



Appeal Decision

Site visit made on 26 November 2019

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Appeal Ref: APP/B3030/W/19/3236332

Land to the rear of Holly House Farm, 8 Main Street, Sutton On Trent, Newark NG23 6PF

- 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 & Mrs C & L Beeby against the decision of Newark & Sherwood District Council.
 - The application Ref 19/00868/FUL, dated 7 May 2019, was refused by notice dated 3 July 2019.
 - The development proposed is the erection of 4(No.) dwellings and associated garages.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs C & L Beeby against Newark & Sherwood District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The description of development above is taken from the application form. However, I have omitted the reference to a previous planning application as this is superfluous and not an act of development.

Main Issue

4. The main issue is whether the appeal site would be an appropriate location for housing having regard to matters of flood risk and the development plan.

Reasons

5. The appeal site lies in an area designated as Flood Zone 2. Policy DM5 of the Newark and Sherwood Local Development Framework Allocations & Development Management Development Plan Document 2013 (A&DM) states that development in such areas will only be considered where it can be demonstrated by a sequential test that there are no reasonably available sites in lower risk flood zones. Core Policy 10 of the Newark and Sherwood District Council Amended Core Strategy 2019 (CS) makes similar provisions. Both policies accord with the National Planning Policy Framework (the Framework) which states permission should not be granted if there are reasonably available

- sites appropriate for the proposed development in areas with a lower risk of flooding.
6. The appellants' sequential test exercise finds no alternative sites for the appeal proposal in lower risk flood zones. However, the Council contends the exercise is too restrictive as it only considers sites within the Parish of Sutton on Trent. As such, the issue between the main parties is the area of search that should form the basis for the sequential test exercise.
 7. I have been referred to no planning policy or a strategic flood risk assessment that provides advice on the extent of a sequential test search area. However, Planning Practice Guidance (PPG)¹ states search areas may be identified from development plan policies. An appeal Inspector who recently considered a housing proposal on this same site² found it reasonable to apply the sequential test to the Newark Area of the District as defined in the CS. This approach is based upon development plan policies and therefore accords with PPG advice.
 8. The appellants suggest a different approach is appropriate as the proposed bungalows would meet a local housing need. However, no development plan policy has been referred to that explicitly supports restricting the search area to within the Sutton on Trent Parish boundary.
 9. Under CS Spatial Policy 2, Sutton On Trent is identified as a location where 5% of the total Principal Villages housing growth would be accommodated. The Council state that a supply of 22 dwellings above this 5% figure can be demonstrated and so there is no need for additional housing in the village in order to meet the CS growth strategy. CS Spatial Policy 2 does not explicitly promote the provision of general market housing above this 5% level so as to meet a need or demand for a particular type of dwelling.
 10. Notwithstanding the housing already constructed and permitted, the appellants suggest that survey reports³ demonstrate a need within the village for more bungalows. Even if the appellants' contention is accepted, these reports do not introduce a policy requirement to provide housing over and above the CS growth strategy figures for Sutton On Trent. Whilst local housing needs information is referred to in other development plan policies, they are not referred to in CS Spatial Policy 2 as a basis for determining where new housing should be located.
 11. The proposal would provide general market units with no restrictions on occupancy. As such it would be significantly different to the development cited by the appellants at North Muskham⁴ where a rural exception affordable housing scheme with a small market housing element for viability reasons was consented. A more restricted sequential test search area was justified for this proposal as it sought to address an identified affordable housing need by restricting occupancy to people with links to the local area. Also, such schemes are explicitly supported by both national and local planning policies. No such occupancy or policy justifications exist to restrict the search area for general market housing proposed in this appeal.

¹ Flood Risk and Coastal Change, Paragraph: 033 Reference ID: 7-033-20140306. Revision date: 06 03 2014

² Appeal decision ref no APP/B3030/W/18/3204708, dated 18 September 2018.

³ Sutton On Trent Housing Needs Survey 2016 and the Council's 2014 Housing Needs, Market and Affordability Study Sub Report

⁴ Council ref no 18/00597/FULM

12. The bungalows are not specifically required to meet the housing supply development plan policy and there is no policy that allows the development on the basis that it serves a specific local need. Consequently, there is no sound policy-based reasons to restrict the sequential test search area to the Sutton On Trent Parish boundaries. As such, the evidence fails to demonstrate there are no reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.
13. In reaching the above findings, I have taken into account the referred to Farndon appeal decision⁵. In that case, the Inspector refers to an earlier version of CS Spatial Policy 3 and finds the proposal to be acceptable as it met a local housing need. His justification for restricting the sequential test area of search is based upon the terms of the previous CS Spatial Policy 3. The revised version of Policy 3 no longer allows development on the basis of it serving a local need and so is materially different to that considered under the Farndon appeal decision. Therefore, it would not be inconsistent with that decision to dismiss this appeal. As flood risk was not considered, the appeal decision relating to a site in Staythorpe⁶ is not comparable.
14. The appellant has also referred to decisions taken by the Council in respect of sites at Hoveringham, North Muskham, Cromwell and other locations where housing schemes have been approved but have failed the sequential test or where the search area has been applied to the settlement itself. However, from the information provided, it would seem that various considerations would have influenced the Council's decisions and I cannot be certain that the circumstances are comparable such that I would be bound to follow the same approach. My assessment must be on the basis of current planning policies, the Framework as well as the PPG. Previous decisions by the Council should not be regarded as irresistible precedents.
15. The appellants also refer to pre-application planning advice provided by Council officers to support their case. However, such advice is not a formal planning decision and has no effect on my conclusions in respect of this appeal.
16. Consequently, there is insufficient evidence before me to demonstrate that there are no sequentially preferable locations available at a lower risk of flooding. Therefore, I am not persuaded that the sequential test has been fully or robustly addressed.
17. The Environment Agency has raised no objection to the proposal but make no comment in respect of the sequential test. Flood protection measures would be included and the PPG identifies the proposed development would be appropriate in Flood Zone 2. Nonetheless, the Framework and PPG state that the sequential test should be applied first to guide development to areas at lower risk of flooding. Only where it is not possible to locate a development in zones with a lower probability of flooding is the exception test applied. Compliance with the sequential test is a fundamental requirement and it is unnecessary for me to consider the proposal's compliance with the exception test where the sequential test has not been met.
18. For the above reasons, I conclude the appeal site would not be an appropriate location for housing having regard to matters of flood risk and the development

⁵ Appeal ref APP/B3030/W/18/3205827

⁶ Appeal ref APP/B3030/W/16/3158081

plan. As such, and in this regard, it would be contrary to Core Policy 10 of the CS, policy DM5 of the A&DM, as well as the Framework. These aim, amongst other things, to direct development to areas with a lower risk of flooding.

Other Matters

19. The site lies in the Sutton On Trent Conservation Area (CA) which covers the majority of the built up part of the village and open spaces beyond. The CA's significance lies with the preservation of historic buildings and their relationship with the surrounding open land, reflecting a traditional close-knit rural village. The appeal site is surrounded on 3 sides by development and so its openness contributes little to the village's rural setting. The courtyard form, single storey height and architectural detailing of the proposal would be in keeping with its surroundings and would reflect the history of the land as part of a farmstead. Therefore, the proposal would not harm the character and appearance of the CA and would preserve its significance. However, this neutral effect does not represent a benefit of the proposal.
20. The development would lie within the defined village envelope and close to local services. The scheme is acceptable in terms of design, impact on landscape and effect on the living conditions of occupiers of nearby residences. Appropriate drainage could be secured through the imposition of a planning condition. Whilst noting concerns, I find the proposal would not prejudice highway safety. However, acceptability in all of these regards is a neutral factor in my assessment of the appeal.
21. The Council states that a 5 year housing land supply can be demonstrated. Whilst the appellants raise comments regarding the delivery of housing on strategic sites and the amount of windfall development coming forward, no substantive evidence has been provided that contradicts the Council's position. I therefore conclude that a sufficient housing land supply can be demonstrated and so under the terms of paragraph 11 of the Framework, relevant development plan policies can be regarded as being up-to-date.
22. However, I have positive regard to the fact that the proposal would boost the supply of housing and of a form which would be suitable for a wide range of occupiers including the elderly or those with restricted mobility. The scheme would also support the economy through construction job creation and future occupiers supporting services and businesses. Given the small number of units proposed, I attach moderate weight to these benefits. Overall, the benefits of the proposed development are insufficient to outweigh the significant harm caused by the scheme in terms of flood risk nor the conflict with the development plan.

Conclusion

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

Jonathan Edwards

INSPECTOR