



Appeal Decision

Site visit made on 14 September 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2021

Appeal Ref: APP/Y0435/W/21/3267500

Land off Caldecote Street, Newport Pagnell, Milton Keynes MK16 0BX

- 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 Manor Farm Developments Ltd against the decision of Milton Keynes Council.
 - The application Ref 20/01732/FUL, dated 16 July 2020, was refused by notice dated 19 October 2020.
 - The development proposed is the erection of a building comprising two B1 office units with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Manor Farm Developments Ltd against Milton Keynes Council. This application is the subject of a separate Decision.

Procedural Matters

Use Classes Order Changes

3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the UC Regulations") came into force, amending the Town and Country Planning (Use Classes) Order 1987 ("the UCO") to simplify the system of use classes.
4. Class A (shops) and Class D (non-residential institutions, and assembly and leisure) were revoked, and a new Class E (commercial, business and service) created, incorporating the previous A1 (shops), A2 (financial and professional services), A3 (restaurants and cafés), and B1 (business) use classes. Some uses previously in classes D1 (non-residential institutions) and D2 (assembly and leisure) are also now within Class E, as well as "any other services which it is appropriate to provide in a commercial, business or service locality".
5. Paragraph 4 of the UC Regulations states that "if prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes".

6. In this instance, the application was submitted to the local planning authority before 1 September 2020. In line with the requirements of the UC Regulations, I have therefore determined the appeal with reference to the use classes which applied on 31 August 2020.

National Planning Policy Framework

7. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Both main parties were invited to comment on the relevance of any changes in the Framework to this appeal, and I have taken their responses into consideration in my decision. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issue

8. The main issue is whether or not the proposal would comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

9. The appeal site is a triangular plot of land between Caldecote Street, from which it is accessed, and the grass verge of Marsh End Road to the west. At the time of my visit the appeal site was overgrown and enclosed by temporary fencing. The surrounding area is predominantly residential, although there is a small commercial centre on the other side of Marsh End Road, with other business or industrial units in the vicinity. Newport Pagnell town centre is a few minutes' walk to the north east.
10. The proposal is the erection of two B1 Use Class offices with associated parking and landscaping. The development would be laid out as a single two-storey "semi-detached" building at the south-eastern end of the site close to the boundary with No 12 Caldecote Street. Car parking spaces for the offices would be laid out along the Caldecote Street frontage and, for visitors, at the north western end of the site closest to Marsh End Road. A shared private outdoor amenity space for all the offices would be provided at the rear of the building,
11. The Environment Agency Flood Map for Planning shows that the appeal site lies within Flood Zones 2 (medium probability) and 3 (High Probability), and so is at medium (1 in 100 to 1 in 1,000 years) or high risk (greater than 1 in 100 years) of flooding from (in this case) rivers. Paragraph 159 of the Framework indicates that "inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk", while the Planning Practice Guidance ("the PPG") clarifies that "areas at risk of flooding" principally means land within Flood Zones 2 and 3¹.
12. Policy FR1 of the 2019 development plan *Plan:MK 2016-2031* ("Plan MK") seeks to steer all new development towards areas with the lowest probability of flooding. It 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 alternative sites at a lower flood risk. To this end, FR1 applies the sequential approach to development set out in national planning policy and guidance. However, the

¹ Paragraph: 003 Reference ID: 7-003-20140306

appellant considers that it is not necessary to follow the sequential approach in this case.

13. The status of the appeal site as lying within Flood Zones 2 and 3 is confirmed by the Flood Risk Assessment ("FRA") submitted with the planning application. However, the area of the site within Flood Zone 3 is shown on the Flood Map for Planning as benefitting from flood defences, which the FRA explains is a scheme at Kickles Lodge built following extreme flooding in the area at Easter 1998. The 2015 Milton Keynes Level 1 Strategic Flood Risk Assessment ("the SFRA") states that the Kickles Lodge defences are not overtopped for the 1 in 1,000-year flood event. The FRA contends that, when these defences are considered, the site should be treated as being located within Flood Zones 1 and 2.
14. In my experience it is usual to ignore the presence of flood defences for the purposes of carrying out the sequential test, as (for example) the maintenance of defences may change over time. While I note the appellant's comment that, given the size of the area protected by the Kickles Lodge defence "the maintenance and upkeep of the defence is assured" this is not substantive evidence of certainty, and it remains correct to assess proposals on the basis that the appeal site is within Flood Zones 2 and 3. This approach is consistent with that taken by an Inspector in an earlier appeal decision on the same site².
15. The appellant's final appeal submission included mapping which showed that, based on the most recent (July 2021) Environment Agency data, a good part of the proposed building as well as the means of leaving the site to Caldecote Street would be within Flood Zone 2, with the remainder being in Flood Zone 1. Given that this came in at the "final comments" stage of the appeal, it is not evidence on which the Council, the Lead Local Flood Authority, or the Environment Agency has been able to comment. However, even applying that more recent modelling a Sequential Test would still be required by Policy FR1.
16. The appellant also argues that the proposal is a "minor development", and so in any case the need for a Sequential Test is negated. I accept that, as the appellant has pointed out, the proposal is not a "major development" in the terms set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015. However, it does not follow from that that it is "minor development" for the purposes of assessing flood risk. Paragraph 168 of the Framework states that "applications for some minor development" (which Footnote 56 then explains includes householder development, small non-residential extensions with a footprint of less than 250m², and changes of use) "[...] should not be subject to the sequential or exception tests".
17. The Framework therefore does not set out a closed list which absolutely defines what is "minor development" for the purposes of assessing flood risk. However, the PPG reiterates that for non-residential development only extensions rather than new development are considered "minor"³, and it is clear in the context that the exemption for minor development is intended to give some room for manoeuvre for relatively small-scale changes on established sites. In my view a new self-contained office development, of whatever physical size, does not fall within that definition.

² Ref: APP/Y0435/W/19/3233875

³ Paragraph: 046 Reference ID: 7-046-20140306

18. Even if I accept the appellant's most recent flood risk modelling, the appeal site and part of the proposed building would be in an area which both national and local policy consider to be at risk of flooding. The proposal would not be "minor development" in the terms set out in the Framework in respect of flood risk. Taking the preceding points together, in my view a Sequential Test is therefore necessary. None has been submitted with the proposal, and accordingly it has not been demonstrated that there are no reasonably available alternative sites where the proposal could be developed.
19. The appellant has also explained that office use is within the "less vulnerable" category in Flood Risk Vulnerability Classification in Table 2 of the PPG⁴, and which Table 3 of the PPG⁵ then indicates as being "appropriate" in Flood Zones 2 and 3a. This is not inaccurate, but Table 3 relates to the course of action after the Sequential Test has been carried out, including setting out the circumstances in which the separate "Exceptions Test" is then required. Paragraph 035 of the PPG⁶ is clear that the Exception Test should only be applied following the application of the Sequential Test. Similarly, I note the appellant's comments that the site is close to Newport Pagnell town centre, and is therefore in a highly sustainable location with good access to services, facilities and amenities. These observations address matters that would be appraised following a Sequential Test (including, were one to be required, as part of the Exception Test which, as Paragraph 164 of the Framework explains, takes into account whether there are wider sustainability benefits to the community which outweigh the flood risk). However, as compliance with the sequential approach has not been demonstrated I have not considered these points in detail.
20. The appellant has drawn my attention to the Council's decisions in respect of proposals at Station Road⁷, Green Farm Road⁸, and Lakes Lane⁹, and argues that the Council has been inconsistent in its approach to flood risk and the development of sites in Newport Pagnell. I do not know the full details of these other sites and proposals, although I have been provided with the officer reports for all three sites.
21. In respect of Station Road, the first application related to a "prior approval" for a change of use from offices to residential, and the Council considered the proposal acceptable in the context of the change of use of an existing building. For the second and third applications at Station Road the Council appears to have considered that, as an extension to provide an additional residential unit at first floor level, the proposals fell within the relevant definition of "minor" development (though this was only specifically addressed in the third report). In respect of Green Farm Road, the Council's officer report appears to accept again that the proposal is for minor development, and that therefore it was not necessary for compliance with the sequential approach to be demonstrated. While this is implied (by the last paragraph of section 7 of the officer report) rather than stated explicitly, again the circumstances do not appear to be the same as in the current appeal. While their locations are close to the appeal site, the proposals at Station Road and Green Farm Road are not directly

⁴ Paragraph: 066 Reference ID: 7-066-20140306

⁵ Paragraph: 067 Reference ID: 7-067-20140306

⁶ Reference ID: 7-035-20140306

⁷ LPA references: 20/00027/PANB1C, 20/02142/FUL and 20/02895/FUL

⁸ LPA reference: 20/00993/FUL

⁹ LPA reference: 17/00220/OUT

comparable to the development in this appeal. Those decisions do not therefore add weight in support of this proposal.

22. Turning to Lakes Lane, the Council granted outline planning permission for a new dwelling on paddock land within Flood Zones 2 and 3, in the face of objections from the Environment Agency and while acknowledging that “it is difficult to calculate the precise impact of the development upon flooding when the size and design of the proposed house is reserved for later consideration”. I note that that permission was granted contrary to an officer recommendation of refusal, but even so a failure to comply with national and local policy in respect of flood risk had not formed a recommended reason for refusal. While there are differences in the nature of the two sites, based purely on the officer report before me the Council’s reasoning in respect of flood risk in that case is difficult to follow. I therefore have some sympathy with the appellant’s perception of inconsistency on the part of the Council as far as the Lakes Lane permission is concerned. However, I have considered this appeal based on the evidence before me and on my understanding of the Framework and the PPG. The fact that the Council has reached a different decision elsewhere does not justify allowing this appeal.
23. For the reasons I have set out above, I conclude that the proposed development would not comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding. It would therefore conflict with Policy FR1 of Plan MK, which requires new development in areas at risk of flooding to meet the Sequential Test and Exception Test as appropriate. It would also conflict with the requirements of the Framework in respect of flood risk.

Other Matters

24. The creation of two small office units in an accessible location close to Newport Pagnell town centre would be likely to provide some economic benefits for the local area. It would also bring a somewhat neglected site back into active use. Nevertheless, given the modest scale of the proposal these benefits would be limited, and would not outweigh the harm I have found.
25. Although the proposed development would result in the loss of a small area of open space, the Council considered that it would be acceptable in terms of its effects on ecology and landscape. It also considered the proposal to be acceptable in respect of its impacts on highways and parking, and on neighbours’ living conditions. While I also note the comments made by interested parties, no substantive evidence was put before me to lead me to disagree with the Council’s assessment of these matters. I consider that these are neutral factors, so they do not weigh in favour of the scheme.
26. The appellant raised further matters in respect of the Council’s handling of the planning application, including its consistency of advice and decision making. Beyond those points which I have addressed in my reasons above they are not directly related to the planning merits of the proposal, but are dealt with instead in the separate costs decision.

Conclusion

27. The proposal does not comply with national or local planning policy in respect of flood risk, and so conflicts with the development plan taken as a whole.

There are no material considerations, including the Framework, which indicate that a decision should be made other than in accordance with the development plan.

28. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector