
Appeal Decision

Site visit made on 23 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Appeal Ref: APP/Y0435/W/19/3233875

Land off Caldecote Street, Newport Pagnell, Milton Keynes MK16 0BX

- 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 Manor Farm Developments Ltd. against the decision of Milton Keynes Council.
 - The application Ref 19/00672/FUL, dated 14 March 2019, was refused by notice dated 11 July 2019.
 - The development proposed is the erection of two semi-detached dwellings, associated parking, landscaping and works to public realm.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the development on flood risk; whether the proposal would be sustainably constructed; and, whether the proposal would have adequate broadband connectivity.

Reasons

Flooding

3. The appeal site is largely located within Flood Zone 3, which is defined by the Planning Practice Guidance (PPG) as having a high probability of flooding. The submitted Flood Risk Assessment (FRA) identifies that the site benefits from existing flood defences. Paragraph 158 of the National Planning Policy Framework (the Framework) requires the application of a Sequential Test in decision taking in order to steer new development to areas with the lowest probability of flooding. It goes on to state that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Policy FR1 of the Plan:MK 2019 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 probability of flooding.
4. It is for local planning authorities, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application. Ultimately, the local planning authority needs to be satisfied in all cases that

the proposed development would be safe and not lead to increased flood risk elsewhere.

5. The appellant has undertaken a Sequential Test. The search area for alternative sites has only been considered within Newport Pagnell, Olney and Woburn Sands on the basis that that Policy DS1 of the Plan:MK 2019 states that within the rural area of the Borough most new development will be concentrated within the key settlements of Newport Pagnell, Olney and Woburn Sands.
6. Whilst Policy DS1, as well as Policy DS2 of the Plan:MK 2019, state that most housing in rural areas will be focused into these three key settlements, they do not preclude housing development in other rural settlements. Furthermore, in setting out how housing will be delivered in the borough, paragraph A.13 of Policy DS2 permits development proposals within the defined settlement boundaries where they comply with all other relevant policies of the Plan:MK 2019 and neighbourhood plans. This is not restricted to Milton Keynes or the three key settlements and therefore could include any settlement within the borough with a settlement boundary. Given the small scale of the proposed development, it is not unreasonable to conclude that other rural settlements could potentially accommodate two dwellings on a site with a lower risk of flooding.
7. I have had regard to the appellant's argument that there are no neighbourhood plans in the borough that make specific allowance for sites such as the application. However, I have not been presented with any evidence of any neighbourhood plan policies that prohibit such small-scale development as that proposed.
8. I note that there are no specific identified housing targets for residential development within the three key settlements, with Policy DS2 of the Plan:MK 2019 stating that a minimum of 26,500 new homes would be delivered across the borough.
9. Whilst I accept that the Plan:MK 2019 seeks to focus new housing in the rural areas to within the three key settlements, it does not preclude housing development within other rural settlements. Therefore, I consider the search area of the Sequential Test being limited to the key settlements as too narrow and should include these other settlements and therefore the requirements of the Sequential Test have not been satisfied. As the proposal fails to satisfy the Sequential Test, despite the appellant's argument to the contrary, there is no need to progress to the Exceptions Test. The Sequential Test must first be satisfied before the Exceptions Test is considered.
10. I acknowledge that the site is located within an area that is defended by purpose-built flood defences designed to withstand a 1 in 1000 year flood event. However, for the purposes of the Sequential Test, the presence of flood defences should be ignored.
11. The appellant has referred me to two recent appeal decisions. In the appeal decision for the case in Farndon¹ the Inspector noted that there was an identified need for 11 affordable homes and 7 open market homes in Farndon for people with a local connection. He concluded that this need justified the

¹ Appeal Ref: APP/B3030/W/18/3205827

search area of the Sequential Test being limited to Farndon. There is no such specific need identified before me for Newport Pagnell, Olney and Woburn Sands. With regard to the appeal decision for the case in St Osyth², the Inspector found that the environmental benefits of the replacement of an existing salvage yard justified the site only being partly within an area of flood risk and its failure to comply wholly with the Sequential Test. Therefore, having regard to these two decisions, I find no direct comparison with the proposal before me that weighs in its favour.

12. I find therefore that the proposal would be contrary to Policy FR1 of the Plan:MK 2019, which seeks to reduce the impact of flooding. It would also fail to accord with the Framework's objective of steering new development to areas with the lowest probability of flooding.

Sustainably Constructed

13. Policy SC1 of the Plan:MK 2019 outlines various sustainable construction principles that proposals must meet, many of which appear to cross-reference with building regulations requirements. The appellant has responded to each of the relevant criteria for the proposal. Whilst specific details of how the proposal would satisfy each these criteria have not been presented to me, there is no evidence that they could not be achieved through the use of appropriately worded conditions, were I minded to allow the appeal.
14. I note that one of the criteria requires the use of green roofs and/or walls where it is technically feasible to do so. The proposal is for two dwellings, the design of which is sympathetic to the surrounding buildings. Although there is no evidence before me that it would not be technically feasible to incorporate the use of green roofs and/walls, it could be feasible to include green walls as part of the landscaping, which could be secured via a condition.
15. Planning conditions should only be used where they meet the six tests set out in the Framework in order to make unacceptable development acceptable. There no evidence presented to me to suggest that the relevant requirements of Policy SC1 could not be achieved through the imposition of conditions. As such, I find no conflict with Policy SC1 of the Plan:MK 2019.

Broadband

16. The appellant has submitted evidence indicating that the proposal could be served by broadband speeds in excessive of 24 Mbps and raise no objection with this, confirming that the proposal would therefore accord with Policy CT9 of the Plan:MK 2019, which seeks to ensure that all new developments are served by digital communication services that provide at least superfast broadband speed. I find no reason to conclude otherwise.

Balance and Conclusion

17. I have found that the proposal could be constructed sustainably, subject to conditions, and would be served by adequate broadband speeds. However, these are neutral affects and weigh neither for nor against the proposal.
18. Notwithstanding this, the site has good accessibility to various services, facilities and employment opportunities and public transport. Also, the

² Appeal Ref: APP/P1560/W/18/3202670

proposal is only for two dwellings and therefore could likely come forward quickly, providing a positive, albeit limited, contribution to the supply of housing in the borough. These matters weigh in favour of the proposal. However, individually or cumulatively, they do not outweigh the harm I have identified above with regard to the unacceptable risk to flooding.

19. For the reasons given above, the appeal is dismissed.

Alexander Walker

INSPECTOR