



Appeal Decision

Site visit made on 10 December 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal Ref: APP/E3335/W/24/3344306

Land East of Cavalla Mews, Berrow, Burnham on Sea TA8 2FJ

- 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 J Notaro of Notaro New Homes Ltd against the decision of Somerset Council.
- The application Ref is 05/23/00011.
- The development proposed is erection of 49 dwelling houses (including 20 no. affordable dwellings) with associated access and infrastructure.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an additional Flood Risk Assessment & Drainage Strategy¹ (the additional FRA) and an amended Drainage Plan (drawing number 101 revision P2). In considering whether to accept the additional information, I have had regard to Holborn Studios Ltd².
3. Although this is new information and an amended plan, it would not result in a fundamental change to the nature of the proposal over what was considered at the planning application stage. The Council and the Environment Agency has had an opportunity to comment on the additional information, as it was submitted with the appeal, and the change would not alter the effect of the proposal on the neighbouring residents. Consequently, no party would be unfairly prejudiced and, I have, therefore, considered the additional FRA and amended drainage plan in determining this appeal.
4. A revised National Planning Policy Framework (the Framework) came into force on 12 December 2024. In the interest of natural justice and to ensure neither of the main parties were prejudiced by this matter, I consulted both main parties on the changes to the Framework, and this has informed my determination of the appeal.

Main Issues

5. The main issues are:
 - whether the site is an appropriate location for the proposed housing, having regard to the development strategy for the area and the character and appearance of the area;

¹ Barnaby Associates Ltd Flood Risk Assessment & Drainage Strategy ref 230404/FRA02, dated 01.03.24

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding and whether there is sufficient drainage information; and
- the effect of the proposed development on biodiversity.

Reasons

Location, character, and appearance

6. The appeal site is a field next to the existing housing on Cavalla Mews, which is accessed off Rosetree Paddock. There are open fields on the other three sides of the appeal site and between the site and the other housing in Berrow.
7. Cavalla Mews is modern and recently completed housing development with a children's play area and footpaths and street lighting either side of the roads. The local school lies off Rosetree Paddock with a car park on the Cavalla Mews development. Beyond this the village is made up of housing clustered along and behind the houses on Berrow Road, Barton Road and Brent Road. The village is not linear in form, it is a self-contained settlement with housing grouped together and surrounded by open countryside and the coastline.
8. The site lies outside of the settlement boundary for Berrow as identified within the Sedgemoor Local Plan – Adopted Version 2011-2031 (the LP). The site, therefore, falls within land that, in planning terms, should be considered as countryside. Moreover, the site is one of the open fields that surrounds the existing built development of Berrow, and it has a strong visual relationship with the countryside around it.
9. Policy T3a of the LP provides an exception to the general restraint against development in the countryside in that, for sites outside but well related to settlement boundaries, mixed tenure affordable and market housing proposals would be supported where it meets all of the criteria listed. The proposal complies with the first two criteria in that the development is for an identified need and proposes 40% affordable housing. The development would also provide public open space and contribute towards local infrastructure through payment of the Community Infrastructure Levy. However, the development of the appeal site would not provide any additional community benefits over and above the minimum required for any housing development, such as the car park provided in the existing estate. Moreover, the proposal is not supported by the Parish Council.
10. The appeal site would project significantly out from the built form of the existing clustered and contained settlement and would not maintain or improve the self-containment of the settlement, which is one of the objectives of Policy T3a, as set out in paragraph 5.169 of the supporting information.
11. The current housing on Cavalla Mews retains the character of the area in being part of the cluster of houses in the settlement. The existing housing was approved as projecting out into the countryside but not to the extent that the appeal proposal would and is not harmful to the wider area.
12. Although the design of the dwellings and the layout of the site would reflect the existing estate it would project further out into the countryside and result in two long estate roads with linear housing either side and open-ended to the fields beyond. The appeal development would extend further out into the countryside

than any other built development and beyond the natural boundaries formed by the field hedges and trees. The appeal site has a strong visual relationship with the countryside and open fields around it rather than the contiguous built-up area of Berrow. The development would, therefore, be out of keeping with the character and physical identity of the settlement and not enhance the local environment and landscape, contrary to two of the criteria of Policy T3a.

13. The increase in the height of the ground level, which is required for flood risk purposes, would increase the prominence of the housing when viewed from the surrounding area and as viewed from Brent Road, beyond the Medical Centre. The development would be visible from neighbouring properties and from the wider area and would be read as projecting out into the countryside, even though the finished heights would be similar to Cavalla Mews.
14. That the area is not a protected, or sensitive landscape, and that there are no heritage assets close to the appeal site would not justify development that is out of keeping with the settlement.
15. I accept that it is unavoidable that any new development in Berrow would need to project eastwards into the countryside and new housing in the countryside is allowed through the exception set out in Policy T3a. Nevertheless, although a continuation of Cavalla Mews, the appeal site would not relate well to the settlement as a whole and would project further out than the existing built development, with areas of countryside lying closer to the settlement than the appeal development. In my judgement it is not appropriate or in keeping to continue to extend the built development further out into the countryside and it is the combination of this projection and the building heights that forms the harm to the character and appearance of the area.
16. For the above reasons, I find that the appeal proposal would be contrary to the development strategy for the area and harmful to the character and appearance of the area and would, therefore, be contrary to Policies T3a, D2 and D19 of the LP. Collectively these policies, amongst other matters, seek to restrict development beyond the settlement boundaries to development that is appropriate to the character and physical identity of the settlement, is well related to and complements the existing built form of the settlement, maintains and where appropriate incorporates enhancements to the local landscape, is responsive to and reinforces local context, character, scale and distinctiveness of place, responds positively to and reflects the particular local characteristics of the site and the identity of the surrounding area, enhances the landscape quality and ensures that the form, bulk and design has proper regard to their context in respect of both the immediate setting, and the defining characteristics of the wider local area.

Flooding & drainage

17. Paragraph 170 of the Framework seeks to avoid inappropriate development in areas at risk of flooding. The Council has undertaken a Strategic Flood Risk Assessment which describes the flood risk plans and strategies for the area and identifies flood zones. Policy D1 of the LP acknowledges the significant flood risk across the area and seeks to promote development within the settlements as a priority. The supporting information to Policy D1 of the LP advises that much of

Sedgemoor is at significant risk of flooding and that it will be difficult to avoid new development in areas at flood risk.

18. Policy D1 of the LP advises that, outside of the settlement boundaries, for the purposes of the Sequential Test, the area of search will be the Sedgemoor District area, unless it can be demonstrated that the development has a specific locational requirement based on functional requirements or to meet a demonstrable specific local need, in which case the area of search should reflect this. For sites adjacent or well related to settlement boundaries where an identified need for that specific settlement is to be met, Policy D1 limits the search area to that settlement only.
19. In considering the Sequential Test, the Council has confirmed that it is not possible for the development to be located in areas with a lower risk of flooding as there are no other sites in Berrow, or locally, within a lower flood zone. Moreover, the appeal proposal includes affordable housing which is to meet a need identified in Berrow. On the evidence before me I have no reason to find otherwise. The Sequential Test is, therefore, met.
20. Paragraph 177 of the Framework, in summary, advises that the Exception Test may then have to be applied, depending on the vulnerability of the development. The development vulnerability type is one where Table 2 of the Flood Risk PPG advises that the Exception Test is needed. The Exception Test has two requirements; the provision of wider sustainability benefits to the community that outweigh the flood risk, and that the development would be safe for its lifetime and not increase flood risk elsewhere.
21. The benefits of the scheme include the twenty affordable houses, which are proposed in response to an established need, and the appeal site is within a location that is accessible to the services and facilities in the village. The development would also have general economic benefits both during and after the development, would contribute to local infrastructure through the payment of Community Infrastructure Levy and would provide on-site open space. The provision of new housing and affordable housing is a significant benefit.
22. Although I have accepted the additional FRA and, even though all of the proposed dwellings would have first floor accommodation that would provide safe refuge for all occupants in the event of a flood and proposes Flood Resilient Building Measures, the evidence before me indicates that three of the proposed dwellings would have finished floor levels below 7m AOD and would, therefore, be at risk of flooding. The residents would have access to the flood warnings and would be able to evacuate or move upstairs. However, their property would still be at risk of flooding damage. Although a condition could be used to increase the finished floor areas of these properties, the effect of this on the wider area has not been calculated.
23. Further drainage information has been provided in the additional FRA. However, there is no assessment of the feasibility of extending the existing attenuation pond or whether the area around the pond is sufficient to accommodate extending it. There is no detail of how the proposed surface water drainage system would operate in the event of flooding or extreme rainfall, and conflicting information relating to the proposed run-off rates and whether the Drainage Board would accept the run-off rates, amongst other concerns. Even with the additional information provided at Final Comments I have no compelling evidence that there

is sufficient certainty that the development would be served by a suitable sustainable drainage scheme, and it would not be reasonable to secure such a scheme by condition as it may involve significant changes to the design and layout of the site. Without a suitable drainage scheme, I cannot be certain that the development of the site would not increase flood risk elsewhere.

24. Moreover, even with the additional information provided in Final Comments, I have no compelling evidence that the development has considered the effects of climate change, the cumulative sea level rise, or the 2125 breach levels. Although the final comments suggest that the development would not flood in the 1 in 100 year event, I have no certainty that the development has been designed for the 100 year lifetime given that the additional FRA continues to refer to the lifetime of the development being less than 100 years. Consequently, the proposal has not proven that it would be safe for its lifetime and the future occupants of the development would be at risk of flooding.
25. From the evidence before me the increase in the ground levels, which albeit increasing to a similar AOD height as the existing housing on Cavalla Mews, would be a greater increase in ground levels as the existing ground level is lower and the height difference would, therefore, be greater. The site area is also larger than that now being classed as "Phase 1". The appeal proposal would, therefore, alter the floodplain and would increase the risk of displacing large volumes of flood waters. The appellant's predicted increase in flood levels, which they assert are only small, are based on a ground level increase of one metre, whereas the ground levels would need to be increased by up to two metres. Either way, there would still be an increase in flooding elsewhere, which would be contrary to the requirements of the Exception Test, Policy D1 and the Framework.
26. I, therefore, find that, even though there would be benefits to the local community, including the substantial benefit to housing supply and affordable housing, in my judgement these benefits would not outweigh the flood risk for both the future occupants of the development and the increase in flood risk elsewhere. As such the Exception Test has not been satisfied and the Flood Risk PPG advises that planning permission should be refused.
27. I acknowledge that the existing dwellings on Cavalla Mews were built on raised ground levels to mitigate the potential for flood risk and, at that time, the Environment Agency did not object to the development. However, the current proposal results in a larger development site with a greater increase in ground levels. It is, therefore, materially different to the previous development which was, in any event, considered under previous national advice on flood risk and climate change. Furthermore, each scheme must, in any case, be considered on its own merits.
28. As the Exception Test has not been met in this instance the proposal fails to comply with local and national planning policy, which seeks to steer new development away from areas at the highest risk of flooding. Moreover, the proposal has not provided sufficient drainage information to show that it is capable of being drained without increasing flood risk elsewhere. The development is, therefore, contrary to Policy D1 of the LP.
29. For the same reasons, the proposal would not comply with the advice found in paragraphs 170, 178 and 179 of the Framework.

Biodiversity

30. I have been provided with a copy of the Ecology Addendum Report³ which includes the results of additional ecology surveys carried out at the appeal site. The report was submitted prior to the determination of the planning application by the Council but was not considered before the decision was issued. However, the Council, within their Statement of Case, has confirmed that they have seen and considered the additional report and that the Council Ecologist has been provided with a copy.
31. The appeal proposal would result in the loss of grassland and part of a hedgerow. However, the proposal would also retain some of the ditches and marshy grassland and also retain part of the hedgerow. Moreover, the proposal would include additional landscaping, the creation of new habitats, dark corridors, and sensitive lighting.
32. The surveys confirm that the site is not an important or regularly used resource for bats, that there was no evidence of Great Crested Newts present within any of the ponds surveyed, that the site is of no more than local importance for invertebrates and that there was no evidence of Water Voles. The addendum also advises that no further survey work is considered necessary.
33. For the above reasons, given the additional information and mitigation measures proposed in the Ecology Addendum Report, I find that the development has now included sufficient ecological information to fully determine the presence or otherwise of protected species, and the extent to which they would be affected by the proposed development. The information also provides sufficient mitigation and biodiversity enhancement measures that could be secured by condition if I were minded to allow the appeal.
34. Consequently, the appeal proposal would not have an adverse effect on biodiversity and would comply with the requirements of Policy D20 of the LP which requires development to contribute to maintaining and where appropriate enhancing biodiversity, retain or enhance features, and make appropriate provision for wildlife.

Planning Balance

35. There is no disagreement between the parties that the Council is able to demonstrate a five-year supply of deliverable housing sites and has met the Housing Delivery Test.
36. The Council refused the application on the basis of T3a, D1, D2, D19 and D20 of the LP. As recognised by the Framework, the countryside is protected for its intrinsic character and beauty, and development should be sympathetic to the context and character of the area. Moreover, sites at risk of flooding should meet both the Sequential and Exception Tests. In this regard Policies T3a, D1, D2 and D19 of the LP are broadly consistent with the Framework and I, therefore, give the conflict with these policies substantial weight. I consider that the harm and policy conflict I have identified would be such that the proposal would conflict with the development plan as a whole.

³ GE Consulting Ecology Addendum Report ref 1952-EA-LT dated December 2023

37. The appellant contends that Paragraph 11d) of the Framework applies as the local housing need figure, calculated using the new standard method, is greater than the housing requirement set in the LP, and the LP is more than five years from the date of its adoption. Even if I were to accept that position, I have, nevertheless, found that the proposal would not meet the Exception Test as the wider sustainability benefits to the community would not outweigh the flood risk. Moreover, the development has not demonstrated that it would be safe for its lifetime and that it would not increase flood risk elsewhere.
38. As set out in Paragraph 11d) i), if the application of policies in the Framework that protect assets of particular importance provide a strong reason for refusing the development proposed, then the 'tilted balance' is disengaged. Footnote 7 lists the policies that protect assets of particular importance and include developments in areas at risk of flooding. In this case, I have found that there are strong reasons for refusing the development, in terms of risk of flooding.
39. The presumption in favour of sustainable development as set out in paragraph 11d) of the Framework, therefore, does not apply to this case. It is, consequently, not necessary for me to consider 11d) ii) of the Framework.

Conclusion

40. The harm arising from the proposed development would outweigh the benefits that would result from it. The proposal would, therefore, conflict with the development plan taken as a whole, and there are no material considerations, including the provisions of the Framework, which indicate that the appeal should be determined otherwise.
41. For the reasons identified above, the appeal is dismissed.

K Townsend

INSPECTOR