



Appeal Decision

Site visit made on 12 August 2024

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/D3125/W/24/3337856

Land to the rear of 110 Witney Road, Ducklington, Witney, Oxfordshire OX29 7TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Laurence Jones against West Oxfordshire District Council.
- The application Ref is 23/01436/OUT.
- The development proposed is the erection of two 4-bedroom detached houses and access.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Laurence Jones against West Oxfordshire District Council (WODC). This application is the subject of a separate Decision.

Preliminary matters

3. The application to which the appeal relates was submitted in outline form with all matters reserved except for access. Plans for determination are therefore the site location plan and those relating to access. An indicative layout and other plans were submitted with the planning application, but these are for illustrative purposes only and I have not relied upon them.
4. The appeal form records that it was submitted because of 'non-determination' of the application. However, the appeal was submitted on 31 January 2024 after WODC had issued a decision notice refusing the application on 3 November 2024. I have therefore had regard to the Council's single reason for refusal.
5. During the appeal, the appellant asked to submit his correspondence with the Environment Agency (EA) dating back to 2023 as 'supplementary evidence'. A further letter from the EA was submitted by the appellant in August 2024 on the basis that it demonstrated a change in circumstances. I accepted these

submissions, the Council was given the opportunity to respond and the appellant provided a final rebuttal.

6. Separately, the appellant wrote to the EA and Council regarding the flood risk assessment (FRA) associated with a nearby gravel extraction site. He subsequently submitted 2 reports and related correspondence to be considered during the appeal. As matters of flood risk assessment are important to the case, I accepted this. Again, the Council was given the opportunity to respond and the appellant provided a rebuttal.
7. The EA provided a 'corrected' statement on 21 August 2024. The appellant indicated that he was not happy for such submissions to be corrected. I have not found it necessary to rely on the amended statement and have therefore disregarded it.

Main issue

8. The main issue is whether the proposal complies with planning policy that seeks to steer new development away from areas at the highest risk of flooding.

Reasons

9. Policy EH7 of the West Oxfordshire Local Plan 2021 (2018) (LP) states that flood risk must be managed using a sequential, risk-based approach, as set out in the NPPF. The supporting text to Policy EH7 and paragraph 168 of the NPPF state that development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower probability of flooding.
10. Paragraph 168 of the NPPF states that the Strategic Flood Risk Assessment (SFRA) will provide the basis for applying this test. The latest version of the SFRA for this area was published in 2016. This shows that the site is in Flood Zone (FZ)1. According to paragraph 168 and EA FRA guidance¹, a sequential approach is not required in FZ1.
11. The EA's 'Flood Map for Planning' was updated in November 2023 and indicates that the site is in FZs 1, 2 and 3. Taking a precautionary approach, the EA has stated that the site should be approached as if it was in FZ3b (the functional floodplain), in which case a sequential approach to the location would be necessary.
12. The appellant has provided a site-specific FRA². This acknowledges the EA's more recent flood zonation. However, it concludes that the site should be considered to be at a low risk of flooding because the site has never flooded, and the site is at lower risk of flooding than the wider area.
13. It is reported that the site has been in the owner's family for many decades and has never been known to flood. While I have no reason to doubt this, the assessment of risk should include the future potential for the site to flood, taking into account changing flow paths and climate change.

¹ Flood risk assessment: flood zones 1, 2, 3 and 3b (Environment Agency, July 2024)

² FRA, Taylor Consulting Engineers (January 2024)

14. The FRA states that the site is higher than the nearby lake, flood plain, 'The Moors' and nearby allotments, which would all have to flood before the proposed development. In addition, it is stated that the access road to the site provides protection from flooding of The Moors to the immediate south. This may be the case, but without a quantitative comparison of future flood water levels with the topography on site, I am unable to conclude that the site would not be subject to flooding over its lifetime.
15. The appellant has drawn my attention to the fact that nearby locations, including Ducklington Lake, have been mapped by the EA as being at lower risk of flooding than the site, even though they have flooded recently. Although this may point to inconsistencies in the modelling, in itself it is not evidence that the appeal site is wrongly mapped or that there is storage capacity elsewhere that has not been accounted for.
16. It is not in dispute that the Flood Map for Planning uses a coarse grid and may not be reliable when applied at a small scale. Other sources of information on flood levels, including from the SFRA, would ideally also be applied in the site-specific FRA. However, no sources of flood level data for the lifetime of the site have been provided. Without a comparison of the site topography to modelled flood levels, it is not possible for me to conclude with confidence that the site is in FZ1.
17. An FRA (February 2024) was undertaken for Gill Mill Quarry, approximately 650 metres (m) away, which indicates that dewatering at the site could lead to reduced river flow, and a lowering of the water table and Witney Lake. However, statutory consultees have not completed their review of the information, permission has not yet been granted and, even if it were, the timescale of the dewatering in comparison to the lifetime of the site is not known. At this juncture, it is not possible for me to rely upon this dataset.
18. The FRA for the site indicates that that the dwellings could be arranged on the site to avoid the area mapped as being at the highest risk of flooding. However, the sequential test initially requires an assessment of whether there are alternative sites for development of housing that would not be at risk of flooding at all.
19. I have noted the other sites in the area that the appellant believes have been dealt with in an inconsistent manner in regard to flood risk. In the absence of site-specific details and on the basis of the submitted information, it is not possible for me to make a meaningful comparison with these.

Conclusion on flood zone and requirement for a sequential test

20. The Lead Local Flood Authority (LLFA) is responsible for reporting on the risks at a site-specific level, rather than the EA who have a strategic overview. The SFRA, for which the LLFA is responsible, should be the basis for the sequential test. It is therefore unfortunate that the LLFA has not provided any comment on a potentially significant change.
21. However, the Flood Map for Planning is referred to as a legitimate source of evidence for the assessment of flood risk in the Planning Practice Guidance³

³ For example, Paragraph: 001 Reference ID: 7-001-20220825, Revision date: 25 08 2022

(PPG). In addition, the steps set out in the EA guidance⁴ recommend, among other things, using the map to establish the flood zone. The EA's appeal statement clearly explains how and why it has revised its Flood Map for Flooding. The EA is an expert in matters of flooding and has undertaken a recent, local update of its map, which strongly indicates that the site is not in FZ1, and this is a matter to which I must give substantial weight. The site-specific FRA has not demonstrated otherwise.

22. I cannot be confident that the lack of update to the SFRA is a deliberate omission by the LLFA. It is notable that the current SFRA originally took account of the Flood Map for Planning, and it is the stated intention that the SFRA be regularly updated in consultation with the EA, taking account of updates to the map. I am mindful of the short time since the EA's revision and consider it highly possible that the LLFA may not have had sufficient time to update its map in response.
23. In addition, according to the Council, the SFRA requires a precautionary approach where detailed modelling is not available, but a risk has been identified.
24. A sequential test is required in all zones other than FZ1. For this reason, it is not necessary for me to determine whether the site is in FZs 2 or 3. For the reasons above, and on balance, I conclude that the site should be approached as being in at least FZ2 over its lifetime.
25. This means that a sequential approach to development should be applied. A sequential test has not been undertaken and I am therefore unable to conclude that there would not be reasonably available sites appropriate for the proposed development in areas at a lower risk of flooding.
26. Whether the site is an appropriate location for housing with respect to flooding is a matter of principle and therefore not something that can be controlled through a condition. The Council's engineer originally requested conditions, but this was on the basis that the site was in FZ1, which is no longer the case.
27. The SFRA records the site as being in FZ1, in which case a sequential test is not required. As far as this goes, the proposal meets the requirements of the LP.
28. However, the EA has recently updated its Flood Map for Planning and this is a material consideration of substantial weight. For the reasons above, this leads me to conclude that a decision other than in accordance with the development plan is justified and a sequential test is necessary. This conclusion is consistent with Policy EN7 of the LP and paragraphs 165, 168 and 173 of the NPPF, in so far as they establish the requirement for flood risk to people and property to be avoided where possible through application of a sequential test.

Other Matters

29. The Council states that it is unable to demonstrate a 5-year housing land supply. However, the 'tilted balance' in paragraph 11(d) of the Framework

⁴ Flood risk assessments: applying for planning permission (August 2024)

does not need to be applied because the area is at risk of flooding, which provides a clear reason for refusing the development.

30. There would be a minor benefit from the development from contribution to local housing stock and economy. This is of limited weight given the small scale of the proposal and would not outweigh the harm that could arise from a lack of sequential test.
31. The appellant has referenced settlement boundaries in an emerging Neighbourhood Plan. As I have concluded that there is an in-principle objection to the proposal, I have not sought to pursue this further. For the same reason, I have not found it necessary to further consider matters relating to character and appearance, landscape, biodiversity or energy.

Conclusion

32. For the reasons given above, the appeal is dismissed.

B Davies

INSPECTOR