



Appeal Decision

Site visit made on 6 January 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/B3030/W/19/3240828

Land adjacent to 8 Harrisons Way, Newark-on-Trent, Nottinghamshire NG24 1NS

- 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 Paul Harrison and Mr Mick Simpson against the decision of Newark & Sherwood District Council.
 - The application Ref 19/01118/FUL, dated 13 June 2019, was refused by notice dated 9 October 2019.
 - The development proposed is for the erection of a detached one-bedroom bungalow.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The address on the application form was incomplete. I have therefore used the details on the appeal form and the Council's Decision Notice for clarity.

Main Issues

3. The main issues are:
 - whether the proposal would comply with local and national policy which seeks to steer new development away from areas at the highest risk of flooding,
 - the effect of the proposed dwelling on the character and appearance of the streetscene and character of the area,
 - the effect of the proposal on the living conditions of future occupiers, especially with respect to privacy.

Reasons

Flood risk

4. The appeal site is a small pocket of grassed land, behind a trip rail enclosure, and adjacent to existing dwellings. The site is within flood zone 2. Core Policy 10 of the Newark and Sherwood Amended Core Strategy (CS) (2019) seeks to steer development away from areas of high risk of flooding. Furthermore, Policy DM5 of the Allocations and Development Management Development Plan (A&DM)(2013), seeks development in zone 2 to satisfy the Sequential Test and

- pass the Exception Test. The policy requires a Sequential Test to illustrate that there are no reasonably available sites in lower risk areas.
5. The Planning Policy Guidance (The Guidance) identifies a risk-based approach to development and to keep development out of medium to high flood risk areas (Flood Zones 2 and 3). It explains that the Sequential Test aims to steer development to areas with the lowest probability of flooding. The Council is satisfied that there are sites available in lower areas of risk. A Sequential Test has not been undertaken by the appellants. They explain that one is not appropriate as they only have ownership of the site itself. However, a Sequential Test should not be constrained by land ownership. It should explore alternative sites to reduce the impact of development on areas of higher risk of flooding.
 6. The site is close to the River Trent and within its flood plain. There is no dispute between parties that the site is within Flood Zone 2. The site therefore has a medium probability of flooding. Table 3 of the Guidance identifies that development classified as 'more vulnerable development' would be appropriate in flood Zone 2 without the need for an Exception Test.
 7. The Framework also states that where appropriate, applications should be supported with a site-specific flood-risk assessment. The appellants' Flood Risk Assessment (FRA)¹ identifies that local flood defences consist of a network of embankments that provide a degree of protection. However, these defences may be overtopped in a 1:100-year event. The FRA indicates that the site is unlikely to flood, except in extreme conditions. It states that the existing ground level of the site is approximately 11.50mm Above Ordnance Datum (AOD) and the proposal would achieve a Finished Floor Level (FFL) of 11.90mm AOD. This would place the FFL 0.22mm above a 1:1000-year flood event datum. Future occupiers of the dwelling would therefore not suffer the risk of flooding provided the delivery of the described flood measures.
 8. However, the proposal would nevertheless result in the exclusion of its development footprint from the current flood zone. The Guidance is clear that the decision taker must be satisfied that the proposed development would be safe and would not lead to increased flood risk elsewhere. As I am unconvinced that the latter would be satisfied. Therefore, the requirement for a Sequential Test in this case is necessary to explore alternative sites. I therefore do not concur with the appellants that the site, being an infill development within an existing residential area, is excluded from the need to comply with the Framework in this regard. Consequently, although of limited effect, the proposal would be likely to exacerbate flood risk within the wider area.
 9. Accordingly, in regard to the effect on flood risk, the proposal would fail Core Policies 9 and 10 of the CS. These seek development to be resilient in the long-term and to steer development away from areas with the highest risk of flooding. Furthermore, the proposal would also not satisfy policy DM5 of the A&DM. This policy seeks to only allow development in flood zones 2 and 3 where it can be demonstrated, by application of a Sequential Test, that there are no reasonable available sites in lower risk Flood Zones. These policies are also consistent with the flood risk objectives of the Framework.

¹ WilliamSaunders - Flood Risk Assessment September 2019

Character and appearance

10. The site is within a residential area. Adjacent dwellings are generally two-storey semi-detached and terraced. Harrisons Way is a small pocket of infill development consisting of semi-detached dwellings. The layout partly creates a 'horse-shoe' arrangement around the turning head. The site is an open area of land. It creates some relief from surrounding built form but appears to be without defined purpose. The site therefore makes a neutral contribution to the character and appearance of the area.
11. The proposal would be constructed of materials that would match the local built vernacular. The front elevation would align with 7 and 8 Harrisons Way. It would reinforce and contribute positively to the horse-shoe arrangement of dwellings. It would therefore round off development in a manner that would complement the existing built form.
12. Consequently, in regard to the effect on character and appearance, the proposal would accord with Core Policy 9 of the CS which seeks development to contribute to the rich local distinctiveness of the district. Also, the proposal would accord with policy DM5 of the A&DM which seek for the scale, form, layout and design of development to reflect the local distinctiveness. The proposal would also fail to satisfy the objectives of the Framework which seek development to be sympathetic to the local character.

Living conditions

13. The proposal would be adjacent to the rear aspect of a row of terraced dwellings. These have relatively small rear gardens and first-floor windows that overlook the site. However, many of these windows are obscurely glazed and appear to serve bathrooms. Furthermore, only a small number are located on the end of the return, most are set back on the main rear elevation of the terraced block. Furthermore, the local dwellings are on relatively small plots and as such separation distances are generally limited. Also, the neighbouring dwelling at 8 Harrisons Way (No 8) is also overlooked by this terraced row, albeit over a slightly greater distance.
14. Therefore, although the proposed rear garden would be overlooked by some of the identified windows, this would not be substantially different to that which occurs to the existing rear garden of neighbouring dwellings. Furthermore, no evidence is before me to suggest that the Council employs a separation distance requirement. Consequently, the extent of overlooking would be limited, and this relationship would be in keeping with similar local examples. Therefore, the living conditions of future occupiers would not be substantially affected by this relationship.
15. Subsequently, in regard to the effect on living conditions, the proposal would accord with Core Policy 9 of the CS, which seeks development to achieve a high standard of design. The proposal would also satisfy policy DM5 of the A&DM, which seeks to ensure that neighbours would not suffer from an unacceptable reduction in amenity from development. The proposal would also satisfy the Framework which requires development to deliver a high standard of amenity for existing and future users.

Other matters

16. Representations received include letters of support from a local resident and Newark Town Council. However, this support has only a limited bearing on the merits of the proposal and would not outweigh the identified conflict with the development plan.
17. The site is described by the appellants as being previously developed. They also indicate that the site is allocated for development but there is limited evidence submitted to confirm this. In any event, this would not bypass the requirement to satisfy flood risk requirements.
18. The appellants also suggest that the original planning application for Harrisons Way did not require an FRA. However, the policy context and associated material considerations may have been different and therefore not there is limited evidence that this would be directly comparably. In any event, each case must be considered on its own merits.

Planning balance and conclusion

19. The proposal would deliver a new dwelling, the appellants suggest that bungalows are rare in the district, however it is not in evidence that this would address a specific need identified in a Housing Needs Assessment. Furthermore, although the Framework seeks to significantly boost the supply of housing this would not outweigh the conflict identified in the Development Plan.
20. For the above reasons, the appeal is refused.

Ben Plenty

INSPECTOR