



Appeal Decision

Site visit made on 22 July 2025

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th August 2025

Appeal Ref: APP/W2845/W/25/3362662

The Gardens, 3 Hodges Lane, Kislingbury, West Northamptonshire, NN7 4AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr M Brown of Browns Developments Ltd against the decision of West Northamptonshire Council.
- The application Ref is 2023/5029/OUT.
- The development proposed is outline development for 2 detached dwelling units.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application form is “proposed outline development for 3 detached dwelling units”. The plans and description of development were amended during the application process, with the agreement of the main parties. I have determined the appeal based upon the amended plans and description which were considered by the Council.
3. The application was submitted in outline form, with matters of appearance, landscaping, layout and scale reserved for subsequent approval. I have therefore treated the plans as being for indicative purposes only, except in so far as they relate to access.

Main Issues

4. The main issues are: i) whether there are reasonably available sites at lower risk of flooding on which the development could be located and if not, whether the exception test is passed where necessary; (ii) whether the development could be made safe from flooding without causing harm elsewhere; and iii) whether the finished floor levels required to mitigate the risk of flooding would affect the scale and appearance of the dwellings resulting in harm to the character and appearance of the area and heritage assets.

Reasons

Whether there are reasonably available sites at lower risk of flooding

5. Policy BN7 of the West Northamptonshire Joint Core Strategy Local Plan (Part 1) (2014) (the JCS), requires development to comply with flood risk assessment and management requirements set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (the PPG). These local and national policies and guidance all seek to direct new development to areas at the lowest

probability of flooding unless it has passed the sequential test, and where necessary, the exception test.

6. I acknowledge the changes made to the Framework in December 2024, which indicate that a sequential test should only be applied when any part of the developed area of the site is at risk of flooding. This includes gardens, access and egress, escape routes and land raising. In this case the whole of the site falls within flood zones 2 (medium probability) and 3 (high probability). Parts of the site are also at risk of surface water flooding. New development would be located in all of these areas and would require mitigation measures to address this. No part of the site or new development is in flood zone 1 (low probability) and not at risk of flooding. Consequently, the sequential test remains necessary.
7. To pass the sequential test, which is not the same as the on-site sequential approach, it must be demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. If the sequential test is passed, then for more vulnerable development on sites in flood zone 3, the exception test would also apply.
8. The appeal was accompanied by revised evidence to demonstrate that the sequential test could be passed. The Council agreed that the sequential test search area could be confined to Kislingbury, only part of which is at risk of flooding, and provided the appellant with details of their brownfield land register, housing land supply register and Strategic Land Availability Assessment. The appellant has also consulted with 15 local property agents.
9. Several sites have been considered and ruled out for various reasons, which the main parties are agreed upon. The only site in dispute between the main parties is the site granted permission in principle for 1-2 self/custom build dwellings on land to the west of Rothersthorpe Road, Kislingbury. This site is outside of the village development boundary, but the agreed search area was not limited to this. However, the planning permission for the disputed site restricts it to custom/self-build housing, and the scheme before me is for open market housing. Given that this site has permission for a different form of development to the appeal, the Council has not suggested that it would grant planning permission for open market housing on this site, and other evidence before me suggests that it now has consent for a single self-build which is expected to commence shortly, I agree that it should be ruled out as a reasonably available site.
10. Alternative sites suggested by third parties include a 48 dwelling scheme, which I am advised does not yet have planning permission (site 1), and two sites with permission for individual dwellings (sites 2 and 3). Whilst I have not been provided with evidence of any attempts to contact the landowners of these sites, it is likely that site 1, is already subject to an option agreement with a housing developer given its scale. Indeed, the appellant has advised that the pending application has been submitted by a recognised housebuilder and the Council has not disputed this site.
11. Sites 2 and 3 each relate to single dwellings and whilst there is no reason before me as to why the proposed dwellings could not be built on separate plots of land, one of the sites referred to me is the restricted self-build site and the other is already under offer, and thus not available.

12. Based upon the evidence before me, I therefore conclude that there are no reasonably available sites at lower risk of flooding that could accommodate the development within the agreed search area. Consequently, the sequential test is passed.

Exception test

13. Paragraph 177 of the Framework states that if it is not possible for development to be located in areas with lower risk of flooding, the exception test may have to be applied, in line with the Flood Risk Vulnerability Classification. 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 would 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. Both elements of the exception test should be satisfied for development to be permitted.
14. It is undisputed that dwelling houses are classified as more vulnerable. PPG Table 2: Flood risk vulnerability and flood zone incompatibility confirms that more vulnerable development in flood zone 3a must pass the exception test. The notes to table 2 advise that where developments comprise different elements of vulnerability the highest category should be used, unless the development is considered in its component parts.
15. It is the appellant's view that the exception test does not apply in this case, as the dwellings would be sited in flood zone 2 and the access is existing. According to the PPG Table 2, only "water compatible" or "less vulnerable" uses within zone 3a are exempt from the exception test. Annex 3 of the Framework gives no indication that a road serving a residential development would fall within either of these categories, and I see no reason why an access should be considered less at risk than the development it serves. Whilst there is a gravel access to the existing dwelling, this is proposed to be widened, tarmac surfaced for the first 10 metres, drained, and extended to create a new access road to serve the proposed new dwellings. This would therefore constitute new development in flood zone 3, along with at least parts of the front gardens and parking areas. As the access and parking areas are essential parts of the development before me, I do not consider they can be dealt with as separate components. Taking the development as a whole and bearing in mind that a large proportion of the red line site area and new built development including access, egress and land raising would be in flood zone 3, it is my view that the exception test is applicable to this case.
16. I acknowledge that the exception test was not referred to in the Council's reasons for refusal, given that the Council did not consider the sequential test to be passed. Nevertheless, it is a policy requirement that I must have regard to, together with the representations of third parties and the Environment Agency (EA) response dated 2 October 2024, which confirms that the development may be acceptable subject to the exception test being passed, which is outside of the EAs remit. The appellant's statement does include an exception test, albeit it states that any requirement for this should be limited to the increased use of the access.
17. There is a dispute as to whether the site is previously developed land (PDL), and although this is referred to in policy BN7 of the JCS, it is no longer a requirement of the exception test in the Framework, which I afford more weight as the most up

to date policy. The PDL status of the site is therefore of little relevance. However, as the development of brownfield land has been cited as a community benefit, I have considered this and conclude that this undeveloped former garden land, which is surrounded by built development, would not fall within the Framework definition of PDL.

18. The other benefits put forward include the provision of family housing, economic benefits to the local area through the construction phase, the use of local trades and materials, ongoing maintenance works for the lifetime of the properties and grounds, sustaining additional ongoing local jobs, and ongoing social and economic benefit to the local area through the introduction of two new households. It is stated that the buildings will be of sustainable construction and introduce benefits such as greywater recycling and on-site renewable energy generation, that the development will improve surface water run-off rates and visually enhance the wider area through high-quality design, and that providing new dwellings within an established built-up area reduces the reliance on vehicles and is considered an inherently more sustainable option, reducing greenhouse gases and supporting the strategic aims of both local and national policies.
19. The site is not unsightly or in need of regeneration, and the social and economic benefits resulting from two open market family houses would be very modest. Whilst the site is within a built-up area, it is within a village with limited services and facilities. No details of on-site renewable energy have been provided and although this could form part of the design of the houses at reserved matters stage, it is unclear how this would benefit the wider local community. The reduction and control of surface water runoff rates is only required to mitigate the effects of the development. The PPG examples of wider sustainability benefits to the community, whilst not a closed list, include overall reductions in flood risk to the wider community and the provision of green infrastructure significantly exceeding requirements. Other benefits may include the provision of an essential local community facility or a development to meet an identified local need. The benefits put forward would not in my view constitute wider sustainability benefits to the community that would outweigh flood risk and as such, the first element of the exception test is not met. The second element of the test is discussed further below.
20. I therefore conclude that although the sequential test has been passed, the exception test has not. Consequently, the proposal would be contrary to Policy BN7 of the JCS, and paragraphs 178(a) and 179 of the Framework. Policy BN7A of the JCS is not relevant to flood risk sequential and exception tests.

Whether the development could be made safe from flooding

21. Flooding is the presence of water, from any source, where it would not normally be present. The evidence before me from local residents, a local Councillor and the Parish Council all confirm that flooding occurs frequently in the area, including on and around the appeal site. The appellant states that the site has never flooded, either historically or in recent years since flood defences were installed. This is however contradicted by recent photographic and aerial evidence, which show most of the site, including the area in flood zone 2, where the proposed dwellings would be sited, under water. The EAs historic flood map included within the appellant's Flood Risk Assessment (FRA) also confirms the whole of site has flooded previously, in 1998. Although the site may not have suffered flooding from

the river since defences were put in place after 1998, it is apparent that when the river level becomes high, water from other local drains and drainage systems can no longer run into it, which subsequently results in these becoming full, and surface water having nowhere to go. As such, surface water flooding is likely to occur prior to the river flooding, which I understand was the case in the 1998 significant flood event.

22. The previous flood depths being limited and considered by the appellant as not life threatening does not negate my concerns. Such events can still have significant social and economic consequences and those having to pass through the flood water, which could contain backed up sewage, remain at risk as they cannot see what is within or below the water. Flood depths could also increase over the lifetime of the development.
23. Concerns have been raised regarding the accuracy of the flood zones shown on the indicative site layout plan, which suggest that the extent of flood zone 3 and surface water flooding may be greater than indicated. I am also advised that the EA flood maps were due to be updated in March 2025. The appellant states that the 'Product 4' flood data provided by the EA is more accurate than the flood map, but it is unclear whether the Product 4 data, which appears to have been obtained in July 2023, would also be affected by the latest updates and datasets.
24. The site falls from south to north towards Hodges Lane with the proposed vehicular access driveway and part of the parking and turning areas, being in flood zone 3 and at risk of both river and surface water flooding. Consequently, in the event of a flood occupiers may not be able to leave by cars, and their homes may not be accessible by emergency vehicles. Parked vehicles could also become water damaged or cause damage or harm should they move, which can occur even in relatively low levels of flood water.
25. It was previously suggested that in the event of a flood, future occupiers of the proposed dwellings would be able to escape across the gardens of neighbouring properties, over a stone wall, and along the adjacent public right of way (PROW), or seek refuge at first floor level. To be safe, people need to be able to move freely and unaided. Bearing in mind that flooding can occur at any time of day or year, and can result in loss of power, climbing over a wall of any height would not be an appropriate escape route, this would be particularly unsuitable in the dark or during inclement weather, or for those unable to do so, due to disabilities, age, fitness and carrying small children or babies. It would risk further accidents, increasing burdens on emergency services.
26. At the time of my visit the extension and outbuilding to the existing house, shown on the indicative plans, had been completed. This dwelling is occupied and is separated from the appeal site by a solid fence, which is approximately two metres high. No escape path running behind the rear garden to the PROW has been retained. No gate is present in the new boundary fence to allow access through its rear garden.
27. A means of escape plan has been submitted with the appeal, which indicates gates between the rear gardens of the two proposed dwellings and the existing dwelling, which would allow future occupiers to cross the garden of the existing dwelling, and in the case of occupiers of plot 1, to cross the rear gardens of both plot 2 and the existing dwelling, and to exit through the existing garden gate onto

the PROW. However, I have concerns as to how safe, practical or enforceable this would be in the future, when all three dwellings would be in separate ownership and control. There is no mechanism before me to ensure that any gates and a safe route through neighbouring gardens would be retained unlocked and unobstructed for all future occupiers. Whilst I am advised this would be controlled within the property deeds; I have not been advised how. If a gate is locked or obstructed in the event of a flood, the deeds are not going to help at that time. In any event property deeds are outside the control of the planning system and therefore could not be enforced or any amendment or removal of such a clause prevented.

28. Furthermore, any route provided from the rear of the dwellings would still be entirely in flood zone 2 until part way along Hall Close, which although at lower risk than the vehicular access to the front of the dwellings in zone 3, is still at risk of flooding. It is also not clear, after leaving their homes and cars and reaching higher ground, where the occupiers would go until they can return home safely or find temporary accommodation. This would normally be a local authority, public or community building such as a school, sports centre or village hall.
29. Taking temporary refuge at first floor level is also not a solution. Whilst this is referred to in the Emergency Plan Guidance, it is clear that this should only be provided as a backup to be used for short periods where evacuation is not possible and is unlikely to be appropriate for long durations. In the event of flooding essential services may be cut off and drains and sewers flooded, leaving occupiers with no heating, electric or clean or flushing water. The time and cost of rescuing those trapped on upper floors of houses surrounded by flood water with no services would be increased, as would the risk to emergency services and volunteers involved in rescuing such vulnerable persons and pets, and the risk to others waiting for help.
30. The appellant states that neither the EA or Lead Local Flood Authority (LLFA), the leading authorities on flooding and flood prevention, raised concerns regarding access or egress of occupiers in the event of a flood. However, the EA Guidance for flood risk emergency plans, at appendix 5 of the appellant's statement confirms in the roles and responsibilities section, that local planning authorities are responsible for these, that it is not appropriate to condition them, and that the EA are not able to comment on the adequacy of them. The PPG states that these plans should be agreed in consultation with emergency planners and services, and that emergency services are unlikely to regard developments that increase the scale of any rescue that might be required as being safe. Advice in the EAs consultation responses on the application also list the details and adequacy of emergency plans as not being within their remit or expertise.
31. With regard to flood water displacement, I acknowledge that the site does not comprise functional flood plain and as such there would be no loss of this and floodplain compensation would not be required. The appellant states the site will only flood if defences are breached. However, the site does still suffer from surface water flooding, and the Council and third parties are concerned that following the raising of the ground level and the construction of dwellings, access road and associated hardstanding on the site, the surface water that currently flows to and stands on the undeveloped garden land, would be deflected elsewhere and thus would be likely to run onto surrounding roads and land, increasing the risks to other people and damage to other properties.

32. The north to south site cross section indicates that the dwellings and rear gardens would be on raised ground, as such it is reasonable to assume water would run down towards the access and adjacent public house. An east to west cross section has not been provided showing existing and proposed ground levels in relation to neighbouring land.
33. Drainage is not a reserved matter, and therefore it should be considered at outline stage, although I acknowledge that the final drainage design would need to be informed by the approved scale and layout of the development. The initial drainage proposals indicated a surface water attenuation pond, the effectiveness of which was ruled out due to it being in flood zone 3. Instead, permeable paving with subbase storage beneath is now proposed, albeit it appears that much of this would also be within flood zone 3. However, the LLFA are satisfied that a sustainable drainage system can be provided, that surface water run-off from the site can be restricted to greenfield run-off rates, which can be conditioned, and that such measures would balance any increases in surface water generated by the proposal, resulting in a neutral effect. Anglian Water has also confirmed that the proposed drainage system can be connected to their surface water sewer network.
34. Subject to further details and calculations being agreed at the reserved matters or discharge of conditions stage, to reflect the final design of the development, and in the absence of any objections from the EA and LLFA on this matter, it is considered that the surface water from the development and displaced by the new buildings and hardstanding could be appropriately mitigated onsite.
35. I therefore conclude that although measures could be secured by condition to mitigate the risk of surface water flooding increasing elsewhere, I am not persuaded that the development would be safe for its lifetime taking account of the vulnerability of its users and the absence of a safe and effective evacuation plan. Consequently, the proposal would fail the second element of the exception test and would be contrary to Policy BN7 of the JCS and paragraphs 178(b) and 179 of the Framework.

Character and Appearance

36. The site is within the Kislingbury Conservation Area (KCA) and is also adjacent to two, grade II listed buildings, the Cromwell Lodge PH and Bridge Cottage, 6 Hodges Lane. There are statutory duties, under Sections 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, and to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
37. I have not been provided with the listing details of the listed buildings, but according to the Council's committee report, their significance is largely derived from their age, vernacular, construction and form, and survival of historic fabric and features. I am advised that the setting of these buildings does not inform a large degree of their historic significance, which is largely limited to their curtilage and immediate environs. It is common ground between the main parties that the heritage significance of these buildings, including their setting, would not be harmed by the proposal, and I have no reason to reach a different view on this matter.

38. It is apparent from the Conservation Area Appraisal (CAA) that the heritage significance of the KCA is derived from the presence of 17th, 18th and 19th century properties, the vernacular style of buildings, their positioning, construction in local materials and boundary walls and hedges, which are prominent in the streetscape and make a positive contribution to it. The site lies within the St Lukes character area, in which boundary walls and mature trees in both public and private realm are identified as key features that contribute to making the area special and which should be retained wherever possible. The retention of open green spaces is also recommended.
39. The Council's concern, which was perfectly reasonable having regard to the sensitive nature of the site and the statutory duties applicable, is that to mitigate the risk of flooding for future occupiers of the development, internal finished floor levels (FFLs) of the dwellings would need to be set at a minimum of 66.55m AOD, substantially above the existing ground levels shown on the topographical survey, which clearly has implications for their scale, design and appearance.
40. There is inconsistent information before me relating to how the increased FFLs would be achieved. The indicative drawings are based upon FFLs of 66.574m AOD, achieved by the provision of access ramps and steps to the front of the dwellings, in addition to gradually raised ground levels. The EA response dated 2 October 2024 also states that the development platform is to be raised rather than individual properties. However, the latest LLFA responses dated 7 October 2024 and 9 July 2024 state the originally proposed ground raising is to be substituted by raising the individual dwellings instead, served by steps, to reduce the effects of surface water runoff on the wider area, with only slight changes to ground levels at the entrance to the site now being proposed. Indicative drawings have not been provided to demonstrate how this might affect the appearance of the dwellings.
41. The submitted plans show that despite the raised FFLs, ridge levels would still be consistent with surrounding properties. I note that this has been achieved by using shallow roof pitches, with rear projections having the same eaves and ridge height as the main roof. This would differ from adjacent buildings and particularly the older and more traditional properties in the area, which have steep roofs, with subordinate projections that have lower ridge heights. The raised floor levels can also affect the buildings proportions, particularly if the ground levels are not raised, resulting in high walls with shallow roofs, high level ground floor windows and stepped or ramped entrances, which could significantly detract from the traditional character of the area. Raised ground levels would also reduce the prominence and visibility of not only the dwellings but also the carports, parking and access road to the front of the houses, which would be visible from public roads and footways.
42. However, as these matters remain reserved, and having regard to the mixture of properties in the area, which include modern dwellings, properties with first floor windows through the eaves level or within the roof and varying window sizes, and given that the dwellings would be set back down a private road and partially screened by the extension and outbuilding to the existing house, I am satisfied that the finished floor levels required could be incorporated into dwellings of appropriate scale and appearance that reflect the surrounding area and conserve heritage assets.
43. I therefore conclude, having had regard to the statutory duties under S66 and S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, that the

proposal could be delivered without resulting in harm to the significance of any heritage assets or to the character and appearance of the area. As such it would accord with policies BN5 and R1 of the JCS, Policies SS2, HE1, HE6 and LH1 of the South Northamptonshire Part 2 Local Plan 2011-2029, and paragraph 135 of the Framework, which collectively seek to ensure, amongst other things, that new development respects the character and appearance of the area and conserves heritage assets and their settings. As I have not found that the proposal would result in harm to any heritage assets, it is not necessary to consider public benefits.

Other Matters

44. I note the other concerns that have been raised by third parties, but given my findings on the main issues, it is not necessary for me to consider these further as it would not lead me to a different decision.

Conclusion

45. The proposal passes the flood risk sequential test based upon the agreed search area and I consider the site could be developed without resulting in harm to the character and appearance of the area or to any heritage assets. Whilst I understand the concerns relating to the displacement of surface water that usually stands on the garden in the event of a flood, the technical evidence before me advises that this could be mitigated by the provision of onsite attenuation methods and restricted run-off rates. However, the proposal would not provide sufficient wider sustainability benefits to the community to outweigh flood risk, and a safe evacuation route to serve future occupiers for the life of the development has not been provided. The proposal therefore fails the flood risk exception test.
46. For the reasons given above, I conclude that the proposal would not accord with the development plan taken as a whole, and there are no material considerations that indicate a decision should be made other than in accordance with this. Consequently, the appeal is dismissed.

R Bartlett

INSPECTOR