

PLANNING & ENVIRONMENTAL PROTECTION
COMMITTEE

TUESDAY 3 MARCH 2015 AT 1.30PM

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**UPDATE REPORT &
ADDITIONAL INFORMATION**

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PETERBOROUGH CITY COUNCIL

PUBLIC SPEAKING SCHEME - PLANNING APPLICATIONS

Procedural Notes

1. Planning Officer to introduce application.
2. Chairman to invite Ward Councillors, Parish Council, Town Council or Neighbourhood representatives to present their case.
3. Members' questions to Ward Councillors, Parish Council, Town Council or Neighbourhood representatives.
4. Chairman to invite objector(s) to present their case.
5. Members' questions to objectors.
6. Chairman to invite applicants, agent or any supporters to present their case.
7. Members' questions to applicants, agent or any supporters.
8. Officers to comment, if necessary, on any matters raised during stages 2 to 7 above.
9. Members to debate application and seek advice from Officers where appropriate.
10. Members to reach decision.

The total time for speeches from Ward Councillors, Parish Council, Town Council or Neighbourhood representatives shall not exceed ten minutes or such period as the Chairman may allow with the consent of the Committee.

MPs will be permitted to address Committee when they have been asked to represent their constituents. The total time allowed for speeches for MPs will not be more than five minutes unless the Committee decide on the day of the meeting to extend the time allowed due to unusual or exceptional circumstances.

The total time for speeches in respect of each of the following groups of speakers shall not exceed five minutes or such period as the Chairman may allow with the consent of the Committee.

1. Objectors.
2. Applicant or agent or supporters.

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PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE – 03 MARCH 2015 AT 1.30PM
LIST OF PERSONS WISHING TO SPEAK

Agenda Item No.	Page No.	Application	Name	Ward Councillor/Parish Councillor/ Objector/Applicant/Agent/ Supporters
5.1	21	14/01781/FUL – Guthrie House, Rightwell, East Bretton, Peterborough	Cllr David Neville Bretton Parish Council Andrew Winterton Brettom Green Ltd	Parish Councillor Agent
5.3	43	14/02126/OUT – Rear of 39 Station Road, Thorney, Peterborough	Cllr Richard Brown John Dickie John Dickie Associates	Ward Councillor Agent

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BRIEFING UPDATE

P & EP Committee 3 March 2015

ITEM NO	APPLICATION NO	SITE/DESCRIPTION
2 .	14/01781/FUL	Guthrie House Rightwell East Bretton Peterborough Extension to create 13 new flats

No further comments.

3 .	14/02078/FUL	Guthrie House Rightwell East Bretton Peterborough Alterations to elevations of existing two storey block of flats and creation of lobby
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No further comments.

4 .	14/02126/OUT	Rear Of 39 Station Road Thorney Peterborough Erection of up to nine dwellings
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Additional representations

Councillor D Sanders – Could you please document in the paperwork and bring to the attention of committee members that along with Cllr Brown and the Thorney Parish Council, as ward Councillor I have no objections. I understand the planning meeting is on the 3rd of March. In light of Cllr Brown and Mr Dickie speaking at committee, I will not be, however I thought it appropriate to record the fact I have no objection.

Councillor Sanders has also submitted further representations as follows: I support the comments of the Parish Council and any submissions made by John Dickie [Agent]. As Ward Councillor, this has my support.

Comments from Applicant

The Agent for the application has submitted a response to the published Committee Report which can be found at Appendix A below.

Officer response: With regards to Mr Dickie's comments on the application of the Sequential Test (with particular reference to why Officers' consider it is unacceptable), no response is put forward as the original Committee Report clearly sets out our position. However, the issue regarding consistency of Officer's decision-making does need to be addressed.

Turning first to the Rose and Crown site, this was approved under Delegated powers (under application reference 12/01926/FUL). In this instance, it is accepted that Officer's incorrectly applied the Sequential Test and therefore, have been inconsistent in their approach. Officers at the time concluded that the development site passed the sequential test because the flood defences in place in the Fens and around Thorney would mean that the likelihood of the site flooding was extremely remote. However, the sequential test should be undertaken based on no flood defences being in place.

Following this decision additional training has been undertaken and Officer's now believe that they are correctly applying flood risk planning policy (in accordance with advice given by Julia Chatterton, Flood and Water Management Officer). This is reflected in the recommendation made by Officers regarding the nearby 'Harlock' site (also referenced by Mr Dickie). This was approved by Members last year (under application reference 13/01627/OUT), contrary to the recommendation of Officers. The original recommendation for refusal was clearly based upon the failure of the proposal to meet the Sequential Test. The only difference in the present approach is a more detailed and thorough explanation of this. However, both applications have been recommended for refusal on the same basis. As such, it is our opinion that the recommendations are consistent.

5 .	14/02145/FUL	17 Castor Road Marholm Peterborough PE6 7JA, Proposed three bedroom detached dwelling with associated driveway
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No further comments.



Planning Department
Peterborough City Council
Stuart House
East Wing
St John's Street,
Peterborough PE1 5DD

Our ref : JDA/2014/395
Your ref : 14/02126
Date : 19th February 2015
For the attention of Louise Lovegrove

Re : Proposed Residential Development at the rear of 39/41, Station Road, Thorney PE6 0QE

Dear Louise

With the greatest of respect and having read the Committee Report, I don't believe that you understand the way in which Sequential or Exception Tests are meant to be applied.

This is taken from your report (*italics*) with my observations in **red**

Sequential Test

*Turning first to the Sequential Test, paragraph 101 of the NPPF requires that development be directed to those areas which are least likely to flood (i.e. Flood Zone 1) and these are the most sequentially preferable sites. Further, the City Council has its own Flood and Water Management SPD (2012) which sets out the process for undertaking such a test. **Agreed***

*The application has been accompanied by a Sequential Test document which details the availability of sites which are either allocated or marketed within an agreed area of geographical search (Thorney, Eye and Eye Green) and at an agreed size (no smaller than the application site). However, the submitted assessment has not taken into account those sites which were previously put forward for allocation and rejected as part of the Site Allocations DPD Evidence Base Report. **There is***

hardly any sense in considering sites that failed to be allocated - the fact that there were clear reasons for rejection is enough for them to be dismissed en masse and at the outset. I have developed a significant number of Sequential Tests (all have been approved) and have **never** been asked to examine sites that were rejected in a Site Allocations DPD (Inc. the adjacent site) - not only have I had no personal experience of this, I cannot find **any** suggestion of such a requirement in ANY Sequential Tests that I have reviewed. *Many of these sites were rejected owing to 'need' issues i.e. that other sites within the settlements were available and of a sufficient size to meet the required level of growth (25,500 houses by 2026). Therefore, these rejected sites must be considered as part of the Sequential Test. Accordingly, the application has failed to adequately undertake a robust Sequential Test and fails on this basis. See above. Given the Flood Zone 3 status of the Rose and Crown application (approved by your colleagues last year) why were the applicants not asked for this additional (and in my view, unwarranted) data on that application? As I have said many times before, it is crucial that Planning Authorities are consistent - especially with 'flooding issues' which are, for the most part, well understood and technical - why is my client's submission being subjected to far more onerous examination than the Rose and Crown? This is not a rhetorical question - my client and I deserve a cogent explanation.*

Notwithstanding the above, the Applicant's measure of sites being 'reasonably available' is also rejected. See above - the reasoning behind my 'measuring' is based on nationally applied conventions, numerous Practice Notes, EA Guidance and - crucially - what PCC Planning Officers agreed on the Harlock site and the Rose and Crown. The Sequential Test undertaken has considered sites as being unavailable by virtue of the land not being able to be sold off to the Developer (in the case of larger sites, those being able to be sub-divided into smaller plots). This is not accepted as the test is whether the development itself can be delivered (i.e. the houses physically built) which could be on any land and by any Developer. That is just wrong. Land ownership and what a land owner wants to do is not a material consideration and therefore is a reason to discount this assessment. Within the area of search accepted by Officers, there are allocated sites which are both presently being developed and are available for development subject to permission. These unconsented sites are still considered to be reasonably available as the ability for the land to be developed is a material consideration as part of the site allocation process in 2011/12. . I am sorry but what is being said here is erroneous and flies in the face of common sense, the criteria agreed on the other two Station Road sites and - most importantly - the well understood 'conventions' on how Sequential Tests are conducted up and down the UK. You are not only ignoring the 'search criteria' agreed for the two nearby consented sites in Flood Zone 3 but also widely accepted professional principles.

Exception Test

Turning next to the Exception Test, paragraph 102 of the NPPF sets out two parts which must be met: a) that the development would offer wider sustainability benefits to the community which outweigh the flood risk; and b) that the development would be safe for its lifetime and not result in increased flood risk elsewhere. In terms of the wider sustainability benefits, the Applicant has undertaken an assessment of the proposal based upon the Sustainable Community Strategy 2008-21. This basis is accepted however it is considered that this is not the only measure of determining wider sustainability benefits.

In the case of this application, the proposal seeks to provide open market housing on a windfall site. However, the City Council has set out adequate allocations to meet the requirement for housing of 25,500 additional dwellings within the plan period to March 2026. Moreover, the Peterborough Five Year Housing Land Supply report from July 2014 demonstrates that the City Council is achieving an adequate 5-year housing land supply. On this basis, it is not considered that there is an overriding need for the housing proposed by the development. It is the view of Officers that this need is fundamental to assessing whether the proposal delivers wider sustainability benefits that outweigh the flood risk and in this instance, the test is not met. On this basis, you are actually saying that if a Council has a 5 year housing land supply then it would be impossible to pass a Sequential Test - that is clearly NOT the case and I can provide you with numerous examples of situations where Tests have been passed where there is an absence of a 5 year supply. One obvious point to make which was seized upon by the Parish Council is that Bungalows are in high demand - almost everywhere - I doubt very many have actually been delivered/build lately in and around the City.

Many Councils have Practice Notes that set out the criteria for Sequential Testing - this is what [Bristol City Council](#) has to say on the matter (I can find plenty more that say much the same thing)

2.2.3. Determining whether alternative sites are 'reasonably available'

A development proposal will only fail to pass the Sequential Test if alternative sites are identified within the search area that are at lower risk of flooding, would be appropriate for the proposed development and are 'reasonably available' for development. A site is only considered to be reasonably available if it is both 'deliverable' and 'developable' as defined by the NPPF (Para.47, footnotes 11-12).

Additionally, a site is only considered to be reasonably available if **all** of the following apply:

- The site is within the agreed area of search.
- The site is of comparable size and can accommodate the requirements of the proposed development.
- The site is either:

o Owned by the applicant;

o For sale at a fair market value; or

o Is publicly owned land that has been formally declared to be surplus and is available for purchase.

- The site is not safeguarded in the Local Plan for another use.

Sites are *not* considered to be reasonably available if they fail to meet any of the above requirements or already have planning permission for a development that is likely to be implemented.

This is what [North Somerset Council](#) has to say on the matter : (I can find plenty more that say much the same thing)

1. What is meant by “reasonably available”?

A site is considered to be “reasonably available” if it is both ‘deliverable’ and ‘developable’ as defined within the NPPF and **all** of the following criteria are met:

- The site is within the agreed area of search.
- The site can accommodate the requirements of the proposed development.
- The site is either:

- o Owned by the applicant.
- o For sale at a fair market value.
- o Is publicly-owned land that has been formally declared to be surplus and available for purchase by private treaty.

Sites are excluded where they have a valid planning permission for development of a similar character and scale and which is likely to be implemented.

I would make the point here that many Sequential Tests have been supported by the EA and Councils in dismissing sites that have an extant Planning Permission.

This is, of course, what the EA has to say on the matter :

Compare the reasonably available sites identified under stage 2 with the application site. Sites should be compared in relation to flood risk; Local Plan status; capacity; and constraints to delivery including availability, policy restrictions, physical problems or limitations, potential impacts of the development, and future environmental conditions that would be experienced by the inhabitants of the development.

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In reading your report, a number of matters occur to me ;

- Both Local Councilors support the scheme and we have found strong support from the Parish Council who make the point that a development of nine bungalows will provide ‘wider sustainability benefits’.
- There have been NO objections from any Statutory Consultees.
- I understand that there have been no individual objections.
- Under 5b, you say that some undefined part of the application site area is ‘private amenity space’ - that is not the case - the amenity space that has historically served the flats is not affected by the proposed development.
- This is a windfall site that is wholly inside the Settlement Boundary - this boundary line was changed to incorporate my clients site during the development of the last Local Plan.
- The ONLY issue that you are seeking to turn down the application on relates to flooding and it is my assertion that your reasoning behind this singular Reason for Refusal is flawed.
- We would prefer not to run a Planning Appeal as it is time consuming and costly - that

said, I don't believe that it would be a great stretch for me to prove 'unreasonableness' on the part of the LPA given the self evident unsound rationale that underpins the Reason for Refusal.

I will, of course be making my views known to Members on the 3rd in the hope that they will be mindful to grant consent. In the meantime, I would be grateful if you could respond to the comments and observations made in this note.

Regards

John Dickie

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