
Appeal Decision

Site visit made on 5 April 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal Ref: APP/B3030/W/21/3285093

Garage House, Great North Road, South Muskham NG23 6EA

- 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 and Mrs Brown against the decision of Newark & Sherwood District Council.
 - The application Ref 21/00690/FUL, dated 19 March 2021, was refused by notice dated 17 May 2021.
 - The development proposed is described as 'a bespoke dwelling.'
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether 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

3. The appeal site is located within Flood Zone 2. The National Planning Policy Framework (the Framework) advises at paragraph 159 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 in paragraph 018 that development should be kept out of medium and high flood risk areas, namely Flood Zones 2 and 3.
4. 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 sites appropriate for the proposed development in areas with a lower risk of flooding. Similarly, Core Policy 10 of the CS¹ and Policy DM5 of the DPD² seek to steer new development away from those areas at highest risk of flooding, applying the sequential approach to the location of development.
5. As a result of the appeal site's location in Flood Zone 2, the Sequential Test as set forth in the Framework should be applied to the scheme. The PPG states in

¹ Review of the Newark and Sherwood Local Development Framework Core Strategy and Allocations Amended Core Strategy (adopted March 2019)

² Newark and Sherwood Local Development Framework Allocations and Development Management Policies Development Management Document (adopted July 2013)

paragraph 034 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.

6. The appellant has provided a Flood Risk Assessment (FRA) (Flood Risk Consultancy Ltd, Ref: 2017-075, 13/07/2017). This concludes that the primary risk of flooding is from the River Trent (fluvial) and that the area has a history of floods from this source. The FRA concludes that the proposal would be safe, as site levels are above those in the model for a 1/1000-year flood event. It is also claimed there is an existing form of defence from a brick wall and subject to further mitigation, such as raising the finished floor levels to 300mm, the proposal could be made safe against flooding. It goes on to recommend evacuation plans and refuge places are devised by prospective future occupiers of the dwelling.
7. However, the Sequential Test was not undertaken as it is argued that the development type being considered is appropriate in Flood Zone 2. This was taken from the Flood Risk Vulnerability Classification table in PPG paragraph 066. However, the 'Notes to table 3' (paragraph 067) clarifies that the table does not show the application of the Sequential Test, which should be applied first to guide development to Flood Zone 1, then Zone 2, and then Zone 3. The PPG advises in paragraph 033 that the Sequential Test does not need to be applied for individual developments on sites which have been allocated in development plans through the Sequential Test, or for applications for minor development.
8. Regardless of the need to apply the exception test, it is a requirement to apply the Sequential Test as the site has not, from the evidence before me, been allocated in the development plan and as the site is not classified as 'minor development'³. The appellant advises a pragmatic approach should be taken in line with the PPG in a paragraph 033. However, the availability of alternative sites in Flood Zone 1 has not been established and it is therefore difficult to assess the level of pragmatism in this regard.
9. Although the appellant claims the proposal should be in Flood Zone 1 rather than Zone 2 due to the presence of flood defences, the Environment Agency (EA) disputes this. Notably, the presence of the brick wall which is not maintained by a risk management authority cannot be relied upon, while there is also no guarantee of ongoing maintenance or improvements to existing defences. In any event, it is not my role to determine which Flood Zone the site falls within.
10. Therefore, the evidence before me fails to adequately address the Sequential Test and consequently the proposal is contrary to the advice in the Framework and PPG and could expose people and property to an increased risk of flooding when alternative sites with less risk of flooding may be available. Whilst the proposal would incorporate mitigation measures that are set out in the appellant's FRA which could be subject to conditions, such matters do not outweigh the failure of the proposal to meet the requirements of the Sequential Test.
11. Based on the above, the proposal would not be located in an area which is considered suitable with regards to flood risk given the lack of a Sequential

³ PPG paragraph 046 Reference ID: 7-046-20140306

Test and is contrary to Policies DM5 of the DPD and Core Policy 10 of the CS. The proposal would also be contrary to advice in the Framework and PPG. Collectively, these seek to steer new development to areas with the lowest risk of flooding from any source.

Other Matters

12. My attention is drawn to the document 'A Detailed Investigation Into The Housing Needs of South Muskham' (Midlands Rural Housing - March 2015), which advises a preference for 11 open market homes in the village for local people. However, this evidently covered a period of 5 years, which would have expired in March 2020. I have nothing before me to indicate whether this need has been met or still exists. Moreover, there is no legal mechanism before me to secure the proposed dwelling for a local buyer. As such, there is nothing before me to indicate that the location of South Mushkam within Flood Zones 2 and 3 equates to an effective moratorium on residential development in the village. As such I afford this document little weight.
13. Additionally, I am informed that the District Wide Housing Needs Assessment (HNA) (January 2021) has identified that the district as a whole has a target of 454 new dwellings, per annum, for the period 2019-2033. South Muskham is located within the 'Rural South' sub-area, with some future growth expected within the sub-area as a whole. However, there is no evidence before me which indicates that the residual requirement in either the sub-area or the District as a whole would not be met and there is no dispute that the Council can demonstrate a 5-year supply of deliverable housing sites.
14. Nevertheless, the appeal scheme would contribute an additional dwelling towards the Council's housing supply. This would align with the overarching aims of the Framework in paragraph 60 to significantly boost the supply of homes. Furthermore, the appeal site is located in an area with access to some facilities and services which would contribute towards growth for the village. However, the socio-economic benefits to be attributed to one dwelling would invariably be limited.
15. No adverse harm has been identified with regards to ecology, highway safety, living conditions of occupiers of adjacent dwellings or the location of development in principle. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
16. My attention is drawn to an appeal decision⁴ which allowed 3 dwellings at Ashleigh. The Inspector in that case found the proposal to be acceptable, although flood risk was not a reason for refusal in that case. Moreover, from the Council's officer report submitted, it seems that although the Sequential Test was not carried out, there was an extant permission in place in outline form on the site. In any event, it is incumbent on me to form my own judgement and I have assessed the proposal on its own merits based on the evidence before me.

Conclusion

17. The proposal has not demonstrated that there are sequentially lower risk available sites than the appeal site. As such it would conflict with the

⁴ APP/B3030/W/19/3243679

development plan as well as guidance in the Framework and PPG as it relates to flood risk. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR