The Planning Inspectorate

Appeal Decision

Site visit made on 11 January 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Appeal Ref: APP/Y0435/W/20/3260556
The Paddocks, Lakes Lane, Newport Pagnell MK16 8EE

- 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 Taj Raja against the decision of Milton Keynes Council.
- The application Ref 20/00938/FUL, dated 15 April 2020, was refused by notice dated 10 July 2020.
- The development proposed is erection of a two storey detached dwelling with under croft voids and car port with the extension to the existing access track and associated works.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   - Whether or not the site represents an appropriate location for the proposed development, having particular regard to the Council's adopted development strategy;
   - Whether or not, in the context of flood risk, Sequential Test considerations have been adequately satisfied; and
   - Whether or not it has been satisfactorily demonstrated that the proposal would not increase flood risk to a Critical Drainage Catchment (CDC).

Reasons

Whether or not an appropriate location for the proposed development

3. As set out at Policy DS1 of Plan:MK 2016-2031 (March 2019) (Plan:MK), within the rural area of the Borough, most new development will be concentrated within the key settlements, which are considered the most sustainable rural settlements and include Newport Pagnell. However, the site lies outside of Newport Pagnell's defined settlement boundary and thus within an area designated as open countryside under the terms of Plan:MK.

4. Policy DS5 of Plan:MK sets out that only certain forms of development are supportable in open countryside locations, of which the proposal is not one. It is also the case that the site does not form part of one of the preferred sites for housing development as identified through Policy NP1 of the Newport Pagnell Neighbourhood Plan (made 2016) (the NP). Policy DS5's supporting text

explains that the Borough's open countryside provides a distinct and intrinsic character for the whole community to enjoy and that the policy seeks to ensure that the open countryside is safeguarded from inappropriate development.

5. It was identified within the Council's Committee Report that the proposed development would not have a detrimental impact upon the character and appearance of the area. Even so, notwithstanding revisions made at planning application stage, the proposal would result in the introduction of a large dwelling to an area of grassed land that has an open countryside designation and a rural identity. A range of publicly accessible views of the dwelling would be available from Bury Field to the east and the proposal would be read and experienced as a noticeable excursion into the open countryside. This is notwithstanding the presence of Kickles Lodge and other sporadically positioned development that exists close to the site.

6. Outline planning permission[1] (the extant permission) was granted by the Council in June 2017 for a dwelling upon an area of land that forms part of the appeal site. At that point in time, the NP had been made and it is my understanding that Newport Pagnell's defined settlement boundary took the same delineation close to the site that it does now. However, Plan:MK now forms an integral part of the development plan, attracts full weight, and sets out a new development strategy for the Borough.

7. Reserved matters[2] pursuant to the extant permission were approved in August 2020 and I accept that there is a strong likelihood that the extant permission shall be built out. However, the proposal that is before me relates to a dwelling of larger size. It is also a site of different and noticeably larger extent, made up (in part) of land set further away from both Lakes Lane and Newport Pagnell's main built-up area. On this basis the proposed dwelling, when compared to that consented under the extant permission, would sit less agreeably in its open countryside surroundings. Indeed, even if a mechanism could be formulated to provide assurance that the extant permission would not be implemented in the event the appeal be successful, the permission does not represent a comparable 'fallback' position and does not establish the principle for the proposed development in this location.

8. For the above reasons, the site does not represent an appropriate location for the proposed development, having particular regard to the Council's adopted development strategy. The proposal would cause harm in this context and conflicts with Policies DS1, DS2 and DS5 of Plan:MK and Policies NP1 and NP4 of the NP in so far as these policies set out that planning permission within the open countryside will only be granted for certain types of development and that new housing development outside of Newport Pagnell's revised settlement boundary will be refused.

Sequential Test

9. The site is situated within Flood Zone 3 upon the Environment Agency's Flood Map. Policy FR1 of Plan:MK states that development within areas of flood risk from any source of flooding will only be acceptable if it is clearly demonstrated that it is appropriate at that location and that there are no suitable available alternative sites at a lower flood risk. This is consistent with the National

[1] 17/00220/OUT
[2] 20/01379/REM

Planning Policy Framework (February 2019) (the Framework), which advocates that all plans should apply a sequential, risk-based approach to the location of development in the interests of steering new development to areas with the lowest risk of flooding.

10. A Flood Risk Assessment (April 2020) (the FRA) has been prepared with the objectives of seeking to establish whether the proposed development would be likely to be affected by current or future flooding from any source and would increase flood risk elsewhere. The FRA also identifies measures to deal with risks identified, including the provision of minimum finished floor levels and the preparation of a flood warning and evacuation plan. However, the FRA does not tackle the matter of initial site selection. Indeed, no comprehensive assessment of the potential suitability and availability of alternative sequentially preferable sites would appear to have been carried out. This is a significant shortcoming of the proposal.

11. I am aware of the presence of flood defences close to the site that consist of an embankment and toe drains. These, I understand, have the effect of reducing flood risk to an equivalent of that found in Flood Zone 1. However, as set out in the Planning Practice Guidance (the Guidance), Flood Zones refer to the probability of river and sea flooding ignoring the presence of defences. The Sequential Test is applied on this basis. Indeed, as set out by the Council, the permanence and ongoing maintenance of flood defences falling outside of the appellant's control cannot necessarily be guaranteed. This is even where the defences in question fall under the control of a competent public body.

12. No objection to the proposal has been raised by either the Environment Agency or the Buckinghamshire & River Ouzel Internal Drainage Board (the IDB). However, it is made clear in the EA's consultation response[3] that this should not be taken to mean that they consider the proposal to have passed the Sequential Test. Indeed, the Guidance is clear that 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.

13. For the avoidance of doubt, the extant permission has little relevance in the context of the sequential approach to site selection. Outline planning permission was granted prior to the adoption of Plan:MK, which sets out an expected sequential approach in no uncertain terms. Furthermore, even if a mechanism could be formulated to seek to provide certainty that the extant permission could not be implemented in the event the appeal be successful, the proposal that is before me is not directly comparable and relates to a Flood Zone 3 site of noticeably larger extent.

14. For the above reasons, in the context of flood risk, Sequential Test considerations have not been adequately satisfied. The proposal would cause harm on this basis and conflicts with Policy FR1 of Plan:MK in so far as this policy sets out that the sequential approach to development, as set out in national guidance, will be applied across the Borough.

[3] dated 19 May 2020

Critical Drainage Catchment

15. The site is located within a CDC. Policy FR1 of Plan:MK sets out that, with respect to all sites highlighted as being at high risk from surface water flooding, or which are located within a CDC (as identified in the Milton Keynes Surface Water Management Plan), the FRA will be required to demonstrate that the proposed development will not increase flood risk to the CDC.

16. The lead local flood authority (the LLFA) has raised objections on the basis that the FRA contains an insufficient level of detail to allow a full and proper assessment to be made of the proposal's implications in a surface water drainage context. Indeed, the FRA merely refers to an intended utilisation of Sustainable Urban Drainage in accordance with a relevant hierarchy for such measures.

17. Whilst it is my understanding that an existing watercourse/drainage channel that runs in proximity to the site (the watercourse) falls under the statutory control of the IDB, the LLFA's objection is a matter of importance. Indeed, as confirmed in the Guidance, it is they who are responsible for managing local flood risk including from surface water, ground water and ordinary watercourses.

18. Nevertheless, a Drainage Strategy (August 2020) (the DS) was recently produced at reserved matters stage in relation to the extant permission and this appears in the submitted evidence. A surface water drainage strategy for that scheme, which is based upon infiltration being unviable, is set out within the DS. The strategy is comprised of a piped network, sub-base attenuation, hydrobrake flow control and outfall to the watercourse.

19. I accept that the DS was formulated with respect to land forming merely a portion of the appeal site and to a dwelling of smaller scale when compared to the proposed dwelling that is the subject of this appeal. Even so, the consented and proposed development footprints and relationships to the watercourse are not markedly dissimilar. It is also the case that the proposed dwelling would be served by an external area of generous extent that would seemingly be capable of incorporating attenuation measures similar to those illustrated in the DS.

20. The DS, particularly when noting its recentness and direct relevance to the appeal site, provides an adequate level of confidence that a suitable technical solution could be found. I am satisfied that, should the appeal be successful, a pre-commencement planning condition could be suitably applied to secure the submission and implementation of a detailed surface water drainage scheme as well as an associated management and maintenance plan.

21. For the above reasons, it has been satisfactorily demonstrated that the proposal would not increase flood risk to a CDC. The proposal adequately accords with Policy FR1 of Plan:MK in so far as this policy requires it to be demonstrated that development will not increase flood risk to the CDC and where possible will provide an improvement to the existing situation. For the avoidance of doubt, my findings on this main issue do not prejudice my above Sequential Test conclusions.

Other Matters

22. I have noted objections/concerns raised by interested parties with respect to matters including sewage disposal and the effects upon an existing oak tree, wildlife and neighbouring living conditions. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters further here.

Planning Balance

23. An additional residential unit is proposed, and the Framework reaffirms the Government's objectives of significantly boosting the supply of homes. Nevertheless, a single additional unit would not make a noticeable difference to the Borough-wide housing supply situation and would be a benefit that attracts limited weight.

24. The appellant wishes to self-build the development for his own occupation and, on this basis, the proposal would specifically cater for a person wishing to build their own home. Indeed, Policy HN5 of Plan:MK sets out support for the aspirations of self-build and custom-build homes and it is my understanding that there is currently, across the Borough, an unmet demand for self-build/custom-build plots. However, merely a single plot is proposed. Furthermore, there is no unilateral undertaking (or similar) before me to provide full confidence that self-build development would ultimately come forward. For these reasons I attach limited weight to this anticipated benefit of the scheme.

25. Any potential biodiversity enhancements brought about by the proposal would reasonably be anticipated to be limited and would attract commensurate weight in the planning balance.

26. The scheme's benefits, when considered cumulatively, would be modest and would not outweigh the significant harms and policy conflicts that I have identified. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

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

Andrew Smith

INSPECTOR