
Appeal Decision

Site visit made on 30 January 2017

by G D Grindey MSc MRTPI Tech. Cert. Arb

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

Decision date: 21 March 2017

Appeal Ref: APP/W1850/W/16/3157677

Land adjacent to Orchard Farm, Eardisland, Leominster, HR6 9BJ.

- 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 Pallas Ventures Ltd against the decision of Herefordshire Council.
 - The application Ref 152779, dated 9 September 2015, was refused by notice dated 3 August 2016.
 - The development proposed is construction of 5no dwellings with garages, formation of new access and private drive and close existing, demolition of outbuilding, steel framed barn, wind tunnel and greenhouse.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application will be the subject of a separate Decision.

Main Issues

3. From my inspection of the site and surroundings and the representations made I find there are three main issues in the determination of this appeal. These are (i) whether the location of the scheme would give rise to concerns in an emergency flooding incident, particularly concerning safe entrance/exit; (ii) whether surface and foul water drainage and management has been adequately considered in the circumstances within this settlement and (iii) whether the scheme would provide an appropriate range and mix of housing to contribute to the creation of balanced and inclusive communities.

Reasons

(i) whether the scheme gives rise to safety concerns in an emergency flooding incident, particularly concerning safe entrance/exit

4. As a background to the consideration of flooding, I note the overarching policy within the National Planning Policy Framework (the Framework) that inappropriate development in areas at risk of flooding should be avoided, by directing development away from areas of highest risk, but where development is necessary making it safe without increasing flood risk elsewhere. The Herefordshire Strategic Flood Risk Assessment (SFRA) mentions Eardisland numerous times and the village is described as an "observed flooding hot-spot"

which encountered particularly severe flooding in January 1986 and other major floods in 1998 and 1979¹.

5. The Framework and Planning Practice Guidance (PPG) sets out the procedure to be followed in such circumstances. Paragraph 103 of the Framework seeks that the most vulnerable development be located in areas of lowest risk within the site, which has been done here. Nonetheless it is clear the development as a whole lies in part within a flood risk area and the Exception Test is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available. The 2 parts to the Test require proposed development to show that it will provide wider sustainability benefits to the community that outweigh flood risk and that it will be safe for its lifetime without increasing flood risk elsewhere and where possible reduce flood risk overall.
6. Local Plan policy SS1 seeks to secure development that improves the social, economic and environmental conditions in the county while SS7 focuses development on the most sustainable locations, taking into account the known physical and environmental constraints when identifying locations for development. Policy RA2 is permissive of high quality sustainable schemes and SD1 requires the safeguarding of residential amenity.
7. Policy SD3 concerns flood risk and ensures development should have regard to the SFRA 2009 for Herefordshire. It also seeks to ensure that development would be safe, providing safe pedestrian and vehicular access, where appropriate, implementing a flood evacuation management plan.
8. Focusing at a closer level, I note the Neighbourhood Plan²'s (NP) Examining Inspector's comments about Eardisland: "Whilst there are no sites allocated within Eardisland, primarily due to the flood risk, we welcome consideration of reduction to flood risk in the Parish and recommend continued discussion with Herefordshire Council". I also note all the Parish Council's submissions concerning day-to-day life within the settlement during times of inundation together with their photographs.
9. The Environment Agency (EA) states that the appeal site is a "dry island surrounded by Flood Zone 3 (high probability) and safe dry access is not available. We are satisfied that the Flood Risk Assessment (FRA) details the risk to occupants on this route. A Flood Evacuation Management Plan (FEMP) has been produced following discussions with your Emergency Planning team. Whilst we offer a flood warning service on which the plan can be based we would not make comment on the adequacy of the FEMP should you be minded to secure permission with it to ensure it secures safe and sustainable development". The FRA confirms that the access would have a flood hazard (in terms of depth and velocity) rating of Danger for All in the DEFRA Hazard risk guidance (FD2320)³.
10. All the proposed dwellings would need to be constructed with finished floor levels at a height slightly above the existing ground levels shown on the Tower Surveys drawing and the EA also states that 2 of the garages would be within

¹ Hydro-Logic Services page 13

² Made October 2016

³ Hydro-logic Services document page 15 I

the 1 in 100 years floodplain extent and would be “allowed to flood”. The boundary treatments for the gardens are required to allow the passage of water through (post and rail for example) and for floodwater to enter the gardens.

11. All of these factors, considered together, give me great cause for concern. While I am aware that the planning officer was, apparently, satisfied with the proposals I bear in the mind the sensible text in the PPG. “Proposals that are likely to increase the number of people living in areas of flood risk require particularly careful consideration as they could increase the scale of any evacuation required”⁴. This scheme would add 5 households to those within the village.
12. The Framework and the PPG requires that access routes should allow occupants to safely access and exit their dwellings in design flood conditions. Vehicular access to allow the emergency services to safely reach the development during the design flood conditions will also normally be required⁵. Wherever possible, safe access routes should be provided that are located above design flood levels and avoiding flow paths. Even low levels of flooding can pose a risk to people in situ, because of the presence of unseen hazards and contaminants in floodwater or the risk that people remaining may require medical attention.
13. It seems to me to be folly to add further households into the present circumstances in this village. The FRA confirms that the access would have a flood hazard (in terms of depth and velocity) rating of Danger for All in the DEFRA Hazard risk guidance. This road access would not be safe at the peak of 1:100 year+CC floods. While I understand that the EA Floodline Warning Direct Service already operates in the village, this relies on a text being received and then residents evacuating, with some 2 hours to reach safety.
14. To concentrate on the procedure a little – these are the actions required: residents should “refrain from driving vehicles through flood water of any depth on the access road. Safe evacuation ensures that residents are away from danger and can access food, water and medical services; however it may not be possible for residents to access their property, vehicles (if left in a safe place within the site) and possessions for a number of days which may deter residents from wanting to evacuate. Residents must also ensure that they have somewhere to sleep overnight if flooding along the main road precludes safe access to their properties for an extended period of time. If residents choose not to evacuate or do not evacuate in time they must shelter in situ”. Obviously this includes having adequate food, water and medical supplies for the duration of flooding. If an unforeseeable medical emergency ensues (premature baby or heart attack for example) then lives may be at risk if the emergency services attempt to reach the premises. This, to my mind, is far from ideal.
15. Residents will inevitably face unreasonable disruption, stress and expense in their day-to-day lives. It would be hard to continue with education and employment commitments for example, from emergency temporary accommodation, without access to your possessions/vehicle and impossible to do so if the occupiers remain in situ. While I accept this is the reality for those

⁴ ID: 7-040-20140306

⁵ ID: 7-039-20140306

- in existing houses subject to flooding I do not accept it is sensible to add to the numbers affected.
16. If residents choose to remain in situ then the foul sewage package treatment plants would possibly cease to work. This is stated to rely on a treated foul water to be discharged into a watercourse at the rear of the site.⁶ However, in times of inundation there is likely to be a positive pressure at the end of the discharge pipe (water flowing back up into the plant) for a time. For larger households in particular, lavatory and washing facilities may not function adequately.
 17. It seems to me that the PPG states a clear message to require the "voluntary and free movement of people during a design flood". I take this to mean that residents should be largely able to help themselves, rather than rely on emergency services assisting them. We cannot continuously add to demands on the emergency services that, in a time of inundation, will be hugely stretched with widespread calls on their services.
 18. But this would be the likely circumstances with this new development. I find that the development would not meet the ensuring 'safe access and egress to and from the development' requirements set out in the PPG⁷. Additionally, there would be conflict with policy SD3 in this regard too.
 19. I have little information on the 2 parts of the Exceptions Test and the 'sustainability benefits to the community that outweigh flood risk' other than a brief (and partially incorrect) reference to the Test in the officer's report to committee. Other than the addition of 5 large, detached dwellings to the housing stock, to which I attribute some weight, there would seem to me to be no 'wider sustainability benefits to the community' and indeed most likely some costs in terms of additional demands on the emergency services.
 20. The second part of the Exception Test is that the development must be shown to be safe for its lifetime. While I understand that, provided the finished floor levels are at the appropriate height the houses would not flood, according to the models, they will be right on the margin, as figure 15 on page 18 of the FRA compellingly demonstrates. 3 of the 5 dwellings on that plan have the red line "margin" for flood water immediately abutting their southern elevations. I am unconvinced as to the wisdom of this; there is no room for error in what is, after all a modelling exercise, nor for any occasional revisions in predictions which may be introduced over the lifetime of a development. For example, there were Climate Change allowances⁸ introduced barely a year ago; there may be other factors, as yet unknown, in the future.
 21. The FRA details flood resilience measures in the construction of the houses "as a precaution". While, in an ideal world, events might follow the predicted models exactly, to my mind all this is too close for comfort. The houses would be just too close to the predicted margins.
 22. Even if the houses do not flood, almost all of the gardens would face severe restrictions, both in the choices for planting, their boundary treatments and on their utility. Similarly, 2 of the garages would be allowed to flood. Occupiers of all these proposed plots would always need to plan for inundation; they

⁶ Page 4 appellant's appeal statement

⁷ ID: 7-039-20140306

⁸ Latest was in February 2016

would not have the reasonable expectation of planting what they wished in their garden, erecting privacy screening as people usually wish to do or storing domestic paraphernalia, as many of us do, in their garages, for example. An integral part of their property, therefore, would lack utility and practicality.

23. Pulling all these threads together, the thrust of the various policies are clear and the simple fact of the matter is that the houses would lie just on the margins of the area shown to flood; their gardens and some garages would flood and occupiers would have to live with the disruption, stress and expense of the threat of evacuation as there would be no safe access/exit.
24. I conclude that the proposals would not meet the advice in the PPG and the Framework and the 2 parts of the Exception Test would not be met. The scheme would not secure development that improves the social, economic and environmental conditions in the county (policy SS1), nor would it be in the most sustainable location, taking into account the known physical and environmental constraint when identifying locations for development (SS7). The homes would not be high quality or sustainable, nor have adequate residential amenity, given the limitations on utility.
25. Policy SD3 refers to the SFRA and seeks to ensure that development would be safe and provide safe pedestrian and vehicular access. I do not think the terms or objectives of this policy would be met. While the actual houses are 'designed to be safe', the overall development must include the gardens, garages, and access. These, in some circumstances would not be safe, and in fact the access is stated to have a flood hazard (in terms of depth and velocity) rating of Danger for All in the DEFRA Hazard risk guidance.
26. I have seen nothing that justifies ignoring the terms of national policy and the development plan. While I understand that the government's policy in the Framework is to boost significantly the supply of housing, it is equally clear that development should be appropriately sited so as to address flood risks. While I give some weight to the delivery of 5 housing units, this benefit is clearly outweighed by the substantial harm I have described above. Of itself this would be enough to dismiss the appeal, but I turn now to the other issues.

Issue (ii) whether surface and foul water drainage and management has been adequately considered in the circumstances within this settlement

27. The appellant's FRA stated that a surface water management plan would be put in place to ensure that the increased rate of run-off from impermeable surfaces would not increase flood risk elsewhere. Infiltration testing was carried out on site which led the appellant to propose the use of perforated concrete-ring soakaways to manage surface water run-off, with the home owners responsible for maintenance. These are not to be located in the areas shown to flood and must be located to ensure the base of any infiltration feature is greater than 1m above groundwater levels.
28. It may well be possible to meet these caveats in full and I am aware that there is no objection from the Land Drainage Manager or the R Lugg Internal Drainage board. However, I am unclear what, exactly, would happen during extreme events when all the ground is likely to be saturated and groundwater levels rise, for example. This is not to say that surface water could not be managed, simply that I find there is insufficient information at present and it is

an important matter in the circumstances of this settlement where ground water levels are known to be high and it is a flooding hot-spot.

29. If, in extreme events, surface water cannot soakaway for any reason then this could possibly add to the floodwater volumes elsewhere. The submitted FRA states that a residual risk is the possible failure of the surface water management system, allowing run-off to affect the site and that the system should be inspected on a regular basis. It is known that the underlying soils are "loamy and clayey floodplain soils with naturally high groundwater"⁹.
30. There is no mains foul drainage in the settlement and the appellant proposes package treatment plants with treated foul water to be discharged into a water course at the rear of the site. Again, it may well be that this arrangement would be satisfactory, but I find that, in the circumstances of this village, it would be as well to ascertain that this would work properly in extreme events when there may well be a positive pressure at the drainage point. As far as I am aware package treatment plants work on the principle of a flow through the system and correct operation may be compromised.
31. On most sites these matters could be the subject of a condition for the submission of a detailed drainage strategy, but on such a problematic site as here, I judge it would be better to clarify them before any permission is given. Indeed, policy SS6 requires that sufficient information should be gathered to judge effects on the water environment before permission is given. Until there is certainty it would not be known whether the development would improve environmental conditions in Herefordshire as Local Plan policy SS1 requires and whether a high quality, fully functional at all times, sustainable scheme would result (RA2, SD3 and SD4). SS7 states that a key consideration is the known physical and environmental constraints on a site and it seems to me that there is not sufficient information to make a fully informed decision at this time. This adds weight to my conclusion on the first issue.

Issue (iii) whether the scheme would provide an appropriate range and mix of housing to contribute to the creation of balanced and inclusive communities.

32. The Framework requires the delivery of a wide choice of high quality homes, creating sustainable, inclusive and mixed communities. This is broadly reflected in the Local Plan policy H3. RA2 is permissive of development where the size, type, tenure and range of housing that is required in particular settlements, reflects local demand. At NP level policy E10 states that housing schemes should demonstrate how they contribute to an appropriate mix of tenures, types and size of dwellings.
33. The NP highlights that there is a major constraint to developing land in and around the settlement as flood zone 3 land. The designation allows for very little future development of the village.¹⁰ Given this constraint, it is therefore important that schemes given planning permission deliver a variety of housing types. As of February 2016, 13 units have been granted permission, including 3 affordable homes¹¹.
34. The scheme would deliver 5 x four-bedroom large, individually designed, detached houses, likely to be expensive, not least because of the additional

⁹ FRA page 10

¹⁰ NP, paragraph 6.16

¹¹ NP paragraph 6.19

flood resilience building techniques required to be incorporated, the extensive standard of accommodation and the pleasing materials proposed. I conclude they would not offer a mix of house sizes and type sought in relevant planning policies referred to above.

Other matters and the planning balance

35. The appellant argues that, as the Council does not have “a 5 year land supply [the application] should be approved”¹². However, I must bear in mind the Written Ministerial Statement of 12 December 2016 which confirms that “where a planning application conflicts with a NP that has been brought into force, planning permission should not normally be granted”. In particular the WMS indicates that, where a NP is less than 2 years old, the NP allocates sites for housing and the Council can demonstrate a three-year supply of deliverable housing sites, policies in the NP will not be deemed ‘out-of-date’.
36. That is not quite the case here, as the NP does not allocate sites for the good reason that the examining Inspector highlighted: “there are no sites allocated within Eardisland primarily due to flood risk”. This is the case at present although I note the Parish is being pro-active and commissioned a Flood Alleviation Study in September 2014 of which the examining Inspector was aware. It may be that, with flood protection improvements, flood risk will be reduced.
37. The WMS is broad-brush in approach; as a short statement of direction-of-travel it cannot cover every eventually. It states that it must be read in conjunction with the Framework (of which I have taken account above) and its purpose is to further strengthen neighbourhood planning. It seems to me that the WMS does not “fail” as argued by Mr Needham in the email of 30 January 2017. Its objectives are clearly stated and only the absence of allocating sites (for very good reasons) puts Eardisland outside of the stated terms. I do not judge that it should be lightly set aside for this reason but accord it significant weight.
38. The Council has a 4.39 supply of deliverable housing sites in any event and this scheme would contribute only 5 units, a figure to which I give only modest weight. I conclude that the adverse effects of allowing the appeal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole and that specific policies in the Framework indicate development should be restricted. Footnote 9 to paragraph 14 specifically refers to locations at risk of flooding as being an example where planning permission should be restricted.
39. I note that the site lies within the Eardisland Conservation Area, where there is a statutory requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. I agree with the Council’s view that the scheme would have a neutral effect on the character or appearance. I have taken account of all other matters raised but find nothing that leads me to a different decision on this appeal.

Gyllian D Grindey

Inspector

¹² Email to Nick Hall of 23 May 2016 and, in more detail, in email of 5 April 2016