



Appeal Decision

Site visit made on 21 January 2025

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2025

Appeal Ref: APP/C2741/W/24/3350098

40 Fordlands Road, York YO19 4QG

- 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 Ms Sarah Poole against the decision of City of York Council.
 - The application Ref is 19/02248/FUL.
 - The development proposed is erection of 4no. detached dwellings with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Ms Sarah Poole against City of York Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Government has published its Housing Delivery Test results alongside the publication of a revised National Planning Policy Framework (The Framework) in December 2024. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the comments made in reaching my decision.
4. The Council refers to policies in the emerging Publication Draft York Local Plan 2018 (the PDLP). Although the Council's Statement of Case states that the PDLP is at examination stage, I am not aware of the extent of any unresolved objections to the policies of this document. The PDLP has not been formally adopted as part of the statutory development plan. On that basis I have given these policies only limited weight in accordance with paragraph 49 of the Framework.

Main Issues

5. The main issues are:
 - Flood Risk; and
 - Whether the proposal would make suitable provision for the collection of household waste, with due regard to character and appearance.

Reasons

Flood Risk

6. The majority of the appeal site is within Flood Zone 2. The Framework sets out that the sequential test should be applied to proposals in areas known to be at risk of flooding. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
7. The Council has specified that the area of search for reasonably available sites should be the administrative area of the City of York. The appellant has disputed this approach, and refers to cases where they consider that the Council took a more pragmatic approach to windfall sites, such as a Ward or school catchment area or where the site would reclaim derelict land.
8. The Planning Practice Guidance (the Guidance) sets out that the area to apply the sequential test will be defined by local circumstances relating to the catchment area for the type of development proposed. Although the examples referred to by the appellant indicate that a more limited area of search was appropriate in those cases, it has not been demonstrated that such circumstances apply to the appeal site or the development proposed.
9. The appellant refers to the Council's Strategic Flood Risk Assessment (SFRA) which states that *"In cases where development cannot be fully met through the provision of site allocations, LPAs are expected to make a realistic allowance for windfall development, based on past trends and expected future trends. It is recommended that the acceptability of windfall applications in flood risk areas should be considered at the strategic level through a policy setting out broad locations and quantities of windfall development that would be acceptable or not in Sequential Test terms"*. The Guidance also refers to the area of search being identified in plan policies.
10. The appellant sets out no such policy has been included in the PDL. Nevertheless, although the Framework sets out that the SFRA will provide the basis for applying the sequential test, it has not been demonstrated that the appeal site would meet the sequential test based on the SFRA or a strategic policy.
11. The appellant highlights the importance of windfall housing sites to meeting the Council's housing supply requirements. However, despite the extent of the Council's area outside of Flood Zone 1 or being within Green Belt, there is no substantive evidence that the amount of general housing need to be met through windfall sites means that development in Flood Zones 2 and 3 is necessary.
12. The need for general windfall housing such as the appeal proposal is over the whole of the Council's area, and this therefore represents the appropriate area of search. I am also mindful that the Guidance specifies that the absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications.
13. The appellant refers to previous proposals for residential development on the site, where flood risk has not been identified as a reason for refusal, including a conclusion that the issue could be addressed by condition. They contend that the

fundamentals of planning policy on the Sequential Test are unchanged since 2012. However, I am mindful that the Guidance on flood risk was subject to a significant refresh in August 2022 in line with updates to the Framework in 2018 and 2021, and I am not persuaded that the policy and guidance in relation to flood risk and the sequential test are as unchanged as the appellant suggests.

14. Based on the evidence before me, the Council's stance that the area of search should be its administrative area is appropriate for the circumstances of the appeal proposal. The proposed development therefore fails the Sequential Test in relation to development in areas at risk of flooding, in that it has not been demonstrated that the development could not be located in an area at lower risk of flooding. On that basis, the proposal conflicts with the Framework and the Guidance in relation to development in areas at risk of flooding. The proposal would also conflict with the approach to flood risk set out in draft Policy ENV4 of the PDLP, although for the reasons stated previously I give this conflict only limited weight.

Waste Collection

15. The Council's reason for refusal on this issue refers to the overdevelopment of the site, although the focus of concern is the ability of waste collection vehicles to enter the site and the visual impact of a bin storage area.
16. Access to the dwellings would be provided by a shared private road. Due to the nature of this access the Council has specified that a refuse vehicle would not be able to enter the site to serve the proposed dwellings. The evidence suggests that this relates to the operations of the Council's Waste Services Department who will not collect waste via unadopted roads, rather than an inability of waste collection vehicles to enter the site.
17. To address this matter, the appellant proposes a 'bin drop' area within the front garden of No 40 where bins can be presented for collection. There would be a considerable travel distance between the proposed houses and the waste collection point. However, it has not been demonstrated that it is unrealistic for residents to transfer the bins over this distance. In any event, the appellant refers to alternative options for the collection of waste and the Council has not challenged this.
18. The Council refers to the harm to visual amenity of the streetscene arising from the bin storage area. However, rather than being a permanent storage area, the bins would only be present in this location on collection day. At other times, subject to suitable landscaping, the bin drop point would appear as part of the open frontage of the area. Even allowing for the number of bins, the temporary storage of bins to the front would not lead to material harm compared to the presentation of bins for collection of other residential properties on this street.
19. In conclusion on this issue, the proposal would make suitable provision for the collection of household waste in a manner that would not harm the visual appearance of the area. The proposal would therefore not conflict with the place making requirements of Policy D1 of the PDLP or the Framework in respect of achieving well-designed places.

Other Matters

20. I am mindful of the benefits of the proposal. It would add to the supply and mix of housing in the area with good access to services and facilities by sustainable means. The appellant has also referred to the Council's housing land supply position and the role of windfall sites, but even then the benefits arising from a development of this scale would only be limited. That would be the case even allowing for the Government's objective of significantly boosting the supply of homes as set out in the Framework and the Written Ministerial Statement on 'Building the homes we need'.

Conclusion

21. It is common ground that the Council cannot demonstrate a 5 year housing land supply, and that despite the progress of the PDLP there are no adopted development plan policies relevant to the appeal. However, I have identified that the policies of the Framework in respect of areas at risk of flooding is a reason to withhold planning permission, and I consider that this represents a strong reason for dismissing the appeal. On that basis, the tilted balance of Paragraph 11(d) of the Framework is not triggered.
22. The proposal conflicts with the PDLP when read as a whole in respect of flood risk. However, the PDLP has not yet been adopted as part of the development plan and for the reasons stated previously the policies referred to carry only limited weight.
23. Nevertheless, the proposal would conflict with the Framework with regards to planning and flood risk, and I give significant weight to that conflict. There are no material considerations that would outweigh the conflict with the Framework. For the reasons given above the appeal should be dismissed.

David Cross

INSPECTOR