



Appeal Decision

Site visit made on 13 August 2018

by **Philip Lewis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 September 2018

Appeal Ref: APP/H0738/W/18/3201477

Land West of Fleet Bridge Road, Norton on Tees

- 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 Mr Vokes, P & M Properties against Stockton-on-Tees Borough Council.
 - The application Ref 18/0216/OUT, is dated 30 January 2018.
 - The development proposed is described as outline application for 9 detached dwellings.
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Decision

1. The appeal is dismissed and planning permission for 9 detached dwellings is refused.

Procedural matters

2. The application is made in outline with all matters reserved. I have dealt with the appeal on that basis, treating the site plans as being indicative. The Council has confirmed that had it been in a position to determine the application, it would have refused planning permission as it considered that the proposal does not comply with national planning policy and guidance which seeks to steer new development away from areas at the highest risk of flooding.
3. The revised National Planning Policy Framework (the Framework) was published on 24 July 2018, replacing that published in March 2012. I wrote to the parties and invited their submissions in respect of the new Framework and any implications for their cases.

Main Issue

4. The main issue is whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding or increase the risk of flooding elsewhere.

Reasons

5. The Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk and that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. The Framework also states that development should only be allowed in areas at

- risk of flooding where supported by a site-specific flood-risk assessment and the sequential and exceptions tests as applicable.
6. The appeal relates to the development of an area of about 2 hectares of open land for 9 dwellings which I saw at my site visit to be undeveloped. I note the proposal has been revised from that previously considered at appeal by my colleague¹. A flood risk and drainage assessment (FRDA) was been submitted with the application which I have taken into account.
 7. The FRDA identifies that the closest watercourse to the site is Billingham Beck which is located about 400 metres to the east. It also identifies the site as falling within Flood Zones 1 and 2 on the Environment Agency (EA) Flood Map. The FRDA explains that the EA mapping data is based on the limits of a tidal flood event that occurred in 1978 prior to major highway works (A19 road) which remodelled the topography of this area, introducing raised embankments between the highway and the site. The EA does not object to the proposal as it considers that the A19 works reduced the likelihood of flooding such as that seen in 1978. However, although the EA does not object to the proposal, and I note that the appellant has been in discussion with the EA in regards to the flood zoning, the site nevertheless remains identified as falling, in part, within Flood Zone 2. On the balance of evidence, it has not been demonstrated that the appeal site no longer falls in part in Flood Zone 2 and I shall deal with the appeal accordingly.
 8. The Planning Practice Guidance 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. The sequential risk based approach to the location of development is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. In this case, the appeal site is not allocated for housing in the development plan and is identified as falling in part within Flood Zone 2 and is liable in part to flooding from surface water.
 9. The indicative plans show two possible ways in which the site could be developed without locating dwellings within the Flood Zone 2 area, including one without access via the Flood Zone 2 area. However, the application is made in outline with all matters reserved and the indicative plans show two of the possible ways in which the site could be developed, rather than providing a clear intention of what is intended to be built. As the matter of layout is not before me and the appeal site nevertheless contains a significant area of land identified as falling within Flood Zone 2, a Sequential Test is required to see if there are no reasonably available sites in Flood Zone 1. Only where there are no reasonably available sites in Flood Zone 1 should reasonably available sites in Flood Zone 2 be considered.
 10. However, there is no evidence before me that there has been consideration of alternative sites at lower risk and consequently, whilst I note the comments concerning the 'Exceptions Test', the Sequential Test has not been passed. A planning condition has been suggested by the appellant to state that no development should take place in the Flood Zone 2 area. This would not overcome the lack of a Sequential Test as required in national policy.

¹ APP/H0738/W/17/3181469 dated 4 January 2018

11. I turn now to surface water flooding. The EA surface water maps identify a risk of surface water flooding on the northern part of the site and on land to the east, and I have regard to the evidence in respect flood events both directly affecting and near to the appeal site. The Lead Local Flood Authority is concerned as to the level of detail provided with the scheme in regards to surface water flooding and I concur that there is a lack of detail as to how development may affect existing surface water storage and flows which could give rise to flooding elsewhere. Furthermore, I note that the drainage design and strategy of the FRDA, depends in part upon the actions of third parties on land outside of the control of the appellant. However, should I be minded to allow the appeal, I consider that surface water matters could be adequately addressed by way of planning conditions.
12. I have taken into account that the appeal scheme is in outline with all matters reserved and the indicative plans. However, in the absence of a Sequential Test it has not been demonstrated that the appeal proposal would steer new development away from areas at the highest risk of flooding or that it would not increase the risk of flooding elsewhere. Therefore, the proposal conflicts with the Framework and this conflict provides a clear reason for refusing permission.

Other matters

13. I take into account that the proposed development would bring forward economic benefits during the construction period, would help to increase the supply of housing and is in an accessible location. I also have regard to the letters of support and the comments that the development of the site would improve its appearance through high quality housing, would retain open space and would not harm highway safety.
14. In the previous appeal, my colleague considered the issue of as to whether the proposal should include a contribution to the provision of education facilities and open space in the area. Whilst I note that the Council has identified that contributions are required in respect of the appeal scheme, I have few details and no planning obligation has been provided for me to consider. If I had been minded to allow the appeal I would have written to parties about this matter, but given my findings on the main issue, this has not been necessary.

Planning balance and conclusion

15. The appellant asserts that the Council cannot demonstrate a five year supply of deliverable housing sites. This is disputed by the Council. If I were to accept the appellants position, Paragraph 11 d) of the Framework applies; namely that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
16. In this case, footnote 6 of the Framework is relevant in that policies of the Framework which protect areas or assets of particular importance include areas at risk of flooding or coastal change. Whilst I have regard to the benefits of the proposal, I have found that the flood risk policies provide a clear reason why the development proposed should not be allowed. Therefore, the appeal

scheme is not a form of sustainable development for which the Framework has a presumption.

17. For the above reasons and having regard to all matters raised, I conclude that the appeal should fail and that planning permission be refused.

Philip Lewis

INSPECTOR