
Appeal Decision

Site visit made on 17 October 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 17 November 2016

Appeal Ref: APP/M1005/W/16/3155384

Mill Green House, Snake Lane, Duffield, Belper, Derbyshire, DE56 4FF

- 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 & Mrs R Johnson against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2015/0762, dated 8 July 2015, was refused by notice dated 28 January 2016.
 - The development proposed is the erection of a new dwelling and associated external works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new dwelling and associated external works at Mill Green House, Snake Lane, Duffield, Belper, Derbyshire, DE56 4FF in accordance with the terms of the application, Ref AVA/2015/0762, dated 8 July 2015, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr & Mrs R Johnson against Amber Valley Borough Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework (the Framework).

Reasons

4. The appeal site is located within the settlement of Duffield and is accessed off Snake Lane. It presently forms part of the garden associated with Mill Green House. Ecclesbourne Brook runs on the opposite side of Snake Lane to the appeal site and there is a recreation ground adjoining the northern boundary of the site. There is a gentle slope on the site with the lowest levels being adjacent to Snake Lane.
5. There is dispute between the two main parties as to which Flood Zones (FZ) the site is located within. Table 1 of the Planning Practice Guide (PPG)¹ provides the definition for the FZ and they are shown on the Environment Agency's Flood Map for Planning (Rivers and Seas)(EAFM). The Council

¹ Paragraph: 065 Reference ID: 7-065-20140306

consider that the EAFM shows that the appeal site is wholly within FZ2 and FZ3. However, the Flood Risk Assessment (FRA) has used the topographical data for the site and the predicted flood levels supplied by the Environment Agency to provide a detailed analysis of the FZ as they apply to the appeal site. As the Council have not disputed this data specifically and the Environment Agency have not raised any issue with the findings of the FRA I am satisfied that the FZ as shown in the FRA apply to the appeal site. Consequently, the site is located within FZ1, 2 and 3.

6. The dwelling would be sited in close proximity to the northern boundary of the site within FZ1 and FZ2. The detached garage would be sited within FZ2 and the garden, access and parking area would be in FZ3. Snake Lane is also within FZ3.
7. Policy EN15 of the Amber Valley Borough Local Plan (LP) requires, amongst other things, that development should not have an adverse effect on the management of flood risk and demonstrate that for development in higher-risk flood zones there is no reasonable option available in lower-risk zone. This policy is broadly compatible with the Framework and as such I give it significant weight.
8. The Framework indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk by the application of the Sequential Test. The aim is to ensure that development only takes place in areas at risk from flooding if there are no reasonably available alternative sites at locations where the risk is less. In this case I have no evidence before me to indicate that a Sequential Test has been carried out for the site at the strategic level (i.e. Local Plan). The FRA submitted by the appellants addresses the Sequential Test but there is disagreement between the parties on the appropriate geographical area.
9. The PPG indicates that for individual planning applications where there has been no sequential testing at strategic level, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. I acknowledge that housing need is a strategic matter which is to be met across the whole of the Council's area. However, the provision of one dwelling would have a limited impact on the strategic housing need for the Borough.
10. The appellants have stated that proposed development in Duffield is tightly constrained by a number of factors including the rivers, the surrounding Green Belt and the Derwent Valley Mills World Heritage Site. There are a number of services and facilities within Duffield and there is no dispute between the parties that the settlement is a sustainable location. The future occupiers of the dwelling would make a modest contribution in maintaining the vitality and viability of Duffield. Consequently, it is reasonable in this particular case to restrict the catchment area to the settlement of Duffield.
11. The Sequential Test could not identify any alternative sites within the Duffield area. The Council have not disputed this. Accordingly, in the absence of any identifiable alternatives, I find that the Sequential Test is satisfied.
12. The dwelling would fall within the 'more vulnerable' classification. However, in accordance with Table 3 of the PPG as the dwelling itself is situated in FZ1 and FZ2 the application of the Exception Test is not necessary.

13. In considering the appropriateness of the proposal, the FRA shows that the development would be positioned in the lowest risk area of the site (i.e. FZ1/2). It recommends a minimum finished floor level of 58.47 m AOD, 150mm above the lowest ground level in FZ1 which goes some way to mitigate the risk of flooding. In addition, the FRA identifies the residual risks and suggests a number of means for their effective management. I note that the Environment Agency and the Emergency Planning Department of Derbyshire County Council are content that these measures, coupled with the safe access and egress proposed, would be sufficient to make the dwelling safe from flooding. This is a good indication that the measures proposed are sufficient to mitigate the risk posed and effectively manage any residual risks.
14. Consequently, for the reasons set out above, I find that the proposed development could not be accommodated on a reasonably available alternative site and as such it is not possible to direct development to an area at lower risk of flooding. Furthermore, I find that the proposed mitigation measures are sufficient to make the proposed dwelling safe from flooding and that the residual risk can be effectively managed. As such, I find no conflict with Policy EN15 of the LP or paragraphs 100, 101, 102 and 103 of the Framework which together seek to ensure that new development is directed away from areas at high risk of flooding.

Other Matters

15. Local residents object to the proposal on a wider basis, including in respect of the increase in traffic on Snake Lane and contamination. The Council consider that contamination can be dealt with by way of conditions and I have no reason to dispute this. Moreover, these did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.

Conditions

16. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of conciseness and enforceability the wording of some of the suggested conditions has been amended.
17. I have imposed a condition specifying the relevant drawings as this provides certainty. Those relating to materials and boundary treatments are appropriate in the interests of character and appearance. In the interests of highway safety I have imposed conditions in relation to the provision of the access and parking/turning area.
18. To reduce the risk of flooding, prevent flooding elsewhere and ensure that any unacceptable contamination risks to humans, controlled waters or the wider environment are minimised I consider that compliance with the flood risk assessment, surface water disposal and decontamination conditions are necessary. However, I have applied what I consider to be a more proportionate condition than that proposed by the Council in respect of contamination.
19. In the case of each of the pre-commencement conditions, I consider that resolution of the matters specified to be of sufficient significance to the achievement of an acceptable development and in safeguarding the subsequent

form of development such that it would be inappropriate to proceed further without the prior clarification and certainty that would arise from their approval.

Conclusion

20. Both parties agree that the Council cannot demonstrate a 5 year supply of housing land and accordingly, it follows, by virtue of paragraphs 47 and 49 of the National Planning Policy Framework (Framework) that relevant policies in the development plan for the supply of housing are to be considered out-of-date. As such the proposal should be considered in the context of the presumption in favour of sustainable development as stated at paragraph 14 of the Framework.
21. I have borne in mind the view of both parties that the appeal site is 'in a sustainable location'. One additional dwelling would be provided which would have economic and social benefits. The proposal would also make a contribution to maintaining the vitality of local services and facilities in Duffield. These social and economic benefits provide modest weight in favour of the appeal proposal. It is common ground between the parties that the proposal would not harm the character and appearance of the area.
22. Paragraph 14 of the Framework states that permission should be granted unless 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 or specific policies in the Framework indicate development should be restricted which include locations at risk of flooding.
23. I have not found any harm that would significantly and demonstrably outweigh the benefits associated with the scheme when assessed against the policies in the Framework taken as a whole. Furthermore, as stated above the proposals would comply with LP Policy EN15 and paragraphs 100, 101, 102 and 103 of the Framework in relation to flood risk and as such the Framework does not indicate that the development should be restricted in relation to the risk of flooding.
24. For the reasons given above, and having regard to all other matters raised I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR

Attached – Schedule of Conditions

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 704-01 Rev A and 704-02.
- 3) The dwelling shall not be occupied until full details of the proposed treatment of the boundaries of the site have been submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall be implemented on site prior to the occupation of the dwelling and thereafter retained in accordance with the approved details.
- 4) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 5) The dwelling hereby permitted shall not be occupied until a means of access for vehicles has been laid out and constructed in accordance with the approved plans and provided with 2.4 metre by 25 metre visibility splays, in both directions, to the centre line of Snake Lane. Clear visibility over a height of 1 metre (600mm in the case of vegetation) above the carriageway level shall exist within the visibility splay at all times. The access shall be retained thereafter.
- 6) The dwelling hereby permitted shall not be occupied until space has been laid out within the site in accordance with in accordance with the approved plans for cars to be parked and for vehicles to turn and that space shall thereafter be kept available at all times for those purposes.
- 7) The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures detailed in the submitted Flood Risk Assessment Version 1.3 (August 2015) and its Addendum No 1 (25th September 2015).
- 8) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the occupation of the dwelling hereby permitted.
- 9) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to

remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority.

- 10) If any part of the site is to be raised or filled using soils brought from outside the application site, the developer must provide evidence that all such materials are free from levels of contamination that would be in excess of appropriate standards. All evidence shall be submitted to and agreed in writing by the Local Planning Authority prior to any material being brought onto site.