



Appeal Decision

Site visit made on 9 October 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2024

Appeal Ref: APP/B3030/W/24/3345747

Land at Former Ashleigh, Great North Road, South Muskham NG23 6EA

- 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 Mr John Winter against the decision of Newark and Sherwood District Council.
 - The application reference is 23/01329/FUL.
 - The development proposed is erection of 3 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development originally included 'Resubmission of previously approved scheme to allow for extended time to commence works.' However, the appeal is not made directly against the imposition of a time limit, nor as a Section 73 appeal, which in any event cannot be used to extend the time for implementation. Rather, the application was made afresh for planning permission. I have considered the appeal on this basis and the description above reflects the actual development sought. In doing so, I have had regard to previous planning permissions on the land as material considerations.

Main Issues

3. The main issues are i) whether the proposed development would be in a suitable location with respect to flood risk, and ii) the effect of the proposal on existing trees.

Reasons

Flood Risk

4. The site lies in Flood Zone (FZ) 2 where a medium possibility of flooding exists, in particular fluvial flooding from the nearby River Trent. Planning permission was granted for three dwellings on appeal in 2020¹. This permission is indicated to have lapsed without being implemented. Flood risk was dealt with briefly as an 'Other Matter' and found to be acceptable on the basis of mitigation measures set out in the submitted Flood Risk Assessment (FRA). However, in this case, permission has been refused on the basis of a failure to pass the sequential test for flood risk set out in the National Planning Policy Framework (the Framework).

¹ Council Ref 19/00782/FUL, granted 9 October 2020 on appeal under Ref APP/B3030/W/19/3243679

5. Core Policy 10 of the Amended Core Strategy (March 2019) (the ACS) states that development should demonstrate a high standard of sustainable design that proves to be resilient in the long term, taking into account the potential impacts of climate change. Policy DM5 of the Allocations and Development Management Development Plan Document (July 2013) (the ADMDPD) seeks to steer development away from areas at highest risk of flooding, through application of the sequential and exception tests of the Framework.
6. The aim of the sequential test is to steer new development to areas with the lowest probability of flooding, these being within FZ1. The Framework is clear that the sequential test should consider flooding from any source. Only where there are no reasonably available sites in FZ1 should reasonably available sites in FZ2, and then FZ3, be considered. If the sequential test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding, then the exception test may have to be applied, which is the case where residential development is proposed in FZ2.
7. Application 19/00782/FUL was considered by the Council to fail the sequential test if applied to the whole district as there are areas within FZ1 that would be preferable. However, it referred back to an earlier permission granted in 2017² that determined the sequential test could be undertaken at a local level, the result of which was that no sequentially preferable sites were identified.
8. The Council now refers to updates to the Framework and the PPG in support of its revised position that the sequential test should take in the whole district, although it does not specify the changes it refers to. The appellant argues that the sequential test should continue to be applied at a local level, and refers to there being no reasonably available sites in the parish.
9. I recognise that there are large areas of FZ2 and FZ3 in the district. The PPG states that where this is the case, and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives. However, residential development is not constrained by locational requirements in the way industrial or commercial development may be, and is capable of being located across the district. The Framework also acknowledges that sustainable development in rural areas may involve development in one village that supports services in a village nearby.
10. The appellant cites the Council's 2015 District Wide Housing Needs Survey (HNS) in support of his position, pointing to an unmet need for 11 market homes in South Muskham identified in that document that still exists as no planning permissions were granted in the settlement in the subsequent 5 years, until the permission granted on appeal in 2020 at the appeal site. However, this survey is now almost 10 years old and in the absence of newer information on needs arising in South Muskham, it is not clear that a need identified in 2015 still exists today, at what level it may exist and what types or tenures of housing may be needed. Moreover, the stated need in 2015 was for market dwellings, but this was not carried forward as a policy requirement in the ACS, as under the planned distribution of growth under Spatial Policy 2, there is no specific housing growth figure set out for South Muskham.
11. I am also provided with the 2020 HNS, which places South Muskham in the 'Rural South' housing sub-area, alongside some 18 other settlements.

² Council Ref 16/01761/OUT

Although this sub-area is identified as having a greater need for 4-bedroom and 2-bedroom dwellings than the district as a whole, it does not provide a breakdown of need by individual settlement or parish. Therefore, it does not establish that there is a specific need for market housing arising in South Muskham. Moreover, the HNS principally refers to affordable housing need, which a proposal for market housing would not address. Indeed, there is no evidence before me of a general undersupply of housing to which the extent of higher flood risk areas in the district may be a relevant factor. On the contrary, the Council's position that it can demonstrate a five year supply of deliverable housing sites is not challenged by the appellant.

12. Spatial Policy 3 deals with rural areas beyond the Principal Villages, and considers proposals for new housing where it would help to support community facilities and local services. However, this policy applies generally to the district and does not identify a specific need for housing to support facilities in particular villages. South Muskham has a limited number of facilities including a church, village hall, and a local bus service, but there is little information as to how the proposal would help support these facilities beyond a very limited increase in the local population, or why such support could only be achieved on a site in FZ2. On the evidence before me, therefore, there is no policy basis or location-specific housing need demonstrated that would justify a smaller area in which to apply the sequential test.
13. I note the appellant's point regarding the feasibility of providing an up-to-date housing needs assessment during the timeframe of the appeal, but the Procedural Guide: Planning Appeals – England sets out that the appeal process should not be used to evolve a scheme and that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and interested parties at the application stage. Thus, I have considered the appeal on the evidence before me.
14. The above considerations notwithstanding, the evidence contains no formal sequential test. The appellant refers to previous assessments under earlier applications, but no direct evidence of those sequential tests has been provided, including specification of the actual 'local area' considered. What is before me are diagrams within the appellant's Flood Risk Assessment (FRA) that indicate areas within FZ1 are as close as around 1km of the site in and around Little Carlton. In a rural context, this is not a significant distance, and it casts doubt on the appellant's claim of there being no sequentially preferable sites locally, particularly as Little Carlton is grouped with South Muskham in the 2020 HNS.
15. In light of this, I cannot be satisfied that there are in fact no sequentially preferable sites available in areas of lower flood risk. Moreover, even if I were to accept the appellant's position regarding a need arising in South Muskham, this lack of evidence in respect of the existence and availability of sites, even at a local level, means I am not satisfied that the proposal represents the most sequentially preferable site to address any such need. As a result, I find that the sequential test has not been passed.
16. The assessment made by the Council in the previous applications is a material consideration. However, although I am provided with the delegated reports for the previous applications, the assessments in each case are limited in terms of the detailed evidence considered by the Council. As these permissions have

lapsed, they no longer represent fall-back positions for the appellant, which limits the weight I afford them. Ultimately, I must have regard to the Framework as an important material consideration and determine the appeal on its own merits.

17. In reaching an overall view, I have considered the appellant's FRA which states that the site is at low risk of fluvial flooding, with no risk in a 1:100yr + 30%CC event, and a small area of the open paddock area flooding to a depth of 100mm in a worst case scenario 1:1000 year event. The appellant proposes various flood resilience measures to address this risk, including raising floor levels of the dwellings to 300mm above the water level of a 1 in 1000 year fluvial flooding event, and 150mm above surrounding ground levels to address low groundwater risk. However, implementation of mitigation measures does not obviate the need to pass the sequential test. Moreover, as I have found the proposal does not accord with the sequential test, it matters not whether it would pass the exception test, as this alone would not satisfy the requirements of the Framework and PPG.
18. In conclusion, the proposed development fails to accord with the sequential test in relation to development in areas at risk of flooding and it cannot be ruled out that the development could be located elsewhere in an area at lower risk of flooding. Accordingly, the proposal conflicts with the Framework and the PPG in relation to development in areas at risk of flooding. The proposal would thus conflict with the aforementioned aims of Core Policy 10 and Policy DM5 to safeguard against the impacts of climate change through directing development away from areas of highest flood risk.

Effect on Trees and Ecology

19. Permission was refused on the basis of a lack of detail of measures to protect retained trees during construction. Such details were required by condition under the previous permissions on the land, including that determined at appeal in 2020. The proposed dwellings are indicated to be in the same location as previously approved.
20. I recognise that the trees contribute to the site's natural character, albeit there has not been any recent maintenance of the site and some planting has become overgrown and unwieldy in size around the site perimeter.
21. Policy DM5 contains a general requirement to protect natural features of importance within and adjacent development sites. However, the trees are not subject to any statutory protection, nor does the site lie within a designated landscape or site of local, national or international significance, as referred to in Core Policy 12.
22. Whilst the dwellings would stand close to the existing boundary planting, there is no indication that these trees are to be removed as part of the proposal. Indeed, their retention would help to screen views to and from neighbouring properties. In any event, the amount of boundary planting potentially affected by works, namely that directly adjacent to the footprints of the dwellings, would be limited in comparison to the overall length of planting around the site perimeter. Any loss of trees would therefore be minor in scale and to the interior of the site. This would not materially diminish the verdant character of the site or its contribution to the surrounding landscape, particularly when viewed from the main road. There is also scope for new planting on the site to

compensate for any loss. On the evidence before me, I am satisfied that details relating to the protection of trees and future landscaping could be secured by planning condition were the appeal to succeed.

23. The Council separately refers to the need to address the ecological impacts of any loss of trees through submission of a preliminary ecological assessment. However, I note Policy DM7 seeks such information only in relation to specific sites designated for nature conservation, including Special Areas of Conservation, Special Protection Areas, SSSIs and sites of regional or local importance. The site is not indicated to be subject to any of these designations. Moreover, there is no evidence before me of any known habitats on the site, which I saw has been cleared of previous development. In these circumstances, I am satisfied that suitable measures to protect existing biodiversity encountered on site could be secured via planning condition.
24. For these reasons, I find no conflict with Core Policy 12 of the ACS or Policies DM5 and DM7 of the ADMDPD.

Other Matters

25. The Council has not refused permission for any other reason, including effects on character and appearance, neighbours' living conditions, highway safety and archaeology. On the evidence before me, I have no reasons to conclude otherwise. An absence of harm in these matters means they are neutral considerations in the overall planning balance.

Conclusion

26. The appeal proposal would add three dwellings to the housing stock which is a minor social benefit of the scheme. The proposal would also give rise to some limited benefits to the local economy through spending by future residents on goods and services, and in the construction of the dwellings themselves.
27. The proposal would accord with criteria for development in lower order settlements under Core Policy 3, including being located close to, and supporting, local amenities in South Muskham, being appropriate in scale and character. However, I have found that the appeal proposal fails to satisfy the sequential test in respect of flood risk. Therefore, it has not been demonstrated in overall terms that the dwellings would be sustainably located, notwithstanding the flood risk mitigation measures advanced by the appellant.
28. Therefore, the proposal would not accord with the environmental objective of sustainable development set out in the Framework, and the similar aims of the development plan. I give significant weight to these conflicts.
29. In my judgment, the benefits of the proposal, taken together, would not amount to material considerations which would outweigh the identified conflicts with the development plan and would not justify a decision being made other than in accordance with the development plan, taken as a whole.
30. Therefore, for the reasons set out, the appeal should be dismissed.

K Savage

INSPECTOR