



Appeal Decision

Site visit made on 26 January 2022

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th February 2022

Appeal Ref: APP/U1430/W/21/3273344

Land at Ferry Road, Rye, TN31 7DN

- 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 Reliant Building Contractors Ltd against the decision of Rother District Council.
 - The application Ref RR/2019/840/P, dated 8 June 2020, was refused by notice dated 22 October 2020.
 - The development proposed is 6 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with access, appearance, layout and scale to be considered at this stage.
3. The appellant has submitted revised drawings as part of the appeal which show additional boundary treatments and tree planting. The Council raises no objection to these being considered as part of the appeal. They do not alter the amount of development or the position of the proposed buildings. As landscaping is a reserved matter, I shall take them into account on the basis that they are indicative of what could be undertaken.
4. The third reason for refusal, relating to overlooking of some of the proposed properties, could be overcome and is no longer being pursued.

Main Issues

5. These are:-
 - Whether the proposed development passes the sequential test in relation to flood risk and, if so, whether the exception test would be satisfied; and
 - The effect on the character and appearance of the area with particular reference to the role of the site as a landscape buffer.

Reasons

Flood risk

6. The National Planning Policy Framework establishes that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Policy EN7 of the Core Strategy (2014) contains similar principles.

7. The appeal site lies within flood zones 2 and 3a and so has a high/medium probability of flooding. Dwelling houses are categorised as “more vulnerable” development. Therefore the proposal should be subject to a sequential test. The aim of this is to steer new development to areas with the lowest risk of flooding from any source.
8. A flood risk sequential test assessment has been undertaken by the appellant covering the entire District. The Environment Agency advised that the proposal did not pass the sequential test. However, it is for the local planning authority and for me as decision-maker in the appeal, to decide whether this is the case or not. In considering whether reasonably available alternative sites exist, the assessment reviewed site allocations in the Development and Site Allocations Local Plan of 2019, sites on the brownfield register of 2019 and those listed on property websites.
9. The appeal site is 0.23ha. The assessment applied a site search range of between 0.1ha and 0.5ha. An Inspector (Ref: APP/X3540/W/20/3250557) refers to the “standard approach” of setting the area of site size considered as up to 20% above and below the proposed development site. There is no such advice in the Planning Practice Guidance (PPG) on *Flood risk and coastal change* but the tolerance applied in the assessment would considerably exceed this percentage. In theory, six houses could be accommodated on any of the larger site allocations. However, there is no evidence that the sub-division of sites in Rother has occurred in the recent past and is realistic. Therefore the parameters used for site size in the assessment are suitable.
10. Six sites are identified for housing development in the Rye Neighbourhood Plan. These are all in either flood zones 2 or 3. The purpose of the sequential test is clear and requires consideration to be given to locations with a lower risk of flooding. Neither the Framework nor the PPG refer to favouring sites of equivalent flood risk that have been allocated in a development plan. Therefore these sites have rightfully been excluded from the assessment.
11. There is no definition of what is meant by “reasonably available” in the Framework or PPG. Eight sites for sale in November 2021 were discounted on the basis that none of them comprise reasonable comparison sites. However, the test is not that other sites must be available now. It would be short-sighted to exclude sites that might come forward in the near future given the primary purpose of the test. This is especially so of sites that are allocated.
12. Of these, sites at Beckley Four Oaks (BEC2) and Northiam (NOR1) have a capacity of six dwellings and are in flood zone 1. Both are privately owned and are not currently for sale. There is nothing in national policy or guidance to the effect that alternative sites must be owned by the applicant. Such an approach would constrain the sequential test to an unwarranted degree. This exercise is not about protecting the interests of individual landowners or developers. There is limited information about these sites. However, there must have been evidence of their deliverability for them to be included as site allocations. Even taking a pragmatic approach, as advised by the PPG, there is insufficient reason to exclude them as preferable alternatives to the appeal site.
13. Since 2011 an average of 38 units have been delivered each year from large windfall sites (six units or more) in Rother. These come forward outside of the development plan process, may not currently have planning permission and will not necessarily be offered for sale as they may be promoted by the landowner.

Whilst they are unexpected, the completions have occurred consistently over a prolonged period. However, there is no further detail about what these sites comprise in terms of the number of units and whether they were in flood zone 1. So it is possible that six units could be accommodated on a windfall site but the evidence is not so compelling that the test should fail for this reason alone.

14. The assessment does not expressly consider sites with planning permission as one of the potential sources. This is not a matter raised by the Council so it may be that there are no unimplemented permissions with a similar capacity to the proposed development. Alternatively they may already be included in the study undertaken. However, the absence of any commentary to this effect reduces the confidence to be placed in the outcome of the assessment.
15. Taking account of the evidence provided, including the submitted sequential test assessment, it has not been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding than the appeal site.
16. The PPG confirms that the exception test should only be applied following the application of the sequential test and that both elements need to be satisfied. The proposed development sets floor levels at 3.85m AOD and there would be no habitable rooms on the ground floor. It is intended to put strategies in place for water entry, warning and evacuation. However, even if the exception test is met, this does not override the failure to pass the sequential test.
17. The issues of the potential for windfall development and the lack of an obvious consideration of sites with planning permission cloud the findings of the assessment. More significantly rejecting two otherwise suitable sites solely because they are outside of the ownership of the appellant and not for sale at the moment is not justified. These therefore represent locations where a development of six houses could better be located and so minimise flood risk. Therefore, in conclusion on this issue, the sequential test is not passed and in these circumstances the Framework is clear that development should not be permitted. The proposal would also be contrary to Policy EN7.

Character and appearance

18. The appeal site is a narrow strip between the railway line and Mill Lane. The land was purchased by the appellant some years ago as it was surplus to the operating requirements of the railway network. The six houses would be spread across the length of the site and would be a mix of detached and semi-detached in four blocks. The spaces between them would be used for parking, gardens and planting. Trees are shown along the boundary with the railway to filter views from that direction.
19. The site is within the development boundary for Rye. Policy DIM2 of the Development and Site Allocations Local Plan confirms that new development will be focussed within defined settlement boundaries. The supporting text of the Core Strategy indicates that there is a presumption that infilling will be acceptable subject to other plan policies.
20. To that end, Core Strategy Policy OSS3 establishes that, in assessing the suitability of a particular location for development, proposals should be considered in the context of various criteria. These include the character and qualities of the landscape and making effective use of land within the main

- built-up confines of towns, consistent with maintaining their character. The relevant development plan policies therefore reflect paragraphs 124 d) and 130 c) of the Framework which also indicate that there is a balance to be struck between these considerations.
21. The Council refers to the site as an "important landscape buffer" even though it has no formal designations. This could have been remedied through the preparation of the current development plan documents. Nevertheless, the first step is to assess the current contribution that the site makes, if any, to the qualities of the locality.
 22. Over the years self-seeded trees and scrub have grown up on the land. This is not as a result of deliberate design or a particular management regime. Several trees have grown to maturity. The Arboricultural Impact Assessment categorises the individual specimens and groups as of moderate or low quality and value whilst three goat willows are identified as in decline. The appearance of the site is rather unkempt and 'wild' but is typical of strips of land found alongside railway tracks.
 23. The softness and outlines of the vegetation provide a marked and pleasant contrast to the urban development that prevails along Ferry Road on either side of the railway. It forms a break in the built form and complements the similar wooded strip on the other side of the railway corridor. Furthermore, the site forms a visual link with Rye Windmill at the end of Mill Lane and the River Tillingham and its banks beyond. It therefore represents an attractive green 'finger' that offers a foil and backdrop to the buildings and railway infrastructure that otherwise predominate.
 24. The site is visible from Ferry Road although the cone of vision is quite limited. However, it is fully appreciated from along the length of Mill Lane which is a public right of way. From this direction it serves to obscure the presence of the railway. Other close to medium views are possible from the south where the trees and other greenery are seen clearly in the foreground. The visibility of the land enhances and emphasises the role that it plays. Its current state may not be worthy of formal recognition but, in its context, the value of the site is more than the sum of its parts.
 25. The significance of spaces such as this is highlighted by the National Model Design Code (NMDC) (Part 2). This refers to land within built-up areas that has been reclaimed by nature including former railway lines that form important green corridors. This aptly describes the appeal site and local residents refer to the site as a rich haven for wildlife.
 26. It is maintained that the proposal provides an opportunity to enhance the arboricultural contribution of the site to the character and appearance of the area. Two trees identified as the "best" ones would be retained within the layout. The indicative plans show extra heavy standard trees along the boundary with the railway and at the southern tip and beech hedging planted as advanced stock along the Mill Lane and Ferry Road frontages.
 27. However, four groups and one individual tree would be removed. In any event, comparing the quality of existing and potential planting does not tell the whole story. This is because the existing character of the site as an overgrown but valuable green corridor would be lost as a result of the proposed development.

The effect of this fundamental change would be a negative one and is not compensated for by the replacement planting that is intended.

28. The starting point of the Townscape and Landscape Appraisal is that the significance of the site as a landscape buffer is a matter for debate given the tree belt to the south of the railway. The starting point for this decision is that the site is a significant landscape buffer. From the main and closest viewpoints the significance of the visual impacts is generally assessed as moderate although major-moderate from Mill Lane. But this assessment underplays the existing value of the site.
29. The proposed houses would shield the railway to some degree and from some angles. However, that is not the only function of the site and its other qualities would be erased if the development were to go ahead. As noted by the NMDC, private gardens can also contribute significantly to biodiversity. Ecological enhancements could be required as recommended in the Appraisal but it is unclear whether they would result in a net gain.
30. Planning permission has been given for 63 houses on the northern side of Ferry Road. The Google Earth image indicates that a considerable number of trees would be lost. The Council refers to a 5m wide wildlife corridor along the railway line but this is difficult to tally with the approved landscaping plan. Nevertheless, this decision does not justify developing the site as proposed with the consequent erosion of its existing natural character.
31. To sum up, this piece of land has been 'taken over' by nature. It represents a green corridor that contributes positively to the area as well as comprising a strong landscape buffer along the railway line. This would be replaced by four large buildings and areas of hard surfacing. The proposed landscaping would not compensate for the significant and adverse change to the character of the site and its role within the local area. In this case more importance should be attached to maintaining existing character.
32. Therefore the proposal would harm the character and appearance of the area. Having regard to Policy OSS3 this would not be a suitable location for this development. As it would detract from and not respect the area, there would also be conflict with Core Strategy Policy OSS4.

Other Material Considerations

33. The Council can only demonstrate a housing land supply of 2.87 years as of 1 April 2020. However, the proposal would be within an area at risk of flooding. As the sequential test has not been passed this provides a clear reason to refuse the development proposed. Therefore, the presumption in favour of sustainable development at paragraph 11 d) of the Framework does not apply.
34. Nevertheless, the proposal would add six dwellings to the stock of housing in a District where both past delivery and future supply is well below what is expected by the Government to significantly boost the supply of housing. It is maintained that the proposed units could be provided quickly on an under-used urban site close to public transport and the facilities of Rye. Extra homes would be likely to increase the demand for local services and employment and expenditure in the construction economy. The proposal would remediate the site of any contamination and make an efficient use of it.

35. All of these considerations favour the proposal. However, national and local policy indicates that it is imperative for new development to avoid flood risk wherever possible. Sites at most risk should only be developed when no other feasible option exists. That is not so here. Furthermore, the Framework seeks to achieve well-designed places and the loss of the existing green corridor would harm the character and appearance of the area. Therefore the benefits of providing additional housing do not outweigh the conflict with the development plan and national policy.
36. Rye Windmill is a Grade II listed building. There is a duty to have special regard to preserving its setting. The proposed houses would be visible in views of the windmill from along Mill Lane. However, it does not stand in isolation from other buildings. The closest dwelling would be some 35m away and the buildings would not be as tall as the windmill and so would appear subservient to it. For these reasons the setting of this listed building would not be spoilt and the proposal would not detract from the significance of the heritage asset.
37. Objections have been raised by local residents on several other grounds including overlooking of neighbouring properties, traffic, surface water flooding and the design and scale of the houses. There is a particular concern about the ability of firefighters to access the station along Mill Lane and to mobilise effectively in the event of an emergency. These matters did not form part of the reasons for refusal. Given that the appeal is to be dismissed there is no need for them to be given further detailed consideration.

Conclusion

38. The proposed development does not pass the sequential test for the location of development in relation to flood risk and would harm the character and appearance of the area. It would not accord with the development plan and there are no other material considerations to outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR