



Appeal Decision

Site visit made on 11 July 2022

by E Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2022

Appeal Ref: APP/N2739/W/22/3291919

The Nelson Inn, Ousegate, Selby, YO8 8BL

- 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 Miss Jackie Howley against the decision of Selby District Council.
 - The application Ref 2019/0982/FUL, dated 13 September 2019, was refused by notice dated 6 August 2021.
 - The development proposed is described as 'Full planning permission for the erection of new build block of self-contained apartments with associated undercroft car parking on vacant ground adjacent to The Nelson Inn, 134 Ousegate, Selby'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by Miss Jackie Howley against Selby District Council. The application is the subject of a separate decision.

Main Issue

3. The main issue is whether the proposal is an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework (the Framework).

Reasons

4. The appeal site is the car park to the rear of the Nelson Inn pub. It is within Flood Zone 3a, where there is a high probability of flooding from rivers and/or the sea. The river Ouse is on the other side of Ousegate to the north. A new build block of three self-contained apartments is proposed. This would be attached to the rear wing of the building. I have had regard to the alternative description of the development which is agreed by both parties as two storey rear extension to create three one bedroom self-contained apartments, with internal garage and car parking.
 5. Paragraph 159 of the Framework advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph 162 of the Framework indicates 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.
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6. Accordingly, proposals in Flood Zone 3a such as the appeal scheme require a Sequential Test to determine whether there are any reasonably available sites at a lower probability of flooding that could accommodate the proposed development.
7. The National Planning Practice Guidance (the Guidance) states that the general approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The aim should be to keep development out of medium and high risk flood areas (Zones 2 and 3). It also advises that when applying the Sequential Test a pragmatic approach on the availability of alternative sites should be taken.
8. The appellant has provided a Sequential Test which found there to be no reasonably available sites at a lower probability of flooding within the relevant search area, which could accommodate the number of dwellings proposed in the appeal proposal.
9. The Council has reviewed this and states that it has undertaken its own Sequential Test. Whilst the full details of this have not been provided, the Council considers that there is a reasonably available site at lower probability of flooding which would accommodate the numbers of dwellings proposed, within the relevant search area. Although no detailed information is provided by the Council, the appellant indicates that SEL-78 at 8-10 Market Cross Selby has planning permission¹ for the refurbishment of the ground floor retail units and the provision of nine flats above. It is in Flood Zone 2 and the planning permission has not yet been implemented.
10. The Council's Flood Risk Sequential Test Developer Guidance Note (October 2019) (Guidance Note) provides advice on applying the Sequential Test including the appropriate search area, which the appellant does not dispute. It also sets out advice relating to alternative sites and advises that comparison sites include allocated housing sites, sites identified in any emerging Plan, and unimplemented planning permissions for housing (such as SEL-78). Nevertheless, the appellant does not regard SEL-78 to be reasonably available or appropriate.
11. In terms of its appropriateness, the appellant argues that SEL-78 is not comparable in size to the appeal site since it is too large. However, in practical terms, since that permission is for nine flats, and the appeal scheme is for three self-contained apartments, I am satisfied that SEL-78 could accommodate the scale of the proposed development. Whilst the Council's Guidance Note states that the capacity of the comparison sites should be able to accommodate the number of dwellings proposed, it does not rule out larger sites. Therefore it remains that the alternative site identified by the Council at SEL-78 could accommodate the three units proposed and I have seen nothing to indicate that it is not appropriate for the development proposed.
12. Turning to its availability, the appellant considers that SEL-78 is not reasonably available since it is part of a wider refurbishment scheme within the Market Cross shopping area. Whilst I appreciate that it is not owned by the appellant, it has planning permission and construction has not yet begun. I have seen nothing in national or local guidance to indicate that the Sequential Test should be in any way constrained by landownership.

¹ 2019/0817/FUL

13. Additionally, although the appellant suggests that the residential units are related to the refurbishment of the ground floor retail units, I have seen nothing to establish that the mixed use nature of the permission would rule it out as alternative site, or to demonstrate that the residential part of the approved scheme at SEL-78 could not go ahead in the absence of the ground floor refurbishment works.
14. Thus, even taking a pragmatic approach to the availability of alternatives, based on the evidence before me I consider that site SEL-78 is a more suitable alternative location for the three apartments proposed. This being so, the appellant has not demonstrated that there are no reasonably available sites in Flood Zones 1 or 2, and I cannot be satisfied that the requirements of the Sequential Test would be met. Therefore the proposal runs contrary to one of the fundamental aims of government policy as set out in the Framework.
15. In this context, the Council has not considered the information provided by the appellant with regard to the Exception Test. I am also mindful that the Exception Test should not be applied unless the Sequential Test has been met. The appellant submitted a site specific flood risk assessment (FRA) to support the proposal and to demonstrate that site will be safe and that people will not be exposed to hazardous flooding from any source. The Environment Agency raises no objections provided that the development is carried out in accordance with the FRA and specified mitigation measures. However, this does not alter my findings in relation to the matter of the Sequential Test.
16. I therefore conclude on the main issue that the proposal would not be an acceptable form of development having regard to its flood zone location and the provisions of the Framework.
17. The proposal would also be contrary objective 6 of the Selby district Core Strategy (CS) which seeks to locate new development in areas of lowest flood risk and is one of the overarching principles of the CS. Although not cited on the decision notice, the Council's appeal statement also refers to CS Policy SP2 which indicates that where appropriate a sequential approach to the assessment of sites will form part of a Sequential Test, and CS Policy SP15 (Part A, Section d) which deals with sustainable development and climate change and seeks to ensure that development in areas of flood risk is avoided wherever possible through the application of the Sequential Test and Exception Test. In my view the proposal would also conflict with these policies.

Other Matters and Planning Balance

Biodiversity

18. The second reason for refusal for the planning application indicates that the proposal has not demonstrated that it would contribute to or enhance the natural and local environment by providing any net gain for biodiversity. Paragraph 174(d) of the Framework advises that planning decisions should contribute to and enhance the natural environment by minimising impacts on and providing net gains for biodiversity. Whilst the Council is content that the proposal would not harm any habitat or biodiversity, no details were provided with the application to enable the Council to assess any net gains or enhancements to the local environment.

19. The appellant has provided further information at appeal to address this reason for refusal. This includes a landscaping scheme and a biodiversity net gain calculation including a baseline habitat plan and landscape enhancement plan. The Council is now satisfied that its concerns have been addressed (subject to the imposition of conditions). Based on the evidence before me, I see no reason to come to a different view on this matter and am also content that the proposal would be acceptable in relation to biodiversity. However, the absence of harm in this regard counts neither for, nor against the proposal.

Additional matters

20. The Nelson Inn is a Grade II listed building (Ref 1167603). Despite the concerns raised by local residents, on the basis of the various revisions to the scheme prior to its determination, the Council is satisfied that it would cause no harm to the significance or special interest of the listed building (subject to the imposition of conditions to secure details of materials and finishes). There are no objections from the Council's Conservation Officer and I am aware of the approved listed building consent for the appeal scheme. However, important though they are, given my conclusions in relation to the main issue in this case, it has not been necessary for me to consider these matters further in this instance.
21. Notwithstanding concerns raised by local residents, the Council has no objections to the proposal in relation to highway safety, landscape, drainage, ground conditions, or the living conditions of nearby or future occupiers. Again, given my conclusions in relation to the main issue I have not considered these matters further. Nevertheless, in the context of the planning balance, I confirm that the absence of harm in all these regards counts neither for, nor against the proposal.
22. The proposal would result in economic benefits arising from the provision of housing and construction and supply chain jobs as well as direct and indirect and induced jobs (including those relating to on-going maintenance by the occupiers and their additional spending effects). Furthermore the appellant refers to the economic benefits of the new homes bonus and council tax receipts, along with support that would be provided by the future occupiers to nearby shops and services. Social benefits are also cited and include the contribution to housing land supply in an accessible town centre location and an increased range of housing units and choice. Environmental benefits would also arise from the proposal's effective use of land and sustainable location.
23. However, these benefits of the proposal are limited by its modest scale for only three units, and would in any event also arise from alternative development in locations at lower risk of flooding. Thus I find that they are insufficient to outweigh the harm that I have identified in relation to the main issue in this case and the conflict with the development plan that would arise in this regard.

Conclusion

24. For the reasons set out above, and having regard to all the other matters raised, I conclude that the appeal should be dismissed.

E Worthington

INSPECTOR