
Appeal Decision

Site visit made on 16 August 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 19 September 2016

Appeal Ref: APP/J1915/W/16/3152775

Matts Auto Repair Services, Bryan Road, Bishops Stortford, Hertfordshire CM23 2HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Derek Rose against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/2445/FUL, dated 4 December 2015, was refused by notice dated 23 February 2016.
 - The development proposed is the erection of a single dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:-
 - i. whether the proposal would comply with the spatial strategy of the National Planning Policy Framework (the Framework) and the Local Plan in terms of minimising flood risk; and
 - ii. whether the proposal would result in acceptable living conditions for the future occupiers of the development with particular regard to noise and disturbance.

Reasons

Flood risk

3. The appellant has carried out a site specific flood risk assessment which indicates that the site lies within Flood Zones 2 and 3. Based upon this work the Environment Agency considers that planning permission could be granted subject to a number of conditions to ensure that the site would be safe from flooding. Nevertheless, as the Agency state in their letter of 19 January 2016, the sequential test should first be applied to the site to determine if there are other available sites with a lower probability of flooding.
 4. Paragraph 100 of the Framework advises that inappropriate development in areas at risk from flooding should be avoided by directing development away from areas at highest risk. Paragraph 101 goes on to advise that a sequential, risk-based, approach must be taken that steers development towards areas with the lowest probability of flooding. The Framework requires a sequential test to be applied to all development in high risk areas.
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5. The Framework also makes it clear that only if there are no sites with a lower flood risk that consideration should be given to whether the development could be made safe and not increase the risk of flooding elsewhere through a Flood Risk Assessment and the application of the exception test. The Appellant appears to have jumped straight to the latter part of the process by concentrating on flood mitigation measures, without considering whether there is better located land to accommodate the development in question.
6. Whilst a pragmatic approach to the availability of alternative sites should be taken, the evidence before me seems to indicate that there are other available sites in the vicinity. In any event, there is little evidence to suggest that there is not.
7. I have also had regard to the operational aspects of the business. Whilst I consider that there would be some clear benefits in this respect it would not outweigh the harm I have identified.
8. For all of these reasons the proposed development would fail to minimise flood risk by locating new housing in an area of higher flood risk contrary to the sequential test. As a consequence, it would be contrary to Policy ENV19 of the East Herts Local Plan Second Review April 2007 (LP) and the Framework.

Living conditions

9. The appeal development would be surrounded on three sides by activities associated with the vehicle repair business with parking spaces located to the side and rear of the proposed dwelling. The front of the dwelling would be approximately 10 metres away from the workshop with the garages only access in between.
10. Whilst I accept that noise and general disturbance at the rear, and to a certain extent at the side, would be minimised by the operation of the business (with only employees of the business using the spaces at the rear) it is unclear how this could be achieved in practice. Additionally, I share the concerns of the Council in relation to the lounge and particularly bedroom 4 owing to their proximity and relationship to the workshop. The same concerns apply to bedroom 2, albeit to a lesser extent.
11. I note that the Appellant considers that this concern would be addressed as the house is to be occupied by the business owner and his family. It has also been indicated that a planning condition could be imposed, or legal undertaking required, to the effect that the house could only be occupied by someone operating or occupied in the workshop.
12. Whilst this may address some of the living condition concerns (particularly from early morning, evening and weekend disturbance), from the limited evidence before me I am not convinced that this would be sufficient to ensure that the occupiers of the dwelling would not be subjected to an unacceptable living environment.
13. For the above reasons, I conclude that the proposal would result in unacceptably poor living conditions for the future occupiers of the dwelling as a result of noise and disturbance from the vehicle repair workshop. Therefore the proposal would conflict with the provisions of Policy ENV1 of the LP which amongst other things seek to protect the amenity of the occupiers of residential properties.

Other matters

14. The site is located close to the Bishops Stortford Conservation Area. I note that the Council consider that the proposal would not give rise to harm to the setting of the Conservation Area and I have no reason to disagree.
15. I have also had regard to the security benefits to the business that a dwelling on site would have. However, I consider that this benefit does not outweigh the harm I have found.

Conclusion

16. For the above reasons and having regard to all other matters raised, including some support for the development, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR