



Appeal Decision

Site visit made on 15 February 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/W2465/W/21/3283279

22A Staveley Road, Leicester LE5 5JT

- 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 planning permission
 - The appeal is made by Nico Properties Ltd against Leicester City Council.
 - The application Ref 20210135 is dated 20 January 2021.
 - The development proposed is to construct 8 apartments (Class C3).
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Decision

1. The appeal is dismissed and planning permission to construct 8 apartments (Class C3), at 22A Staveley Road, Leicester LE5 5JT, is refused.

Application for costs

2. An application for an award of costs has been made by Nico Properties Ltd against Leicester City Council. This is the subject of a separate Decision.

Preliminary Matters

3. I have omitted reference in the description of development to this being a revision of an earlier scheme, as this does not in itself refer to an act of development.
4. On 14 January 2022, the Government published the 2021 Housing Delivery Test (HDT) results, which show the Council's delivery has exceeded the requirement over the last three years, unchanged from its position in 2020. Therefore, these results do not have implications for the parties' respective arguments at appeal and it has not been necessary to seek the parties' further views in this matter.

Background and Main Issues

5. The appeal relates to a backland site to the rear of residential development on Staveley Road, Hollington Road and Kedleston Road. The site is previously developed with a disused single storey building on the land. The site has been subject to several recent planning applications for residential development, which have either been withdrawn or refused permission by the Council. The application preceding this one was dismissed at appeal¹. I note the appellant's position that the proposal before me now is intended as a revision of the dismissed scheme to address the previous Inspector's concerns.
6. The Council did not issue a decision on the appeal within the prescribed time limit or within an agreed extension of time. No officer report has been

¹ Appeal Ref: APP/W2465/W/20/3254722, dismissed 20 October 2020

provided. The Council's appeal statement does not set out putative reasons for refusal in full, but I have gleaned its areas of concern from the statement itself. These form the basis of the main issues of the appeal.

7. Having regard to the evidence before me, therefore, the main issues are:

- i) Whether the proposal represents an acceptable location for residential development, having regard to the identified level of flood risk and the safety of access and egress from the site in times of flood;
- ii) Whether the proposal would achieve a suitably high quality design, and its effect on the character and appearance of the area;
- iii) Whether the proposed flats would provide a suitable standard of accommodation for occupants, with particular reference to daylight and outlook.

Reasons

Flood Risk

Sequential Test

8. The appeal site is located close to Evington Brook and has areas within Flood Zones (FZ) 1, 2, 3a and 3b. The Council recognises that most of the site, including the area where the proposed building would be located, falls within FZ1 and is therefore at the lowest risk of flooding. The Council's primary concern relates to the site access from Staveley Road, which it indicates is within FZ3b, the functional flood plain, and is therefore at 'very high' risk of the impacts of surface water flooding in particular. The Council also states that the site lies within a critical drainage area and rapid surface water run-off from the site could lead to flooding in neighbouring areas.
9. Given that part of the site falls within FZ2, FZ3a and FZ3b, the Council points to the need for the proposal to satisfy the sequential and exception tests set out under the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). The Framework indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG states that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within FZ2 and FZ3.
10. The aim of the sequential test is to steer new development to areas with the lowest probability of flooding, these being within FZ1. The Framework is clear that the sequential test should consider flooding from any source. Only where there are no reasonably available sites in FZ1 should reasonably available sites in FZ2 be considered. If the sequential test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding, then the exception test may have to be applied.
11. The appellant has not undertaken a sequential test in line with the approach of the Framework. Instead it is argued that a sequential approach has been followed in locating the proposed flats within FZ1 and thus within an area at the lowest risk of flooding within the site itself. However, in relation to the sequential test, the Framework refers to development and not housing. Therefore, the whole site, including external areas and the access, is to be considered in determining whether to apply the sequential test. The proposed

access would form an integral part of the development and would be the only means of escape from the site. Therefore, it represents an area of potential risk and, as it falls within FZ2 and FZ3b, a sequential test should be undertaken to identify whether other sites of lower flood risk exist within a reasonable search area, particularly in respect of the access.

12. The appellant in discussing the sequential test admits that they are '*aware of numerous sites which could be redeveloped for a similar number of apartments*²but argues that it would be at odds with the aims of the Framework and PPG to '*fabricate search zones to make sure the proposal passes the sequential test.*' Such an approach would clearly not be appropriate if it used a convoluted or very restricted search area. Given the location of the site within the urban area of Leicester, and the proposal being for housing, it would be expected that a reasonable search area would encompass a considerable area of the city. However, in the absence of any details of alternative sites, preferable or otherwise to the appeal site, it is not possible for me to conclude that the proposal would pass the sequential test.
13. The appellant points to the fact that flood risk was not a matter considered by the previous Inspector. The reasons for the Council not including this as a main issue are unclear, given that it was indicated to have been a reason for refusing an earlier application. However, appeals principally turn on the main issues stemming from the reasons for refusal. Therefore, matters not specifically put to the Inspector will not be considered in detail, and the fact that flood risk was not addressed by the Inspector is not an indication that he considered the proposal acceptable in this respect. Moreover, given the importance placed upon flood risk by the Framework, it is not a matter that can be set aside, even if it was not a main issue previously.
14. In terms of the exception test, the PPG is clear that this should only be applied where the sequential test has been passed. As I have found the proposal does not accord with the sequential test, it matters not whether it would pass the exception test, as this alone would not satisfy the requirements of the Framework and PPG.

Site Access and Egress

15. The appellant's flood risk assessment (FRA) states that the site is at low risk from fluvial flooding, with the chance of flooding in any given year being 1 in 100. The main risk in this case is flooding from Evington Brook. The FRA has modelled 1 in 100 year flood levels which factor in additional allowances for climate change. The appellant has applied the 'higher central' allowance of 30% over the 1 in 100 year levels given the proximity of the site to FZ3. The predicted 1 in 100 year+30% level is 66.84 metres AOD.
16. The topographic map of the site indicates that the road immediately outside the site, and those areas of the entrance falling within FZ2 and FZ3, are all at 66.896m AOD or above, with most areas being above 67m AOD. Based on these figures, the ground level of the entrance is higher than the predicted 1 in 100 year+30% level, and therefore is unlikely to suffer significant fluvial flooding even during a major event.

² Appeal Statement, Para 5.26

17. However, the FRA in considering surface water flooding states that the entrance to the development is 'high risk' at a greater than 1 in 30 chance of flooding in any given year. High, medium and low risk scenarios are modelled in the FRA, although there appear to be errors in Figures 11a and 11b with the high and low risk scenarios labelled as the opposite. The supporting analysis also appears to mix the scenarios, as it describes the 'low risk' scenarios as having the deepest water levels.
18. Even if read the other way, the FRA appears to concede that in a high risk scenario, surface water levels would be between 300mm and 900mm, and flood velocities would be *over* 0.25 metres per second in both low and high risk scenarios. With no upper limit given, it is unclear what the expected velocities actually would be within the site. Based on these figures, the proposal would have a Flood Hazard Rating (FHR) of 'danger to most', having regard to DEFRA/Environment Agency (EA) guidance³ provided by the Council. A depth of 900mm would be significant and likely to make access or egress by occupants very difficult, if not impossible. Moreover, the maps provided in the FRA show surface water levels along Staveley Road could also reach between 300mm and 900mm in a high risk scenario, which would add to the difficulty for people in leaving the site and area, or for emergency services to reach it.
19. I note the comments of the Lead Local Flood Authority (LLFA) in this respect, who state that the appellant has been requested under previous applications to evaluate the risk posed by a flooded access route in line with the aforementioned guidance and demonstrate a FRH of less than 'danger to some'. The LLFA comments that construction measures may need to be implemented to achieve this or, failing this, appropriate emergency flood management measures must be developed.
20. The appellant's FRA includes calculations suggesting 73m³ of surface water attenuation would be required on site. It is briefly indicated that permeable paving and water butts would be utilised; however, these appear to be intended to address normal surface water drainage within the site, rather than to provide mitigation during a significant flood event. The only resistance and resilience measures set out in the FRA relate to the fitting out of the dwellings themselves, rather than the entrance, for which no specific measures have been put forward to ensure safe access and egress could be maintained. Various flood planning measures are indicated, but these do not address egress from the site during a flood, except to advise not to walk or drive through flood water as, it states, 300mm of fast flowing water can knock an adult over. To my mind, this exemplifies the potential risk in this case, but the measures set out would not fully address this risk.
21. I recognise that there is no record of the site having suffered significant flooding in the past and it is surrounded by long established residential development, with many dwellings lying within higher flood zones. However, this is not sufficient as an indicator of flood risk, and is countered by the evidence in respect of potential surface water flooding. Ultimately, the evidence before me is not sufficiently robust to demonstrate that the identified flood risk relating to the site access would be suitably managed or that the proposal could be made safe from all sources of flooding for its lifetime.

³ Environment Agency's Flood Risk Assessment Guidance for New Development (FD2320/TR2) October 2005 [Section 13; Requirements for Safe Access and Exits]

22. In reaching a view, I have had regard to the appeal decision⁴ submitted by the appellant relating to a development site also containing land in FZ1, FZ2 and FZ3, and where development was proposed in FZ1. However, I am not provided with the full particulars of this case to understand if it represents a comparable situation to the appeal scheme. That said, I note some differences, such as comments from the EA and LLFA raising no objection to the proposal, and the possibility of a second pedestrian access/egress route being created. Therefore, I am not persuaded that this decision presents a wholly comparable scenario to this proposal terms of flood risk, and I have therefore considered the appeal on its own planning merits.

Conclusions on flood risk

23. In summary, the proposed development fails to accord with the sequential test in relation to development in areas at risk of flooding and it cannot be ruled out that the development could be located elsewhere in an area at lower risk of flooding. This conflicts with the national policy approach to flood risk of the Framework and the PPG. Moreover, it has not been satisfactorily demonstrated that safe access to and egress from the site could be maintained during a flood event. Therefore, the proposal would not represent a suitable location for housing on the basis of flood risk.

24. Consequently, I conclude that the proposal would conflict with CS Policy 2 of the Leicester City Core Strategy (July 2014) (the CS) in terms of its overall aims of mitigating and adapting to climate change through, among other things, directing development to locations with the least impact on flooding or water resources.

Design and effect on character and appearance

25. The proposed residential building would be two storeys in height, located roughly in the same location as the existing building on the land, but larger in footprint. It would have a contemporary flat roofed form, with the broad front elevation made up of four main bays linked by recessed sections. Two additional recessed additions would stand to either end, one of these single storey. From my observations, the building would be proportionate in size to its site, and would maintain an appropriate relationship to surrounding dwellings in terms of height, massing and physical separation.

26. The facades would be in brickwork, with both grey and red tones proposed which would provide articulation and visual interest to the building, whilst also reflecting the prevailing materials of adjacent development. The use of different window sizes would add to this visual interest, but these would still sit within a consistent pattern of fenestration that would bring coherency to the overall appearance of the building.

27. Based on details within the appellant's submissions, the previous appeal scheme was very similar in its overall form, the main differences appearing to be that different external finishes – painted render and timber panelling – were proposed. It is notable that the Council did not appear to refuse permission for this earlier scheme because of concerns over its design or the effect on the character and appearance of the area.

⁴ Appeal Ref: APP/B3410/Y/18/3213200

28. Now, the Council takes issue with whether aspects of the brickwork detailing to the building shown on the plans can be achieved, describing it as 'tokenistic' and also seeking changes to the parapet detailing. The Council's statement goes on to provide examples of suitable precedents, though these are located in Norwich and Cambridge.
29. I acknowledge that the Framework seeks the highest standards of design and states that the quality of materials and detailing should be secured at the time permission is granted. However, it is also necessary to take into account the location and surroundings of the development in assessing these matters. In this case, the proposal would provide for the redevelopment of a disused site overlooked by multiple residential properties. In this respect alone, the proposal would enhance the character and appearance of the area.
30. The site is surrounded by consistent two storey, semi-detached pairs of red brick dwellings. The rear elevations are simple in their form, as would be expected of secondary elevations not addressing the public realm. The proposed building would be similarly located on a backland site, largely out of view from public viewpoints. As such, whilst I do not discount the need to secure the design shown on the proposed plans, the brick and parapet detailing concerning the Council would not be readily visible outside the site. Conversely, the exemplar designs suggested by the Council appear to relate to prominent buildings addressing the street, which I find not to represent a direct comparison with the appeal scheme.
31. Therefore, I find that the Council's concern with ironing out the minutiae of the detailing is unnecessary and the absence of these preferred details would not render the building unacceptable in its overall design or appearance. In any event, details of materials and finishes, and their implementation, could be secured by condition. More importantly, the Council has neglected to consider the overall effect of the building on its surroundings, with no commentary of any substance offered in this respect.
32. On the evidence before me, I am satisfied that the proposed design would provide for an attractive building that would elevate the appearance of the site and its surroundings. I conclude that the proposal would preserve and enhance the character and appearance of the area, and no conflict would arise with CS Policy 3 which expects high quality, well designed developments that contribute positively to the character and appearance of the local natural and built environment. Nor would there be conflict with the similar aims of the Framework to achieve the highest standards of design.

Standard of Accommodation

33. The standard of accommodation for future occupants was a matter considered by the previous Inspector, who concluded that there would be harm due to poor levels of outlook and light to several of the ground floor flats. This was due to a combination of rear windows closely facing the rear boundary wall of the site, and front windows being located below projecting first floor balconies.
34. The appellant has amended the design of the scheme with one ground floor flat omitted and changes to the other flats to reduce the degree of recess to the front windows. Larger floor-to-ceiling windows are also proposed to increase light to the units. I also note the rearrangement of the floor plans to bring living rooms and bedrooms to the front where the best light would be received,

a change welcomed by the Council. The appellant has also undertaken analysis which indicates that the flats would achieve the required average daylight factor (ADF) as set out under the widely used guidance of the British Research Establishment (BRE).⁵

35. However, the Council maintains scepticism that sufficient light would be received by the flats in the absence of, in its description, a full sunlight and daylight report undertaken in line with the BRE guidance by a suitably qualified professional. It is unclear whether the Council has had regard to the Daylight Modelling Exercise provided by the appellant which indicates compliance with the BRE guidance in terms of the ADF measurement. Whilst only one flat has been assessed in this exercise, I am satisfied that this represents the worst case scenario, being a middle unit on the ground floor, and that it can reasonably be concluded that the other flats would also achieve this standard.
36. Technical assessments aside, I consider that the amendments made to the design, in particular the reduced recess and full height windows, would make a tangible difference to the quality of light to the ground floor flats. The front elevations would face south-east and would enjoy direct sunlight in the morning, whilst secondary windows in the rear elevation would provide an additional source of daylight to the rearmost parts of the floorplan, now rearranged with kitchens and bathrooms in this area, rather than living rooms and bedrooms. The larger windows would also afford better outlook from more parts of the internal floor space.
37. Overall, I am satisfied that the proposed flats would provide a suitable standard of accommodation for occupants, and that no conflict would arise with CS Policy 3 or Saved Policy PS10 of the City of Leicester Local Plan 2006 (LP), in terms of their aims to ensure that new developments provide acceptable living conditions for future occupants. The proposal would also accord with the Framework, which seeks to achieve well-designed places with high standard of amenity for existing and future users.

Other Matters

38. The Council has not raised objection to other issues including neighbours' living conditions, highway safety, parking, accessibility and ecology/protected species. I have considered the comments made by interested parties in these and other matters. However, the evidence before me in these respects is limited, and my observations on site have not led me to conclude that these other matters are of such significance as to raise additional material harms or benefits to be weighed in the planning balance. As such, I do not address them in further detail.

Planning Balance

39. The Council is unable to demonstrate a five year supply of deliverable housing sites, although I have no details as to the extent of this shortfall. Nonetheless, given the Council's position, the provision of eight flats offering a good standard of accommodation in an accessible location would be a clear benefit weighing strongly in favour of the proposal.
40. The proposal would also give rise to limited benefits to the local economy through spending by future residents on goods and services, and in the

⁵ Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice, BRE 2011

construction of the flats themselves. There would be other minor benefits through the proposal making use of previously developed land, improving the appearance of the site and addressing its derelict condition.

41. However, I have found that the proposal fails to satisfy national flood risk policy in terms of the sequential location of development. Moreover, the evidence before me does not satisfactorily demonstrate that the actual flood risk on the site could be suitably managed for the lifetime of the development. Therefore, it has not been demonstrated that the dwellings would be sustainably located in overall terms. The proposal would not accord with the environmental objective of sustainable development set out in the Framework, and the similar aims of the development plan. I give significant weight to these conflicts.
42. This conflict with the Framework in respect of flood risk means that, per Paragraph 11(d)(i) and Footnote 7, the presumption in favour of sustainable development, i.e. the 'tilted balance', is not engaged despite the Council's shortfall in housing land supply.
43. The benefits of the proposal, taken together, are considerable. However, in providing new housing, the development would simultaneously introduce demonstrable flood risk to that housing. In my judgment, therefore, the benefits of the scheme would not amount to material considerations which would outweigh the identified significant conflict with the development plan and the Framework in terms of flood risk. Consequently, they would not justify a decision being made other than in accordance with the development plan, taken as a whole.

Conclusion

44. Therefore, for the reasons set out, I conclude that the appeal should be dismissed.

K Savage

INSPECTOR