

Appeal Decision

Site visit made on 19 December 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 03 February 2017

Appeal Ref: APP/P2935/W/16/3160540

Land south of Percy Drive, Swarland, Morpeth, Northumberland NE65 9HB

- 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 J S Lambert against Northumberland County Council.
 - The application Ref 14/02284/OUT, is dated 30 June 2014.
 - The development proposed is residential development of detached houses with access road and turning area to enable vehicles to enter and leave onto Percy Drive in a forward facing direction. Provision of widened vehicle access to improve vehicle passing on Percy Drive.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved apart from access and I have dealt with the appeal on that basis. Drainage is a matter which falls outside of those reserved matters and therefore needs to be considered at the outline stage.
3. The application was recommended for approval by Council officers although a decision was deferred at the Council's Area Planning Committee - North meeting on 4 December 2014. There is no indication that the application was considered at such a subsequent meeting.
4. The Council's Statement indicates that had it been in a position to reach a decision on the application it would have been refused. This would have been on grounds that it had not been fully demonstrated that appropriate surface water drainage could be achieved to avoid an increased risk of flooding elsewhere.

Main Issue

5. Therefore, the main issue raised by this appeal is whether a satisfactory arrangement for disposing of surface water can be achieved and consequently whether there would be a risk of flooding.

Reasons

6. The appeal site is surrounded by detached houses and bungalows and is largely bounded on three sides by the residential estate roads which serve them. The proposal would include improving and widening the existing access point
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between 5 and 6 Percy Drive to serve as the vehicular access to the site. The site is currently open grassland and slopes down gently from the Percy Drive side to its boundary with Cherry Tree Drive.

7. The site lies within Flood Zone 1, that is one with a low probability of river or sea flooding. However flooding can occur from surface water including that running off housing sites if that surface water run-off is not disposed of effectively. The appellant advises that he is not aware of any reports of land drainage problems or surface water run-off from the site affecting neighbouring properties in the past. The Council consider that the general area of Swarland is known as having flood risk and drainage issues. Interested parties have also raised concerns about surface water flooding occurring in the vicinity although their main concerns in respect of flooding matters relate to previous problems with the foul water drainage systems serving the area failing.
8. The appellant indicated on the application form that a main sewer would be used to dispose of surface water. Following the statutory undertaker advising that this option would not be available, the appellant subsequently proposed that either infiltration of surface water into the ground or the use of existing field drainage pipes on the site could provide an effective form of surface water disposal. Exploring an infiltration approach is consistent with the Planning Practice Guidance's¹ (PPG) aim to discharge surface run-off as high up its hierarchy of drainage options as reasonably practicable. Those options descend from; into the ground (infiltration); to a surface water body; to a surface water sewer, highway drain, or another drainage system, and finally; to a combined sewer.
9. There is insufficient information available relating to the performance of the field drains as to whether their use would equate to that of infiltration or would be considered as another drainage system and therefore further down the PPG's hierarchy.
10. On the basis of the information provided the use of alternative drainage options further down the hierarchy are not straightforward. The Council in its role as Highways Authority have advised that a connection into the existing highway drainage system would not be possible, the nearest surface water body is located some distance from the site and may require connection over third party land and there are capacity issues with the sewerage system in the area.
11. There remains a disagreement between the appellant and the Council as to whether the available information and the results of the appellant's on-site investigations provide sufficient certainty to demonstrate that infiltration would be a realistic prospect for appropriate surface water disposal.
12. In particular, the Council advises that it would expect low rates of water absorption by soils on the site. This view is informed by information from the British Geological Survey which indicates the site is located in an area which has a soil type that is considered to provide poor infiltration media². Conversely, the appellant considers that his results indicate a much higher rate of absorption consistent with a soil type which would provide good infiltration media. However, the Council consider that there is a risk that the soil and its good infiltration results may be localised on the site. The consequence of this

¹ Paragraph: 080, reference ID: 7-080-20150323.

² CIRIA C697, table 4.7.

would be if it is very localised that there would remain a risk that any water disposed into the soil may reappear nearby, potentially affecting surrounding properties, rather than being absorbed.

13. The Council are of the view that additional investigation should be undertaken to establish the extent and depth of soils under the site which have good infiltration performance. The Council's approach in this respect is supported by industry good practice and guidance³ which advises that the use of infiltration should be approved by a geotechnical engineer or engineering geologist and that the geotechnical properties of surrounding soils should be checked to ensure that infiltration of water will not cause problems. There is no indication that the appellant's reports were informed, approved or interpreted by such specialist technical advice.
14. Whilst from the available evidence neither option would appear to be ruled out at this stage there remains a gap between the information supplied by the appellant and that which would give the Council the confidence that an infiltration or land drainage disposal arrangement for surface water drainage could be employed without risk of flooding arising elsewhere. I can appreciate that the appellant has endeavoured to follow the technical guidance to investigate the soil and infiltration performance on the site, however in light of the unexpected results it would be reasonable for the Council to take a cautious approach.
15. I therefore share the Council's concern that if they accepted infiltration or the land drains as a surface water disposal method based on the information presented to date, and that subsequently the infiltration rate was considerably lower than the appellant's figures, this would result in a drainage system which would be under-designed and flooding could occur affecting existing dwellings.
16. Although the evidence of flood risk may largely be anecdotal, the effects of flooding if it were to occur could be serious in terms of their effect on adjacent properties. It is therefore appropriate to take a precautionary approach. As the Council have raised a concern about the effectiveness of surface water drainage this needs to be considered as part of an outline proposal. In the circumstances I consider that the information sought by the local planning authority is no more than necessary, having regard to the scale and nature of the development concerned, which reflects the advice in the PPG⁴.
17. I have considered whether a planning condition could make otherwise unacceptable development acceptable in line with the National Planning Policy Framework's (the Framework) approach⁵. This includes whether a condition requiring the implementation of a sustainable drainage system and limiting surface water run-off to greenfield rates taking account of storm levels might be appropriate. However, were I to grant permission subject to a condition that the surface water drainage arrangements be approved by the Council, there would be no certainty that a scheme would be subsequently approved in light of the above points of disagreement between the main parties. There is also no certainty that there are currently realistic options further down the PPG's drainage hierarchy which could be relied upon should an infiltration or field drain solution not prove to be acceptable.

³ CIRIA C697, paragraph 4.7.2, item 5 and notes to CIRIA RP992 The SuDS Manual Update: Paper RP992/19.

⁴ PPG paragraph: 081, reference ID: 7-081-20150323.

⁵ Paragraph 203.

18. The effect of this lack of agreement would be granting a planning permission in the knowledge that it would be unlikely to be capable of implementation. Such a condition would not therefore pass the Framework's test of being reasonable in all other respects in light of the considerable uncertainty that such a scheme would be approved by the Council.
19. I have considered the appellant's views that it is not possible to design a detailed drainage scheme until a detailed design of the proposed houses has been carried out. Whilst the appellant has referred to boreholes carried out at The Avenue nearby which indicate similar soil characteristics to those he has found on the site and that he understands that the Council's Building Regulations section have previously approved infiltration systems for new dwellings in the vicinity, this would not necessarily conclusively demonstrate that the ground conditions on this particular site are appropriate for an infiltration approach.
20. There remains a residual risk that disposal by way of infiltration on the site or the existing land drainage system may not be effective. As such the proposal would not meet the physical infrastructure and flood risk criteria of Policy S3 of the Alnwick District Local Development Framework Core Strategy Development Plan Document, 2007 (CS). It has not been demonstrated that the principles of sustainable drainage would apply, one of the criteria of CS Policy S16. The approach of these policies is consistent with that of paragraph 103 of the Framework which requires that local planning authorities should ensure that flood risk is not increased elsewhere.
21. I can appreciate the appellant's disappointment in light of these matters of concern being raised following a positive recommendation to the Council's planning committee at which foul water disposal appeared to be the issue of concern. This will have been compounded by the Council not returning the application to committee for consideration and by apparent delays in the Council being explicit about the information they required and providing feedback on his investigations. However, whilst these concerns are understandable they do not alter the above position and do not lead me to a different conclusion.

Conclusion

22. Therefore, whilst the options for securing appropriate surface water drainage from the site would not appear to have been exhausted, it has not been conclusively demonstrated that a satisfactory arrangement for disposing of surface water can be achieved and consequently a risk of flooding would remain. Having had regard to all other matters raised, the proposal would be contrary the development plan and the Framework and the appeal is therefore dismissed.

Geoff Underwood

INSPECTOR