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# Appeal Decision

Site visit made on 12 December 2023

**by K Townend BSc MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> January 2024**

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**Appeal Ref: APP/P2365/W/23/3324944**

**Newstead, Parrs Lane, Aughton, Lancashire L39 5BP**

- 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 Joseph Fay against the decision of West Lancashire Borough Council.
  - The application Ref 2022/0591/FUL, dated 20 May 2022, was refused by notice dated 25 January 2023.
  - The development proposed is erection of two residential dwellings after demolition of existing dwelling and associated works (resubmission of planning application 2021/0021/FUL).
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## Decision

1. The appeal is allowed and planning permission is granted for erection of two residential dwellings after demolition of existing dwelling and associated works at Newstead, Parrs Lane, Aughton, Lancashire L39 5BP in accordance with the terms of the application, Ref 2022/0591/FUL, dated 20 May 2022, and the plans submitted with it, subject to the conditions set out in the Schedule of Conditions attached to this decision.

## Applications for costs

2. An application for an award of costs was made by Mr Joseph Fay against West Lancashire Borough Council. This application will be the subject of a separate decision.

## Preliminary Matters

3. As part of the appeal, the appellant has submitted a Sequential Test Statement (STS). Although this represents a change to what was considered by the Council at the application stage, I do not consider that the additional information results in a substantial or fundamental change to result in a different application. Moreover, as the STS was submitted with the appeal documents the Council had an opportunity to comment on it and have chosen not to. As such, neither main party would be unfairly prejudiced and I, therefore, have had consideration to the submitted STS in determining this appeal.
4. A revised National Planning Policy Framework (the Framework) came into force on the 19 December 2023 with a further change published on 20 December. The revised Framework is a material consideration which should be taken into account from the day of publication. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the revisions and in light of the principles of natural justice, in this instance I do

not consider it necessary to invite any submissions from the parties on the revised Framework.

### **Main Issue**

5. The main issue is whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

### **Reasons**

6. The appeal site comprises the host dwelling, Newstead, which is a large, detached house and its domestic garden. The host dwelling is situated between other dwellings along Parrs Lane with open fields opposite and to the rear.
7. The appellant has drawn my attention to a more recent decision at the appeal site for the erection of two dwellings<sup>1</sup>. The recent application is for the same development as the appeal before me and constitutes a valid fallback position as there is a significant likelihood that the development, as approved, would take place should the appeal before me fail. I have, therefore, given substantial weight to the fallback scheme in considering this appeal.
8. The Framework aims to steer development away from areas at highest risk of flooding and to areas with the lowest probability of flooding through a sequential test. Allocated sites within the local plan should be informed by a Strategic Flood Risk Assessment (SFRA) and, where planning applications come forward on sites allocated in the development plan through the SFRA, the sequential test need not be applied again.
9. Both main parties agree that the site is within an area defined in the West Lancashire Local Plan Development Plan Document, adopted 2013 (DPD) as "safeguarded land". The land was released from the Green Belt but as "safeguarded land" the policy advises that it will be protected from development until it is absolutely required to meet development needs, or if allocated sites fail to deliver the required amount of development.
10. However, although it is identified as "safeguarded land" in the local plan I have not been provided with a copy of the strategic sequential test or the SFRA. The appellant contends that the site would have been subject to assessment within the SFRA, but I do not have any evidence to support this claim and the extract from the Green Belt Study does not provide sufficient detail to show that the site was considered against the sequential test.
11. The appeal site lies within Flood Zone 1 but within an area identified by the Environment Agency as at risk of surface water flooding. Footnote 59 of the Framework advises that a Flood Risk Assessment (FRA) is required in Flood Zone 1 where, amongst other matters, the land has been identified by the Environment Agency as having critical drainage problems; is identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.
12. On the basis of the evidence submitted with the appeal I cannot be certain whether the site requires a Sequential Test to be submitted.

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<sup>1</sup> Council reference 2023/0695/FUL approved 21 December 2023

13. However, as one has been submitted to overcome the reason for refusal, I have considered the information provided within the STS which concludes that there are no other sequentially preferable sites within the area which are at lower risk of flooding, and which could provide for the development of two dwellings proposed on the appeal site, other than other parts of the safeguarded land. I have also taken into consideration that much of the area around the appeal site lies within the Green Belt and the appeal proposal would be inappropriate development within the Green Belt.
14. For the above reasons I consider that the STS submitted with the appeal provides sufficient evidence that it is not possible for the proposed development to be located in an area with a lower risk of flooding. The exception test must therefore be met.
15. The appeal proposal is for two dwellings but would only result in one additional dwelling. The flood risk of the development is not significant, and the proposal does not introduce a more vulnerable use. Albeit limited, the community benefit of the proposal would outweigh the flood risk. Moreover, the development would be safe for its lifetime and would not increase flooding elsewhere, as shown in the submitted FRA. Therefore, both elements of the exception test are satisfied in accordance with the requirements of paragraph 171 the Framework.
16. For the above reasons I find that the proposed development would comply with national planning policy set out within the Framework which seeks to steer new development away from areas at the highest risk of flooding. I, therefore, find no conflict with the requirements of Policy GN3 of the DPD which aims to ensure that development would not result in unacceptable flood risk, is supported by a FRA, locates development away from flood zones 2 and 3 and satisfies the sequential and exception test, where necessary.

### **Conditions**

17. The Council has provided a list of conditions that it considers would be appropriate and the appellant has commented on this. I have considered these in light of the Framework and the Planning Practice Guidance, and I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity.
18. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. In order to ensure a satisfactory appearance, I have included a condition requiring the submission of samples of the materials to be used for the external surfaces of the dwellings.
19. Although construction can affect highway safety and the living conditions of neighbouring properties, I am not convinced that a construction management plan condition is required for this scale of development or is required by any local planning policies. Moreover, the proposed layout includes a large space to the front of the proposed dwellings for parking and turning which could easily accommodate the construction parking, compound, and wheel wash facilities without the need for this information to be submitted for approval. I have, therefore, not imposed the condition requiring this information or the condition requiring wheel washing facilities.

20. To ensure that the drainage scheme is provided and maintained I have included an additional condition to this effect, in accordance with the more recent consent granted by the Council.
21. In the interests of highway and pedestrian safety I have included conditions to require the access and parking areas to be provided prior to occupation of either of the approved dwellings. I have also included a condition to require one electric vehicle charging point per dwelling to encourage sustainability and the use of electric vehicles.
22. However, given the scale of the proposal and that the landscaping of the two dwellings would be of a domestic scale and maintained by the future occupants of the properties, I have not imposed the requested landscaping condition.

### **Conclusion**

23. The proposed development is in accordance with the development plan when considered as a whole. Having had regard to all matters raised, I conclude that the appeal should be allowed.

*K Townend*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 210FAY01-02, 210FAY01-10 REV F, 210FAY01-15 REV.A, 210FAY01-16 REV.A, 210FAY01-20 REV.A, 210FAY01-21 REV B, 1000 REV.P01, 1005 REV.P01, 1061 REV.P01 and 1062 REV.P01.
- 3) Notwithstanding any description of materials in the application, no development above ground floor slab level shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved samples.
- 4) No dwelling shall be occupied until the foul and surface water drainage scheme has been completed in accordance with the details as shown on the approved drawings 1000 REV.P01, 1005 REV.P01, 1061 REV.P01 and 1062 REV.P01 and the drainage scheme shall thereafter be maintained for the lifetime of the development.
- 5) No dwelling shall be occupied until a means of access for vehicles shall have been constructed in accordance with the approved plans and the Lancashire County Council Specification for Estate Roads. The access shall be retained thereafter for the lifetime of the development.
- 6) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 210FAY01-10 REV F for cars to be parked and for vehicles to turn so that they may enter and leave the site in a forward gear and that space shall thereafter be kept available at all times for those purposes.
- 7) The development shall not be occupied until electric vehicle charging points have been provided in accordance with details to be submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be installed in accordance with the approved details and shall thereafter be maintained for the lifetime of the development.