



North Somerset Council

Statement of Case

Town and Country Planning Act 1990 Section 78

Appeal by Mead Realisations Ltd against the decision of North Somerset Council to refuse planning application 20/P/1579/OUT for a residential development of up to 75no. dwellings and associated infrastructure with access for approval, and appearance, scale, layout and landscaping reserved for subsequent approval on land at Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston-super-Mare

Planning Inspectorate reference: APP/D0121/W/22/3313624

Local Planning Authority reference: 20/P/1579/OUT

March 2023

1. Introduction

1.1 This appeal is by Mead Realisations Ltd against the decision by North Somerset Council to refuse the planning application 20/P/1579/OUT for a residential development of up to 75no. dwellings and associated infrastructure with access for approval, and appearance, scale, layout and landscaping reserved for subsequent approval, on land at Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston-super-Mare.

1.2 The Council refused the application for three reasons as set out in the Statement of Common Ground and copied below:

- 1) *Housing development should only be permitted in a 'High Probability' (3a) floodplain when it is necessary, and where it has been demonstrated through a flood risk sequential test that there are no 'reasonably available' sites in areas with a lower flood risk where the development can be provided. The Council consider that the applicant's Flood Risk Sequential Test fails to demonstrate this, and the proposed development is therefore unnecessary in a "High Probability" floodplain, which is contrary to Policy CS3 of the North Somerset Local Plan, paragraphs 159, 162 and 163 of the National Planning Policy Framework.*
- 2) *The proposal would not provide wider sustainability benefits to the community that outweigh the flood risk. The application therefore fails the Exception Test. This is contrary to Policy CS3 of the North Somerset Local Plan, paragraphs 164, and 165 of the National Planning Policy Framework.*
- 3) *The application has failed to demonstrate that the impacts of artificial lighting during construction and occupation of the proposed development, which has a clear potential to cause unacceptable harm to European Protected Species (Bats) which use the site, can be*

mitigated. This is contrary to policy CS4 of the North Somerset Core Strategy, policy DM8 of the North Somerset Sites and Policies Plan Part 1, and paragraphs 174, 179 and 180 of the National Planning Policy Framework.

- 1.3 A description of the appeal site and surrounding area are set out in the Statement of Common Ground.
- 1.4 The Council will present details of the appeal site and further detail to explain the reasons for refusal of development as a part of its case.
- 1.5 The Council's evidence will summarise relevant consultee responses and other third-party comments, where these are relevant to the reasons for refusal.
- 1.6 The Council will seek to agree planning obligations in a Section 106 agreement with the appellant, without prejudice to its case, and will refer to the Community Infrastructure Levy (CIL). A full justification for any planning obligations sought, in accordance with paragraph 57 of the NPPF, will be provided to the Inspector in the form of a CIL Compliance Statement.
- 1.7 The Council will also seek to agree any necessary planning conditions in accordance with the tests set out in paragraph 56 of the NPPF, again without prejudice to the appeal. The agreed list of draft conditions that should be imposed if the appeal were to be successful will be provided to the Inspector in advance of the inquiry.

2. Planning Policy Framework and other relevant material

- 2.1 Section 38 (6) of the Planning and Compulsory Act 2004 and section 70 (2) of the Town and Country Planning Act 1990 require planning applications to be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 2.2 The Council will show that the proposal is clearly contrary to the adopted Development Plan specifically with reference to flood risk policy and will refer to wider national policy and guidance, and other relevant evidence in supporting its case. These adverse impacts of the proposed development would significantly and demonstrably and outweigh the benefits. Consequently, the scheme does not constitute sustainable development, and when read in the context of the Secretary of State's policies in the National Planning Policy Framework, these impacts constitute compelling reasons for dismissing the appeal.
- 2.3 The council's evidence will set out the development plan policies relevant to this appeal and which are the most important for determining the application. This will include reference to policies from the North Somerset Core Strategy (adopted January 2017), the Sites and Policies Plan Part 1: Development Management Policies (adopted July 2016) and the Sites and Policies Plan Part 2: Site Allocations Plan (adopted April 2018). The following policies are of particular relevance in this case, but other policies may also be referred to:

Core Strategy:

CS3: Environmental impacts and flood risk management

CS14: Distribution of new housing

CS28: Weston-super-Mare

Sites and Policies Plan Part 1: Development Management Policies

DM1: Flooding and drainage

DM8: Nature Conservation

DM71: *Development contributions, Community Infrastructure Levy and viability*

Sites and Policies Plan Part 2: Site Allocations Plan

SA1: *Allocated residential sites (10 or more units)*

SA2: *Settlement boundaries*

Other relevant plans and policies

- 2.4 The Council's evidence will refer to the emerging North Somerset Local Plan 2038 where relevant to its case, as well as the supporting evidence base on land availability as a necessary reference point for sequential assessment in line with national guidance.

Supplementary Planning Documents

- 2.5 The Council will also refer to Supplementary Planning Documents as required where relevant to proposed planning conditions and/or obligations. This may include the following:

- Biodiversity and Trees SPD (adopted 2005)
- Travel Plans SPD (adopted 2023)
- Affordable Housing SPD (adopted 2013)
- Development Contributions SPD (adopted 2016)
- Creating Sustainable Buildings and places SPD (adopted 2021)
- North Somerset and Mendip Bats SAC guidance on development SPD (adopted 2018)
- Employment led delivery at Weston-super-Mare SPD (adopted 2014).

National policy and guidance

- 2.6 The National Planning Policy Framework (2021) is a material consideration of significant weight which will be referred to in the Council's evidence. The NPPF provides a clear approach to development in flood risk areas setting the context for the application of the Sequential Test and, if required, the Exceptions Test.

2.7 The Council will also refer to relevant sections of the National Planning Practice Guidance where necessary, in particular the section on Flood Risk and Coastal Change last updated in August 2022.

Other key documents

2.8 The Council's evidence will refer to the North Somerset Flood Risk Advice Note (2019) prepared with the Environment Agency. This is a practice note prepared to assist in the implementation of key elements of flood risk policy including the sequential and exceptions tests.

2.9 Further evidence documents will be referred to including:

- Environment Agency 2010, National Flood and Coastal Erosion Risk Management Strategy for England
- Environment Agency 2020, Woodspring Bay and Severn House Farm Flood Modelling and Mapping Report prepared by JBA Consulting
- Association of British Insurers (ABI) 2020, Written evidence submitted to the EFRA Committee Inquiry on Flooding
- Environment Agency 2021, Guidance, Mental health costs of flooding and erosion
- Environment Agency 2022, Guidance, Flooding and health: assessment and management of public mental health
- University of the West of England 2020, Enhancing the evidence base for property flood resilience
- Paul Sayers, Charlotte Moss, Sam Carr, Andres Payo 2022, Responding to climate change around England's coast - The scale of the transformational challenge
- Aviva 2023, Building Future Communities Report Homes for a changing climate

2.10 The North Somerset Strategic Flood Risk Assessment (SFRA) Level 1 SFRA was prepared by consultants Jacobs in 2020. This provides an assessment of flood risk from various sources across North Somerset, including tidal flood risk relevant to the appeal site.

3. Principle of development

Flood risk

- 3.1 National policy provides a clear approach to development in areas at risk of flooding, that is to avoid areas at greatest risk of flooding, and to direct development to areas of least flood risk, taking into account all sources of flooding, as well as how this flood risk changes over time.
- 3.2 North Somerset is particularly affected by various sources of flood risk, especially tidal flooding, given the extensive coastline present and the unique characteristics of the landscape with large areas of low-lying land.
- 3.3 Whilst there is no dispute between the parties on the flood status of the site being high-probability Flood Zone 3a (tidal), the council will present evidence to demonstrate this and put this risk into context, including how the risk changes over the lifetime of the development due to climate change and associated sea level rise.
- 3.4 In order to give effect to the underlying principle of avoiding areas at greater flood risk, national and local policy provide two specific policy mechanisms to be applied at the planning application stage – the Sequential Test and the Exceptions Test.
- 3.5 The Sequential Test seeks to ensure that more vulnerable types of development, including residential development, are directed to areas of lower flood risk. Only when there are no ‘reasonably available’ alternative sites that can accommodate the type of development, at a lower flood risk, should development be considered in areas of higher risk. The assessment of alternative sites is guided by national and local guidance including the recently updated PPG, especially with reference to the assessment of ‘reasonably available’ alternatives and how this should be considered.
- 3.6 The onus is upon the applicant to have provided the requisite evidence to support their sequential assessment to enable the council to determine whether

or not the test is passed. In instances where decision makers conclude that the test is not passed, national policy advises that development should be refused.

- 3.7 The Exceptions Test is only required when a proposed development is deemed to have passed the Sequential Test, and has two parts:
- a. development that has to be in a flood risk area will provide wider sustainability benefits to the community that outweigh 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.

Failure of the Sequential Test

- 3.8 The Council's evidence will show that the Sequential Test is failed in this case and will present evidence to support this, with reference to national and local policy and guidance including NPPF and the most recently updated PPG section on Flood risk and Coastal Change. Reference will also be made to other relevant appeal cases which substantiate this.
- 3.9 As part of this, the Council will address the various documents submitted by the appellant through the planning application process with regard to the sequential test as well as other relevant evidence. This will demonstrate that there are reasonably available sites at a lower risk of flooding appropriate for the proposed housing development in line with national and local policy and guidance.
- 3.10 Core Strategy Policy CS3 requires the sequential test to be applied across the whole of North Somerset when, as is the case with this appeal, the proposed site is outside of the settlement boundaries of a main town, and when there are not specific reasons as to why a more localised search area should be applied.
- 3.11 The Core Strategy policy is by definition a strategic policy and so does not address the myriad of specific considerations that become relevant in the

application of the sequential test. Accordingly national guidance seeks to provide additional detail with the latest update being in August 2022. Locally, the council has worked collaboratively with the Environment Agency to produce a local advice note that includes further detail on the application of the test.

- 3.12 The Council's evidence will demonstrate how the emerging Local Plan proposes to meet housing needs, by minimising development in areas at risk of flooding. Land availability evidence prepared to support the plan's preparation demonstrates the range of sites that are available for development in areas at lower risk of flooding.

Failure of the Exceptions Test (in the event that the sequential test was passed)

- 3.13 It is the council's position that the sequential test is failed in this case and therefore there is no requirement to progress to the Exceptions Test. However, the council has nevertheless considered the Exceptions Test in the event that the Sequential Test were deemed to have been passed.
- 3.14 Linked to the second refusal reason, the council's evidence will demonstrate that there are no wider sustainability benefits to the community that outweigh the flood risk. This evidence will refer to national and local examples of what might represent such circumstances; sustainable development objectives defined at the local level; and evidence that will assist in the consideration of the balancing exercise that is required by part (a) of the Exceptions Test.
- 3.15 On the latter this will include technical evidence on the present level of flood risk, including its associated hazard, but also the increasing nature of this risk over time, uncertainty about future funding for flood defence improvements and maintenance, alongside wider evidence around the increasing importance of the planning process to address flood risk as part of wider sustainable development. The council's case will include evidence on the economic, social and environmental cost of flooding related specifically to this case. This will make clear that development of the appeal site constitutes unsustainable development.

Biodiversity

- 3.16 Artificial lighting from the development during construction and the operation of the development adjacent, has potential to unacceptably harm bat feeding and foraging routes. At the time of determining the application the Council had not been provided with sufficient information to conclude that there would not be an adverse impact on protected European Species (bats) as a result of artificial lighting and Natural England did not therefore agree with the conclusions of the HRA that the proposal would not result in an adverse impact on the integrity of the North Somerset and Mendip Bats SAC as a result of light spill.
- 3.17 As set out in their statement of case, the appellant proposes to submit a further lighting assessment to demonstrate to the Inspector that the proposals would not result in adverse impact on the bat species that use the site and that there would be no likely significant adverse effect on the integrity of the North Somerset and Mendip Bats SAC. Discussions between the parties following submission of the appeal indicate that it should be possible to address this issue and resolve the concerns of Natural England by agreeing a suitably worded condition. The Council and appellant are continuing to positively engage to achieve this.

Five year land supply

- 3.18 It is agreed between the parties that the current housing land supply position is 3.5 years as set out in the Statement of Common Ground. Notwithstanding this, the Council's evidence will demonstrate that the tilted balance is not engaged in this case, given the location of the site in an area at risk of flooding and the failure of the applicant to pass the sequential and exceptions tests. This is a clear reason for refusal as per NPPF paragraph 11 and footnote 7.

4. Planning Obligations and conditions

- 4.1 A Section 106 Legal Agreement is required to secure the proposed 30% affordable housing contribution in accordance with policy CS16, a financial contribution towards employment support for those in the local labour market, a construction phase 'Local Labour Agreement and Action Plan', a contribution towards sustainable travel measures to support future residents, fire hydrants, and the provision of on-site public open space and green infrastructure.
- 4.2 It is anticipated that the appellant will submit this in advance of the inquiry however in the absence of a S106 Legal Agreement the LPA would demonstrate that the proposal failed to make policy compliant contributions towards the identified needs.
- 4.3 A list of suggested conditions will be agreed with the appellant prior to the inquiry.