



Appeal Decision

Site visit made on 23 July 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2024

Appeal Ref: APP/Y0435/W/23/3329756

1 Station Road, Newport Pagnell, Milton Keynes MK16 0AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Kunbri Holdings Limited against the decision of Milton Keynes Council.
 - The application Ref is 23/01163/FUL.
 - The development proposed is erection of semi-detached 2-bedroom dwelling and 1 x 3-bedroom dwelling with associated access, parking, landscaping & refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In February 2024 Modifications to the Newport Pagnell Neighbourhood Plan (NP) were submitted. However, I am not aware of the extent of any unresolved objections, whether its policies are considered as consistent with the National Planning Policy Framework (the Framework) or when the Plan is likely to be adopted. Consequently, in accordance with paragraph 48 of the Framework, I give it limited weight.
3. Since the submission of the appeal a revised National Planning Policy Framework (the Framework) was published in December 2023. Those parts of the Framework most relevant to this appeal have not been amended.
4. In addition, on 30 July 2024 the Government published a consultation on proposed reforms to the Framework and made a written ministerial statement (WMS) titled "Building the homes we need". Given that those parts of the draft Framework most relevant are not proposed to be amended I consider there is no requirement for me to seek further submissions on the Framework, the consultation or written ministerial statement. I am satisfied that no party's interests would be prejudiced by my taking this approach.

Main Issues

5. The main issues are:
 - i) the acceptability of the location of the proposal in respect of flooding; and
 - ii) whether the proposal would provide acceptable living conditions for future occupiers with particular regard to outdoor living space.

Reasons

Flooding

6. The appeal site is located within Flood Zone 3a. As set out in the Planning Practice Guidance (PPG) zones 3a is defined as having a 'high probability' of flooding.
7. The Framework states that inappropriate development should be avoided by directing development away from areas at higher risk of flooding. Paragraph 168 of the Framework seeks to steer new development to areas with the lowest risk of flooding, and states that development should not be permitted if there are 'reasonably available sites', appropriate for the proposed development, in areas with a lower risk of flooding. Similarly, Policies FR1 and FR2 of Milton Keynes Council Plan:MK 2016-2031 Adopted March 2019 (Plan:MK) supports development proposals that avoid areas of current or future flood risk, and which do not increase the risk of flooding elsewhere.
8. It is understood that flood defences are present in the locality. Nevertheless, the permanence and ongoing maintenance of flood defences cannot be relied upon as they fall outside of the applicant's control.
9. The PPG states that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. The PPG requires the applicant to identify whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing availability assessments, such as sites currently available on the open market. The PPG also advises that a 'reasonably available' site could include part of a larger site if these would be capable of accommodating the proposed development.
10. The Sequential Test includes a search area of the district-wide area of Milton Keynes City Council. However, this does not include rural settlements. From the evidence before me, whilst I accept that the development plan seeks to focus new housing within the three key settlements it does not preclude housing development within other rural settlements. Accordingly, in this regard I consider the parameters of the Sequential Test search to be too narrow and should have been inclusive of rural settlements.
11. Sites considered to be too large or too small for the proposed development were also disregarded, and those stated to "require policy change" before they could be deemed suitable. Despite the Appellant's assertions, I have limited information regarding these alternative sites. Furthermore, the discounting of larger sites which may be capable of accommodating the proposed development runs contrary to the PPG. In addition, a number of the sites were discounted due to being unviable. However, no substantive evidence has been submitted in this regard.
12. The Council has identified a number of alternative sites within the search area where dwellings could be accommodated within Flood Zone 1 that would be sequentially preferable. They state that these are broadly comparable in terms of providing for between 1-3no dwellings, and of a similar number of bedrooms. The Appellant has responded in respect of sites at Dormans Close, Bridge House and Queensway, stating that these are not readily available sites

- nor any near comparison of the appeal site due to many planning implications and considerable financial factors. However, no robust evidence has been submitted to substantiate this.
13. Consequently, the evidence before me fails to adequately address that there are no sequentially lower risk available sites than the appeal site. As the development fails the Sequential Test, there is no need to apply the Exception Test.
 14. I am mindful that the Appellant's Flood Risk Assessment indicates that there would be no significant change to the impermeable area of the site, and that the proposal would incorporate flood resilient construction methods, which could be subject to conditions. Nevertheless, this does not overcome the need to apply the Sequential Test.
 15. I note the Lead Local Flood Authority raised concerns regarding the absence of hydraulic modelling of the proposed surface water drainage systems. I have had regard to the suggested conditions by the Council. Were the scheme otherwise acceptable a detailed drainage scheme, which makes appropriate provision for surface and foul drainage could be secured. However, that would not, in itself, reduce flooding vulnerability.
 16. I have been referred by the Appellant to a number of instances where, in their view, the Council have been inconsistent in their application of flood risk policy. Whilst I have been provided with some level of detail on a number of these cases, I am not party to the full circumstances. Similarly, the parameters of the Sequential Test for commercial developments could reasonably differ to that for housing-led development. Nevertheless, given the existence of clear national policy and guidance in relation to flood matters, I do not consider that these cases provide any justification or precedent for allowing the appeal.
 17. My attention has been drawn to the emerging NP which notes that the appeal site detracts from the character and appearance of the conservation area and goes on to identify the site as a redevelopment opportunity within the Town Centre. Whilst the NP recognises it is an opportunity to improve the current impermeable hardstanding surface of the site it goes on to state that a suitable scheme can only come forward by accepting the Sequential and Exceptions tests are met. Considering this, and given the stage of the NP, I afford this limited weight in favour of the proposal.
 18. The Appellant submits that planning appeal decision at Athol Villa and Woodside¹ demonstrates the importance of considering local attributes in applying the Sequential Test. From the limited evidence before me, this case relates to a different description of development and is within the jurisdiction of a different local authority. In referencing this appeal my attention has been drawn to a recent appeal decision² in Newport Pagnell. However, from the information before me the description of development differs significantly, as does the locational context and the main issues for the case. I therefore attribute this limited weight. Nevertheless, I recognise the importance of infill development on key sites within town centres, and within key settlements.

¹ APP/R0335/W/22/3304460

² APP/Y0435/W/23/3333914

19. I recognise that the appeal site has previously benefited from approvals for residential development³, and I understand that a Sequential Test was not required. However, from the limited information before me the application types differed in that the proposals related to a change of use and extension. Accordingly, they are not directly comparable. In any event, it is understood that these permissions have lapsed and therefore carry very limited weight in my consideration of this appeal.
20. For the reasons stated above, I conclude that the proposal is not suitably located in relation to flood risk, with particular regard to the Sequential Test. The proposal therefore conflicts with Policy FR1 of Plan:MK and the Framework, insofar as they relate to flood risk which seeks to steer all new development towards the lowest probability of flooding.

Living conditions

21. Policy HN4 of the Plan:MK requires development proposals to demonstrate good internal and external design that can accommodate different lifestyles and needs. The New Residential Development Design Guide 2012 (Design Guide) states that provision should be made for private gardens where family housing is proposed. It goes on to state that gardens for family housing should be a minimum of 10 metres in depth, although they can be shorter (7-8 metres) for wide frontage units. In particular the Design Guide states that north-facing gardens may need to be longer to ensure they receive afternoon sun.
22. The proposed dwellings would be provided with private garden space to the north of the proposed buildings. The 3-bedroom plot would have a tapered garden with a depth ranging from 3m to 5.1m. The 2-bedroom plot would have a garden depth of 3.5m. The external areas would be narrow in width and shallow in depth. Whilst I accept that developments should provide a mix of different garden sizes to meet differing needs, in this instance the proposed outdoor spaces in both instances, would fall significantly short of the guidelines set out in the Design Guide.
23. The Appellant submits that Bury Field, a public open space, is within a 6-minute walk from the appeal site with a suitable traffic light crossing system. Be that as it may, the presence of nearby public open space does not overcome the harms identified.
24. The Appellant submits that limited garden spaces were not previously disputed when approval was given for residential development at the site. I have limited information regarding the previous permissions but understand that a shared garden was provided for the occupiers of flats that were single units and not family dwellings. Similarly for the single bedroom dwelling a roof balcony was deemed acceptable. I am therefore not satisfied that the schemes are directly comparable to the appeal before me. In any event, I have determined the appeal on its own merits.
25. For the reasons stated above, the proposed development would not provide satisfactory living conditions for future occupiers, with particular regard to

³ 20/02895/FUL - Change of use of a building from Use Class E, formerly B1(a) offices and extension to accommodate 3 residential flats at first floor level and office and retail use at ground floor level (resubmission of 20/02142/FUL) permitted on 07.01.2021 and 20/00027/PANB1C - Prior notification for the change of use from office (use class B1) to two residential units (use class C3) permitted on 25.02.2020

outdoor space. Conflict arises with policies D5 and HN4 of Plan:MK and the Design Guide insofar as they seek an acceptable level of amenity for future occupiers. The proposal would conflict with the Framework which seeks to create places that promote health and well-being, with a high standard of amenity for future users.

Other Matters

26. Whilst the Council's ability to demonstrate a Framework compliant housing land supply is not disputed, the Framework is clear that the Government's objective is to significantly boost the supply of homes, as part of which under-utilised land should be developed. There would be moderate, social and economic benefits associated with the proposal relating to construction employment and spend within the local economy upon occupation of the dwellings. However, given the small scale of the proposed development the weight afforded to these benefits is limited.
27. The Appellant asserts that the appeal scheme would develop a site which currently has an adverse impact on the character of the surrounding area and that as a small site the proposal would make the best use of land. It is recognised that the appeal site is in a location close to services, facilities and public transport. The proposal would reflect the character of the surrounding area in terms of scale, mass and siting, would not have an adverse impact upon highway safety and would provide high quality residential accommodation in line with the development plan policies.
28. The site is located within Newport Pagnell Conservation Area (CA). I am cognisant of my duties under S72(1) of the Listed Building and Conservation Areas Act (1990) (as amended) (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. I have also had regard to my duty under the Framework to consider the potential effects on the significance of a heritage asset that may be affected, including by development affecting its setting. The main parties agreed that the scheme would not harm the CA or its setting and would thus preserve its significance. Given the proposed siting to the rear of an existing substantial building along with the design and external finish of the proposal, I too share that view.
29. A Grade II Listed Building, known as 122 High Street, and a Grade II Listed milepost are proximate to the appeal site. Having regard to my duty under S66(1) of the Act I am satisfied that owing to the proposal's location to the rear of the existing building at the site, the proposal would not detract from the significance of the identified designated heritage assets in the locality.
30. The absence of objections from consultees is a neutral matter.
31. I have considered all other matters raised by interested people. However, as I have found the development to be unacceptable for the reasons given, it is not necessary for me to reach a conclusion on these matters.
32. While the benefits weigh in favour of the proposal, given the scale of the appeal scheme, even cumulatively, these benefits attract limited weight. Therefore, even with the significant weight that the Framework places on the value of using brownfield land, these benefits do not outweigh the harm found in relation to the main issues.

Conclusion

33. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. The appeal is therefore dismissed.

R Gee

INSPECTOR