



Appeal Decision

Hearing held on 25 March 2025

Site visit made on 25 March 2025

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2025

Appeal Ref: APP/D0121/W/24/3355982

Land off Moor Lane, Backwell, Somerset BS48 3LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by M7 Planning Ltd and Octavia Homes Ltd against the decision of North Somerset Council.
 - The application reference is 22/P/0252/OUT.
 - The development proposed is for the demolition of "Even Keel" and the erection of up to 35 dwellings, public open space, landscaping, sustainable urban drainage system and engineering works, with vehicular access off Moor Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is made in outline with all matters reserved for later consideration other than the means of access. It was confirmed at the hearing that the means of access relates to the vehicular and pedestrian connections to Moor Lane. It does not include the internal roadway shown on the feasibility plan, which is for illustrative purposes only. I have removed references to the proposal being an outline application and that some matters are reserved from the description as they are not themselves a description of development.
3. The proposal was amended during the application from a scheme for up to 55 dwellings to one with up to 35 dwellings. I have considered it as amended.
4. A legal undertaking under Section 106 of the Town and Country Planning Act 1990 has been submitted with the appeal. The undertaking secures affordable housing and open space on-site, land for biodiversity enhancement off-site, and financial contributions towards public transport infrastructure and a bus service. The Council is satisfied that these obligations address the fourth, fifth and sixth reasons for refusal on its decision notice. These matters have therefore been satisfactorily resolved and I do not need to consider them any further.
5. The legal undertaking and works on-site also secure mitigation of any potential impact on the North Somerset and Mendip Bats Special Area of Conservation. Subject to that mitigation, both the Council and Natural England are now satisfied that no harm would result to the ecological integrity of that area. I consider this issue further as part of an appropriate assessment under other matters.

Main Issue

6. Having regard to the matters that have been resolved, the remaining issue is whether the development would be at risk of flooding.
7. It is also necessary to consider the implications of a lack of housing land supply within the area, and the planning benefits of the scheme. I do this as part of the overall planning balance.

Reasons

Flood risk modelling

8. The site is shown to be at risk of surface water flooding on the Environment Agency's Flood Map for Planning. More detailed modelling carried out on behalf of the appellant has confirmed that the extent of flooding on the site is similar to that shown on the Environment Agency's flood map but considers that the associated depth, and therefore level of risk, is lower. The modelling also confirms that Moor Lane is at risk from surface water flooding with differing depths along its length.
9. The modelling work is criticised by the Council on a number of grounds. From submissions made and the discussion that took place at the hearing I consider that there are some discrepancies with inputs to the model. The discrepancies include the use of a 40% allowance for climate change rather than 45%; the area used for modelling being significantly less than the upstream catchment area; incorrect roughness values for roads and the railway line; and that the run-off coefficient used does not account for differences between rural and urban run-off rates. The parties were unable to reach agreement on whether the rainfall figures have been correctly calculated.
10. At the hearing the appellant argued that these criticisms of the model inputs are unlikely to significantly alter the outputs and could lead to lower as well as higher figures. The Council considers that, taken cumulatively, the discrepancies are likely to materially alter the outputs.
11. Given that I have found that there are discrepancies with the modelling that has been undertaken, the reliability of the outputs is less certain and the weight that can be given to the findings on flood risk is consequently reduced. It also appears that all the discrepancies tend to underestimate flood risk. The depth of any flooding that might take place is therefore likely to be greater than that shown by the modelling.
12. The Council raises the same criticisms to the post-development modelling as well as a lack of clarity as to the extent of ground raising. While the appellant considers that there would be no detrimental impact on the wider catchment, the Council considers that there would be a higher risk of flooding outside the site, including along Moor Lane. Given the discrepancies with the modelling, its findings as regards post-development effects must also be less certain, and I treat them with caution.
13. The appellant says that there should have been an opportunity for a review/respond process as part of the modelling approach. However, a meeting took place in January 2025 between the main parties to discuss the Council's criticisms of the modelling work, and prior to the hearing I invited the parties to agree a flood risk statement of common ground in so far as that was possible. In

the event, no statement was forthcoming and instead both parties submitted rebuttal statements without any further modelling work being undertaken. I have therefore reached my decision based on the submitted evidence.

Sequential test

14. Irrespective of the degree of flooding that might take place in the event of a flood, it was accepted by both parties that the site is at risk of surface water flooding. This includes the area intended for built development. In such situations, national planning policy on flood risk requires a sequential risk-based approach to be taken. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source, including surface water flooding.
15. At the hearing the appellant accepted that there were reasonably available sites appropriate for the proposed development in areas at a lower risk of flooding, and therefore acknowledged that the development failed the sequential test. That acceptance was based on evidence submitted by the Council on alternative available sites, and also with a recent appeal decision at Rectory Farm, Yatton¹. The Council's evidence and the Yatton decision reach different views on the availability of some sites but given the acceptance by the appellant that the sequential test is failed, it is not necessary for me to consider those differences or individual sites in any detail. For the purposes of this appeal, I am satisfied that there are reasonably available sites appropriate for the type of development proposed in areas with a lower risk of flooding.
16. Consequently, I conclude that the development would fail the sequential test as set out in national flood risk policy. For the same reason it would also conflict with Policy CS3 of the North Somerset Core Strategy 2017 and Policy DM1 of the North Somerset Development Management Policies Sites and Policies Plan Part 1 2016, which seek to avoid placing development in areas at risk of flooding. Part of Policy CS3 is no longer consistent with national flood risk policy, but given the acceptance that the sequential test is failed, that is of little relevance in this appeal.
17. Where the sequential test is failed, paragraph 177 of the Framework implies that it is not necessary to apply an exception test. Nevertheless, for the purposes of assessing the harm that might be caused in the event of a flood, I have taken account of whether the development would be safe for its lifetime, without increasing the risk of flooding elsewhere. I do this as part of the overall planning balance under mitigation.

Other Matters

Appropriate assessment

18. Under the Conservation of Habitats and Species Regulations 2017 where there is a possibility of harm being caused to a site of designated ecological importance, I am required to carry out an appropriate assessment to determine if the proposed development would have a significant adverse effect on the site, and if so whether there are any measures that could be taken to mitigate that effect.
19. The North Somerset and Mendip Bats Special Area of Conservation is designated in part as habitat for the breeding and hibernation of greater and lesser horseshoe bats. The site lies within the zone of influence of the designated area, and there is

¹ APP/D0121/W/24/3343144 Land at Rectory Farm (North), Chescombe Road, Yatton

evidence of both species of bat using it for commuting and foraging. It is likely that the site forms part of the wider habitat for such species of bat.

20. Development on the site could adversely affect the commuting and foraging behaviour of bats through loss of habitat and light pollution. Consequently, a significant adverse effect on the integrity of the special area of conservation cannot be ruled out.
21. The development proposes to mitigate such potential harm through the provision of enhanced open space within the site and additional habitat off the site. Both would be subject to management agreements as part of the legal undertaking and conditions. The mitigation strategy has been amended during the course of the appeal and now satisfactorily addresses the Council's concerns set out in its third reason for refusal. Natural England agrees with the Council that, subject to this mitigation, there would be no net loss of foraging habitat and connectivity with the wider countryside would be maintained.
22. The mitigation would be secured through a combination of obligations in the legal undertaking and conditions. Having regard to this mitigation, and the views of Natural England, my assessment is that the development would not have a significant adverse effect on the North Somerset and Mendip Bats Special Area of Conservation.

Planning Balance

Housing land supply

23. It was accepted at the hearing by both parties that the most recent assessment of housing land supply in the district is that carried out by the Inspector in the Yatton appeal. It was concluded that there was a shortfall of 3,704 dwellings against a revised five-year requirement of 8,362, equating to 2.79 years' supply. That is by any estimation a significant shortfall in supply.
24. The Council is in the process of developing a new local plan. It has responded to the revised housing requirement in the December 2024 version of the Framework by conducting an additional call-for-sites exercise and proposes to carry out a second Regulation 19 consultation² on a revised plan this summer. While that demonstrates a willingness to address the shortfall in housing supply through a plan-led approach, adoption of the plan is still some time away. In the meantime, there will remain a significant shortfall of housing land supply.

Planning benefits

25. There are a number of benefits that would accrue from the development. The most important is the provision of up to 35 dwellings, which could be delivered relatively quickly, and therefore help meet housing demand in an area with an acknowledged shortfall of supply. Such provision would be of significant benefit. The provision of 30% of those dwellings as affordable would also be of significant benefit in helping to meet the needs of those unable to afford housing on the open market.
26. The development would provide economic benefits, both in the short term for the construction industry, and in the longer term through the purchasing power of future

² Town and Country Planning (Local Planning) (England) Regulations 2012

occupants and an increase in the local workforce. These benefits are of moderate weight.

27. The development would provide public open space and biodiversity net gain. While these provisions are primarily required to meet the needs of the development itself or legislative requirements, the open space would be publicly accessible, and the biodiversity net gain would represent an improvement on the existing ecological value of the site. These matters are of modest beneficial weight.
28. The scheme also proposes a pedestrian footway alongside the single width section of Moor Lane. This would avoid pedestrians from having to walk on the carriageway, and as such would provide a modest benefit to highway safety.

Mitigation

29. It is proposed to raise the level of parts of the site with finished floor levels a minimum of 300mm above made ground level. This is intended to raise floor levels above the design flood event. A flow route would remain along the northern boundary allowing flood water from the north and northwest to flow in a westerly direction before flowing south alongside the railway embankment. The appellant considers that, other than for some garden areas adjacent to the northern boundary, these measures would ensure that the development would be safe from flooding for its lifetime. Given the uncertainty with the modelling, it is possible that more garden areas might flood or that higher land raising might be required, but in principle I accept that there are ways to reduce flood risk to the proposed dwellings.
30. The sole means of access to the site is via Moor Lane. The appellant acknowledges that the lane is at risk of surface water flooding but argues that it would be shallow, with only a relatively short stretch being classified as 'danger for some'. This contrasts with the Council's assessment with greater flooding and a classification of 'danger for most'. Given the uncertainty in the modelling, I consider it likely that the flood risk would be higher than that shown by the appellant, and for that reason prefer the Council's assessment. At the hearing the possibility of a flood management plan was discussed, which could be secured through a condition. While that may help future occupants to make sensible choices in times of flood, it would not reduce the difficulty of accessing or egressing the site.
31. The main parties also differ in their assessment of whether the development would increase flood risk elsewhere. Given the uncertainty with the modelling, and the fact that land raising on parts of the site would be necessary to mitigate flood risk to the dwellings, I cannot rule out the possibility that the development might divert flood waters onto adjacent land.
32. I conclude that while mitigation would be able to reduce flood risk to dwellings, it would not do so for the only means of access to the site which would remain at risk of flooding. There may also be an increased risk of flooding elsewhere. For both the site and the access there would also remain a residual flood risk.

National flood risk policy

33. While mitigation may be possible, putting mitigation before avoidance runs counter to national flood risk policy, which is to steer new development to areas with the lowest risk of flooding from any source. The Planning Policy Guidance advises that avoiding flood risk through the sequential test is the most effective way of

addressing flood risk because it places the least reliance on such mitigation measures³, and that the exception test is not a tool to justify development in flood risk areas when the sequential test has already shown that there are reasonably available, lower risk sites appropriate for the development⁴.

34. Irrespective of the degree of flooding that might occur or measures that could be taken to make the development resilient to flooding during its lifetime, national flood risk policy in paragraph 174 of the Framework states plainly 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. As it is agreed that there are such sites available, in terms of national flood risk policy it follows that the development should not be permitted. In my view, this forms a strong reason for refusal.
35. I am aware that in the Yatton appeal, the Inspector found that the failure of that scheme to meet the sequential test did not form a strong reason for refusal. In doing so, he weighed in the balance various matters specific to that scheme. There are differences between the two schemes that are of relevance. The nature of the flood risk is different, being tidal flooding at Yatton for which there are flood defences, as opposed to surface water flooding at Backwell for which there are not. The benefits of the Yatton scheme are different, it being for up to 190 dwellings as opposed to up to 35 dwellings, and with 50% affordable as opposed to 30%. The Yatton site also has two points of access, one of which the Inspector found would still provide safe access and egress in times of flood, unlike the current appeal site. I distinguish the two schemes for these reasons.
36. At the hearing the question was also discussed of whether it is inevitable that some sites at risk of flooding would have to be allocated in the emerging plan if it is to meet the revised housing requirement. The Council acknowledges that some sites in existing urban areas that are at risk of flooding are being considered because other factors, such as being already developed, in highly accessible locations and/or supporting the vitality of town centres, provide countervailing advantages. So far as edge-of-settlement residential sites are concerned, the Council considers that it will be able to identify sufficient land without needing to include sites that are at risk of flooding.
37. Whether that is the case or not will be a matter for the emerging local plan. However, I have no reason to disbelieve what the Council says, and while it is a more nuanced approach than I took in the decision at Lynchmead Farm⁵, it is consistent with the High Court judgement in Mead⁶. For the type of development proposed I conclude that it is not inevitable that edge-of settlement residential sites that are at risk of flooding will have to be allocated in the emerging plan. I note the views of the Inspector in the Yatton appeal on this point, but I reach my conclusion based on the evidence presented to me at this appeal.

Weighting

38. I have found that the development would conflict with Policies CS3 and DM1. As flood risk is the main issue in determining this appeal, I conclude that the development would conflict with the development plan when taken as a whole.

³ ID 7-023-20220825

⁴ ID: 7-031-20220825

⁵ APP/D0121/W/22/3313624 Land at Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston-super-Mare

⁶ Mead Realisations Ltd v SSLUHC [2024] EWHC 279 (Admin)

39. It would also conflict with national flood risk policy because the sequential test is failed, and because irrespective of what mitigation could be achieved on site, the only means of access to it along Moor Lane would be at risk of flooding. I have also been unable to rule out that flood risk would not be increased elsewhere.
40. Because of the shortfall in housing land supply, the policies which are most important for determining the application are deemed to be out of date by virtue of footnote 8 of the Framework. However, avoiding flood risk is one of the policies in the Framework which footnote 7 identifies as being of particular importance. Since I have concluded that the failure to meet the sequential test forms a strong reason for refusal in this case, it follows that the presumption in favour of sustainable development in paragraph 11 of the Framework (sometimes referred to as the 'tilted balance') is not engaged.
41. In weighing the benefits of the scheme, I am conscious of the current significant shortfall in housing land supply. In that context the provision of up to 35 dwellings, 30% of which would be affordable, would be of significant benefit. There are also other moderate and modest benefits as summarised above. However, on the evidence before me I do not consider that it is inevitable that residential development in edge-of-settlement locations such as that proposed in this appeal would have to be allocated on sites at risk of flooding to meet the revised housing requirement.
42. It is clear that national flood risk policy places a strong emphasis on avoiding locating vulnerable development in areas at risk of flooding. Flooding of dwellings is distressing to their occupants. Even if flood water is relatively shallow, it can cause extensive damage to property with consequent upheaval and disruption. It must therefore be right to avoid such a risk occurring where there are reasonably available alternative sites. As there are such alternative sites available in this case, I conclude that the benefits of the scheme, significant though they are, do not outweigh the risk of flooding.
43. Consequently, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR

Appearances

For the appellant:

Andrew Shepley	Director, OG Planning
Matt Regan	Managing Director, OG Group
James Applegate	Director, OG Consulting Engineers
Simon Mirams	Director, Rappor Consultants Ltd

For the Council:

Natalie Richards	Planning Policy Manager, North Somerset Council
Edward Hartwell	Principal Analyst, JBA Consulting
Timothy Leader	Barrister, St John's Chambers
Marcus Hewlett	Planning Policy Team Leader, North Somerset Council

Documents submitted after the hearing:

1. Signed and dated copy of Section 106 undertaking
2. Grampian condition relating to formation of footpath along Moor Lane
3. Condition relating to flood management plan