



Appeal Decision

Site visit made on 18 March 2025

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

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/U2750/W/24/3355423

**Land Adjacent Orchard Villa, Brier Lane, Newland, Selby, North Yorkshire
YO8 8PS**

- 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 Nick Jones against the decision of North Yorkshire Council.
 - The application Ref is ZG2024/0292/FUL.
 - The development proposed is new dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for new dwelling at Land Adjacent Orchard Villa, Brier Lane, Newland, Selby, North Yorkshire YO8 8PS in accordance with the terms of the application, Ref ZG2024/0292/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties have had the opportunity to comment on any relevant implications for the appeal as part of the appeal process. I have had regard to the Framework in reaching my decision.

Main Issue

3. The main issue is flood risk, with due regard to the exception test.

Reasons

4. The appeal site is within Flood Zone 3 which is an area identified as having a high risk of flooding.
5. The appeal proposal is subject to the sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding. Reference has been made to the Council's developer guidance note for sequential testing which sets out the criteria to be used when assessing the area of search required when considering alternative sites. For single dwellings this is considered to be within the development limits of the village the site is located in. All of the village of Newland is within Flood Zone 3, so even if alternative sites were available within the village then they would not be in a lower risk flood zone. On this basis the Council accepts that the sequential test has been passed, and I see no reason to disagree.
6. Having met the sequential test, the exception test should then be applied in the case of the appeal proposal. To pass the exception test it should be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
 - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
7. In respect of the first part of the exception test regarding wider sustainability benefits to the community, the Council refers to the Planning Practice Guidance (the Guidance) which gives a number of examples including the re-use of suitable brownfield land as part of a local regeneration scheme. Based on the evidence before me, the site represents brownfield land. But the Council considers that the proposal does not comply with the Guidance as it is not part of a local regeneration scheme. However, the cases of wider sustainability benefits referred to in the Guidance are simply examples and are not a closed list. It is therefore appropriate to consider other wider sustainability benefits arising from the proposal.
8. The village of Newland is identified as a 'Secondary Village', which the Selby District Core Strategy 2013 (the Core Strategy) sets out is generally much smaller and less sustainable village or else has no opportunities for continued growth owing to constraints including flood risk. However, some housing development including the redevelopment of previously developed brownfield land may take place in Secondary Villages where it will enhance or maintain the vitality of rural communities. This is reflected in Policy SP2(b) of the Core Strategy, which emphasises that limited amounts of residential development may be absorbed inside Development Limits. The reference to flood risk in the supporting text indicates that this issue has been considered when establishing the Council's spatial development strategy.
9. Policy SP4 of the Core Strategy also sets out that in Secondary Villages redevelopment of previously developed land as well as filling of small linear gaps in otherwise built up residential frontages is acceptable in principle. The proposal would comply with these criteria.
10. In many circumstances, the benefits arising from a single dwelling would be limited at most. However, in the particular circumstances of the proposal, the development of this unsightly and underused brownfield site for housing would contribute to the vitality of this rural community in accordance with the Council's spatial development strategy. Cumulatively, the development of individual sites in Secondary Villages carries wider public benefits, and mindful of the Council's spatial development strategy I give the benefits arising from the development of this brownfield site great weight.
11. In respect of other potential benefits, the proposal would contribute to employment during the construction period, but this would be a limited benefit over a short period of time. The property has been designed to be an 'accessible and adaptable' dwelling, which is a moderate benefit as it would add to the mix of housing in the area and provide for persons requiring this form of dwelling.
12. The modern construction methods and efficiency of the building would address the impacts of the development itself, and are therefore neutral in the overall planning balance. Based on what I have seen and read, the appeal proposal would not have good access to employment and services by sustainable means of transport. However, this carries little weight against the appeal given that residential

development of this nature in a Secondary Village is supported by Council's spatial development strategy and the support in principle regarding the management of residential developments in settlements.

13. The Council refers to an appeal¹ elsewhere in the district where the Inspector concluded that the examples given in the Guidance imply that they would positively impact a substantial number of people or make a substantial environmental difference. However, I have concluded that development within Secondary Villages in accordance with the Council's spatial development strategy would cumulatively carry wider social benefits which carry great weight in favour of the proposal.
14. On the matter of flood risk, the Guidance states that this should be informed by a site-specific flood risk assessment. The appellant has submitted a Flood Risk Assessment (FRA) which concludes that the development could proceed without being subject to significant flood risk, subject to proposed mitigation measures. The Council considers that the mitigation measures are proportionate and acceptable. Having regard to the FRA and the mitigation measures, I conclude that the flood risk associated with the proposal is no more than limited even given its location in Flood Zone 3.
15. On balance, I consider that the benefits of the development, particularly its contribution to the Council's spatial development strategy, would provide wider sustainability benefits to the community that outweigh the flood risk. On that basis, the proposal would comply with the first part of the exception test.
16. In respect of the second part of the exception test, given the proposed mitigation measures I conclude that the development will be safe for its lifetime taking account of the vulnerability of its users. The FRA also concludes that the development will not increase flood risk to the wider catchment area. Although it may not reduce flood risk overall, I do not consider that requiring this is reasonable or possible given the scale of the proposal. On that basis, the proposal would pass the second element of the exception test.
17. Drawing the above together, I conclude that the proposal would pass the exception test as well as the sequential test in respect of flood risk. The proposal would therefore comply with the requirements of the Framework and the aims of Policy SP15 of the Core Strategy with regards to flood risk.

Conditions

18. The Council has provided a list of suggested conditions, and the appellant has had the opportunity to comment on these. I have considered the suggested conditions against the advice in the Planning Practice Guidance, and as a result have reworded some of the conditions in the interests of clarity and effectiveness.
19. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans and documents in the interests of certainty. A condition in respect of materials is appropriate in respect of character and appearance.
20. A condition requiring the development to be carried out in accordance with the FRA and mitigation measures is required in the interests of addressing flood risk. This has been updated to refer to the version of the FRA submitted with the appeal.

¹ Appeal ref: APP/N2739/W/23/3318326

21. Conditions in respect of the hours of construction works and details of piling are required in the interests of the living conditions of nearby residents.
22. Conditions in respect of the disposal of sewage and details of soakaways are required in the interests of satisfactory and sustainable drainage. Details in respect of soakaways should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.
23. Due to the nature of this brownfield site, a condition to deal with contamination is required to ensure that risks to residents, property and other receptors are minimised.
24. Exceptionally, due to the sensitive rural character of part of the site boundary, a condition removing permitted development rights regarding means of enclosure is appropriate in the interests of the character and appearance of the countryside setting of the village.

Conclusion

25. For the reasons given above the appeal should be allowed.

David Cross

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:
 - Plan ref: 438-01 – Floor Plans & Elevations - Received 26th March 2024.
 - Plan ref: 438-02 – Site Plans - Received 26th March 2024.
 - Plan ref: 438-03 – Site Section - Received 26th March 2024.
 - Plan ref: 438-04 – Site Location Plan - Received 26th March 2024.
 - Plan ref: 438-05A – Visibility Splays - Received 1st July 2024.
 - Plan ref: 438-06 – Visibility Splays-Level Survey - Received 1st July 2024.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as stated on the application form, received by the Local Planning Authority on 26th March 2024. Only the approved materials shall be utilised, unless agreed otherwise in writing by the Local Planning Authority.
- 4) The development shall be carried out in accordance with the submitted flood risk assessment by Topping Engineers referenced 24029-FRA-001 Revision P2 and dated 2 August 2024, and the following mitigation measures it details:
 - Finished floor levels shall be set no lower than 4.50 metres above Ordnance Datum (mAOD)
 - All sleeping accommodation to be on the first floor.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

- 5) No work relating to the development hereby approved, including works of demolition or preparation prior to building operations, shall take place other than between the hours of 08:00 hours and 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays and at no time on Sundays or Bank or National Holidays.
- 6) Should any of the proposed foundations be piled, no development shall commence until a schedule of works, and setting out mitigation measures to protect residents from noise, dust and vibration has been submitted to and approved in writing by the Local Planning Authority. The proposals shall thereafter be carried out in accordance with the approved schedule.
- 7) The dwelling hereby permitted shall not be occupied until works for the disposal of sewage have been provided on the site, in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority.
- 8) Prior to commencement of the development, soakaway tests are to be provided to demonstrate that soakaways are a suitable method of surface water disposal, which shall be submitted to and approved in writing by the Local Planning Authority. The development shall then proceed in accordance with the approved details.
- 9) In the event that unexpected land contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and, if remediation is necessary, a remediation strategy must be prepared, which is subject to approval in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation strategy, a verification report must be submitted to and approved by the Local Planning Authority. All reports must be prepared by a suitably qualified and competent person.
- 10) Notwithstanding the provisions of Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order (2015) (or any order revoking or re-enacting that Order) no new fences or other means of enclosure shall be erected along the eastern boundary of the site, other than those hereby approved, without the prior written consent of the Local Planning Authority.

End of Schedule