



Appeal Decision

Site visit made on 26 September 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

Appeal Ref: APP/D3505/W/23/3336107

Little Barnes, Shotley Road, Chelmondiston IP9 1EE

- 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 and Mrs Malster against the decision of Babergh District Council.
 - The application Ref is DC/23/02992.
 - The development proposed is erection of 2no dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought outline planning permission with all matters reserved other than access. I have determined the appeal as such, and any details in relation to the reserved matters are considered on an illustrative basis.
3. The Babergh and Mid Suffolk Joint Local Plan – Part 1 (the JLP) was adopted following the Council's determination of the planning application. The policies of the JLP supersede those of the Babergh Core Strategy 2014 (the CS) cited in the decision notice, which are no longer part of the development plan and hold no weight in this appeal. Both main parties' evidence acknowledges the changes to the statutory development plan.
4. An update to the National Planning Policy Framework (the Framework) has been published since the determination of the planning application. However, other than paragraph numbering, there are no material changes relevant to the substance of the appeal.

Main Issue

5. The main issue is whether the proposed development would be acceptable on flood risk grounds.

Reasons

6. The appeal site is a former plant nursery to the north of the B1456 Shotley Road. During my visit, I observed the site to contain polytunnels, greenhouses and open grass areas, with mature hedgerows lining the roadside boundary.
7. Both main parties agree that the site is in Flood Zone 1, and therefore has a low probability of river or sea flooding. However, it is also agreed that the Environment Agency (EA) Surface Water Flooding Map (SWFM) identifies part

of the site being at risk of surface water flooding, with the level of flood risk ranging from very low to high.

8. The Flood Risk Assessment (FRA) submitted with the application suggests that the area the SWFM identifies to be at risk of surface water flooding corresponds to the location of a former pond that has since been filled. Additionally, the FRA notes that there are no recorded incidents of flooding at the site.
9. The FRA further explains that this former pond area is not part of a surface water flow path and is an isolated area of flood risk which can be mitigated. Suggested measures include raising ground levels across part of the site and implementing a formal surface water drainage system to manage overland flows in a controlled manner.
10. The Framework directs that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This should be achieved by applying the sequential test and then, if necessary, the exception test. The Framework specifies that the sequential test should account for all sources of flood risk, including surface water, and this is reflected in Policy LP27 of the JLP. The Planning Practice Guidance (the PPG) further clarifies that 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.
11. No sequential test has been conducted for the proposed development. The appellant argues, given the former pond area does not form part of a surface water flow path and poses only an isolated flood risk that can be mitigated, that a pragmatic view should be taken whereby this area is not considered by the sequential test parameters.
12. Although the appellant disputes the accuracy of the EA SWFM, the map clearly indicates areas at risk of flooding on the site, and this appeal is not the appropriate forum to challenge the accuracy of the mapping. As such, the strict provisions of the development plan, the Framework and the PPG direct that the sequential test must still be satisfied. The mitigation measures outlined by the FRA would usually form part of an exception test, which should only be considered once the sequential test has been passed. Therefore, even if I was to find the FRA's proposed mitigation measures acceptable, the proposal fails to demonstrate through a sequential test that there is no alternative land at a lower risk of flooding available for the proposed development.
13. For these reasons, in the absence of a sequential test, I conclude that the proposal has failed to demonstrate that the necessary steps have been taken to protect future occupiers from harm arising through flood risk. In respect of this issue, the proposal would therefore conflict with Policy LP27 of the JLP and the provisions of the Framework, the aims of which have previously been set out.

Other Matters

14. The proposed development would provide 2 new dwellings, making efficient use of the land and providing a small but meaningful contribution to housing stock. It would thereby align with the government's objective to boost the

supply of homes, as set out in the Framework. Whilst these benefits offer some weight in favour of the proposal, they do not outweigh the previously identified harm.

15. The site lies within the Zone of Influence of one or more European Sites comprising the Suffolk Recreational disturbance and Avoidance Mitigation Strategy (RAMS). A financial contribution has been made in line with the RAMS, which the Council considers would adequately mitigate the additional recreational pressure on the European Sites arising through the proposed development. In the event that I was minded to allow the appeal, it would have been necessary to consider this matter within an appropriate assessment. However, because I am dismissing the appeal for other reasons, I have not done so.

Conclusion

16. For the reasons given above, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR