features of the SPA. In my view these are important matters, to the extent that the proposal should be regarded as being in conflict with the development plan as a whole.
37. These adverse impacts significantly and demonstrably outweigh the small scale benefits that would result from the proposed development.
38. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed and planning permission refused for the proposed development.

*John Dowsett*

INSPECTOR