



Appeal Decision

Site Visit made on 22 March 2021

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Appeal Ref: APP/D0121/W/20/3263507

Land at Duck Lane, Kenn BS21 6TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Stuart Ings & Ms Jackie Manning against the decision of North Somerset Council.
 - The application Ref 20/P/0426/OUT, dated 11 February 2020, was refused by notice dated 8 June 2020.
 - The development proposed is an outline application for the erection of 2no. four bed detached dwelling houses on land off Duck Lane, Kenn, with access, parking and scale to be considered, and appearance and landscaping reserved for subsequent approval.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been made in outline with access and scale for consideration at this stage and matters of appearance, landscaping and layout reserved. The application was submitted with a layout showing the potential position of the two dwellings together with landscaping. I have had regard to this plan as an indication of what the appellant has in mind in these respects.
3. At the appeal stage, an amended plan has been submitted. This shows a different point of vehicular access to the southern property. It is associated with a revised, indicative layout of the arrangement of the related dwelling and the drive. As the access point could be related to the position of the dwelling and the likely car parking arrangements, amendments to the position of this access could also influence the future layout of the site.
4. The Planning Appeals – Procedural Guide explains that if an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
5. Access is a matter for consideration at this outline stage and the revised plan evolves the scheme at the appeal stage. I consider, having regard to the Wheatcroft Principles¹, that it might prejudice others involved in the appeal process because the access arrangements could ultimately be related to the siting of the dwellings and in turn the relationship of the development to the adjoining properties. Consequently, I conclude that the proposed access re-positioning should not be considered and that the appeal should be decided on

¹ As set out in *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37].

the basis of the proposal as set out in the application determined by the Council.

Main Issues

6. The main issues are:

- whether the development plan would support the proposal in this location,
- whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework (the Framework), and
- the effect of the development on the character and appearance of the area, including any impact on trees.

Reasons

Whether the development plan would support the proposal in this location

7. Kenn is defined as an infill village under Policy CS33 of the North Somerset Council Core Strategy January 2017 (the Core Strategy). This allows residential development of an appropriate scale within the settlement boundary. Outside the settlement boundary, which the policy terms 'residential development elsewhere' it is explained that new development will be restricted to a limited range of circumstances.
8. The appeal site lies outside the defined settlement boundary of Kenn. The proposal would provide two new build dwellings and not meet with any of the exceptions for the provision of residential development outside settlements in the Core Strategy.
9. Accordingly, I conclude that the development plan would not support the proposed dwelling in this location. In particular, the proposal would not accord with Policy CS33 of the Core Strategy which, amongst other things, sets the approach for residential development within and beyond infill villages.

Flood risk

10. The site lies within Flood Zone 3a (tidal) and therefore the risk of the site from sea flooding with the current defences is 1:200 or greater annual probability and categorised as having a high probability of flooding. The present use of the site as a paddock, stables and workshop would be replaced with two dwellings which fall within the 'more vulnerable' category of development as explained by the Planning Practice Guidance (the Guidance). Tidal flood risk has been identified in the submitted Flood Risk Assessment as the main risk of flooding at the site.
11. The Framework requires that inappropriate development in areas of risk from flooding should be avoided by directing development away from areas of highest risk. The Guidance states that the suitability of sites in Flood Zone 3 should only be considered if there are no reasonably available sites in Flood Zones 1 or 2 (areas of low and medium probability of flooding). This is referred to as the sequential test.
12. Policy CS3 of the Core Strategy sets out the approach when undertaking the sequential test and this indicates that the area of search in this case should be

North Somerset-wide and the types of site that can be considered reasonably available.

13. It is for the Local Planning Authority to determine whether the sequential test has been met. The Environment Agency has raised no objection to the development, subject to conditions such as raised finished floor levels, if the sequential (and then exception) tests are passed.
14. The proposal has been accompanied by a sequential test which analyses other sites, in particular similarly sized sites for about two dwellings, which are judged could potentially meet with the relevant criteria of Policy CS3 of the Core Strategy. In summary, the submissions indicate that there are not sites that are reasonably available within a lower flood zone that would provide an alternative to deliver the proposed housing.
15. The Council has raised the issue of larger allocated sites which are said to be reasonably available and could meet the housing need in this case. However, the information before me is that these sites are also within Flood Zone 3a and therefore they are not in locations with a lower risk zone than the appeal site, even if they could be made safer by investment in flood defence measures as part of their comprehensive development.
16. Furthermore, these alternative sites seem to be larger sites because they are allocated for development and would not therefore be of the same or similar character and scale as the present proposal. Additionally, the present proposal is advanced as a self-build scheme and there is little robust evidence of reasonably available opportunities elsewhere to deliver self-build housing and which would be in areas with a lower flood risk.
17. Based on the information which has been presented and the response of the Local Planning Authority, the balance falls in favour of the evidence demonstrating that the sequential test has been met as it would not appear to be able to locate the development in an area with a lower zone of flood risk.
18. In these circumstances, it is necessary to undertake the exception test as detailed in paragraph 160 of the Framework. The submissions in support of the appeal proposal set out the case why it is considered that the exception test would be met.
19. In terms of wider sustainability benefits, there would be opportunities to increase the biodiversity of the site, including with planting and bat/bird boxes but given the reasonably modest size of the site, with the likely proportion to be used as residential curtilage, I afford these benefits limited weight. There would be benefits from the provision of two self-build houses to help meet the requirements for the delivery of this type of housing and that the proposed occupants would be local residents who grew up at the adjacent property and would be able to return to the village. However, as only two houses would be provided, I attribute the community benefits of this matter limited weight. Also the benefits to the local economy from supply contracts and employment during the construction would be modest in extent and time and therefore also a matter of limited weight in favour of the scheme.
20. The submissions explain that land immediately to the east of the site could be offered for community benefit. The appellant has indicated a willingness to consult with the local community in order to offer some useful space to meet

local needs such as for recreation space, an ecological project or other needs. However, this aspect of the scheme is not well advanced and does not form a detailed part of the proposal. Consequently, in terms of community benefit as part of the exception test considerations, this carries very little weight and is not a matter that could reasonably be the subject of a condition in any approval.

21. While the precise floorspace of the proposal is yet to be agreed, it may be that the increase in footprint of buildings on the site would be fairly limited. However, the provision of the two dwellings would introduce a more vulnerable occupation of the site than the present uses to land within flood zone 3a. This flood risk is a matter which I consider should be attributed significant weight. The wider sustainability benefits to the community of the proposal, even when considered collectively, would be relatively minor and therefore would afford only limited weight in support of the scheme. As a consequence, the development would not provide wider sustainability benefits to the community that would be outweighed by the flood risk. This part of the exception test, as set out in paragraph 160(a) of the Framework, would not be met.
22. I have carefully considered the submissions regarding the criteria in paragraph 160(b) of the Framework. With the various elements that are explained, including the raised proposed finished floor levels and the ability of occupiers to be part of an early flood warning system, this part of the exception test would be met.
23. Drawing all these matters together, the proposed housing would be located within Flood Zone 3a and while the sequential test would be met, for the reasons explained above, the exception test would not be passed in this case. That other sites across the plan area may have been allocated or permitted for residential development and also lie within Flood Zone 3a does not alter my view on the balance of considerations and evidence in this particular case in relation to flood risk.
24. Accordingly, I conclude that the site would be vulnerable to flooding and the proposal would not represent an acceptable form of development having regard to its flood zone location and the provisions of the Framework. The development would, therefore, conflict with Policy CS3 of the Core Strategy and Policy DM1 of the North Somerset Council Development Management Policies – Sites and Policies Plan Part 1 (July 2016) (the Policies Plan Part 1) which, amongst other things, details the approach to considering development within areas liable to flood.

Character and appearance

25. The site lies towards the end of Duck Lane, a road with a generally linear character with most properties adjoining the road in a ribbon form. To the front of the site is the single width access to Mead Cottage and this gives the site the appearance of having some road frontage in a broadly similar way to other properties in the surrounding area. There is a scattering of dwellings in the vicinity, with Walnut Tree House, Mead Cottage and Honeymead providing a built context such that there is a general feeling of the built form of the village tapering off before open countryside.
26. The site itself has some buildings, with the stable block and workshop, an access into the site and with the paddock adjoining the stable, the appearance

has elements of development which associate the site more with the surroundings of Duck Lane than the open countryside beyond. I have had regard to the Landscape Character Assessment Supplementary Planning Guidance (September 2018) and that the site is located within the Landscape Type A1: Kingston Seymour and Puxton Moors character area. The description of this character area includes that it consists of an 'open, strikingly flat landscape framed by intermittent hedgerows and the distinctive skyline of wooded limestone ridges'. I consider for the reasons explained above that this description is more characteristic of the adjoining countryside than the appeal site.

27. The hedge boundary to the south and the intermittent screening provided by the field boundaries in the wider open countryside would soften the appearance of the proposed dwellings in the wider landscape, including from the right of way to the south. From these views, the development of the site would be seen in the context of the other built surroundings. In closer views, including from within adjoining parts of Duck Lane, the proposed housing, with an appropriate design, bulk and layout at the reserved matters stage, would not be out of character with the existing developed form and informal arrangement of buildings at this end section of the village.
28. The Council draw attention to the trees on the site and that to accommodate the development it would be necessary to remove trees and crown lift others and this would be harmful. However, these trees do not appear to have been protected and at my site visit I noted that some trees identified on the original plans had been removed. The appellant has explained the background, that these were not good specimens and I have also noted the concerns and comments on this issue from local residents. The trees which remain are mainly on the broadly western side of the drive which leads to Mead Cottage, although there are two pine trees along the frontage of the appeal site and a cedar tree further to the south within the adjoining property.
29. The pine to the north would be unlikely to be materially affected by the proposal as the access is already in place and in regular use by vehicles to the site. To access the southern dwelling, the proposed driveway is shown to pass south of the pine and north of the cedar tree. I am satisfied that the Arboricultural Report² explains how the access to the southern property could be accommodated with a no-dig approach. With suitable details, which could be agreed by condition, and the limited encroachment into the root protection areas it should be possible to accommodate the development without unduly affecting the health of these adjoining trees.
30. The two pines within the site would help to some extent to soften the proposed development within the street scene, although it appears not to the same extent that the previous trees on the site would have provided. Nevertheless, two important pine trees are retained and the site is of a sufficient size that would enable a comprehensive landscaping scheme, including along the rear boundary, to be agreed at the reserved matters stage.
31. Drawing these matters together, the development would remove the existing buildings on the site and provide two dwellings, which with suitable details at the reserved matters stage, would be in a form that would not look out of place with the existing pattern of development at this end of the village and have an

² Arboricultural Impact Assessment with Constraints Plan and Method Statement 29 January 2020

acceptable relationship to the adjoining countryside. The remaining trees on the site would not be adversely affected. It follows that the scheme would meet with the Framework policy requirement that the development should be sympathetic to local character including the surrounding built environment and landscape setting.

32. Consequently, I conclude that the scheme would not adversely affect the character and appearance of the area. Accordingly, the development would comply with Policies CS5 and CS12 of the Core Strategy, Policies DM9 and DM10 of the Policies Plan Part 1 and the Framework which seek, amongst other things, that development proposals should respond to local character and reflect the identity of local surroundings, whilst minimising landscape impact.

Other Matters

33. I have taken into account the views of local residents and the comments of the Parish Council. The key planning issues which have been raised have been examined above. Other issues, including the relationship to adjoining properties and the highway and traffic implications of the development were not matters which the Council considered should form reasons for refusal and I have found no reason to disagree.
34. The Council has drawn attention to a number of appeal decisions, however, these are either schemes of a different scale or in a different location. Those sites have their site specific issues and overall a different balance of considerations apply compared to the present appeal proposal. Consequently, I attribute these other decisions limited weight and I have considered the present proposal on its merits.

Planning Balance and Conclusion

35. The Council are unable to demonstrate a five year supply of housing land. However, the site is located in an area at risk of flooding and the proposed development would not be Framework compliant in this respect. Consequently, in terms of Paragraph 11d(i) of the Framework, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed in this case³. It follows that the presumption in favour of sustainable development as set out in paragraph 11d of the Framework is dis-engaged
36. In terms of the benefits of the scheme, subject to suitable details at the reserved matters stage, the development would fit appropriately with the character and appearance of the area. There would, in all likelihood, be modest benefits to biodiversity from the proposal.
37. The development would be in a location next to the settlement boundary and with Kenn designated as an in-fill village, the scheme would be of a scale appropriate to the size and function of the settlement. The development would provide a benefit to the social and economic well-being of the local community during construction and in subsequent occupation.
38. The scheme would provide a boost to housing land supply and on a windfall site which formed part of a garden area in the past. In particular, I have taken into

³ The list of areas or assets of particular importance at footnote 6 of the Framework includes areas at risk of flooding.

account the scheme would deliver two self-build dwellings, in a Council area which is unable to demonstrate a Framework compliant supply of housing land. The information indicates that the dwellings would be built to high environmental and energy efficient standards.

39. These would all be benefits of the scheme, however, as only two units would be delivered, I consider that cumulatively the benefits would afford limited weight in favour of the proposal.
40. On the other hand, the scheme would be located on land beyond the settlement boundary of Kenn, contrary to the development plan strategy for the location of housing, and on land subject to flood risk, falling within the zone with a high probability of flooding. These are matters which collectively I attribute substantial weight. It follows that the harm arising from the scheme and the conflict with the development plan would not be outweighed by the benefits.
41. For the above reasons, and having regard to all other matters raised, the proposal would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and the associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR