



Appeal Decision

Site visit made on 13 May 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2019

Appeal Ref: APP/H0928/W/19/3222726

Skirsgill Lane, Eamont Bridge, Penrith, UK, CA10 2BQ

- 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 Ray King against the decision of Eden District Council.
 - The application Ref 18/0829, dated 3 October 2018, was refused by notice dated 20 December 2018.
 - The development proposed is erection of single dwelling intended for local occupancy.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Ray King against Eden District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the site would be a suitable location for the proposed development having regard to the risk of flooding.

Reasons

4. Policy DEV 2 of the Eden District Local Plan 2014 – 2032 (the Local Plan) relates to Water Management and Flood Risk and sets out criteria in respect of the location of new development which must be met, including that it meets the sequential approach to development in flood risk areas. It states that inappropriate development will not be permitted in Flood Zones 2 and 3, critical drainage areas or areas which have a history of groundwater flooding, or where it would increase flood risk elsewhere unless there is an overriding need and a clear absence of a suitable alternative site. Further, if sites, as an exception, need to be developed in areas at risk of flooding, suitable flood protection measures will be required.
5. Paragraph 155 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

6. Paragraph 158 of the Framework states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
7. The appeal site is located adjacent to Skirsgill Lane and is an island within flood zones, the site itself being within Flood Zone 2 (medium probability of flooding) and the surrounding land Flood Zone 3 (high probability of flooding). Whilst the site is located within Flood Zone 2 and in their decision notice the Council refer to Flood Zone 3, in their consultation response in respect of this proposal, the Environment Agency (EA) stated that following completion of further hydraulic modelling of the River Eamont the proposed site is highly likely to be re-classified as Flood Zone 3. Given the EAs' role in flood risk management I attach significant weight to this.
8. The appellant submitted a Flood Risk Assessment (FRA) with their planning application which identifies that the risk of flooding from groundwater is low, contrary to the Council's contention. Nevertheless, it confirms that the site is at high risk of flooding from main rivers/watercourses.
9. In their response the EA confirmed that they were satisfied that the FRA demonstrates that the proposed development would not be at an unacceptable risk of flooding or exacerbate flood risk elsewhere. Whilst they went on to consider the proposal satisfies the second element of the exception test set out in Paragraph 160 of the Framework, they highlighted that if the local planning authority (LPA) determined that the sequential test had not been met then the application would not be in compliance with the Framework and they would not support it.
10. The Planning Practice Guidance (PPG) advises that the aim of the sequential test is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). This general approach 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. 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.
11. The sequential test must be passed before the exception test can be applied. While the EA commented in respect of the exception test, and the appellant may rely on this, their response does not mean they endorse the appellant's consideration of any sequential test. The responsibility for deciding on this rests with the decision maker. In the appeal decision referred to by the Council, albeit in a different part of the country, the Inspector referenced the EAs' comments in respect of another proposal where they stated 'The lack of technical objections to the scheme, however, does not override the primacy of steering developments to areas of lower probability of flooding, in this case to sites located within Floodzone 1'.¹
12. The appellant has undertaken a sequential test which I acknowledge was accepted by the planning officer who dealt with the application. Nevertheless, the PPG states that in the first place it is the LPAs responsibility to consider if the sequential test has been satisfied, informed by evidence provided by the developer.

¹ APP/E12210/W/17/3175948

13. The PPG advises that the area to apply the sequential test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For housing, the extent of the test should not be constrained by land ownership and realistically will often extend across a town or district area. The planning officer considered the catchment area of the proposed development to be the settlement of Eamont Bridge however, this seems to me to be a narrow search area particularly given that the site is within the Parish of Penrith and the town of Penrith is only a short distance from the site.
14. Given the scale and nature of the proposed development, a proportionate approach to the sequential test is appropriate. However, the appellants sequential test is very limited, whilst it is stated that they searched within an area of 10 miles distance utilising local estate agencies and the internet, and all searches have presented no equivalent sites within that location, only limited details have been provided of a small number of sites considered with little analysis or explanation. In my view it does not provide robust evidence to demonstrate that there are no reasonably alternative equivalent sites where the proposal could be developed.
15. The Council state that there are many allocated sites within Penrith. Whilst they have provided no details of alternative sites, as the Inspector in the appeal decision provided by the Council stated, 'there is no necessity for the Council to demonstrate the availability of sites of exactly equivalent size, or sites which are available to the Appellant, to show the availability of sites in areas of lower flood risk than the appeal site'. Furthermore, I note that the Council can demonstrate a supply of housing land equivalent to 6.8 years. On this basis it seems likely to me that there may be alternative sites capable of accommodating the development.
16. Given the above, in my judgement, the sequential test has not demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal therefore fails the sequential test and would not be an acceptable form of development with regard to flood risk and would be contrary to Policy DEV 2 of the Local Plan and the Framework.
17. As the sequential test is not passed there is no need to apply the exception test.

Other Matters

18. I have had regard to the planning permission granted by the Council last year for the erection of a dwelling and garage on land approximately 25m away from the appeal site within Flood Zone 3. I acknowledge the apparent similarities with this case albeit this proposal would deliver a local occupancy dwelling. I note that this was granted under delegated powers and that the Committee were made aware of this decision. However, I have considered this appeal on the basis of the evidence before me and on my understanding of the advice in the Framework and the PPG.
19. That the proposal would not result in any material harm to other interests of acknowledged importance, including visual amenity, highway safety, or the living conditions of neighbouring occupants, and that with the exception of the qualified response from the EA, there were no objections from statutory

consultees other than the Parish Council, are neutral matters which cannot outweigh my findings.

20. I acknowledge that the appellant sought pre-application advice from the Council and the EA however, these are informal opinions which have no bearing on the planning merits of the proposal.
21. That the planning officer recommended approval and this was overturned by a small margin at the Planning Committee, that they may have been influenced by the images provided by an objector taken during Storm Desmond, a 1:1000 year flood event, and the Council's motivations for approving planning permission reference 18/0188, are matters which have no bearing on my assessment of the planning merits of the proposal.
22. I agree that application 17/0792, 45 metres to the north of the appeal site which relates to a variation of a condition is not relevant or comparable to the proposal before me and weighs neither for nor against the proposal.

Conclusion

23. For the reasons given above and having regard to all matters raised, the appeal is dismissed.

Felicity Thompson

INSPECTOR