



Appeal Decision

Site Visit made on 21 September 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/D0515/W/21/3273824

Anglian Water Treatment Works, The Pigeons, Murrow, PE13 4JU

- 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 Mrs G Beecham against the decision of Fenland District Council.
 - The application Ref: F/YR20/1011/F, dated 28 September 2020, was refused by notice dated 21 December 2020.
 - The development proposed is described as 'erect a dwelling (2-storey 3-bed) involving demolition of existing garages and Anglian Water pumping station'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021. The Framework represents the Government's up to date planning policies and how they should be applied. The Council's reason for refusal refers to paragraph 158, which has been re-numbered 162 in the revised version. The parties have been provided an opportunity to comment on the implications of this for their case.

Main Issue

3. The main issue is whether the proposal would comply with the development plan and national planning policy which seek to steer new development away from areas at risk of flooding.

Reasons

4. The appeal site is located within Flood Zone 2 where there is an identified medium risk of flooding. The Framework at paragraph 159 advises that inappropriate development in areas at risk of flooding should be avoided, by directing development away from areas of highest risk. The Planning Policy Guidance (PPG) sets out that development should be kept out of medium and high flood risk areas namely Flood Zones 2 and 3¹. As a result of the appeal site's location, the Sequential Test set out in the Framework should be applied to the appeal scheme.
5. Paragraph 162 of the Framework states that the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available

¹ PPG Paragraph: 018 Reference ID: 7-018-20140306

sites appropriate for the proposed development in areas with a lower risk of flooding

6. The PPG² states that it is the local planning authority's responsibility to consider if the Sequential Test has been satisfied, informed by evidence provided by the developer. The appellant provided a Flood Risk Assessment³ and a Sequential Test⁴ that indicated a number of other sites within Murrow are located outside of Flood Zone 2, however, these are discounted from the Sequential Test for varied reasons. I accept that it is appropriate to discount any site that lies within an area of greater risk of flooding such as sites situated within Flood Zone 3.
7. However, the appellant's evidence also specifically discounts the site of a dwelling with outline planning permission⁵. It is the appellant's case that this site is not available due to constraints with access. Whilst I acknowledge the requirement for a shared access and driveway, there is no substantive evidence before me to demonstrate that this is an issue that is not capable of resolution through negotiation with the landowner. On this basis, I am not satisfied that this site should be found not to be reasonably available by virtue of 'constraints' as identified within the Cambridgeshire Flood and Water Supplementary Planning Document (2016)(SPD).
8. Furthermore, the outline planning permission for the aforementioned dwelling relates to a further three dwellings. The appellant has discounted these and cites the reason for doing so is due to these being 'in the process of being developed'. However, the Council's evidence in rebuttal confirms that a reserved matters application for all four dwellings has been submitted to the Council. There is no clear evidence to explain why these other plots have been discounted from the Sequential Test and, in the absence of any compelling justification, I concur with the Council's view that all four plots would be sequentially preferable to the appeal site.
9. Furthermore, when assessing whether there are reasonably alternative sites at a lower risk of flooding, it is not appropriate to automatically discount sites on the basis that they are larger than required or that the viability between the sites is not comparable. This approach relies on an overly narrow method of finding a similar site in terms of size and financial viability to the appeal proposal which may rule out otherwise suitable sites. By setting artificial parameters the outcomes are limited, which inevitably reduces the likelihood of finding suitable alternatives and does not reflect the actual situation regarding potential site availability in lower flood risk areas. The approach does not deliver an adequate application of the Sequential Test and site comparison.
10. The appellant has provided an update as part of this appeal and states that there are no longer any sites available for sale. I have had regard to the Rightmove document provided in support of this matter. However, rather than providing justification for the appeal scheme, this simply points to there being no active marketing of any sites within Murrow upon one selling portal. In my view, it does not clearly demonstrate that there are no alternative sites available to accommodate the development.

² PPG Paragraph: 034 Reference ID: 7-034-20140306

³ Ellingham Consulting Ltd, Flood Risk Assessment, dated May 2020

⁴ Swann Edwards Architecture, Sequential Test, dated September 2020

⁵ Planning Ref:F/YR17/1148/O

11. Ultimately the Framework sets strict tests to protect people and property from all sources of flooding and that where these tests are not met new development should not be allowed. Overall, the reasons presented by the appellant do not justify discounting available sites that could accommodate the proposed development with a lower risk of flooding. Indeed, if I were minded to accept these arguments it would fundamentally undermine the sequential risk-based approach, as it would be extremely difficult or impossible to identify an alternative site on this basis.
12. Accordingly, I find that it has not been demonstrated that there are no reasonably available sites appropriate for residential development in areas with a lower probability of flooding. The proposal fails the Sequential Test. The appeal site would not be a suitable location for the proposed development with regard to local and national planning policies relating to flood risk. It would conflict with Policy LP14 of the Fenland Local Plan (2014) and the requirements of the SPD insofar as these require development to adopt a sequential approach to flood risk from all forms of flooding and, development in areas known to be at risk from any form of flooding will only be permitted following the successful completion of a Sequential Test. In addition, it would conflict with the aims of paragraph 162 of the Framework the aims of which are set out above.

Other Matters

13. The appeal scheme would contribute an additional dwelling towards housing supply and it would make efficient use of previously developed land, which the Framework aims to support. However, the benefits to be attributed to one dwelling would be limited.
14. No adverse harm has been identified with regards to highway safety and parking, refuse collection, the principle of development and the appeal scheme's proposed design and layout. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
15. The area of search used to inform the Sequential Test was limited to Murrow. Although the Council's case did not suggest this area was too constrained, I am mindful that for housing, the extent of the test should not be constrained by land ownership and realistically it will often extend across a town or district area. Whilst I have concerns regarding the extent of the area considered for the test, as I have found that the Sequential Test has not been satisfied for other reasons, I have not considered it necessary to go back to the parties to pursue this matter further in this instance.

Conclusion

16. The appeal scheme would conflict with the provisions of the development plan and national planning policy. This is a matter to which I attribute substantial weight. There are no material considerations that indicate a decision should be made otherwise than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal is dismissed.

E Brownless

INSPECTOR