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## Appeal Decision

Hearing held on 3 August 2016

Site visit made on 3 August 2016

**by I Radcliffe BSc(Hons) MRTPI MCIEH DMS**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28 September 2016**

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**Appeal Ref: APP/H1840/W/16/3148838**

**Pipe Supports Limited, Salwarpe Road, Droitwich Spa WR9 9BH**

- 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 Hill and Smith Holdings Plc against the decision of Wychavon District Council.
  - The application Ref W/13/02032/OU, dated 25 September 2013, was refused by notice dated 1 December 2015.
  - The development proposed is residential development.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on that basis and I have taken the illustrative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development of up to 34 dwellings on the appeal site.
3. Since the application was determined by the Council the Wychavon District Local Plan has been replaced by the South Worcestershire Development Plan (SWDP). As a consequence, the policies of the Wychavon District Local Plan cited in the Council's decision notice no longer form part of the development plan and have been replaced by policies of the SWDP. I have accordingly determined the appeal on this basis.
4. A properly completed section 106 agreement has been submitted, the contents of which were discussed at the hearing. It secures financial contributions towards the provision of on-site affordable housing, local infrastructure and services. Its terms are addressed in more detail within the decision.

### Main Issue

5. The main issue in this appeal is whether the appeal scheme comprises sustainable development as defined in the National Planning Policy Framework ('the Framework'), having regard to;
    - whether the proposal complies with the spatial strategy of the Framework in terms of minimising flood risk; and,
    - the accessibility of services and facilities from the site and the social, economic and environmental effects of the proposal.
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## Reasons

6. The appeal site is previously developed employment land within the settlement boundary of Droitwich Spa. On the basis that it has been unsuccessfully marketed for employment use for a number of years, the parties are agreed that there is no objection in principle, other than in relation to the issue of flooding, to its redevelopment for housing. I concur with that assessment.

### *Flooding*

7. The appeal site is a rectangular area of land enclosed by a railway embankment to the east, the raised level of Salwarpe Road to the west, River Salwarpe to the north and Droitwich canal to the south. The main sources of flood risk to the site are the River Salwarpe and highway surface water runoff. Water from the Droitwich canal is also identified as a possible risk.
8. The site has not been allocated for housing in the recently adopted South Worcestershire Development Plan (SWDP). In such circumstances policy SWDP 28 of the SWDP states that proposals for development should clearly demonstrate that the Sequential Test, as set out in the latest version of the Strategic Flood Risk Assessment (SFRA), has been passed. Only where the Sequential Test is passed should the Exception Test be applied. This approach is consistent with the Framework and Planning Practice Guidance (PPG).
9. The SFRA for the area places the majority of the appeal site is located in Flood Zones 2 and 3. These are zones with a medium to high probability of flooding (1 in 1000 to greater than 1 in 100 annual probability of river flooding).
10. The SFRA advises that, in terms of defining the area to which the Sequential Test should be applied, the starting point should normally be South Worcestershire. However, it also allows that the area to which it is to be applied may be reduced, if justified by the nature of the proposed development or the objectives of the development plan. In this instance, given that the proposal is for housing, and being mindful that housing land supply is assessed at local planning authority level, I am satisfied that Wychavon District, or a significant part of it at least, is the appropriate starting point, as opposed to the whole of South Worcestershire. This approach is consistent with previous appeal decisions to which I have been referred<sup>1</sup>.
11. The SWDP notes that Droitwich Spa is a main town and the largest settlement in Wychavon which has experienced the highest natural increase in population and has the greatest housing needs in the District. It is also separated from the other main town in the District, Evesham, by a reasonable distance. As a result, in relation to this case I agree with the appellant that the area to which the Sequential Test should be applied can properly be narrowed down to Droitwich Spa. Whilst there is general support for the re-use of previously developed land in the SWDP the appeal site is not within a specific area identified for regeneration area by this plan. Consequently, I am not persuaded that the search area should not be narrowed further to a particular area of the town.
12. The Sequential Test identifies twelve other potential housing sites within Droitwich Spa. A number of these are allocated for housing in the SWDP. In terms of deciding what constitutes sites that are 'reasonably available' some detail is provided in PPG<sup>2</sup> and the Environment Agency's guidance<sup>3</sup> to which

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<sup>1</sup> Appeal references APP/U2370/A/13/2209077, APP/L3245/A/13/2204719

<sup>2</sup> Paragraph: 033 Reference ID: 7-033-20140306

- PPG refers. PPG advises that a pragmatic approach should be taken and that it is for the local planning authority to decide whether the Sequential Test is passed, taking into account the particular circumstances in any given case. At appeal that responsibility is transferred to the Inspector / Secretary of State.
13. There are two sites available within the search area which are on land of low flood risk (flood zone 1) that form part of the allocated urban extensions to the town. As a consequence, the Council is of the view that as these sites will deliver well in excess of the 34 dwellings the appeal site could provide, there are other reasonably available sites for the delivery of the amount of housing proposed. The appellant, on the other hand, maintains that as those sites are in the hands of a different developer they are not 'reasonably available' in the terms of the PPG. Furthermore, the appellant considers those sites to be too large to equate to a suitable alternative to the appeal site.
  14. The Sequential Test stems from the sequential approach embraced by the PPG. The sequential approach seeks to ensure that areas at little or no risk from any source of flooding are developed in preference to areas of higher risk, the aim being to keep development out of medium and high flood risk areas. As set out in the PPG<sup>4</sup>, this will help ensure that development can be safely and sustainably delivered and developers do not waste their time promoting proposals which are inappropriate on flood risk grounds. It is clear, therefore, that in carrying out the Sequential Test, it is the strategic issue of the availability of housing land at lower flood risk for the type and amount of development proposed that is determinative, rather than private considerations of whether a particular housing developer would have the opportunity to purchase land of a similar size and capacity to the appeal site to develop. In this case, the evidence before me is that there is ample capacity to deliver the amount of housing proposed on other sites in the town which are at lower risk of flooding and are thus sequentially preferable. As a result, I conclude that the Sequential Test is not passed. Consequently, the proposed development would be contrary to policy SWDP 28.
  15. Having regard to paragraph 100 of the Framework, the appellant states that in determining whether development is necessary, the objectives of the SWDP and the policies of the Framework as a whole should be considered. The SWDP and the Framework encourage the re-use of previously developed land. However, a core planning principle of the Framework is that planning should be plan led. Sites that involve the redevelopment of previously developed land in the town over the plan period have been allocated by policy SWDP 48, a number of which are likely to deliver housing over the medium term. Whilst the Council is reliant on windfall development to meet its housing requirement, at present the SWDP is providing a healthy supply of housing land comfortably in excess of five years on sites at lower flood risk in the town. Moreover, there is no evidence that the Council needs to rely on windfall sites of medium to high flood risk to meet its housing targets. For these reasons, I am satisfied that the proposed scheme is not necessary to meet the objectives of the SWDP.

#### *Accessibility*

16. The appeal site is approximately 750m by road, and a shorter distance away by the canal towpath, from the town centre and the wide range of shops, services

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<sup>3</sup> Flood risk assessment: the sequential test for applicants – Detailed guidance – [www.gov.uk](http://www.gov.uk)

<sup>4</sup> Paragraph: 018 Reference ID: 7-018-20140306

and facilities that it has to offer. The railway station is approximately 500m away to the south and bus stops for services that link the site to the town centre, Worcester and other large settlements are within 400m of the site. The appeal site is therefore in an accessible location for development in compliance with policy SWDP4 which requires, amongst other matters, that new development offers sustainable transport choices.

*Sustainable development*

17. The Framework sets out a presumption in favour of sustainable development. The policies of the Framework as a whole constitute the Government's view of what sustainable development means in practice. There are three dimensions to sustainable development: environmental, economic and social.
18. In terms of the environment, the site comprises previously developed land in an accessible location. The site has been cleared of buildings and rubble, and vegetation is encroaching across the site. As a result, it is not an eyesore that detracts from the character and appearance of the area. Given the extent of vegetation encroaching across the site, the Green Infrastructure that is proposed on the site is a benefit of the scheme to which I attach only some weight. In addition, redevelopment of the site offers the potential to enhance biodiversity on the site. However, on the basis of the submitted Ecological Assessment the scope for enhancement is limited.
19. The appeal site is located next to the Droitwich Canal Conservation Area, the boundary to which tightly follows the line of the canal. Its heritage significance is historical. The appeal site in its current undeveloped open state does not contribute to the heritage significance of the Conservation Area and has a neutral effect on its setting. On this basis I am satisfied that the proposed development with the potential for housing to be set back within the site behind a landscaped edge would not harm the heritage significance of the Conservation Area and could improve its setting. Dependent upon the final design, the proposed development could also result in increased surveillance of the canal towpath, increasing the safety, or perception of safety, of those who use it. However, a major negative environmental factor is that whilst the proposal would to an extent increase the flood storage capacity of the site, the scheme does not comply with national policy on the location of development and the avoidance of flood risk.
20. Socially, up to 34 new dwellings would be provided of which 15% would be affordable. I recognise that there may well be a shortage of affordable housing in the District. The provision of up to 5 affordable dwellings as part of the appeal scheme would leave the community better off in this regard and is therefore a benefit of the scheme.
21. Economically, although the site was last in employment use it has been unsuccessfully marketed for several years and the Council is of the view that a sufficient supply of employment land exists in the area. Its redevelopment therefore would not cause economic harm. However, the absence of harm in this regard does not equate to a benefit. The proposal would increase employment during construction and fitting out, although by its nature this would be short lived. The scheme by increasing the local population would also boost local spending power slightly.
22. Until such time as the Sequential Test in relation to any development proposed on the site is passed, the scope for its redevelopment and the economic benefits that would result is restricted. However, as this is the intention of

national planning policy and the development plan, I attach little weight to this consideration in favour of the appeal.

23. The site is in an accessible location and the proposed development would result in some social, economic and environmental benefits which I have described above. However, the positive aspects of the proposal are, in my judgement, insufficient to outweigh the conflict with national policy contained within the Framework and the SWDP on the location of development and the avoidance of flood risk. I therefore conclude, based upon the overall balance of considerations, that the proposal would not be a sustainable development.

**Conclusion**

24. For these reasons that I have given, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
25. As I noted as a procedural matter, at the request of the Council the appellant has submitted a properly completed section 106 agreement. The tests in paragraph 204 of the Framework and regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) apply to planning obligations. In this case however, as the appeal is to be dismissed on its substantive merits, it is not necessary to assess the agreement against these requirements.

*Ian Radcliffe*

Inspector

Richborough Estates

