



Appeal Decision

Site visit made on 8 May 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/G1630/W/23/3329664

**Land Adjacent to Greenacres, Hill End Road, Twyning, Tewkesbury
GL20 6JD**

- 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 Mr Daniel Thorp on behalf of Santon Property Ltd. against the decision of Tewkesbury Borough Council.
 - The application Ref is 21/01282/OUT.
 - The development proposed is outline application for the erection of 5 dwellings with access from Greenacres. All other matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with approval sought for access only. The appearance, layout, scale, and landscaping of the development are reserved for later. The Council determined the application on that basis and so shall I.

Main Issues

3. The main issues are whether the proposed development:
 - would provide a suitable location for housing having regard to the development strategy for the area;
 - would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - whether the proposal would provide adequate means of surface water drainage.

Reasons

Location

4. Policy SP2 of the Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy 2011-2031, adopted 2017 (JCS) sets out the strategy for the distribution of new development and the settlement hierarchy for the area. Part 4 of the policy sets the housing delivery requirement for Tewkesbury and part 5 advises that rural service centres and service villages will accommodate lower levels of development, proportional to their size and function. Twyning is identified in Table SP2c as a Service Village.

5. Policy SP10 supports the development of housing on allocated sites. Part 3 of the policy advises that on sites that are not allocated, housing development will be permitted on previously developed land in the existing built-up areas, including in service villages. Part 4 of the policy sets four criteria for development of housing on other sites.
6. Policy RES3 of the Tewkesbury Borough Plan 2011-2031 (BP) provides seven exceptions to the restriction against residential development outside of defined boundaries. Exception 3 allows for very small-scale development at rural settlements in accordance with Policy RES4.
7. Policy RES4 allows for very small-scale residential development within and adjacent to the built-up areas providing it is of a scale that is proportionate to the function of the settlement, does not have a cumulative impact, complements the form, is not a site of significant amenity value, and does not result in coalescence of settlements.
8. Policy GD1 of the Twynning Parish Neighbourhood Development Plan 2011-2031, adopted 2018 (NP) also sets a number of criteria for consideration of residential development outside of the settlement boundaries.
9. The appeal site is a parcel of land outside the settlement boundary for Twynning, accessed off Greenacres which is a small residential cul-de-sac on the edge of the settlement. At the time of my visit the site was very overgrown with weeds. A public footpath runs along one edge of the site, the housing on Greenacres and off Lynworth Lane lie to the east and south and open fields are to the west and north, to the side and beyond the gardens of the existing houses.
10. The site is not previously developed land, and the appeal proposal would not meet any of the criteria set out in Part 4 of Policy SP10 of the JCS or any of the criteria within Policy GD1 of the NP. Although the appellant asserts that the development would be akin to infill, the appeal site is next to open fields. It would, therefore, not be within the existing built-up area as required by 4ii) of Policy SP10 of the JCS. In this regard the appeal before me is also materially different to the Stocks Lane appeal¹ which was defined as "sitting within a largely continuous built-up frontage along Stocks Lane." Albeit not subject to a landscape designation or within a conservation area, new housing development on the appeal site would be considered to be located in the countryside.
11. Although Policies RES3 and RES4 provide an exception to support very small-scale development, paragraph 3.31 of the supporting text to this Policy confirms that this exception does not apply to service villages such as Twynning. As such, although it is referred to in the Council's reasons for refusal, I do not consider Policy RES4 of the BP is relevant to the appeal before me.
12. Twynning is identified as a service village in the JCS and benefits from a small number of services and facilities to meet resident's needs. The services and facilities of the village are accessible from the site by foot or a short car journey.
13. However, as the development would be located beyond the settlement boundary, as the Inspector found in the Stocks Lane scheme, the appeal proposal would not be a suitable location for housing having regard to the

¹ Appeal reference APP/J1860/W/21/3288103

development strategy for the area. The proposal would be contrary to Policies SP2 and SP10 of the JCS, Policy RES3 of the BP and Policy GD1 of the NP.

Flood risk

14. The appeal site lies within Flood Zone 1. However, it has been identified as being at high risk of surface water flooding from an overland flow route which results in surface water ponding on the appeal site. Although at the time the planning application was submitted the requirement for a Sequential Test for sites at risk of surface water flooding was not required by the Framework or the Planning Practice Guidance (PPG) by the time the application was determined, and at the time of my decision, this requirement has been added.
15. The appellant has drawn my attention to the Substation case² in which the judgment accepted that a sequential test was not considered necessary for an area at risk of surface water flooding. However, the Substation case was considered against the previous version of the Framework and the PPG, albeit that the judgment was not issued until after the latest revisions to the Framework.
16. Although the wording of the Framework remains unchanged, the PPG is now explicit and confirms that the sequential test now applies to all sources of flood risk, including areas at risk of surface water flooding. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source and to ensure that areas at little or no risk of flooding, from any source, are developed in preference to areas at higher risk. The PPG continues to refer to the need for pragmatism, for example for small extensions, but this is not relevant to the proposal. As such, the Substation judgment is now of only limited relevance to the proposal. I, therefore, find that a sequential test should be applied in this case.
17. That the proposal is an outline application would not remove the need for the whole of the appeal site to pass the sequential test, or exception test if required, due to it being at risk of surface water flooding. That the development could be carried out on parts of the site which are at lower risk, and could be made safe for the lifetime, would not meet the sequential test requirements as set out in the Framework and the PPG. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.
18. No assessment of potential alternative sites has been demonstrated by the appellant. The proposal is for housing development outside the edge of a settlement and could, therefore, potentially be provided on alternative sites at lower risk of flooding, if any are available. The sequential test of the Framework is, therefore, not satisfied. Consequently, the development would not comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.
19. It follows that the proposal would conflict with Policy INF2 of the JCS, Policy ENV2 of the BP and Policy GD7 of the NP. Collectively these policies seek to ensure that development avoids areas at risk of flooding and seek to reduce the existing risk of flooding.

² Substation Action Save East Suffolk Ltd v Secretary of State for Energy Security and Net Zero: CA-2023/000087

20. For the same reasons, the proposal would not comply with the advice set out in the Framework which seeks to avoid inappropriate development in areas at risk of flooding.

Drainage

21. From the evidence before me, including the Technical Note³, I am not wholly convinced that the development would reduce surface water runoff from the site, attenuate the existing surface water flooding or that it would provide suitable storage for surface water. The appellant's evidence shows that the depth of flooding in parts of the site would increase, and not just in the location of the swale, attenuation pond and bund where flood depths would be likely to be greater. Moreover, the proposal indicates that the rainfall from the site is intended to be discharged to the public sewer. However, the evidence before me indicates that this connection has not been accepted by the sewer provider due to insufficient capacity and flood risk.
22. The information provided is, therefore, insufficient to show that the development and the surface water drainage proposals would not increase flood risk elsewhere. I am, therefore, not convinced, that the development of the site would manage the surface water as close to the source as possible.
23. Consequently, I do not have sufficient evidence, even considering the additional Technical Note and the response from JBA Consulting within Final Comments, to show that the development would provide adequate means of surface water drainage. The development would, therefore, fail to comply with Policies INF2 of the JCS, ENV2 of the BP and GD7 of the NP which, taken together, require developments to incorporate sustainable drainage measures to manage surface water, achieve significant betterment on existing discharge rates, and ensure that flood risk is not increased on-site or elsewhere.

Other Matters

24. In addition to the matters considered above, interested parties have expressed concerns including, but not limited to, the density and design of the development, the access, loss of trees and vegetation, the effect on biodiversity including badgers, and the capacity of the foul drainage system, local school, and lack of public transport. These matters were considered by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above.
25. Whilst I understand the concerns of the interested parties, there is limited evidence before me that would lead me to come to a different conclusion to the Council on these matters. As an outline planning application, the layout and design of the development are reserved for later approval, so too is the width and shape of the proposed road. The increase of five additional dwellings off Greenacres, including using the junction onto Hill End Road, would not result in severe adverse highway safety impacts. On-site mitigation can be provided to secure biodiversity enhancements and a badger survey was carried out and submitted to the Council which confirmed no evidence of badgers. If the existing trees are not worthy of retention, then replacement planting can be provided. I have no substantive evidence that the proposed development of five dwellings would result in significant pressure on the local school and note

³ JBA Consulting Technical Note reference 2022s0407, dated 27 May 2022 – S3 – P01

that the sewerage provider has agreed to the foul drainage connection proposal.

Planning Balance

26. Following receipt of the Council's Statement of Case, there is now no disagreement between the parties that the Council is, at the time of this decision, unable to demonstrate a five-year supply of deliverable housing sites, notwithstanding the comments from interested parties. Consequently, the appeal before me is different to the appeal decision at St Margarets Drive⁴ in which the Council sought to argue that it did have a five-year land supply and the Inspector concluded that it did not. The latest Five-Year Housing Land Supply Statement from the Council, dated October 2023 and therefore after the St Margarets Drive appeal decision, advises of a 3.23 years' supply of housing land.
27. Paragraph 11d) of the Framework sets out the presumption in favour of sustainable development. This includes, in summary, that where the policies which are most important for determining the application are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The policies referred to in this part of the Framework are set out in footnote 7 and include areas at risk of flooding.
28. In this case, the appeal site is within an area at risk of flooding. I have found that the proposal has failed to provide the sequential test and that there is insufficient information to show that the proposal would provide adequate means of surface water drainage. Consequently, there is a clear reason for dismissing the appeal and, therefore, the presumption in favour of sustainable development as set out in paragraph 11d) of the Framework does not apply.

Conclusion

29. For the reasons given above the appeal should be dismissed.

K Townsend

-0INSPECTOR

⁴ Appeal ref APP/G1630/W/22/3310117