



Appeal Decision

Site visit made on 18 December 2017

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 January 2018

Appeal Ref: APP/R3325/W/17/3180365

Land at Willows, Westover, Langport TA10 9RB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by The Rees Trust against the decision of South Somerset District Council.
 - The application No.16/04191/OUT, dated 23 September 2016, was refused by notice dated 27 March 2017.
 - The development proposed is up to 22 dwellings, employment units up to 790 m sq for B1 use and raising of site levels to form flood defences.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appeal application is in outline with all matters reserved for later consideration, but with access to be determined as part of the application. I have had regard to the other details shown on the submitted drawings as illustrative material not forming part of the application.
3. A unilateral planning obligation, dated 22 November 2017, provides for affordable housing and financial contributions towards sports and leisure on commencement of the development that is the subject of this appeal.
4. The appeal site lies to the south of a small industrial estate. It adjoins Frog Lane, but access is proposed via the trading estate road. The site and its access are located within Flood Zone 3b, a part of the functional floodplain of the River Parrett, close to where it is joined by the Huish Level Rhyne.
5. Outline planning permission was granted for the erection of employment units for B1/B2/B8 use (12/01724/OUT) on the site, and reserved matters approved (15/02975/REM). This proposal incorporated flood protection measures in the form of a raised site and access levels to 8.60 m AOD in order to protect the proposed development, as well as benefitting existing premises.

Main issues

6. The main issues in this appeal are:
 - (a) The effects of the proposed development on flood risk, having regard to relevant policy.
 - (b) Whether the occupiers of the proposed residential development would be likely to experience unreasonable levels of noise and disturbance arising from nearby uses.

Planning policy

7. The development plan for the area includes the South Somerset Local Plan (2006-2028), which was adopted in 2015 (LP). Policy SD1 reflects the provisions of the *National Planning Policy Framework* (hereinafter the *Framework*) concerning sustainable development. The appeal site lies within the defined Development Area for Langport. Policy SS1 sets out a settlement strategy in which Langport is defined as a Local Market Town, and Policy SS3 concerns delivering new employment land. Policy EQ1 addresses climate change.
8. The *Framework* states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Paragraph 101 provides for a sequential test to steer new development to areas with the lowest probability of flooding, adding that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
9. Paragraph 49 of the *Framework* provides that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
10. The *Planning Practice Guidance* (hereinafter the *Guidance*) states that the *Framework* sets strict tests to protect people and property from flooding and that where these tests are not met new development should not be allowed. It sets out steps, which in summary, are designed to ensure that if there are better sites in terms of flood risk the development should not be permitted. It designates dwelling houses as 'More vulnerable', and offices, general industry and storage/distribution as 'Less vulnerable' to flooding in the five classes of flood risk vulnerability set out in Table 2. The flood risk vulnerability and flood zone 'compatibility' Table 3 provides, for both the 'More vulnerable' and 'Less vulnerable' classes, that "Development should not be permitted" in Zone 3b.

Reasons

Flood risk

11. The proposed development incorporates raising the ground level of the appeal site and its access to 8.90 m AOD. These flood alleviation measures would also benefit existing properties and the trading estate road. Subject to the requirements of the sequential test under the *Framework* being met, the Environment Agency has no objection to the proposal with the imposition of conditions regarding finished ground levels, finished floor levels (9.20 m AOD) and provision of an emergency vehicular and pedestrian route to Frog Lane. The Lead Local Flood Authority has no objection subject to a drainage condition.
12. However, LP Policy EQ1 directs development away from medium and high flood risk areas through using South Somerset's Strategic Flood Risk Assessment as the basis for applying the sequential test. It adds that the area of search to which the test will apply will be South Somerset wide, unless adequately justified otherwise in relation to the circumstances of the proposal. It also provides for the exception test, where appropriate.

13. The appellant considers that the sequential test is passed on a reduced site search area basis given the sustainable benefits of the proposal, which it is argued could not be provided by the same development at an alternative site. In the appellant's submission, the history of this site demonstrates that an employment scheme alone would not generate sufficient revenue to deliver the flood alleviation works. The additional flood protection that the scheme would provide to existing properties would be beneficial, but there is no requirement that flood improvements for the trading estate should be funded by the development of the appeal site. Furthermore, the *Guidance* states that the first preference should be to avoid flood risk. It does not say that flood risk should be dealt with by raising the land above predicted flood heights, even where the scheme, by itself, would not materially reduce flood storage and so would not significantly increase flood heights elsewhere.
14. However, it seems to me that the appellant's approach could incrementally and cumulatively undermine flood policy. If this appeal decision undermined flood policy it could have a substantial long term impact on the overall flood risk. I find no grounds here for applying the restricted sequential search area advocated by the appellant, which would effectively reduce the search to the appeal site and its immediately adjoining land. On that basis, it has not been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal would not, therefore, pass the sequential test.
15. If I am wrong about this, Table 3 of the *Guidance* provides that the proposed development should not be permitted here, even if the sequential test has been passed. Furthermore, Table 3 does not provide for an exception test in this case. The *Guidance* sets a high bar to granting planning permission for development that does not comply with the *Guidance*. The significant benefits of the additional housing, including affordable units, along with the proposed employment provision, and the overall contribution to the local economy and potentially to low carbon travel, together with the benefits of the proposed flood alleviation measures, would weigh in favour of the scheme. But in my judgement, I do not consider that these benefits would be sufficient to outweigh the substantial harm I have identified that could result from siting residential development within the functional flood plain in the circumstances that apply here, contrary to the *Guidance*.
16. The appellant considers that the Council has acted inconsistently in permitting an employment use of the site without an appropriate sequential test. How the Council dealt with the earlier application is not a matter for me. However, I do not consider that this previous decision establishes a precedent about the application of flood policy that would now justify residential development of part of the appeal site.
17. On the first main issue, I find that the proposal would increase the risk of harm from flooding in an area that has experienced serious floods in the past. The proposal would conflict with LP Policy EQ1, and would be at odds with national policy and the *Guidance* about flooding and flood risk. This is a consideration which weighs heavily against the proposal.

Living conditions

18. The access to the site would be via a small industrial estate that includes some B2 uses. But that need not, by itself, preclude residential development of part of the appeal site. This is an outline application with appearance, landscaping, layout and scale as reserved matters. Given the size of the site, its configuration and its relationship with adjoining uses, I am satisfied, in the event that the scheme was acceptable on all other grounds, that there would be a reasonable prospect of designing a scheme for the proposed residential and business development that would provide an appropriate standard of amenity for future occupiers. However, I make no assessment about whether the submitted illustrative scheme would do so.
19. It was apparent from my site visit that vehicle speeds on the estate road are low, and that reversing HGVs from the feed processing plant are assisted by a banksman. Shared use of the estate road by occupiers of, and visitors to, the development proposed for the appeal site would be unlikely to give rise to any unacceptable harm to highway safety.
20. I do not consider that any conflict with relevant local or national policy concerning design and standards of amenity would rule out a grant of outline planning permission here. On the second main issue, I find no basis for dismissing the appeal.

Other matters

21. I have taken into account all the other matters raised in the evidence, including that the proposal would provide housing and employment close to the town centre. The resultant potential for low carbon travel would be advantageous. I was referred to other appeal decisions, but it is not clear that the circumstances that applied are directly comparable with those that apply here, and so I have determined this appeal on its own merits. I have taken into account all other matters raised in evidence, but have found nothing to outweigh the main considerations that lead to my conclusions.

Conclusions

22. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The proposed development would conflict with LP Policy EQ1. It would gain some support from LP Policy SS3, but overall I find that the proposal would conflict with the development plan, when taken as a whole.
23. Paragraph 14 of the *Framework* is engaged here because the Council cannot demonstrate a deliverable five-year housing supply. However, specific *Framework* policies relating to locations at risk of flooding (footnote 9) indicate that the development should be restricted, and so the presumption in favour of sustainable development does not apply here. Therefore, the planning balance that applies in determining this appeal is a straightforward balancing exercise of weighing the benefits of the proposed development against the harm, having regard to the three dimensions to sustainable development, as set out in paragraphs 6-10 of the *Framework*, without applying a 'tilt' in favour of the grant of planning permission. For the reasons set out above, I find that the planning balance here falls against the proposal. I do not consider that the scheme would be sustainable development, and so it would not accord with LP Policy SD1.

24. Notwithstanding my favourable finding for the appellant on the second main issue, I consider that the harm to flood risk and the conflict with relevant policy weighs heavily against allowing the appeal. There are no material considerations in this case which indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Woolcock
Inspector