
Appeal Decision

Site visit made on 3 June 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2019

Appeal Ref: APP/L3245/W/19/3221394

Formally Minsterly Bus Depot, Station Road, Minsterley, Shrewsbury SY5 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Atbay Ltd against Shropshire Council.
 - The application Ref 18/03583/OUT, is dated 2 August 2018.
 - The development proposed is a mixed use development for Residential, Retail and Business units with associated parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline, with all matters reserved for future consideration. I have determined the appeal on this basis.

Background and Main Issues

3. The appeal follows the Council's failure to determine the respective planning application. The application was presented to the Council's Central Planning Committee (the Committee) on 20 December 2018 with a recommendation for approval. The Committee resolved to defer the determination of the application to give the appellant the opportunity to submit a Flood Risk Assessment (FRA) and a Noise Assessment (NA). The appellant declined this opportunity and lodged this appeal on the grounds of non-determination.
4. Accordingly, I consider that the main issues are:
 - whether or not the proposal would provide a suitable site for housing, having particular regard flooding; and
 - whether the proposal would provide adequate living conditions for future occupants, with regard to noise; and,
 - the effect on the living conditions of the occupants of neighbouring residential properties, with regard to noise.

Reasons

Flood Risk

5. The Council confirms that the eastern boundary of the site lies within Flood Zone 3, as defined on the surface water flood maps. Although the appellant does not dispute this, I note that the Drainage Statement prepared by Stewart & Harris, dated 28 September 2006, states that the site is within Flood Zone 1. However, this statement is of some age and there is a likely probability that it does not reflect the most up-to-date flood maps. I have not been presented with any extracts from the surface water flood maps referred to and therefore I cannot be certain as to how much of the site falls within Flood Zone 3. Nevertheless, in the absence of any substantive evidence to the contrary, I consider that the site, albeit only part of it, falls within Flood Zone 3.
6. Footnote 50 of the National Planning Policy Framework (the Framework) states that a site-specific flood risk assessment should be provided for all development within Flood Zones 2 and 3. The National Planning Practice Guidance (PPG) clearly identifies 'buildings used for dwelling houses' as 'more vulnerable' development. Paragraph 158 of the Framework requires the application of a Sequential Test in decision taking in order to steer new development to areas with the lowest probability of flooding. It goes on to state that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
7. Paragraph 159 goes on to say that if, following application of the Sequential Test, it is not possible for development to be located in zones with a lower risk of flooding, the Exception Test may have to be applied. A more vulnerable use such as dwellings should only be permitted in Flood Zone 3 if the Exception Test is passed. To pass the Exception Test it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site-specific flood risk assessment demonstrates that the development will be safe for its lifetime taking account of the vulnerability of its users.
8. It is for local planning authorities, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application. Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere¹.
9. The Drainage Statement indicates how the previously approved scheme would mitigate any existing drainage on the site and what drainage scheme would be utilised. However, there is no evidence within the statement, or elsewhere before me, that a Sequential Test has been undertaken. Therefore, there is insufficient evidence to demonstrate that there are no alternative sites at lower risk of flooding.

¹ Planning Practice Guidance, Paragraph: 034 Reference ID: 703420140306

10. I note that the Committee Report suggested a condition requiring a Flood Risk Assessment to be submitted as part of the reserved matters. However, as such information is required in order to determine whether or not the site is suitable for the proposed development, the imposition of such a condition would be unreasonable and therefore fail the tests set out in paragraph 55 of the Framework.
11. I have also had regard to the planning history of the site and the previous planning permissions. However, in the absence of any detailed information regarding these permissions, I cannot be certain that the constraints of the site at the time, notably the risk to flooding, were comparable to the existing constraints.
12. I find therefore that it has not been satisfactorily demonstrated that the proposal would not represent an unacceptable risk to flooding. I have not been referred to any specific development plan policies in respect of this main issue. However, the proposal would fail to accord with the Framework's aim of directing development away from areas of highest flood risk.

Noise

13. It is not clear from the Council's evidence whether or not their concerns regarding the need for an NA is in respect of the living conditions of future residents of the development, neighbouring residents, or both. I have considered the proposal in respect of both.
14. The application is in outline form with all matters reserved for future consideration. Since the previous planning approval on the site was granted, there is no dispute that the surrounding environment has changed. In particular, dwellings have been constructed to the east of the site and the adjacent factory has changed its operations and plant/machinery. As a result, the potential implications of the proposal on neighbouring residents and the existing factory on future residents is different.
15. However, given the size of the site, there is no evidence before me to demonstrate that any potential effects of noise on existing and future residents cannot be adequately mitigated through appropriate siting of the proposed uses and the use of mitigation measures that could be secured by way of appropriately worded conditions, were I minded to allow the appeal.
16. I find therefore that the proposal would provide adequate living conditions for future occupants and would not result in any significant harm to the living conditions of existing neighbouring residents, with regard to noise. The Council have not referred me to any specific development plan policies in respect of this main issue. However, I find no conflict with the Framework's objective of protecting residential amenity.

Other Matters

17. I note the concerns raised by interested parties regarding the effect of the proposal on ecology. Whilst I acknowledge that the site has been cleared of vegetation, it is a brownfield site, free of any buildings and surrounded by development on three sides, including a large factory. Furthermore, to the north is improved grassland. The Preliminary Ecological Appraisal prepared by Arbor Vitae concludes that the site has very limited ecological value and that no mitigation for loss of habitats or impact on protected species is necessary. In

the absence of any substantive evidence to the contrary, I find no reason to conclude otherwise.

Conclusion

18. Whilst the proposal would provide adequate living conditions for future occupants and would not result in any significant harm to the living conditions of existing neighbouring residents, with regard to noise, these are neutral effects and therefore carry no weight in favour of, or indeed against, the proposal. Therefore, there are no material considerations that outweigh the harm I have found in respect of the unacceptable risk the proposal represents to flooding.

19. For the reasons given above, the appeal is dismissed.

Alexander Walker

INSPECTOR