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## Appeal Decision

Site visit made on 11 August 2020

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 October 2020**

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**Appeal Ref: APP/V2723/W/20/3246982**

**Land East of Lonicera, South View, Tunstall DL10 7QH**

- 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 Joe Smith ELG Planning against the decision of Richmondshire District Council.
  - The application Ref 19/00387/FULL, dated 7 June 2019, was refused by notice dated 10 December 2019.
  - The development proposed is the erection of 1 no. dwelling and associated works with access from South View.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 no. dwelling and associated works with access from South View at Land East of Lonicera, South View, Tunstall DL10 7QH in accordance with the terms of the application, Ref 19/00387/FULL, dated 7 June 2019, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Details Elevations, Plans & Block Plan Dwg. No. 01 Rev.B - dated Apr 2019; Site Topographic Survey Dwg. No. 33545\_T Rev 1 – dated 01.05.19.
  - 3) Notwithstanding condition 2 no development above foundation level shall take place until details of the door and window frames, including rooflights, and fitting have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 4) No development above foundation level shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre x 1 metre and show the proposed material, bond, pointing technique and palette of materials (including roofing, cladding and render) to be used in the development. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development.
  - 5) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the

part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.

- 6) There shall be no access or egress by any vehicles between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway together with a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The works shall be implemented in accordance with the approved details and programme.

### **Main Issues**

2. The main issue is whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the Framework.

### **Reasons**

3. The appeal site is located within Flood Zones (FZ) 1, 2 and 3 as identified by the Environment Agency's flood mapping and therefore the risk of flooding varies across the site.
4. Local plan policy CP2 and CP3 of the Richmondshire Local Plan Core Strategy (the Local Plan) largely echo the national planning policy situation, seeking to steer development away from areas at risk of flood and promoting sustainable development.
5. Section 14 of the National Planning Policy Framework (the Framework) addresses planning and flood risk and seeks to direct development away from areas at highest risk. Paragraph 158 states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with lower risk of flooding (sequential test).
6. If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied (paragraph 159). For the exception test to be passed it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh flood risk and the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, would reduce flood risk overall.
7. The proposal seeks the erection of a dwelling within FZ1 and associated access, parking and garden space in FZ2 and FZ3. Because operational development is proposed within FZ2 and FZ3 this, in my view, would trigger the requirement for the sequential test. While the appellant argues that the works are minor development they relate to a new dwelling and as such are not exempt under guidance set out in either the Framework and the Planning Practice Guidance.

8. The appellant has carried out a Sequential Assessment (SA) looking at a range of sources to identify other sites. While not extensive, on the basis of the evidence before me I am satisfied that the scope of the submitted SA is sufficient to identify available alternative sites in this instance.
9. It is the Council's case that an alternative site, Land at Chaytor Farm, exists. I understand that the Land at Chaytor Farm site is currently subject to a planning application for development but at this time it has not been determined. Furthermore, the appellant details that the site is not currently on the market and in discussions with the landowner it was indicated that the site would not be marketed until or unless planning permission was in place. I have no substantive evidence before me to suggest that the granting of planning permission is likely or imminent, or that the site is shortly to be available on the open market. On this basis I find that the Land at Chaytor Farm site is not currently available.
10. The Council has referred to other general areas and sites not included in the SA, I have not been provided with any substantive details regarding these sites, their suitability for the development proposed or their availability. Therefore, on the basis of the evidence before me I find that it has been demonstrated that no sequentially preferable sites are available, and the sequential test is therefore satisfied.
11. Turning to the exception test, the provision of a single residential dwelling would make a modest contribution to the already very healthy housing land supply and to the continued vitality and viability of local facilities and services. While of a modest scale, this would always be the case for small scale development. Furthermore, in accordance with Policy CP6 of the Local Plan the appellant has provided a Unilateral Undertaking to make a financial contribution of £23,600.00 to the provision of affordable housing. These are material considerations that weight in favour of the appeal scheme.
12. The appellant emphasises that the dwelling would be within FZ1 and thereby at low risk of flooding. The submitted plans show that there would be no buildings within the part of the site that lies in FZ2/3 and that alternative emergency means of access exists, in the form of Back Lane to the rear of the appeal site. I have no substantive evidence before me to suggest that the proposed development would increase the risk of flooding elsewhere.
13. In this context, the wider sustainability benefits to the community, while of a modest scale as detailed above, outweigh the very modest flood risk of the proposed development.
14. It has not been argued that the appeal scheme would be contrary to the second part of the exception test as detailed in paragraph 160 of the Framework. On the basis of the evidence before me I see no substantive reason to conclude otherwise.
15. Therefore, I find that the proposed development has met both the sequential and the exception test and therefore is not contrary to the guidance of the Framework and Policies CP2 and CP3 of the Local Plan in so far as they relate to flood risk and policy CP6 in relation to affordable housing.

### **Other matters and conditions**

16. Local residents have referred to the access to the proposed dwelling as being a private access. I note that the access is already utilised by a number of dwellings, I have no objection from the relevant highway authority to the appeal scheme and any dispute as to legal right to use the access is outside of the scope of this appeal. As such I find that the proposed access is suitable.
17. Turning to conditions, I have included a condition referring to the approved plans for the purposes of clarity, a condition to ensure appropriate external materials are used and a further condition controlling the details of the door and window frames in the interests of good design and protecting the character and appearance of the area.
18. To protect the local environment and future occupiers of the appeal scheme I have included a condition regarding previously unidentified contamination and, at the request of the local highway authority, a condition to prevent the flow of surface water onto the highway in the interests of highway safety.
19. I have not included a number of conditions, including to restrict permitted development rights regarding the conversion of the property's garage following advice in the Planning Practice Guidance<sup>1</sup> that such conditions may not pass the tests of reasonableness or necessity. I have not been provided with any substantive evidence to justify the removal of permitted development rights in this instance and as such I do not find that such conditions would be necessary.

### **Conclusion**

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

*Mark Brooker*

INSPECTOR

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<sup>1</sup> paragraph 21a-017-20190723