



Appeal Decision

Site visit made on 26 February 2025

by H Faulkner BSc (Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2025

Appeal Ref: APP/P1133/W/24/3355745

Land at Chipley Mill, Bickington, Newton Abbot, Devon TQ12 6JW

- 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 Wessex College Ltd against the decision of Teignbridge District Council.
 - The application Ref is 22/01348/FUL.
 - The development proposed is change of use from agricultural use to education use (Class F1) in association with Greater Horseshoe School, and associated ancillary buildings and structures.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Teignbridge District Council against Wessex College Ltd. This application is the subject of a separate decision.

Preliminary Matters

3. The application form states that the development commenced in September 2018. I saw during my site visit that the site was in active use including the use of various buildings and structures in association with an educational use of the site. While the development is retrospective my assessment of the proposal is based on the plans before the Council at the time of the application. I have removed the words 'retention' from the description of development to reflect this.
4. The National Planning Policy Framework (the Framework) was updated in December 2024 and again in February 2025, and for the purposes of this decision I have referred to the latest version of it. The content of the Framework has not been significantly altered insofar as it relates to this appeal, other than paragraph numbering. Therefore, it has not been necessary to seek further views from the main parties in this instance and I am satisfied no party would be prejudiced by determining the appeal accordingly.

Main Issues

5. The main issue is whether the proposal would be safe from flooding and comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

6. The site is located to the west of Newton Abbot and is currently operating as an educational facility in association with the Greater Horseshoe School. The site is located to the north of the A383 Ashburton Road and the River Lemon runs along the north boundary of the site.
7. The site is within Flood Zone 3 and classified as High Risk of flooding from the River and Medium Risk of flooding from Surface water runoff. The Environment Agency (EA) have objected to the application on the basis that the Flood Risk Assessment (FRA) is not appropriate in accordance with 171 (previously paragraph 167) of the Framework. The EA consider that the FRA has not adequately assessed the flood risks associated with the proposal or demonstrated that the site is safe.
8. In response to the appeal the EA confirm that the site is in Flood Zone 3b (Functional Flood Plain) and state that there is no evidence from the appellant to demonstrate otherwise.
9. Planning Practice Guidance (PPG) provides flood risk vulnerability classifications. The Council have assessed the proposals on the basis that the use is an educational establishment and therefore is classified as a 'more vulnerable use.' The appellant considers that the use of the site is more akin to an outdoor recreation use and therefore should be classified as 'water compatible development.'
10. In the PPG water-compatible development includes open amenity space, nature conservation and biodiversity, outdoor sports and recreation and essential facilities such as changing rooms. I do not find that the use as explained within the evidence and from what I observed on site falls within one of these types of use. Whilst I accept that there may be an element of recreation use it is clearly an educational establishment. There are also a number of buildings and structures on the site which are more than just essential facilities to facilitate the use.
11. The application was submitted for change of use to education use (F1) and whilst I accept that the use is linked to other sites and may not be used on a full-time basis this does not preclude it from being considered as an educational establishment. The site is in operation most weekdays of the academic year with several staff and students using the site most days, using the land, buildings and structures. Based on this, I conclude that it is more appropriate for the use to be considered as a 'more vulnerable' rather than a 'water compatible development.'
12. Table 2 in the PPG sets out the flood risk vulnerability and flood zone 'incompatibility'. Given the lack of evidence to demonstrate that the site should be considered as being in anything other than in flood zone 3b and the use is 'more vulnerable' then it is clearly indicated that development should not be permitted.
13. There is dispute between the parties as to whether the buildings proposed in the application are now lawful. Whilst evidence has been provided by the appellant, there is no Lawful Development Certificate to confirm this position. However, even if the buildings were lawful this would only negate the need for a sequential test which is irrelevant as Table 2 indicates development should not be permitted in any event for the reasons above.

14. It is noted that there are potential changes to the flooding situation which could be beneficial to this site through the removal of the damaged weir. However, I have not been provided with a timeframe for these works or any guarantee that they will take place. Furthermore, it is accepted that the site would remain in Flood Zone 3.
15. The refusal reason states the FRA predicts flood depths between 0.8 to 1.5metres which represent a significant to extreme hazard ('Danger for Most' to Danger to All – Risk to Life) and no assessment has been made with regard to this hazard or how the development could be made safe. A Flood Risk Appeal Statement was provided with the appeal. In its comments on the appeal the EA stated that they did not consider that the FRA or additional statement adequately addressed whether the development would be safe over its lifetime and would not increase flood risk elsewhere. Even if it did there would still be a fundamental objection to the principle of development on flood risk grounds as explained above.
16. The information submitted with the appeal provides details of flood warning systems and emergency plans. However, given the in principle objection to the development I have not considered the suitability of these proposals. Furthermore, although suggested conditions have been provided relating to restrictions on to the educational use and a Flood Warning and Emergency plan these would not overcome the in principle objection to the scheme.
17. The proposal is for a 'more vulnerable' development in an area at high risk of flooding. As a result, it would be contrary to Policy EN4 of the Teignbridge Local Plan (2014) which guides development to areas at lower risk of flooding along with the Framework including paragraphs 172 (previously 167) and 181 (previously 173) and the PPG which requires a risk-based approach to flooding so as to avoid risk to people and property.
18. Policy EN6 is referenced in the reason for refusal. This policy is from the Council's emerging local plan, Teignbridge Local Plan 2020-2040 which has reached Regulation 19 stage. Given the stage of the emerging plan and the consistency of the policy with the Framework it can be afforded some weight. However, the policy does not weigh in favour of the scheme in any event.

Other Matters

19. As an education facility the proposal would have benefits for the students that attend, and it is recognised that the site may respond to a particular specialist need. Whilst such provision is important, the safety of children, and staff, is also a significant consideration. I acknowledge that the school has other sites available and could potentially choose not to operate this site in the event of a flood and that measures such as restricting the number of pupils and the use of the site have been suggested. However, I am also mindful that flash flooding has been raised as a possibility by the EA and therefore the risk is significant as it would be difficult and potentially dangerous to safely evacuate the site in the event of such a flood. The use of alternative buildings nearby for refuge have been suggested as these have upper floors. I have only been provided with limited details in respect of these building and their suitability. In any event, even if this building could be used it would not outweigh the concerns raised.
20. Being mindful of the benefits of the site and the specialist provision I have not been provided with any information to demonstrate that these needs could not be fully

met on the other sites operated by the school. Furthermore, there is no evidence before me that no other safer sites are available for the use.

21. The Framework gives 'great weight' to the need to create and expand schools. I have assessed the appeal on the basis that the site is for an educational purpose rather than a recreational use and therefore I can apply the weight attributed by the Framework. However, in accepting that the use is a school (or part of one) then other provisions of the Framework and PPG therefore apply. As such the assessment that the use is 'more vulnerable' and therefore should not be permitted in accordance with the PPG weighs significantly against the proposal.
22. My attention has been drawn to an appeal (APP/P1133/W/23/3317094) by the same appellant relating to one of the school's other sites. Although there are some similarities between the proposals, I do not find the appeals to be sufficiently comparable. The other appeal related to the change of use of an industrial building where there was a potential fallback comparison and there had been a previous industrial use. Furthermore, it did not relate to flood risk and the Inspector took a view in relation to the risk involved and the benefits of the scheme. For this appeal I have balanced the risks and benefits of the scheme along with the differing policy situation and reached a view that the appeal should be dismissed in this instance.
23. In making this decision I am mindful of the Public Sector Equality Duty and the potential for those with 'protected characteristics' being affected by this decision. I have had due regard to the aims of this duty which seek to eliminate discrimination, advance equality of opportunity and foster good relations. However, whilst I accept the benefits that the proposal would bring it also involves unacceptable risk in relation to flooding and therefore it is necessary and proportionate to dismiss the appeal.

Conclusion

24. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given, the appeal is dismissed.

H Faulkner

INSPECTOR