



Appeal Decision

Site visit made on 24 September 2019

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/W3005/W/19/3232970

Land rear of 17 Annesley Road, Hucknall, Nottingham NG15 7AD

- 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 Mr Peter Evans against the decision of Ashfield District Council.
 - The application Ref V/2018/0745, dated 21 November 2018, was refused by notice dated 31 January 2019.
 - The development proposed is demolition of garage and erection of dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Peter Evans against Ashfield District Council. This application is the subject of a separate Decision.

Procedural Matter

3. Following the decision to refuse the application, the appellant has produced revised drawings which seek to address the second reason for refusal on the decision notice. The matters which have changed are material. I have no substantive evidence that the necessary consultations have been conducted.
4. Within this context, I am mindful of principles of the Wheatcroft case (*Bernard Wheatcroft Ltd. V Secretary of State for the Environment and Another 1982*). It is my firm view in the interests of fairness, that this appeal must be determined on the basis of the plans submitted to the Council and upon which it based its decision, which has been subject to consultation. To do otherwise could unacceptably prejudice the interests of third parties and/or consultees who would not have been consulted on the revised plans, and who may have observations to make.

Main Issues

5. The main issues in this case are:
 - The effect of the development on flood risk; and
 - The effect of the development on highway safety

Reasons

Flood Risk

6. The appeal site is located to the rear of 17 Annesley Road, which has been separated by the erection of a boundary fence. As a result, access to the site is taken from Ogle Street. Baker Lane Brook cuts across the site.
7. It is not disputed by the parties that the site lies within Flood Zone 3 and as a result, a Flood Risk Assessment was included with the planning application.
8. Section 14 of the National Planning Policy Framework (the Framework) addresses the issue of flood risk, and Paragraph 155 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from area of highest risk. The sequential test is used to facilitate the aims of Paragraph 155, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
9. It appears that requirements of the sequential test has been the subject of discussion between the parties for a considerable length of time. There is some disagreement between the parties as to the extent of the area of search and the nature of how those sites are assessed. It would appear from the evidence in front of me that the Council has been willing to allow a smaller search area than would normally be expected, and have provided information to the appellant in regards of what the Council consider to be appropriate alternative sites, for the appellant to investigate.
10. I have noted the methodology used by the appellant in discounting these sites for reasons other than flooding and have taken into consideration an appeal judgement (APP/R3650/W/15/3136799) referenced by the Council, which the appellant has been made aware of.
11. The Inspector in the above appeal found that the discounting of sites for reasons other than flooding was flawed. I find that methodology employed by the appellant in this appeal does extend beyond the basic principle of assessing the comparative flooding status of the alternative sites. I am in agreement with the Inspector who found that the discounting of sites for other reasons would be a self-serving, circular exercise which would undoubtedly render the vast majority of sites incapable of consideration and that there is no support for such an approach in national policy or guidance, and would undermine the overall objective of steering development to locations at a lower probability of flooding.
12. As a result, I find that the flawed methodology in relation to the discounting of appropriate sites in the sequential test means that I cannot be convinced that the sites identified have been discounted correctly, and therefore I find that the proposal is contrary to the aims of the reduction of flood risk for development as set out in Part 14 of the Framework, and the appropriate paragraphs within that section.

Highway Safety

13. I have noted that the land subject to the appeal proposal has been separated from 17 Annesley Road, and is now under separate ownership. As the occupiers of 17 Annesley Road cannot access the appeal site at the rear of that property, then it is not part of this application to take into consideration any parking needs of that property and this assessment will take into consideration the requirements of the appeal site, and any subsequent effect of highway safety.

14. I find that the parking layout would see vehicles overhanging the pavement when entering the site, due to the presence of the front gates, which would undoubtedly cause highway safety issues in relation to pedestrians and vehicle users. Ogle Street is a busy, well used highway, with significant levels of on-street parking, and the appeal proposals would cause harm to highway safety.
15. I have noted the comments of the appellant in relation to the approach of the Council in previous planning applications on the appeal site, however, Paragraph 109 of the Framework states that development should be prevented or refused if there would be an unacceptable impact on highway safety, which is a different position from the contents of the Framework in previous iterations.
16. As a result, I find that the appeal proposal is contrary to Policy ST1C of the Ashfield Local Plan Review which states that development should not affect highway safety, and also contrary to Paragraph 109 of the Framework.

Other Matters

17. I have noted the comments of the appellant with regard to the Council being unable to demonstrate a five-year housing land supply, and therefore the presumption in favour of sustainable development should apply.
18. The presumption in favour of sustainable development does not change the status of the development plan as the starting point for decision making. The degree of consistency of the relevant Local Plan policies that I have identified with the Framework means that I can attach significant weight to those policies.
19. As a result, even if the Council is unable to demonstrate a five-year housing land supply, the adverse impacts associated with the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The presumption in favour of sustainable development therefore does not apply in this case.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed.

Paul Cooper

INSPECTOR