



Appeal Decision

Site Visit made on 12 October 2021

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal Ref: APP/Z4718/W/21/3279006

Land next door to no 9 The Briggate in Dalton, Huddersfield

- 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 Mrs Deborah Smith against the decision of Kirklees Council.
 - The application Ref 2019/60/91688/W, dated 3 April 2019, was refused by notice dated 18 June 2021.
 - The development proposed is 3 x 2/3 bedroom townhouses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with it subsequently being agreed that all matters were reserved for future consideration (including access). I have determined the appeal on this basis, treating supporting plans as illustrative.
3. The description of the development proposed in the banner heading is taken from the application form. During the course of the application the decision was made to amend the number of dwellings to one. This tallies with the submitted site plan and was the basis on which the Council reached its decision. I have proceeded on this basis.
4. I have taken account of the new Framework in my decision¹.

Main Issue

5. The main issue is whether the appeal site is an appropriate location for the proposed development with reference to its vulnerability to flooding.

Reasons

6. The appeal site is located in flood zone 3a which the Planning Practice Guidance (PPG) identifies as having a high probability of flooding. Although part of the site is located in the functional flood plain (flood zone 3b), the Council's officer report notes that this area forms banking to the adjacent watercourse and would not be developed. The PPG defines dwellings as 'more vulnerable' in terms of flood risk. The PPG sets out that a sequential test should be applied to proposals for more vulnerable development in flood zone 3a and an exception test would also be required but only following application of the sequential test. A Sequential Test Assessment, Exception Test Assessment and Flood Risk

¹ The National Planning Policy Framework, 2021

Assessment and Drainage Strategy have been prepared to support the proposed development.

7. Policy LP27 of the Local Plan² directs development to areas at the lowest probability of flooding following a sequential risk based approach. It states that the starting point for the area of search to which the test will apply should be the whole of Kirklees District, with applicants required to justify where a smaller area is proposed. It also provides for the exception test, where applicable. Chapter 14 of the Framework also requires a sequential test to steer new development to areas with the lowest risk of flooding.
8. The appellant considers that a reduced site search area is appropriate for the sequential test given that it is the same area as that used on nearby sites which the Council accepted. However, from the information presented by the Council, the two specific applications referred to relate to a substantially bigger site and a much larger scale proposal. As such, these applications are not directly comparable to the appeal site or proposed development and so do not provide a justifiable reason for focussing on a smaller area than the whole Kirklees District.
9. The appellant has only considered greenfield sites on the basis that the appeal site is greenfield. However, no circumstances are presented to demonstrate that a brownfield site would not be appropriate for the proposed development, i.e. a single dwelling. There is thus no reasonable justification before me to support the restriction of sites to greenfield only.
10. The appellant used the Council's SHLAA³ dating from 2014 in the sequential test search. This is not a recent document and there is a high likelihood that the situation with regard to available housing sites or sites with planning permission has changed in the intervening period. The information presented on the number of applications for dwellings more recently determined by the Council and the fact that the Council can demonstrate a five year supply of deliverable housing sites lends weight to this position (information which is not specifically contested by the appellant).
11. For the reasons given, I find no justification for applying the restricted sequential search area used by the appellant. Furthermore, the search criteria and sources of information used to identify potential alternative sites are unduly restrictive. On this basis, the appellant has failed to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The sequential test has not therefore been passed.
12. The appellant states that every precaution has been taken to ensure that the land in question is as safe as any other within the area and that the Environment Agency does not object. However, it is for the local planning authority and not the Environment Agency to consider the extent to which sequential test considerations have been satisfied. Furthermore, the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. As set out above, the appellant's assessment is

² Kirklees Local Plan Strategy and Policies, adopted 2019

³ Strategic Housing Land Availability Assessment

not sufficient to demonstrate that there are no reasonably available appropriate sites in areas with a lower risk of flooding.

13. Given that the sequential test has not been passed, it is not necessary for me to address the exception test, although I note it is referenced in the reason for refusal on the Council's decision notice.
14. For the above reasons, the proposed development would conflict with Policy LP27 of the Local Plan as well as the objectives in chapter 14 of the Framework which seek to ensure that development takes place in areas with the lowest risk of flooding.

Other Matters

15. The appellant states that the proposed development would provide housing in an area of housing need and in a sustainable location. The benefits of the additional dwelling and the associated social and economic benefits would weigh in favour of the proposal. However, the benefits stemming from one dwelling would be limited and would not be sufficient to outweigh the substantial harm that could result from siting a dwelling within an area of high probability of flooding when it has not been demonstrated that other sites with a lower risk may be available.
16. The appellant considers that the proposal would result in a visual improvement in the locality. Whilst the appeal site has an overgrown appearance I would not class it as being significantly harmful to the character or appearance of the area. As such, I give this matter very limited weight.

Conclusion

17. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations that indicate the decision should be made other than in accordance with it. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR