



Appeal Decision

Site visit made on 27 October 2023

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2023

Appeal Ref: APP/Z0116/W/23/3321456

Land Adjacent to Teddies Nursery, Clanage Road, Ashton, Bristol BS3 2JX

- 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 Entace Limited against the decision of Bristol City Council.
 - The application Ref 22/06010/F, dated 16 December 2022, was refused by notice dated 27 February 2023.
 - The development proposed is described as the demolition of existing buildings and erection of replacement building for indoor recreation use Class E(d), with associated car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant refers to the Bristol City Council Flood Risk Sequential Test Practice Note 2013 ("the Practice Note"). Particularly in respect to the search areas for the Sequential Test and whether a site is reasonably available.
3. However, the Practice Note is approximately 10 years old and refers in part to now withdrawn planning policy¹. I have also not been made aware of any policy or guidance in the current National Planning Policy Framework ("the Framework"), the National Planning Practice Guidance ("the NPPG") or elsewhere which is more recent and exempts replacement buildings from the Sequential Test. Additionally guidance regarding a 'reasonably available' site is also set out in the more recent NPPG.
4. I have therefore ascribed more weight to the Framework and NPPG in these respects.

Main Issue

5. The main issue is whether the proposed development would be in a suitable location and if so, would be safe without increasing flood risk elsewhere.

Reasons

6. The appeal site is in Flood Zone 3a where development is required to follow a sequential approach to flood risk management, giving priority to the development of sites with the lowest risk of flooding.

¹ Planning Policy Statement 25: Development and Flood Risk, withdrawn March 2014

7. A wider Sequential Test has been submitted with the appeal. It identifies nine potential alternative sites by consulting five separate property portals which include listings from eight property agents.
8. The Council indicate there are higher vacancy rates than those put forward by the appellant. However, the details provided by the Council regarding these alternative sites is limited. There are no addresses or substantive details of how these alternative sites meet the search criteria.
9. The Council suggests that a higher focus should have been placed on the South Bristol designated centres and the areas within 300 metres of the boundaries. However, from the evidence before me, the search area covered alternative sites within the whole of South Bristol.
10. While the reliability of the appellants Sequential Test is questioned by the Council, in the absence of clearly demonstrated counter evidence, it is very difficult to say if any other reasonably available sites exist beyond those identified by the appellant. Therefore, I conclude that the nine alternative sites presented by the appellant are reasonably representative of availability within the catchment area.
11. The appellant individually considers each of the nine sites and provides details for discounting these sites. None of the sites were discounted due to standalone reasons and at least two reasons are given for each site.
12. Some of these sites are discounted as they are no longer available, do not meet the minimum site size thresholds or need reserved matters to be agreed and require a development partner. I find these to be compelling reasons which are not substantially challenged by the Council.
13. However, site number six has been discounted as it has planning permission for housing and such housing is 'considered likely to be implemented'. But, there is no convincing evidence before me to show the approved development has or will commence or that planning permission for a commercial use would not be forthcoming.
14. The size of site number six has also been discounted as it could not accommodate the proposed building and the required parking. However, I have no reason to believe this site suffers from poor accessibility and it has not been shown the parking level suggested is an essential requirement.
15. Consequently, I find site number six to be a reasonably available site appropriate for the proposed development in an area with a lower risk of flooding. The proposed development would not therefore be in a suitable location and fails to represent an acceptable form of development having regard to its flood zone location.
16. The proposed development is also supported by a Flood Risk Assessment and both the Council and Environment Agency raised concerns regarding its content. The Flood Risk Assessment has been amended but the Council and Environment Agency continue to find it unacceptable.
17. These concerns do not appear to be insurmountable, subject to further dialogue between the parties. However, given my findings in respect to the Sequential Test, there is no need for me to consider this matter further.

18. The development as proposed is therefore contrary to the relevant provisions of Policy BCS16 of the Bristol Core Strategy 2011 and the Framework. These, amongst other things, require development to be steered towards areas with a lower risk of flooding.

Other Matters

19. The proposal would deliver some economic, social and environmental benefits. It would be in an area with public transport links and includes the redevelopment of an existing building. However, given the scale of the development, the benefits would be modest. Similar benefits are also likely to arise from alternative development in locations at lower risk of flooding.
20. Thus, I find the benefits 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.

Conclusion

21. The proposal is therefore contrary to the development plan as a whole and there are no other material considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

N Praine

INSPECTOR