
Appeal Decision

Site visit made on 26 June 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 18th July 2017

Appeal Ref: APP/R0660/W/17/3172252

Vale Business Centre, Priesty Fields, Congleton, Cheshire East CW12 4AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Nortek Material Handling (MHE) Ltd against the decision of Cheshire East Council.
 - The application Ref 16/0798C, dated 16 February 2016, was refused by notice dated 7 October 2016.
 - The development proposed is an outline application for residential development comprising up to 10 No dwellings including demolition of Vale Business Centre.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Nortek Material Handling (MHE) Ltd against Cheshire East Council. This application is the subject of a separate Decision.

Procedural Matter

3. The application was submitted in outline, with all matters except access reserved for future consideration. A site plan and elevational drawings were submitted with the application. However, these are clearly labelled as illustrative. Furthermore, the appellant has confirmed that only details pertaining to the proposed access are to be considered at this outline stage. I have determined the appeal on this basis.
4. Following the Council's determination of the planning application, the Cheshire East Borough Design Guide Supplementary Planning Document (SPD) was adopted on 2 May 2017. I have had regard to this in my assessment of the appeal.

Main Issues

5. The Council's decision notice refers to the effect of the development on the setting of the nearby listed building and the character and appearance of the Conservation Area. In addition to this, I note that the site is located within Flood Zones 1, 2 and 3 as identified on the Environment Agency's (the EA) Flood Zone Mapping.
6. Therefore, I consider the main issues to be whether the appeal site would be a suitable site for housing, having particular regard to its location within Flood

Zones 1, 2 and 3; the effect of the proposal on the setting of the nearby listed building, 7-11 Vale Walk; and, whether the proposal would preserve or enhance the character or appearance of the West Street Conservation Area and the Moody Street Conservation Area.

Reasons

Flood Risk

7. The Flood Risk Assessment (the FRA) carried out by Hydrock, dated January 2016, undertaken on behalf of the appellant, refers to the site as being within Flood Zones 1, 2 and 3. The EA Flood Risk Mapping identifies that the majority of the site is located within Flood Zone 1. The western section of the site is located within Flood Zone 2 and a low point on the western bank of the watercourse that runs through the site is located within Flood Zone 3. Correspondence from the EA makes no reference to Flood Zones.
8. Paragraph 101 of the National Planning Policy Framework (the Framework) requires decision makers to steer new development to areas at the lowest probability of flooding by applying a Sequential Test to those developments on sites in areas at risk of flooding and not already allocated within the development plan. National Planning Practice Guidance (the PPG) indicates that the aim is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The aim should be to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) and other areas affected by other sources of flooding where possible. Only where there are no reasonably available sites in Flood Zones 1, should the suitability of sites in Flood Zone 2 be considered and only where there are no reasonably available sites in Flood Zones 1 or 2, should the suitability of sites in Flood Zone 3 be considered.
9. Paragraph 102 goes on to say that if, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. A more vulnerable use such as a dwelling should only be permitted in Flood Zones 2 and 3 if the Exception Test is passed. To pass the Exception Test it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site specific flood risk assessment demonstrates that the development will be safe for its lifetime taking account of the vulnerability of its users.
10. Applying the Flood Risk Vulnerability Classification in Table 2 of the Technical Guidance to the National Planning Policy Framework (2012) (the Technical Guide), the proposed development is classed as more vulnerable. Table 1 of the Technical Guide states that such uses should only be permitted in Flood Zones 2 and 3 if the Exception Test (and Sequential Test) is passed.
11. In reference to the Sequential Test, the FRA states that the Framework considers that more vulnerable development is appropriate in both Flood Zones 1 and 2, as set out in table 3 of the PPG, and therefore the proposal meets the requirements of the Sequential Test. However, the note to table 3 states that *'This table does not show the application of the Sequential Test which should be applied first to guide development to Flood Zone 1, then Zone 2, and then Zone 3'*.

12. The appellant contends that as the proposal is in outline form the layout of the development, to be considered at the reserved matters stage, could be arranged so that the ten dwellings would all fall within Flood Zone 1 and therefore negate the need for a Sequential Test. However, there is no evidence before me that this could satisfactorily be achieved.
13. Therefore, in accordance with the Framework, by reason that part of the appeal site falls within Flood Zones 2 and 3, the Sequential Test is required. There is no evidence before me that a Sequential Test has been undertaken.
14. The appellant also argues that there are no suitable sites around Congleton for a number of reasons including the lack of a five year supply of deliverable housing sites, which is not disputed by the Council; the proposal would involve the redevelopment of a previously developed site; there will be pressure on the Council to release open countryside sites to meet the needs set out in the emerging Cheshire East Local Plan Strategy; and, the Council is proposing approximately 6000 new dwellings on land within the Green Belt. However, these reasons do not relate to flood risk.
15. Notwithstanding the absence of an objection from the Environment Agency or the Council on this matter I am, nevertheless, required to ensure that the proposal meets the requirements of national guidance. On the basis of the evidence before me, irrespective of the conclusions of the FRA and the benefits of the development in terms of contributing towards the shortfall in housing, in the absence of a Sequential Test, I am unable to conclude that there are no reasonably available alternative sites for a new housing development in lower flood risk areas within the area. As the proposal fails to satisfy the Sequential Test, there is no need to progress to the Exceptions Test.
16. For the reasons given, there is insufficient evidence before me in this case to conclude that all requirements of the Framework have been met, including the Sequential Test. Therefore, I conclude that the proposal fails to comply with the objectives of national guidance with regard to new housing development in flood risk areas.

Character and appearance

17. The appeal site comprises a collection of large industrial buildings that sits in between the West Street Conservation Area (WSCA) and the Lawton Street-Moody Street Conservation Area (LSMSCA). The site sits within a valley with both the east and western boundaries being on significantly higher ground levels than the centre of the site, through which Howty Brook runs. To the north of the site is the grade II listed building, 7-11 Vale Walk, which is an attractive mid-19th century row of small Tudor Gothic villas.
18. The WSCA comprises a mixture of 17th, 18th and 19th century residential and retail properties on a historic thoroughfare, with their origins in the medieval street layout and burgrave plots. Similarly, the LSMSCA comprises a mixture of 17th, 18th and 19th century residential, retail and public buildings centred around a historic thoroughfare with a typical medieval street layout and burgrave plots.
19. Whilst the site and the existing buildings are large, given their position within the valley they are well screened from view, with them only being readily seen in short views off Priestly Fields and Vale Walk.

20. The main building on the appeal site was once used as a mill. Whilst its original form is still evident, it has been significantly altered over the years. The building is not statutorily or locally listed, although it does have some historic industrial heritage with it being one of the few remaining mill buildings in the area. The Council confirm that the loss of the building is acceptable and, based on the evidence before me and the observations I made during my site visit, I find no reason to disagree with this view.
21. Notwithstanding the illustrative drawings submitted with the application, the matters of appearance, landscaping, layout and scale have been reserved for future consideration. The Council confirms that, in principle, the loss of the existing employment use and the development of the site for housing is acceptable.
22. Their principle concern is with regard to the design of the proposal as set out in the illustrative drawings and the quality of the development that would be approved. In particular the effect of the development on the heritage assets.
23. However, as all matters regarding design are reserved for future consideration, the Council retains control over such matters to be determined as and when they are sought. Should a proposal be submitted at reserved matters stage that the Council considers would be unacceptable then they have the power to refuse it. The illustrative drawings do not form part of the outline permission and do not form any indication as to what would be acceptable at the reserved matters stage. They do not prejudice the Council's position with regard to the reserved matters.
24. The Council had discussions with the appellant and agreed development principles for the site. Whilst the appellant may not have followed these principles, it is clearly evident that, by reason that they reached a consensus regarding these principles, the Council consider that there is an acceptable design solution.
25. Furthermore, had the Council considered that the proposal ought not to be considered separately from the reserved matters regarding appearance, layout and scale and it was before them under Article 5(2) of the Town and Country (Development Management Procedure) (England) Order 2015 to notify the appellant within 1 month that they could not determine the application unless such details were submitted. The appellant confirms that no such request was made by the Council. Accordingly, the application proceeded on the basis that the principle of the development of the site for 10 dwellings and access were the only matters to be considered.
26. Notwithstanding the above, I have a statutory duty under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving the listed building or its setting and enhancing the character or appearance of the Conservation Areas. I must attach this duty significant importance and weight.
27. Whilst I acknowledge the sensitivity of the site in terms of the potential impact on neighbouring heritage assets, there is no substantive evidence demonstrating that, regardless of the illustrative drawings, 10 dwellings on the appeal site would not be acceptable in design terms. Although the application is made in outline, I am satisfied that it would be possible to design a scheme

that would preserve the setting of the neighbouring listed building and Conservation Areas.

28. I find therefore, that the proposal would preserve the setting of the neighbouring listed building and Conservation Areas. As such, it would comply with Saved Policies GR2, BH4 and BH9 of the Congleton Borough Local Plan First Review 2005, which, amongst other matters, seek to ensure that development is sympathetic to the character, appearance and form of the area and does not adversely affect the setting of a listed building or Conservation Area. It would also comply with Policies SE1 and SE7 of the Cheshire East Local Plan Strategy 2014, which seek to ensure that development is sensitive to designated and local heritage assets and their settings and conserves and enhances the historic environment. In addition, it would also comply with the guidance set out in the SPD. Furthermore, it would accord with the design objectives of the National Planning Policy Framework (the Framework).

Planning Balance and Conclusion

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The Framework is the most up to date national policy and is a material consideration to which I attribute considerable weight.
30. The Council confirm that they cannot demonstrate a five year supply of deliverable housing land, albeit they have made significant steps to address this. Accordingly, paragraph 14, bullet 4 of the Framework is engaged. However, paragraph 14 footnote 9 of the Framework states that development restrictions relating to locations at risk of flooding still remain in effect.
31. The proposed development would be located in an area at high risk of flooding with its consequent potential for risk to buildings and people. It has not been adequately demonstrated that the development could not be located in an area of lower flood risk. This is contrary to national policy and I attribute it considerable weight. Therefore, as specific policies within the Framework indicate that such development should be refused, the presumption in favour of sustainable development does not apply in this case.
32. I have found that the proposal would preserve the setting of the listed building and the neighbouring Conservation Areas. Furthermore, it would make a positive contribution towards the shortfall in housing provision which I attribute significant weight in favour of the proposal. However, this does not outweigh the harm to flood risk.
33. For this reason, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Alexander Walker

INSPECTOR

