



Appeal Decision

Site visit made on 6 December 2023 by Andreea Spataru BA(Hons) MA MRTPI

Decision by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 May 2024

Appeal Ref: APP/A3010/W/23/3320465

Land to the west of Marsh Dene, Stockwith Road, Misterton, South Yorkshire DN10 4ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Fiona Ruddick against the decision of Bassetlaw District Council.
 - The application ref is 22/00792/OUT, dated 10 June 2022, was refused by notice dated 14 February 2023.
 - The development proposed is described as an 'outline planning application with all matters reserved except for the access arrangements, for two dwellings'.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary matters

3. Since the application was determined, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework in reaching my decision.
4. One of the Council's reasons for refusal refers to the failure of the proposal to accord with the Misterton Neighbourhood Plan (MNP), particularly Policy 5, as outlined within the Planning Officer's report. Given that the appeal development has been initially assessed only against Part 1 of this policy, I have found it necessary, for the reasons set out below, that main parties provide their views regarding the assessment of the proposal against Part 2 of Policy 5. Their comments have been taken into account in my consideration of this appeal.

Main Issues

5. The main issues are whether the proposal is in an appropriate location for residential development in respect of flood risk and whether it accords with the spatial strategy of the development plan.
-

Reasons for the Recommendation

Flood risk

6. The appeal site is located outside the Misterton settlement boundary, and in flood zone 3. Policy DM12 of the Bassetlaw District Local Development Framework Core Strategy & Development Management Policies DPD (CS) states that proposals for the development of new units in Flood Zone 2, 3a and 3b that are not defined by national planning guidance as being suitable for these zones will not be supported while development sites remain available in sequentially superior locations across the district.
7. The Framework requires that inappropriate development should be avoided in areas at risk of flooding by directing development away from areas at the 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. The Planning Practice Guidance (PPG) adds that when applying the sequential test, a pragmatic approach on the availability of alternatives should be taken.
8. The planning application was accompanied by a site-specific flood risk assessment (FRA), which did not include a sequential test. The appellant has drawn my attention to a previous planning application¹ that was granted outline permission for two dwellings on the appeal site. However, it is unclear whether that permission is still extant. Notwithstanding the planning history of the site, a sequential test is necessary for the appeal development.
9. I have had regard to the appellant's evidence that there have been no flooding incidents on the site. I also note the recommendations set out within the FRA, which include permeable areas to be incorporated, and that the ground floor level of the dwellings are to be used for non-habitable uses such as garages, store rooms and utility rooms. Several other flood resilience measures regarding external and internal walls, floors and fitting, fixtures, and services, are suggested to be incorporated into the dwellings' construction. However, implementation of mitigation measures does not obviate the need to pass the sequential test.
10. Moreover, although the proposed mitigation measures would be considerations in the exception test, the PPG is clear that the exception test should only be applied following the application of the sequential test. In the absence of a sequential test, it matters not whether it would pass the exception test, as this alone would not satisfy the requirements of the Framework and the PPG.
11. In coming to the above view, I acknowledge that the Environment Agency (EA) has not objected to the proposal on the basis of the mitigation measures set out in the FRA. However, there is no consideration of the sequential test in the response from the EA and as such this lack of objection does not weigh in favour of the proposal.
12. Accordingly, due to the failure of the proposal to pass the sequential test, it has not been demonstrated that the appeal site would represent a suitable location

¹ LPA ref: 17/01306/OUT

for housing with respect to flood risk. Therefore, the proposal would be contrary to Policy DM12 of the CS and the requirements of the Framework.

Spatial strategy

13. The Council indicates that the MNP is the most up-to-date development plan for the settlement. The Planning Officer's report outlines that Policy 5 of the MNP is particularly relevant to the appeal proposal as it refers to windfall development.
14. Given that the MNP shows the appeal site to be outside the development boundary, I consider that Part 2 of Policy 5 of the MNP is particularly relevant, as it relates to proposals for residential development outside the development boundary. Part 2 of Policy 5 of the MNP indicates that this type of proposal will be supported where they accord with the principles included within Policy DM3 of the CS.
15. Part B of Policy DM3 of the CS refers to the re-use of previously developed land in rural areas and states that proposals for the re-use of previously developed land outside Development Boundaries will be supported, other than where the site has naturally regenerated to the extent that it is of biodiversity value, where they result in (amongst other matters) the redevelopment of the site for the existing permitted use (other than where this is clearly no longer appropriate in the context of e.g. nearby residential amenity or wider sustainability issues); and (v) development that will not create significant or exacerbate existing environmental or highway safety problems.
16. Given the location of the site outside the built-up area, and its planning history which shows the appeal site as being formally part of the garden area of a residential dwelling (along with the previous outline planning permission granted for residential development), it is clear that the appeal site falls within the definition of 'previously developed land'.
17. The proposal seeks to redevelop the site for residential use (which is the existing permitted use), and there is no indication that the site has naturally regenerated to the extent that it is of biodiversity value. As such, I find that the proposal accords with Point (i) of Part B of Policy DM3 of the CS.
18. From the evidence before me, the proposal would not create significant or exacerbate existing environmental or highway safety problems which could not be addressed through suitably worded planning conditions. As such, the proposal also accords with Point (v) of Part B of Policy DM3 of the CS. In reaching this conclusion I have had regard to neighbour representations, consultees' responses, the Council's assessment outlined within the Planning Officer's report, as well as the appellant's arboricultural and flood risk reports.
19. Considering all of the above, the proposal accords with Policy DM3 of the CS, and is also compliant with Policy 5 of the MNP. Consequently, I consider that the proposal would not be harmful to the spatial strategy of the MNP. Nevertheless, this does not negate the unsuitability of the appeal site for residential development in the context of flood risk as identified above.

Other matters

20. The appellant has drawn my attention to the planning history to the site which includes the outline planning permission, reserved matters submissions² and discharge of condition requests that have been agreed by the Council.
21. However, the appeal before me is a new outline application and as such I can only attach limited weight to the history of the appeal site, particularly as it is unclear whether the previous permission is extant or not.
22. In addition to the above, the appellant has drawn my attention to an appeal decision³ concerning a refusal to grant approval for reserved matters pursuant to an outline planning permission. In that sense, I find that this appeal development is not directly comparable with the proposal before me as that case sought approval for reserved matters. The Inspector in that case found that flood risk itself was not a reserved matter and, no doubt as a result, there was no mention of a sequential test. Accordingly, I have considered the proposal based on its own merits and site-specific circumstances.

Planning Balance and Recommendation

23. The addition of two dwellings to the housing stock would be a minor benefit of the scheme, as would the limited economic activity generated by its construction and subsequent engagement by residents with local businesses. Accordance with Policy DM3 of the CS and Policy 5 of the MNP, as outlined above, is a neutral matter.
24. Significantly, in the absence of a sequential test, the proposal fails to demonstrate that it cannot be directed towards sites that are at lower risk of flooding. Therefore, notwithstanding the flood risk mitigation measures advanced by the appellant, the lack of a sequential test weighs very heavily against the development.
25. Overall, the benefits of the proposal, taken together, would not amount to material considerations which would outweigh the identified conflict with the development plan and would not justify a decision being made other than in accordance with it.
26. Finally, I understand that the appellant is not satisfied with the service provided by the Council, particularly in how matters were dealt with during previous applications. However, it is incumbent on me to determine the appeal on its own merits and the matters raised do not indicate that planning permission should be granted.
27. Therefore, for the reasons given above, I recommend that the appeal should be dismissed.

Andreea Spataru

APPEAL PLANNING OFFICER

² LPA refs: 19/01631/RES & 19/01600/RES

³ Appeal ref: APP/A3010/W/22/3291976

Inspector's Decision

28. I have considered all the submitted evidence, and my representative's report, and on that basis the appeal is dismissed.

Chris Forrett

INSPECTOR