
Appeal Decision

Site visit made on 10 April 2024

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2024

Appeal Ref: APP/U2750/W/24/3338016

Ness Cottage, Barlby Bank, Selby, North Yorkshire YO8 5AU

- 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 & Mrs G Beddard against the decision of North Yorkshire Council.
 - The application Ref: ZG2023/0898/FUL, dated 23 August 2023, was refused by notice dated 7 December 2023.
 - The development proposed is the erection of new bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The revised National Planning Policy Framework (Framework) was published after the Council made its decision but prior to the appeal being submitted. The parties have thus had the opportunity to comment on this document during the course of the usual appeal timetable. I have considered it in my decision.

Main Issue

3. The main issue is the effect of the proposal on flood risk, in particular with regard to the application of the sequential test.

Reasons

4. The appeal site comprises an area of enclosed land which contains predominantly grassland, shrubs and trees. It lies adjacent to a small group of properties associated with the former Barlby Bank farmstead, including the neighbouring Ness Cottage with which it is associated. There is a more consolidated form of housing to the south and east, including terraces and flat complexes. The River Ouse lies a short distance to the north of the site, as well as to the west, beyond Ness Cottage.
5. The site lies within Flood Zone 3 (high probability of flooding). The Framework states that the planning system should take full account of flood risk. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Part of this approach is the application of the sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding

from any source. Development is not to be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

6. The Planning Practice Guidance: Flood Risk and Coastal Change (PPG) further advises that the aim is to steer new development to Flood Zone 1 (low probability of flooding). It goes on to set out that where there are no reasonably available sites in Flood Zone 1, reasonably available sites in Flood Zone 2 should be considered. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability) be considered.
7. Under the PPG, reasonably available sites are those which are in a suitable location for the type of development and with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower risk sites do not need to be owned by the applicant to be considered reasonably available.
8. The PPG also advises that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. It goes on to state that local planning authorities may find it helpful to prepare guidance on the appropriate area of search for common development types.
9. In this regard, a Selby District Council Flood Risk Sequential Test Developer Guidance Note - October 2019 (Guidance Note) has been prepared. It sets search areas and identifies what sites applicants need to consider. These consist of allocated housing sites identified in the Selby District Local Plan and Core Strategy; sites identified for housing in emerging Development Plan Documents which have reached advanced stages of preparation; and unimplemented planning permissions for housing.
10. The appellants' revised Sequential test and Exception Test Report (the Report) identifies Selby as the geographical coverage area for the test. It then considers sites on the basis of Selby District Council's (SDC) 2023-2028 Strategic Housing Land Availability Assessment (SHLAA) and five year housing land supply report published in March 2023, along with SDC Local Plan Publication Version Consultation 2022 and the Local Plan Interactive Policy Map. It considers both that the SHLAA and the five year housing land supply interactive map seemed to offer the most up to date resource. Online sources were also reviewed. The appellants maintained the view throughout that there are no sequentially preferable sites, including through subsequent correspondence with the Council.
11. While it is evident from the Report and the subsequent correspondence that a number of the sites have permission, it is not clear whether this covers all unimplemented planning permissions for housing that are in a lesser flood zone in Selby. The appellants consider this would be an unreasonable exercise through time, resources and potentially site visits. However, this would need to be investigated because the proposal is itself small scale and therefore may be able to be accommodated on either small or larger sites that fall into this category. If it transpires that a planning permission has been implemented, the site would simply be discounted.

12. This approach would also address concerns which the appellants have raised over the Council adding sites and then responding. This is because it would provide a definitive search of reasonably available sites in line with the Guidance Note. While there is a degree of judgment involved, it is not though unreasonable to expect the application of the sequential test to be carried out in accordance with the Guidance Note, including unimplemented planning permissions for housing in Selby. This is consistent with the approach in the PPG in that the Council has provided guidance for applicants to follow and it would allow for greater confidence in the results in the sequential test that are put forward.
13. The appellants have also stated that the proposal is entirely contingent upon the use of land already in this ownership and that it would no longer be financially viable when transaction costs are taken into account for the sale of the currently owned land and the purchase of an alternative site. Detailed viability evidence is not though before me. Still, if this was to attract significant weight it would severely limit the application of the sequential test in combating flood risk because it would acutely restrict the area of search. It does not alter my conclusion.
14. Some of the appeal submissions refer to the site also being in Flood Zone 2 (medium probability of flooding). The Report clearly shows though the entirety of the site in Flood Zone 3, utilising Environment Agency mapping. I have therefore proceeded on this basis, notwithstanding that the Guidance Note criteria would still need to be fully applied if the site was in Flood Zone 2. My attention has also been drawn to a different site in the area which received planning permission. This does not though negate the need to fully apply the sequential test to the proposal that is for my consideration. Nor does the consideration of the originally submitted version of the Report take my deliberations any further.
15. As a consequence, there is insufficient evidence to demonstrate that the sequential test has been passed. Whilst the proposal would incorporate mitigation measures that are set out in the appellants' Flood Risk Assessment (FRA), these do not obviate the need to first pass the sequential test under the Framework before the exception test and the FRA is considered, in line with the Framework and the PPG.
16. While the Planning Officer Report refers to conflict with development plan policies on flood risk, these are not contained in the Council's decision notice. Nevertheless, the Framework sets particular tests to protect people and property from all sources of flooding, including the sequential test. This is where I find against the appellants.
17. I conclude that the proposal would have an unacceptable effect on flood risk, in particular with regard to the application of the sequential test. As a result, it would not accord with the Framework because it has not been adequately demonstrated that there are not reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Other Matters

18. I am aware of why the appellants wish to utilise this area of land for the proposal, and related matters raised over affordability, well-being and reducing travel. The Report also sets out a number of other matters in its application of

the exception test, which also can be viewed as housing and economic benefits, as would energy efficiency as an environmental benefit. It would also be a self-build/custom build development. However, these do not outweigh the unacceptable effect on flood risk, including the application of the sequential test, with the protection that is afforded on this matter through national policy. Other matters raised including the accessibility of services, parking, means of drainage and character and appearance simply attract neutral weight. New development is to be not unacceptable in these respects if it was to proceed.

19. The site lies within the setting of the grade II listed Bank View Farmhouse, which lies to the south-west. Its significance derives from its architectural and historic interest as an 18th century former farmstead. The proposal is outbuilding-like in design and incorporates traditional features and proportions. It would preserve the setting of the listed building. The same applies as regards the site's location within the Selby Town Conservation Area. It would preserve or enhance the character or appearance of that area.

Conclusion

20. For the reasons set out above and having regard to all matters that have been raised, the appeal should be dismissed.

Darren Hendley

INSPECTOR