



## Appeal Decision

Site visit made on 8 May 2018

**by Alison Partington BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> May 2018.

---

**Appeal Ref: APP/U2370/W/18/3195063**

**Land rear of Chequers and Wyresdale, Smallwood Hey Road, Pilling PR3 6HJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Cookson against the decision of Wyre Borough Council.
  - The application Ref 17/00396/OUT, dated 27 April 2017, was refused by notice dated 22 November 2017.
  - The development proposed is a single dwelling.
- 

### Decision

1. The appeal is allowed and outline planning permission is granted for a single dwelling at land rear of Chequers and Wyresdale, Smallwood Hey Road, Pilling PR3 6HJ in accordance with the terms of the application, Ref 17/00396/OUT, dated 27 April 2017, subject to the conditions set out in Annex A.

### Procedural Matter

2. The application was submitted in outline with all matters reserved for future consideration. I have dealt with the appeal on this basis, treating the plan that shows a potential layout for a dwelling on the site as indicative.

### Main Issues

3. The main issues in the appeal are:
  - Whether or not the proposal represents an acceptable form of development having regard to its flood zone location; and
  - The effect of the proposed development on the living conditions of nearby residents with particular regard to outlook, light and privacy.

### Reasons

#### *Flooding*

4. The appeal site lies within Flood Zone 3 which has a high probability of flooding, and the scheme is classified as a 'more vulnerable' development. The *National Planning Policy Framework* (the Framework) and the *Planning Practice Guidance* (PPG) set out strict tests to protect people and property from flooding. The aim of these being to avoid inappropriate development in areas at risk of flooding by directing development away from areas of highest risk.

5. The Framework (paragraph 101) indicates that a sequential test should be carried out the aim of which is to steer new development to areas with the lowest probability of flooding, and that development should not be allowed if there are reasonably available sites, appropriate for the proposed development, in areas with a lower probability of flooding.
6. The appellants have produced a Sequential Test which was revised during the application process to take account of comments from the Council. Whilst I note the appellants' comments regarding changes in information that came out during the application and appeal process, I consider that it is appropriate that the case is determined on the most up to date data.
7. The sequential test has been produced on a borough wide basis which accords with the advice contained in the *Wyre Council Flood Risk Sequential Test: Advice for Applicants (May 2015)* (STAA) that this should normally be the area of search for applications. I am satisfied that this represents a reasonable approach as defined by local circumstances. Nevertheless, it is disputed between the parties whether the sequential test adequately demonstrates that there are no reasonably available, sequentially preferable sites.
8. The appellants have indicated that it was agreed with the Council that sites for one dwelling between 0.02 and 0.04 ha in size, and up to a maximum of 0.05 ha provide an appropriate basis to determine comparator sites. The sequential test analysed sites found in the most recent Housing Land Monitoring Reports as well as planning permissions granted in the period 30/04 /16 – 31/3/17. The sequential test list all the sites that are potentially sequentially preferable and sets out the reasons why they are either not appropriate as comparator site or not available. On this basis it concludes that there are no sequentially preferable sites.
9. The Council has not disputed the conclusions of the sequential test with regard to any of the sites listed, but based on the most up to date data the Council's appeal statement identifies 3 further sites in Flood Zone 1 that they consider to be sequentially preferable. The appellants have highlighted that on two of these sites applications for the discharge of conditions applications have been made. The other is stated to be too large to be a comparator site, and has also had an application made for the approval of reserved matters. On this basis, in accordance with advice in the STAA, I consider that these sites would appear to have valid planning permissions which are likely to be implemented, and so are not considered reasonably available.
10. Notwithstanding this, the STAA indicates that to ensure a comprehensive approach is taken to identifying comparable sites applicants should also provide evidence from a minimum of 3 professional property agents with demonstrable knowledge and understanding of the local land and property market to show that there are no suitable comparable sites. I note the Council's concerns in this regard, but appendix 2 to the appellants' sequential test shows that 4 local property agents were contacted for this purpose. Whilst only one of these responded, I consider it is reasonable to assume that if others had had sites available they would have provided details. It is stated that the three sites identified by the agent who responded are too large to be considered as comparator sites.
11. In the light of this, I am satisfied that sufficient evidence has been produced to conclude that currently there are no alternative, reasonably available sites,

- appropriate for the proposed residential development in areas with a lower probability of flooding.
12. The Framework indicates that if the Sequential Test demonstrates it is not possible for the development to be located in zones with a lower probability of flooding, the Exceptions Test can be applied if appropriate. For the Exceptions Test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh the flood risk. In addition, a site specific Flood Risk Assessment (FRA) must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flooding elsewhere, and, where possible, reducing flood risk overall.
  13. The site is an unused area of former garden land immediately adjacent to a residential area which also has a variety of shops and services. Smallwood Hey Road is also a bus route, thus providing an alternative form of transport to the private car. As such, the site is in an accessible location. The construction of the house would provide some work for local contractors, spending by the new residents would also be beneficial to the local economy, and the development would make a small contribution to housing supply in the area. Therefore, I consider that the proposal would result in some limited social and economic benefits to the local community.
  14. The application was accompanied by a site specific FRA, and the Environment Agency are satisfied that, provided the development proceeds in accordance with this, the development would be safe, and would not exacerbate flood risk elsewhere. I see no reason to come to a different conclusion in this regard.
  15. As a result, I consider that the proposal passes both parts of the Exceptions Test. Paragraph 103 of the Framework states that development should only be considered appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, a number of matters can be demonstrated. These include that the development is appropriately flood resilient and resistant, with safe access and egress routes, and that any residual risk can be safely managed.
  16. The FRA sets out how the development would incorporate flood resilient construction methods, and as the application is currently in outline with all matters reserved, further details in terms of the design and layout of the development will be determined as reserved matters.
  17. All in all, I consider that the proposed development accords with the requirements of the Sequential and Exceptions Test, as set out in the Framework. Therefore the proposal would be an acceptable form of development having regard to its flood zone location.

### *Living Conditions*

18. The appeal site is located at the rear of two bungalows. The rear gardens of these dwellings are limited in length and so their rear elevations, which contain a number of windows, are relatively close to the boundary with the site.

19. In order to ensure adequate living conditions for both existing and future occupiers the Council's *Supplementary Planning Guidance 4 : Spacing Guidance for New Housing Layouts (adopted September 1998)* sets out suggested minimum separation distances. The Council have indicated this requires that a rear elevation facing a side elevation should be a minimum of 12m apart.
20. As the proposal is made in outline with all matters reserved, the scale, layout and appearance of the dwelling are not fixed at this stage. Nevertheless, due to the limited distance the adjacent houses are to the common boundary with the site, and the constraints of the site itself, the Council have indicated that, on the basis of the indicative plans, they do not consider a dwelling can be satisfactorily accommodated on the site.
21. However, I observed that Chequers is L-shaped and so part of the rear elevation is set back a greater distance from the site than the rest of the house and the rear elevation of Wyresdale. Given this, I consider that it may be possible to design the dwelling in such a way that the minimum separation distances are maintained. As such, the proposed development would not necessarily have an overbearing impact on the adjacent properties. Moreover, careful positioning of any windows above ground floor level would be able to prevent any overlooking of adjacent properties and their gardens.
22. Whilst these matters would need careful consideration at reserved matters, at this stage I consider that the proposed development would not necessarily unacceptably harm the living conditions of nearby residents with regard to outlook, light and privacy. Therefore, there would be no conflict with Policy Sp14 of the WBLP which seeks to ensure a good standard of amenity is maintained in new development.

### **Conclusion and Conditions**

23. The Council have indicated that the site is located in an area designated as open countryside and would be contrary to Policy Sp13 of the *Wyre Borough Local Plan (adopted July 1999)* (WBLP). However, the Council have acknowledged that they cannot demonstrate a five year housing land supply. In such circumstances paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date, and paragraph 14 indicates that permission should be granted, unless there are specific policies in the Framework (such as locations at risk of flooding), which indicate that development should be restricted. As I have concluded that the proposal would be acceptable in terms of its flood zone location, this provision does not apply, and overall, I consider that it accords with the development plan.
24. For the reasons given above I conclude that the appeal should be allowed.
25. In addition to the standard implementation and reserved matters conditions, to provide certainty it is necessary to define the plans with which the scheme should accord. To ensure the satisfactory drainage of the site it is necessary to control details of the drainage systems. Given the sensitive nature of the end use I consider it is appropriate to have a condition to assess the potential for contamination and to outline how any contamination should be dealt with.

26. A wheel washing facility is not necessary due to the small scale nature of the development and as landscaping is a reserved matter, I do not consider the condition suggested by the Council in this regard is necessary at this stage.

*Alison Partington*

INSPECTOR

## **Annex A**

### **Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan.
- 5) No development shall take place until full details of surface and foul water drainage for the site have been submitted to, and approved in writing by, the local planning authority, including results from percolation tests to establish that ground conditions are suitable for the use of any soakaways. The approved scheme shall be implemented in full on site prior to the first occupation of the dwelling and maintained thereafter.
- 6) No development shall take place until a desk study to investigate and produce an assessment of the risk of the potential for on-site contamination has been undertaken, and approved in writing by, the local planning authority. If the study identifies potential contamination, a detailed site investigation shall be carried out in accordance with a written methodology, which shall first have been submitted to, and agreed in writing by, the local planning authority. If remediation measures are then considered necessary, a scheme for decontamination of the site shall be submitted to, and approved in writing by, the local planning authority. The scheme implemented in accordance with the approved scheme prior to the development of the site, and a verification report shall be submitted to, and approved in writing by, the local planning authority.