



# Appeal Decision

Site visit made on 2 August 2023

**by L Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 08 August 2023**

**Appeal Ref: APP/N2739/W/23/3318326**

**1 Railway Houses, Sandwath Lane, Church Fenton, Tadcaster LS24 9QX**

- 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 Robert Hanson against the decision of Selby District Council.
- The application Ref 2022/0680/FUL, dated 6 June 2022, was refused by notice dated 14 December 2022.
- The development is the sub-division of property to form new dwelling.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The development is described as retrospective. I did not view the dwellings internally, but a fence has already been erected at the site which appears to be as shown on the plans before me. For the avoidance of doubt, I have determined the appeal based on the submitted plans.

## Main Issue

3. The main issue is the flood risk of the development, and if any flood risk is found, whether this would be outweighed by any wider sustainability benefits to the community.

## Reasons

4. The appeal site is located within a small grouping of dwellings alongside the Church Fenton railway station. The building was previously a 5-bedroom dwelling, and through minor works including the blocking up of an internal doorway, has been converted to a 3-bedroom dwelling and a 2-bedroom dwelling. Each property has a garden area separated by a new fence.
5. The site is located in flood zones 2 and 3, and is therefore at risk of flooding. It creates a new dwelling and so is categorised as a 'more vulnerable' development by the National Planning Policy Framework ('the Framework') (2021). The main parties agree that the development passes the required flood sequential test under the Framework paragraph 162, and I see no reason to disagree.
6. The appellant suggests there is no need for an exception test under the Framework paragraph 164, as the development has not increased its flood risk. This is because there is no additional floorspace, the finished ground floor level is 1.00m above ground, a new dwelling is not increasing or changing the vulnerability of the site so the flood risk to the property itself is not changing, and there is no increase in the number of potential occupants. However, a

dwelling's sub-division is not exempted in the Framework or the Planning Practice Guidance (PPG). Furthermore, it is specifically referenced in the PPG in relation to the potential to introduce more people and therefore increase the vulnerability of the development, albeit that is in the context of sub-division into flats. A lack of objection from the Environment Agency is not determinative. I therefore find that an exception test is required.

7. Based on the site specific Flood Risk Assessment (FRA), the development meets part b) of the exception test, as it would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and reducing flood risk overall. However, part a) must also be satisfied. This requires the development to provide wider sustainability benefits to the community that outweigh the flood risk.
8. The PPG identifies that such benefits could include the re-use of suitable brownfield land as part of a local regeneration scheme, an overall reduction in flood risk to the wider community through flood risk management infrastructure, or the provision of multifunctional sustainable drainage systems. The implication of these examples is that they would positively impact a substantial number of people or make a substantial environmental difference. These examples do not apply to the appeal site.
9. The development does reduce surface water runoff, as it incorporates some flood mitigation and resilience measures outlined in the FRA, including permeable surfacing. A condition could restrict permitted development rights for new extensions and outbuildings, reducing the future potential for further hard surfacing. However, such measures are very small-scale and have only a very localised effect on minimising flood risk, so this is only a limited benefit.
10. The development provides an additional dwelling to the Council's housing requirement, but I have no evidence that there is a District-wide or local area housing undersupply, or that the types of dwellings created from the sub-division meet any specific local housing requirement. This is therefore a very limited benefit. Additional council tax would also be a very limited economic benefit from such a small-scale proposal, and there would also likely be a reduction in the tax currently payable on the 5-bedroom dwelling.
11. The appellant suggests that the sub-division allows an additional family to use the local services and businesses, which therefore benefits the local economy. However, as they have also argued that there is no increased vulnerability to flooding because there is no overall increase in the potential number of occupants, I am not convinced such a benefit exists. In any case, the occupation of an additional dwelling provides only a very limited social benefit.
12. The development is on previously developed land and makes an effective use of land, for which the Framework provides general policy support. It has created a new dwelling without having to use new construction materials, which is an environmental benefit. However, entirely new build dwellings could be constructed under zero carbon principles, and could be more energy efficient overall. Similarly, although more noise and pollution may occur during the construction phase of a new dwelling elsewhere, no specific site has been identified which would no longer be required as a result. Without evidence on such comparisons, I therefore find these benefits are only very limited.

13. The development has made the dwellings more affordable for the appellant to live in and maintain, but this is only a private benefit to which I give very limited weight.
14. The fact that the development has created some benefits, does not automatically mean that they outweigh the flood risk. This is a matter of planning judgement. Overall, due to its small scale nature I only give limited weight to the sustainability benefits to the community from the introduction of a single dwelling. I give moderate weight to the harm arising from the site's flooding risk. Therefore, part a) of the exception test identified in the Framework paragraph 164 is not met.
15. The development is at risk of flooding, and this is not outweighed by any wider sustainability benefits to the community. It therefore conflicts with Policy SP15 of the Selby District Core Strategy Local Plan (2013) and the Framework section 14, in their aim to avoid locating dwellings in areas at risk of flooding.

### **Other Matters**

16. The site is located within the Green Belt, and the Framework requires that substantial weight should be given to any harm to the Green Belt. The only built form of relevance to a consideration under Green Belt policy is the fence. The Council regards this as not inappropriate, plus suggests that it could be erected under permitted development rights. On the basis of the evidence before me, I agree with this conclusion.

### **Conclusion**

17. The proposal conflicts with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

*L Hughes*

INSPECTOR