



Appeal Decision

Site visit made on 15 September 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2020

Appeal Ref: APP/P1615/W/20/3254588

Severn Bridge Park Homes, Former Buttington Works, Beachley NP16 7HQ

- 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 Jason Smith of Tremlo Limited against the decision of Forest of Dean District Council.
 - The application Ref P0774/19/FUL, dated 16 May 2019, was refused by notice dated 22 January 2020.
 - The development proposed is a change of use of disused industrial site to extend adjacent existing park homes site with 29 residential park homes. Demolition of existing buildings. (Resubmission) with extended flood wall defence.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Forest of Dean District Council against Mr Jason Smith of Tremlo Limited. This application is the subject of a separate Decision. An application for costs was also made by Mr Jason Smith of Tremlo Limited against Forest of Dean District Council. This application is also the subject of a separate Decision.

Procedural Matters

3. The description of development has been taken from the Council's decision notice following written confirmation from the appellant that this was agreed by both parties during the application process. The appeal has been determined accordingly.
4. It is clear from the evidence that pre application advice was not sought for the application subject to the appeal specifically, but that historical advice from a previous application was carried over and reapplied. The pre application advice was originally provided in 2015, and although it is somewhat dated, the matters that need to be considered under this appeal seem consistent with the matters raised by the Council at the time.
5. The appellant submitted new information under the appeal relating to a sequential test pursuant to flood risk requirements in accordance with Section 14 of the National Planning Policy Framework (the Framework). The Council and other interested parties will have had the opportunity to review this evidence and comment accordingly. The appeal has been dealt with on this basis.

Main Issues

6. The main issues are whether the:
- (a) site is in an appropriate location for housing with regards development strategy and flooding;
 - (b) loss of an employment site is acceptable; and
 - (c) effects on character and appearance of the area are acceptable.

Reasons

Location

7. The site is located on land at the former Buttington Works, Beachley, which is outside of defined settlement boundaries as shown on the Proposals Map associated with the Forest of Dean Core Strategy 2012 (CS) and Allocations Plan 2018 (AP). In this context, Policy CSP.4 of the CS states that areas outside defined settlement boundaries will be treated as part of the open countryside. The site is therefore in the open countryside for the purposes of this appeal. The policy goes on to state that most development will be expected to take place within existing defined settlement boundaries with limited exceptions for some other specific forms of development, including affordable housing for local persons and building conversions and (rarely) new buildings for employment uses on the edge of settlements.
8. In addition, Policy CSP.16 of the CS states that the defined settlement boundary will be a key determinant in judging the acceptability of proposals, and that land in the open countryside will not be generally suitable for new housing, with the possible exception of very modest developments of affordable housing under policy CSP.5, and exceptionally conversions. Consequently, in considering that the proposal is for market housing, it does not meet any of the specific policy exceptions and would represent fundamentally unacceptable development within the open countryside.
9. The appellant states that the intention would be to provide affordable housing on the site as part of the proposal. However, this has not been secured by an appropriate planning obligation, and financial matters such as these cannot be subject to a planning condition because it would fail the test of enforceability. Consequently, any exceptional circumstances associated with the provision of affordable housing carry only limited weight in determining whether the proposal is in an appropriate location.
10. Paragraph 155 of the Framework is clear that inappropriate development in areas at risk of flooding should be avoided. Development should be directed away from areas at highest risk. Paragraph 158 of the Framework states that this is done by applying a sequential test. It follows that development should not be allocated or permitted if there are reasonably available sites appropriate for development in areas with a lower risk of flooding. Logically, only after the sequential test has been applied is it then appropriate to apply the exception test under Paragraph 160 of the Framework. The proposal is for more vulnerable development that lies predominantly within Flood Zone 2 and the appellant has not demonstrated that the sequential test has been applied to its fullest extent or that there are no genuinely available sites appropriate for the proposal in areas at lower risk of flooding.

11. For example, it is not clear whether the sequential test has robustly considered all allocated sites, which by their very nature are acceptable for development in principle and therefore likely to be the most appropriate for consideration. Consequently, without exhausting all genuinely available allocated sites it could be argued that the sequential test is not comprehensive.
12. Going further on this point, the sequential test relies primarily on the Strategic Housing Land Availability Assessment 2019. It is unclear whether the assessment contains a comprehensive list of all allocated sites or whether it is in essence an assessment of potential future sites that may never be found suitable for housing. Consequently, this feeds into the uncertainty around the robustness of the sequential test in the round. Correspondence from the Council does not appear to provide advice that the Strategic Housing Land Availability Assessment 2019 should be relied on in isolation for the purposes of informing sequential testing, and rather a wider review of allocations may have been required.
13. The appellant queries the suitability of the allocated sites identified by the Council as examples of sites that were potentially missed. However, it is not clear why they would be fundamentally unsuitable just because an allocation is for a quantum in excess of that represented by the proposal. For example, there is no evidence suggesting why a suitable proportion of the allocated sites in question could not be delivered in conjunction with other stakeholders to realise a comprehensive development.
14. The Environment Agency has considered the sequential test in very specific terms, in relation relating to fluvial flood risk and not on the appropriateness of alternative site parameters. Consequently, the lack of objection from the Environment Agency in this regard does not make the sequential test acceptable in the round. The viability concerns of developing alternative sites are noted, but there is no objective viability assessment that demonstrates this is the case.
15. Planning Practice Guidance¹ is clear that the exception test should be applied following the proper application of the sequential test. Consequently, given the uncertainty around the sequential test, it would not be appropriate to make a comprehensive finding on the exception test in this case. Notwithstanding this position, it is unlikely that the second exception test would be met in any event. This is because a ground conditions survey has not demonstrated that the technical solution to defend flood risk is appropriate in its entirety, for reasons concerned with character and appearance covered later in my decision.
16. Paragraph 78 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities and Paragraph 117 of the Framework encourages the effective use of land and remediation of contaminated land. Notwithstanding, these matters do not preclude proposals from according with the development strategy for the area established by the development plan. Furthermore, it would not be appropriate to place more people at risk of flooding as a mechanism to secure the proper flood protection of existing development.

¹ Paragraph: 035 Reference ID: 7-035-20140306 Revision date: 06 03 2014

17. Overall, the site is not in an appropriate location for housing and would conflict with Sections 1, 2, 3, 5, 6, 7 and 14 of the Framework, Planning Practice Guidance, Policies CSP.1, CSP.2, CSP.4, CSP.5 and CSP.16 of the CS and Policies AP.1 and AP.4 of the AP. Among other things, these seek to ensure that proposals come forward in accordance with the development strategy for the area and locate more vulnerable development away from flood risk.

Employment

18. The site comprises existing employment land and buildings that have not been put to beneficial use for several years. Policy CSP.7 of the CS requires that land presently used for employment remains as such, unless allocated for another purpose within the development plan or otherwise proven to be unsuitable by way of environment or location. The market reports submitted by the appellant demonstrate that demand for the current configuration of employment space may not be attractive for the existing needs of the local market. Nonetheless, there appears to be little in the way of alternative options considered in order to sustain the existing employment use. For example, there appears little exploration of the possibilities to redevelop the site for an employment use that does respond to local market demands, or a mixed use development comprising employment and residential uses. Consequently, it has not been demonstrated that the site is fundamentally unsuitable because of its location relative to local market demands or that an alternative non employment use is the only reasonable conclusion to achieve beneficial development of the site.
19. Initial viability concerns are noted, but there is no objective viability assessment that demonstrates redeveloping the site would be unachievable in this context or that a comprehensive assessment of alternative should not be explored on this basis. Even though the proposal would make use of previously developed brownfield land, it would still fail to pursue the fundamental need to improve the range and quality of employment on offer and to ensure that increased employment is available in step with new housing.
20. Overall, the proposal would generate an unacceptable loss of an employment site based on the fact that the appellant has not explored alternative mixed use options for the site's development, or redevelopment for alternative forms of employment space that may better suit local market demands. Consequently, the proposal conflicts with Section 6 of the Framework and Policy CSP.7 of the CS. Among other things, these seek to improve the range and quality of employment on offer.

Character and Appearance

21. Given the extended period of disuse, the site and associated development has fallen into a state of disrepair. This detracts from the residential development that sits adjacent, the majority of which is located to the south. Agricultural fields are located to the west, north and east of the site and are representative of the open countryside location. Access is achieved from Beachley Road in the east, via an appreciable long access road which separates the site from more built up areas nearby. The site is in close proximity to the River Wye to the south west and the land is characterised by varying degrees of topographical rise and fall that influences the immediate flood risk profile of the area. Consequently, flood defence schemes are required to ensure that existing development is sufficiently protected from flood risk.

22. The Environment Agency has indicated that a flood defence scheme could be implemented in theory but would need to be sizeable in order to be effective. Clearly, this would potentially have a significant bearing on the character and appearance of the area and relationship with neighbouring residential development. Further survey and assessment of the ground conditions would be required in order to establish a feasible engineering solution that would not lead to a structure that was fundamentally inappropriate in its design.
23. Notwithstanding the details submitted by the appellant, which show a sheet pile flood defence scheme, without the aforementioned level of information, it cannot be determined with certainty whether the scheme is first deliverable in feasibility terms and then acceptable in all other respects thereafter. For example, a feasible scheme may require substantial earth movements to achieve structural integrity and this would alter the topography and have a substantial bearing on the appearance of the landscape.
24. Consequently, without knowing whether the works would be fundamentally deliverable in an acceptable manner, it would not be reasonable to secure a flood defence scheme by planning condition. The uncertainty around the potential harmful effects generated by the design of the flood defence scheme would neutralise any positive effects that might be generated by sanitising the disused industrial character and appearance of the existing site; including the formation of a coherent relationship with neighbouring residential development.
25. Overall, although there are no clear harmful effects on the character and appearance of the area, there is insufficient information to rule out such harms with any degree of certainty. Similarly, without being able to quantify the level of harm, it is not possible to determine whether the potential benefits associated with sanitising the disused industrial development would result in a positive balancing of the potential effects. Consequently, the proposal is in conflict with Sections 12, 14 and 15 of the Framework, Planning Practice Guidance, Policies CSP.1 and CSP.2 of the CS and Policies AP.1 and AP.4 of the AP. Among other things, these seek to secure a high quality design in order to make a positive contribution to the character and appearance of an area.

Other Matters

26. There is no evidence to suggest that the development plan is required to distinguish between park homes for the purposes of housing land supply or that the proposal is designed for a specific demographic in the form of a retirement village or similar, and therefore how such matters should be assessed under the appeal. More generally, it is disputed whether the Council can demonstrate adequate housing land supply and delivery. However, even if I were to conclude that there is a shortfall of the scale suggested by the appellant, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, due to the primacy of the development plan and conflict with up to date policies relating to several matters of significant importance; location, flooding, character and appearance, that cumulatively carry substantial weight. Notwithstanding the cumulative weight, the application of policies in the Framework that protect areas at risk of flooding provides a clear reason for refusing the development. Consequently, the presumption in favour of sustainable development under Paragraph 11 d) of the Framework would not be engaged in any event.

27. Paragraph 170 of the Framework requires that planning policies and decisions should contribute to and enhance the local environment in a number of ways, including provision of net gain for biodiversity. Planning Practice Guidance² defines biodiversity net gain as works which deliver measurable improvements for biodiversity by creating or enhancing habitats in association with development. Defra and others have developed a Biodiversity Metric 2.0 and associated guidance on intended use. Planning Practice Guidance advises that the metric can be used to demonstrate whether or not biodiversity net gain will be achieved.
28. Although the evidence submitted by the appellant alludes to some potential enhancements that might amount to biodiversity net gain, these appear linked to relatively small scale hedgerow planting, bat and bird boxes and hedgehog habitat provision. No firm details seem to be provided, and it is not clear how such enhancements would be secured in perpetuity. Consequently, any benefits have carried limited weight.
29. Accessibility credentials of the site would not otherwise preclude the proposal from satisfying the requirements of Policy CSP.4 of the CS and it would still need to accord with the fundamental development strategy for the area. Licensing matters relating to the Caravan sites and Control of Development Act 1960, as amended, are not matters to be determined under this appeal.
30. The site has been identified within the zone of influence for the Wye Valley and Forest of Dean Bat Site Special Area of Conservation (SAC), Wye Valley Woodlands SAC, River Wye SAC and Severn Estuary SAC. However, as I am dismissing the appeal, the decision would not result in any effects and consequently I have not considered the implications further.

Conclusion

31. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

² Paragraph: 022 Reference ID: 8-022-20190721 Revision date: 21 07 2019