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## Appeal Decision

Site visit made on 8 January 2018

**by David Cross BA (Hons), PGDip, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 February 2018**

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**Appeal Ref: APP/Y2736/W/17/3187521**

**Former Agricultural Compound, Land North of Lakeside Way, Norton.**

- 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 Thomas Crown Associates Ltd against the decision of Ryedale District Council.
  - The application Ref 17/00118/OUT, dated 30 January 2017, was refused by notice dated 21 April 2017.
  - The development proposed is residential development.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description and location of development in the heading above have been taken from the planning application form. In relation to the description of development, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description and location of development have been agreed. Accordingly, I have used the details given on the original application.
3. The application has been submitted in outline with approval sought in relation to access and layout, with all other matters reserved for future consideration. I have dealt with the appeal on that basis.

### Main Issues

4. The main issues in this appeal are:
  - Whether the proposal represents an acceptable form of development having regard to flood risk; and
  - The effect of the development on the living conditions of residents of nearby properties with regards to outlook and light.

### Reasons

#### *Flood Risk – Sequential Test*

5. The appeal site is located in Flood Zones 2 and 3a, within which the Planning Practice Guidance indicates that a Sequential Test followed by an Exception

Test need to be applied in order to justify 'more vulnerable development', such as residential development. The National Planning Policy Framework (the Framework) indicates that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Whilst a Flood Risk Assessment (FRA) was submitted with the planning application, this did not include information to enable a Sequential or Exception Test to be undertaken.

6. However, a Sequential Test Report (STR) and Exception Test Report have subsequently been submitted with the appeal. The Council has requested that I do not assess these documents as part of the appeal as it considers that they have not been subject to public consultation. However, the documents were submitted as part of the appeal statement and I understand that the Council have notified interested parties of the appeal. I therefore consider that appropriate consultation has taken place and I have proceeded to consider the appeal on that basis.
7. A definition of whether a site is 'reasonably available' under the terms of the Sequential Test is not provided, but the Planning Practice Guidance advises that a pragmatic approach on the availability of alternatives should be taken. The screening criteria adopted by the STR include that to be regarded as a 'reasonable alternative' a site must be within 15% of the gross site area of the appeal site, which, based on a gross site area of 0.54 ha, equates to a screening range of between 0.46 ha and 0.62 ha. In my judgement, that criterion is unduly restrictive. Firstly, the illustrative application plan indicates that the 'developable area' that would be needed to accommodate the dwellings would only be around 0.23 ha, much smaller than the lower screening limit. Furthermore, to my mind, it would not be unreasonable to expect consideration to be given to sites larger than 0.62 ha, parts of which might be made available for development of the scale proposed.
8. Given the above, in my judgement, the STR has not demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal therefore fails the Sequential Test and would therefore not be an acceptable form of development with regards to flood risk. The proposal would therefore be contrary to Policy SP17 of the Ryedale Plan – Local Plan Strategy 2013 (RPLPS) in respect of managing flood risk as well as paragraphs 100 and 101 of the Framework.

#### *Flood Risk - Other*

9. The Council's second and fourth reasons for refusal relate to specific concerns on matters of remodelling ground levels and surface water run-off.
10. In relation to remodelling, the appellants contend that Appendix G of the FRA shows the flow routes through the site. However, the methodology behind this plan is unclear, particularly in relation to whether the re-profiling of the site has been fully considered. The flood flow routes between the rear gardens of the proposed dwellings and those of Springfield Garth would also appear not to have been specifically addressed. On that basis, I concur with the Council's concerns that inadequate evidence has been provided to demonstrate that the regrading of the site would not divert water into neighbouring properties.

11. In relation to surface water run-off, the appellants have submitted correspondence between their representatives and the Environment Agency (EA) which I note includes a statement from the EA that "reducing the run-off rate to the watercourse by 64% is acceptable"<sup>1</sup>. However, I also note that this was correspondence directly between the appellants' representatives and the EA, and that the Council are concerned that they have not been provided with evidence to fully substantiate the statement from the EA. Moreover, I note that the EA's objections to the planning application have not been formally withdrawn, even though the e-mail correspondence post-dates the objections.
12. However, it is not necessary for me to comment further on these matters because, even if I were to accept the appellants' position, this would not overcome the issues identified above in relation to the Sequential Test.
13. I note that the appellants contend that the proposal would meet the Exception Test. However, I am not convinced by the appellant's assertion that the Exception Test could be met, not least because the Council has confirmed that it is able to demonstrate a 5-year supply of housing sites without the appeal scheme. Furthermore, the appellants have not demonstrated an overriding requirement for residential development of the nature of the proposal in this location. In any event, the Framework indicates that the Sequential Test must be passed before the Exception Test can be applied. I consider that the failure of the Sequential Test is a compelling reason why the development should not proceed.

#### *Living Conditions*

14. The proposed dwellings on Plots 1 and 7 would be located in close proximity to the rear boundaries of dwellings on Springfield Garth. Due to this location to the south of the existing properties, the proposed dwellings would result in a significant degree of overshadowing to the rear gardens of the existing properties to the north. Furthermore, due to the close proximity to the boundary, the proposed dwellings would have an overbearing relationship to the rear gardens of the neighbouring properties. These harmful effects would be exacerbated by the proposed increase in floor levels of the proposed dwellings in response to flood risk, which would increase the bulk and massing of the proposed buildings.
15. The appellants state that the proposal would comply with typical spacing standards in new development. However, I note that Council policy does not refer to standard separation distances and instead requires an assessment of the amenity of neighbouring occupants on matters including loss of daylight and an overbearing presence. Whilst the separation distances between buildings may be acceptable in relation to Plot 1, the dwelling on Plot 7 would be located in close proximity to the rear elevation of the dwellings to the north and would have an overbearing relationship in relation to the existing dwellings. In any event, the separation distances between buildings would not address the harm arising from the close proximity to the rear gardens of existing properties and the harm identified above.
16. I acknowledge that the application has been submitted in outline and that the scale and appearance of the proposal are reserved for future consideration. I am also mindful that the appellants state that they would be willing to accept a

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<sup>1</sup> e-mail from Rachel Clarke-Wood of the EA dated 17 July 2017

condition which limits the height of the dwellings on both plots 7 and 8 to no more than two storeys. However, due to the layout of the proposal and the close-knit relationship with properties on Springfield Garth, I do not consider that matters of outlook and light could be satisfactorily addressed through the design of the dwellings.

17. I therefore conclude that the proposal would be harmful to the living conditions of residents of neighbouring properties due to loss of light and an overbearing appearance. The proposal would therefore conflict with Policy SP20 of the RPLPS which states that new development should not have a material adverse impact on the amenity of occupants of neighbouring land or buildings.

**Conclusion**

18. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

*David Cross*

INSPECTOR