



Appeal Decision

Site visit made on 17 October 2023

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Appeal Ref: APP/P0119/W/22/3312355

Buckley Wright, Severn Road, Hallen BS10 7RZ

- 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 Graham Rose (RSS Property Ltd) against the decision of South Gloucestershire Council.
 - The application Ref P21/08133/F, dated 21 December 2021, was refused by notice dated 11 August 2022.
 - The development proposed is the erection of a pair of semi-detached houses, with integral garages and variation to existing access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made against South Gloucestershire Council by the appellant. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal site is in the Green Belt. The National Planning Policy Framework (the Framework) confirms that the Government attaches great importance to Green Belts. The identified fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. The Council state that the proposal would not compromise the openness of the Green Belt. Based on the plans before me and my observations on site I see no reason to take a different view. Accordingly, the proposal is not inappropriate development in the Green Belt and does not conflict with the guidance set down in the Framework on this matter.
4. The appellant has provided further information with the appeal in relation to flooding which includes an assessment of reasonably available sites within Hallen. The proposal itself has not changed and the Council have had the opportunity to comment on this information. On this basis, I do not consider that any party would be unfairly prejudiced, and I therefore have had consideration to the submitted information in determining this appeal.
5. My attention has been drawn to the emerging South Gloucestershire Local Plan. I am not aware of the exact stage this plan has reached, the extent of unresolved objections or whether the policies concerned will be considered consistent with the Framework. Consequently, in accordance with paragraph 48 of the Framework, I give it limited weight.

Main Issue

6. The main issue is whether the proposal represents an acceptable form of development given its flood zone location and the provisions of the development plan and the Framework, with particular regard to the Sequential Test.

Reasons

7. The appeal scheme proposes the erection of two houses on a site which currently comprises parking associated with an industrial building. The site is located within the settlement boundary of Hallen and is bordered by residential development to the south.
8. The proposal is accompanied by a site-specific Flood Risk Assessment (FRA) which states that the site is in flood zones 2 and 3 and is located close to the edge of these flood zones. The FRA states that the site is at risk of fluvial and tidal flooding and benefits from existing flood defences, which are the subject of future improvement works. The FRA states that, when these flood defence measures are taken into account, the site would be protected in a 1 in 200 year event, and that in a 1 in 1000 year event the site would be the subject of approximately 30mm of flooding. Additionally, it is stated that, when taking into account the Avonmouth Severnside Enterprise Area Ecology Mitigation and Flood Defence Project, projected breach scenarios for a 1 in 200 year flood event would not reach the appeal site. Therefore, the FRA states that the site is unlikely to flood.
9. The FRA goes on to state that, in the event that the site does flood, the design and layout of the development would minimise damage and ensure safe egress through the raising of floor levels, flood resilient construction methods and the siting of living accommodation on the first and second floors. It is also stated that, once completed, the development would be signed up to the Environment Agency flood warning service.
10. Notwithstanding the content of the FRA, the appellant's submission questions the accuracy of flood risk zoning data and suggests that the site may actually lie in flood zone 1. In support of this reference is made to applications for residential development in the area¹ which included extracts of the South Gloucestershire Strategic Flood Risk Assessment (SGSFRA) map which, it is stated, appear to show the appeal site as being within Flood Zone 1.
11. I have not been presented with the particular details of these applications. Even if it is the case that the FRAs submitted in support of these applications appear to indicate that the site is within flood zone 1 based on the SGSFRA map, nonetheless, based on the latest Environment Agency Flood Zone maps the site is clearly located in Flood Zones 2 and 3.
12. Whilst reference is made to the guidance in Planning Policy Statement 25, that document has been withdrawn and replaced by the Framework. The Framework requires that inappropriate development should be avoided in areas at risk of flooding by directing development away from areas at highest risk. It sets out a sequential test to steer new development to areas with the lowest risk of flooding. Where it is not possible for development to be located in areas with the lowest risk of flooding, the Framework sets out an exception test. This

¹ P19/2012/F, P19/18717/F and P19/18247/F

requires that development demonstrates that it would provide wider sustainability benefits to the community that outweigh the flood risk, and that the development will be safe for its lifetime without increasing flood risk elsewhere and, where possible, reducing flood risk overall.

13. Given the site's location within flood zones 2 and 3, the FRA would have to demonstrate that the sequential test is satisfied and, if necessary, the exception test. The Planning Practice Guidance (PPG) explicitly states that even where a FRA shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied².
14. The sequential test submitted with the planning application did not consider alternative sites. In support of this approach the appellant references the site's location on the edge of the flood zone, protection from flooding from existing and proposed flood defences and the approval of other forms of development in Flood Zone 3, which, it is stated, were not supported by a sequential test³.
15. The full details of these applications are not before me. I note that one of these applications (PT07/3047/F) appears to pre-date the requirement for a sequential test, and another (PT10/2939/EXT) appears to relate to an extension of time of that permission. On the basis of the limited information before me application PT16/6775/PNOR appears to relate to the change of use of an existing building. The PPG⁴ states that a sequential test will not be required for development types listed in footnote 56 of the Framework, which includes applications for changes of use. It would therefore appear that a sequential test was not required in support of these applications.
16. On the basis of the information before me applications P19/2012/F, P19/18717/F, P19/18247/F and P22/04025/F appear to relate to residential development within Flood Zone 3 which were approved on the basis that planning permission had previously been granted for residential development on the site. However, on the basis of the information before me the application sites for these proposals appear to cover larger or different site areas. Whether or not the Council were correct in their approach in relation to the assessment of flood risk in relation to these applications, and in the weight they afforded to past permissions in the decision making process, given the importance placed on flood risk by the Framework, it is not a matter that can be set aside on the basis of the approach in previous decisions. Therefore, past decisions, do not provide sufficient justification for a departure from the Framework.
17. From the evidence before me it appears that the Council did not clarify the search parameters for the sequential test. Further information submitted in support of the appeal considers reasonably available sites within the settlement of Hallen. The PPG⁵ specifies that the area of search for alternative locations will be defined by local circumstances relating to the catchment area for the type of development proposed. The Council suggests that the parameters of search should have included all reasonably available sites within the district. In support of this approach, they reference an appeal decision⁶ in which the

² Paragraph: 023 Reference ID: 7-023-20220825

³ Application references PT07/3047/F, PT10/2939/EXT, PT16/6755/PNOR, P19/2012/F, P19/1817/F, P19/18247/F and P22/04025/F

⁴ Paragraph: 027 Reference ID: 7-027-20220825

⁵ Paragraph: 027 Reference ID: 7-027-20220825

⁶ APP/0119/W/20/3264817

Inspector found that the sequential test should be applied across the entire district, commenting that it was not explained why the proposal needed to be located within the settlements considered in the sequential test.

18. I acknowledge that people may have a desire to live in a particular area and that the site is well located in relation to nearby employment sites, some of which would be accessible by bicycle or on foot. I also acknowledge the appellant's comments regarding the limited number of residential properties for sale in Hallen and reported rising house prices in the local area, and that on the basis of the information supplied by the appellant, there would appear to be limited opportunities for residential development within the settlement boundary.
19. Nonetheless, I have not been provided with any evidence of particularly high levels of unmet need for market housing within the village. I give limited weight to references to previous planning applications within the village which in themselves are not indicative of such unmet need. Whilst reference is made to demand for self-build housing, I have not been presented with any compelling evidence of particularly high levels of demand for such plots within Hallen, or that if approved, this proposal would contribute towards meeting such need.
20. I acknowledge the ability for those on the self-build register to express a preference of location within broad areas of the district. However, the ability to express such a preference does not demonstrate high levels of unmet market housing need within a particular area and it does not evidence that a sequential test which considers sites beyond the settlement is too broad in its scope, in particular given the specific aims of the sequential test. Additionally, whilst reference is made to an identified shortage of social housing, I note that this application is for 2 market dwellings. Therefore, if approved, this proposal would not contribute towards meeting that need.
21. Furthermore, I have not been presented with any compelling evidence that previous decisions made by the Council have accepted that the search parameters for a sequential test should cover only the settlement boundary of Hallen, or that there is any evidence that the Council has considered windfall sites in areas at lower risk of flooding separately when assessing past applications.
22. In light of the above, whilst there are differences between the current appeal and the appeal decision referred to by the Council⁷, namely that it comprised emergency accommodation and not market housing, similarly there is also a lack of compelling justification for why the development of open market housing needs to be located within the village. Nor is there substantive evidence to show that the proposed development is required to sustain the existing community in Hallen. In such circumstances there is no justification for the search area to be constrained to the settlement of Hallen. The benefits of the proposed development could be potentially achieved on sites with a lower flood risk elsewhere in the district. In the absence of this evidence, it has not been demonstrated that there are no other sites outside of Flood Zones 2 and 3 that could accommodate the proposal.

⁷ APP/0119/W/20/3264817

23. Even if it is the case that the development would reduce flood risk elsewhere by reducing surface water run-off and increasing rainwater absorption, and that the development would be adequately protected from flooding by existing and proposed flood defences, the PPG is clear that in such circumstances the sequential test still needs to be satisfied. Additionally, whilst I acknowledge the appellant's willingness to increase the finished floor levels of the development, and to increase the site levels, nonetheless such measures would not overcome the requirement for a sequential test or alter the site's flood zone. Similarly, whilst it may well be the case that the site would be less likely to flood than others on the same road on which development has been approved, and that the finished floor levels would be the same height as these approved developments, nonetheless this does not overcome the requirement for a sequential test.
24. The appeal site presents a greater risk of flooding than sites that are in flood zone 1 and outside areas at risk of flooding. The Framework states that development should not be permitted if there are reasonably available sites in areas with a lower risk of flooding and this should be demonstrated through the application of the sequential approach set out in the Framework. Regarding the exception test, the PPG states that this should only be applied where the sequential test has been passed and there are no reasonably available, lower risk sites, suitable for the proposed development. I have found that the submitted sequential test does not satisfy the requirements set out in the Framework and the PPG. As such the need to undertake the exception test does not arise.
25. I therefore conclude that the appeal site is not a suitable location for the proposed development, having regard to the potential for flooding. Therefore, the proposal would not comply with Policies CS5 and CS9 of the South Gloucestershire Local Plan: Core Strategy 2006 - 2027 (2013) and Policy PSP20 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (2017). Collectively these policies seek to ensure that development be located away from areas of flood risk and require that the sequential and exception tests will be applied to direct development to areas with the lowest probability of flooding. I also find conflict with the requirements of Section 14 of the Framework which has similar aims.

Other Matters

26. I note the appellant's comments regarding the results of the Housing Delivery Test (HDT) and 5-year housing land supply. Nonetheless, I have not been presented with any evidence that the HDT indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous 3 years or that the Council is unable to demonstrate a 5-year supply of deliverable housing sites⁸. Whilst the appellant's comment that, had the application been determined within the prescribed period, the Council would not have been able to demonstrate a 5-year supply of deliverable housing sites, is noted, nonetheless I must consider the appeal on the basis of the evidence before me.
27. The proposal would make provision for 2 residential units within the settlement boundary on Previously Developed Land which the appellant states is deliverable. There would be short term economic benefits associated with

⁸ As required by Footnote 8 of the Framework

construction, council tax revenues in the longer term and future occupiers may contribute to the economic and social prosperity of the local area through the use of local facilities and services and participating in local groups. Additionally, the housing units would be energy efficient incorporating renewable technologies and would be constructed using sustainable materials. The proposal would provide the opportunity for biodiversity enhancement. These matters weigh in favour of the proposal. However, these benefits would be limited given the scale of the development and are not sufficient to outweigh the harm that I have identified and the conflict with the policies I have referred to.

28. I note that the Community Infrastructure Levy to be obtained would help deliver infrastructure needed to support development and, as such, would weigh neutrally rather than positively in the planning balance.
29. The Council raised no objection to the design, scale and layout of the proposal including the proposed access and parking arrangements, housing mix, the effect of the proposal on the living conditions of the occupiers of neighbouring properties or the standards of living environment for future occupiers. Based on the plans before me I see no reason to take a different view. Nonetheless, compliance with the relevant policies on these matters would be required in any case. Therefore, these matters do not weigh in favour of the proposal.
30. I acknowledge that the appellant is dissatisfied with the Council's handling of the planning application. Nonetheless, that is not a matter for consideration as part of this appeal. Additionally, it is stated that the submission reflects the feedback given during a pre-application enquiry. Whilst this may well be the case, nonetheless, I have found conflict with the development plan in relation to the main issue.

Conclusion

31. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, I conclude the appeal should be dismissed.

N Robinson

INSPECTOR