



Appeal Decision

Site visit made on 17 September 2024

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2024

Appeal Ref: APP/F1040/W/24/3343255

2 Sapperton Lane, Church Broughton, Derbyshire DE65 5AU

- 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 James Bates against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2020/1094.
 - The development proposed is the erection of 2 new dwellinghouses.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr James Bates against South Derbyshire District Council and is the subject of a separate Decision.

Procedural Matter

3. The proposed development includes the erection of a pair of semi-detached dwellings. Although in outline form, access to and the layout of the proposed development are not reserved for subsequent approval.

Main Issues

4. It is considered that the main issues are the effects of the proposed development on (a) the risk of flooding and (b) character and appearance of the surrounding area.

Reasons

Risk of Flooding

5. The appeal site comprises an area of land situated between a terrace of 3 dwellings and a pair of semi-detached dwellings which front Sapperton Lane.
6. There is no disagreement between the parties that the site flooded in 2012 because the surface water draining from the adjacent fields overwhelmed the culvert along the site's western boundary but, since then, this culvert has been improved. From the evidence provided, including the appellant's Flood Risk Assessment (FRA), the site is still potentially at risk from pluvial flooding and flooding associated with the potential blockage or failure of the culvert.

7. The FRA recommends mitigation measures, including creation of flood storage on the site and the finished floor levels of the proposed dwellings set 0.3 metres above the ground level. These technical measures to address the risk of flooding for the future occupiers and occupiers of other properties elsewhere have been accepted by the Local Lead Flood Authority (LLFA).
8. However, the National Planning Policy Framework (the Framework) identifies that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk by applying the sequential test and then, if necessary, the exception test. The Framework clarifies that the sequential test should take account of all sources of flood risk when permitting development, including from surface water and overwhelmed drainage systems. The Planning Practice Guidance on Flood Risk and Coastal Change reflects this position whereby 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. The sequential test should be applied when any part of a site is at risk of flooding and this requirement is referenced in the comments submitted by a third party with expertise in flood matters.
9. Although there is a claim from the appellant that the sequential test is not required, this is not the case based upon national policy and guidance. No sequential test has been undertaken to demonstrate that there is no alternative land at a lower risk of flooding available to erect the proposed development. Technical measures, such as those related to increasing flood capacity and the finished floor level of the proposed dwellings, agreed by the LLFA to reduce the risk of flooding to the future occupiers, are usually part of any exception test, which must follow only after the sequential test has been complied with.
10. On this matter, it is concluded that in the absence of a sequential test, the future occupiers would be at an unacceptable risk of flooding and, as such, this would be contrary to national policy and guidance and Policy SD2 of the South Derbyshire Local Plan (LP). This policy echoes national policy concerning the sequential approach to flood risk management.

Character and Appearance

11. The site is within a small cluster of dwellings which include 1 to 3 Sapperton Cottages, Tunstall Cottage, 2 Sapperton Lane and The Homestead. This small cluster of properties does not comprise a settlement and it is not part of a recognised village. Accordingly, the proposed dwellings would be isolated from a settlement and the Framework refers to avoiding the development of isolated homes in the countryside. The sense of isolation of the cluster is accentuated by the surrounding area being characterised by open and verdant countryside comprising arable fields separated by hedgerows with trees. Although there are some structures and it forms part of the curtilage of 2 Sapperton Lane, the site shares the open and verdant characteristics of the surrounding area.
12. However, LP Policy BNE5 refers to development in rural areas outside settlement boundaries being permitted in specified circumstances. One of these circumstances is infill development that is in keeping with the character of the locality and represents the infilling of a small gap, for not normally more than two dwellings, within small groups of housing. The explanatory text does not give guidance on what comprises a small gap. In the case of the appeal site, there is a gap of around 50 metres according to the appellant between the

neighbouring properties fronting Sapperton Lane. The Council suggest the gap is some 70 metres. Irrespective of the measurement, it is a significant gap within this small cluster of properties.

13. The indicated layout of the proposed development and the proposed accesses from the road, both of which are not matters reserved for subsequent approval, would reflect the linear form of development associated with the neighbouring properties. However, the proposed development would not infill the full width of the gap between the properties on the eastern and western boundaries. There would remain a significant gap between the siting of proposed new house 2 and Tunstall Cottage due to this neighbouring property's garden. There would be a smaller gap between proposed new house 1 and Sapperton Cottage.
14. Accordingly, and although 2 dwellings are proposed, the appeal scheme would not represent the infilling of a small gap within a small group of housing. Instead, the erection of the proposed dwellings would adversely harm the positive contribution made by the openness of this gap to the character and appearance of the surrounding countryside within which the small cluster of properties is located. For the reasons given, it is concluded that the proposed development would cause unacceptable harm to the character and appearance of the surrounding area and, as such, it would conflict with LP Policy BNE5
15. Accordingly, it is concluded that this appeal should be dismissed.

D J Barnes

INSPECTOR