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## Appeal Decision

Site visit made on 14 September 2015

**by Joanne Jones BSc(Hons) MA MRTPI**

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

**Decision date: 23 September 2015**

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**Appeal Ref: APP/W1145/W/15/3038982**

**Land East and West of Manteo Way, East the Water, Devon**

- 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 M Baker (Property Services) Ltd against the decision of Torridge District Council.
  - The application Ref 1/1162/2013/OUTM, dated 19 December 2013, was refused by notice dated 8 May 2015.
  - The development proposed is the construction of up to 76 dwellings together with associated parking, roads, sewers, children's play area and access.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The planning application which became the subject of this appeal was made in outline, with details of access provided, but details of appearance, landscaping, layout and scale reserved for future consideration. I have determined the appeal on that basis.
3. I have used the site location details taken from the appellant's appeal form as, from what I saw on my site visit, it better reflects the site's location.
4. Following the submission of the appeal a signed and dated agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (S106), dated 25 August 2015, has been submitted. The S106 has been considered under the statutory tests under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

### Main Issue

5. The main issue is whether the proposed development complies with national policy regarding flood risk.

### Reasons

6. The appeal site comprises two fields, set to grass, on either side of Manteo Way. It is located within the settlement boundary of 'East the Water' and forms part of a site allocation for residential and associated development within the Torridge District Local Plan (Local Plan), Policies DVT1 and BID2 refer.

7. However, according to the Environment Agency's (EA) Flood Map, part of the site is in Flood Zone 3, including residential apartments, parking and an access route. The National Planning Policy Framework (the Framework) seeks to direct new housing away from areas at risk of flooding and sites should not be developed if there are reasonably available sites in areas with a lower probability of flooding. If it is not possible for development to be located in areas at lower risk of flooding then it may be permitted, subject to the exception test being passed. In short, this requires the development to provide wider sustainability benefits to the community which outweigh flood risk and to show that it will be safe for its lifetime without increasing flood risk elsewhere and where possible reducing flood risk overall.
8. The appellant states that the layout drawings are illustrative only and that flooding and drainage issues should be considered at the reserved matters stage. Nevertheless, what needs to be demonstrated at this stage is that it would be feasible to develop the site in the manner proposed, without placing future residents at risk, or increasing the risk of flooding elsewhere.
9. For the purpose of assessing flood risk paragraph 067 of the Planning Policy Guidance (PPG) defines housing as 'more vulnerable' and indicates that such development should not be permitted in Flood Zone 3b. Housing may be permitted in Zone 3a subject to an exception test.
10. Whilst the appellant does not dispute that the site is at risk of flooding, he contends that the dwellings can be accommodated on the site without intrusion into the 'no build zone', particularly when considered against the 'refined flood extent risk outline'. Furthermore, it is stated that planning conditions would ensure that the mitigation indicated in Flood Risk Assessment (FRA) was implemented.
11. However, the Environment Agency states that it never accepted the FRA because the flood hydrology that was used was significantly below what it should have been. Therefore the 'refined flood outline' was not acceptable. Moreover, they state that the development in the flood risk area would reduce flood storage and effect flood conveyance, which would increase flood risk to third parties.
12. I am not confident that I am able, from the information submitted, to reach a firm conclusion as to whether the appeal scheme would ensure that prospective residents would be safe for the lifetime of the development or that flood risk would not be increased elsewhere. In the absence of such confidence, I cannot find in favour of the scheme before me.
13. Additionally, it would not be appropriate to deal with this matter by condition, as it is not clear whether this site is capable of being developed in the manner proposed, which would not result in increased flood risk elsewhere.
14. Notwithstanding my finding above, I have also had regard to the second question which relates to surface water attenuation drainage. Whilst I am mindful that this is an outline application, having regard to the detailed concerns of the Environment Agency I am in no doubt that further technical input into surface water drainage is required. This would include more detailed site investigations to assess the viability of utilising infiltration techniques which could be accommodated within the site as part of the detailed layout were the appeal to succeed.

15. Accordingly, I am not satisfied that the proposed development would be safe for its lifetime. I conclude, therefore that the proposal conflicts with national policy as set out in the Framework and the PPG.

*Other matters*

Financial contributions

16. Policy DVT16 (Infrastructure Provision) of the Torridge District Local Plan requires that where development has a directly attributable and measureable impact on the infrastructure of Torridge, the local planning authority will seek to negotiate with developers for the provision of appropriate contributions towards infrastructure. During the course of the appeal, a Unilateral Undertaking (UU) was submitted which would secure a range of financial contributions.
17. The UU sets out that a minimum of 16 of the dwellings will be affordable, and that a highway agreement would be entered into to secure highway works. It also offers financial contributions to the value of: £215,878 towards the provision of a new primary school; £50,000 towards on-site play area and children's play equipment; £30,750 on-site open space; £25,000 towards public art; £10,00 towards the improvement and/or expansion of the Wooda Surgery, Clarence Wharf, Barnstaple Street, Bideford.
18. These obligations are necessary to make the development acceptable in planning terms and I am satisfied that the obligations accord with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

**Conclusion**

19. For the reasons given above, and having regard to all other matters raised, the appeal should be dismissed.

*Joanne Jones*

INSPECTOR