
Appeal Decision

Site visit made on 16 August 2016

by B Bowker Mplan MRTPI

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

Decision date: 23 September 2016

Appeal Ref: APP/C3105/W/16/3147961

24A Fergusson Road, Banbury, Oxfordshire OX16 3HQ

- 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 Timothy Beckett against the decision of Cherwell District Council.
 - The application Ref 16/00089/F, dated 12 January 2016, was refused by notice dated 17 March 2016.
 - The development proposed is described as '*new construction of a single story 1 bedroom bungalow*'.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. Following clarification regarding the proposed vehicular access arrangements, the Council no longer object to the proposal on highway safety grounds. As such, this decision will focus on the main issues below.

Main Issues

3. The main issues are:
 - whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and,
 - The effect of the proposal on the character and appearance of the surrounding area.

Reasons

Flood risk

4. The appeal site is located within a Flood Zone 3a area which has a high probability of fluvial flooding. The site is relatively flat and along with the surrounding area was flooded in 1998. The main potential sources of flooding are the River Cherwell 350 metres to the west and an unnamed watercourse 100 metres to the south west. Paragraphs 100- 103 of the National Planning Policy Framework (the Framework) and Policy ESD6 of the Cherwell Local Plan (CLP) state inappropriate development in areas of flood risk should be avoided by directing development away from areas at highest risk through application of a sequential test.
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5. Consequently, planning applications within flood zones 2 and 3, such as the proposal, are required to apply a sequential test to establish whether there are other reasonably available sites for the proposed development in areas with a lower probability of flooding. The use proposed is considered 'more vulnerable' as outlined in table 2, paragraph 66 of the Planning Practice Guidance. Therefore, should the sequential test conclude no other sites are available, the proposal is then required to pass an exception test. This test involves submission of a Flood Risk Assessment (FRA) demonstrating that the proposal would have sustainable community benefits or that there are other factors that would outweigh flood risk. No such sequential test has been made or submitted by the appellant, nor any exception test that necessarily follows where no site availability is demonstrated.
6. A FRA undertaken in 2014 which accompanied a previous proposal at the site for four dwellings has however been submitted in support of this appeal. Based on the Council's record of the site's history, I understand the application for the four proposed dwellings was withdrawn. Nonetheless, the appellant outlines that Nos 24b and 24c have already been approved at the site and that the previous FRA was considered acceptable by the Environment Agency (EA). However these factors do not remove or meet the need for the proposal to undertake a sequential test.
7. In addition, the EA have objected to the appeal proposal on the grounds of flood risk. I note that the FRA's analysis involved a proposal with a combined larger built footprint than the appeal proposal. However, I have a number of concerns regarding the FRA as it was used to inform the design of a different proposal and is approximately two years old. In addition, the EA outline that the climate change allowances which applicants must design and assess their development against have recently changed. Consequently, despite the construction details provided by the appellant, I am not convinced that the FRA can be relied upon. Furthermore, since the previous approval of two dwellings at the site, I note that the Council adopted the CLP which now makes full provision for housing allocations over the plan period, so increased housing land supply in the Borough above the previous position. This circumstance significantly diminishes any arguments in favour of housing development within the Flood Zone 3a area.
8. As a sequential test and FRA are intended to establish whether the principle of development is acceptable in terms of flood risk, the appellant's suggested condition is not acceptable. In addition, I have no substantive evidence to indicate that there is a significant probability that a garage, annex or outbuilding would be constructed at the site should this appeal be dismissed. This limits the weight that I can attach to it as a fall-back position. Regardless, unlike the fall-back position, the proposal would increase the number of residents in an area of flood risk.
9. Therefore I conclude that the proposal would not comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Consequently, the proposal would be contrary to Policy ESD6 of the CLP and paragraphs 100 to 103 of the Framework. Combined, these policies seek to ensure vulnerable development is located in areas at lower risk of flooding.

Character and appearance

10. During my site visit I saw a number of single storey buildings adjoining the service road to the rear of the site and a bungalow at 28a Fergusson Road. Therefore, the single storey design of the proposal would not be out of character with the surrounding area. In addition, the single storey height would reduce visibility of the proposal from the rear access road.
11. Views of the proposal from Fergusson Road and the west of the site would be restricted to a glimpsed view between Nos 24A and 24B, both of which are two storey dwellings. This limited view would consist of a modest single storey bungalow with driveway and would not be particularly harmful to the surrounding area. In addition, the size of the site in relation to the bungalow's built footprint would be comparable with the surrounding area and in excess of those at Nos 24B and 24C. A condition to secure appropriate roof and wall materials would ensure the proposal is in keeping with surrounding properties.
12. Therefore I conclude that the proposal would not have a harmful effect on the character and appearance of the surrounding area. Consequently, the proposal meets the requirements of CLP Policy ESD15 and saved Policies C28 and C30 of the 1996 Cherwell Local Plan. Combined, these policies require housing development to be compatible and enhance the character of its context through a high quality design.

Other matters

13. Whilst not a reason for refusal, the Council note concern in relation to the proposal's effect on the living conditions of occupants at Nos 24b and 24C by way of vehicular activity, and future occupants by overlooking. However, owing to the width of the access road and scale of the proposal, vehicular activity would be slow moving and infrequent and therefore would have a limited effect by way of noise and disturbance. With reference to overlooking, owing to the siting of proposal, I am satisfied that no harmful effect would occur to the privacy of future occupants residing at the bungalow.
14. I have taken into account the site's accessibility to the town centre, employment and public transport. In addition, the proposal would help meet housing demand in the area and I have identified no harm in relation to the proposal's effect on character and appearance. However these factors and modest benefits are outweighed by the harm I have identified in relation to the main issue.

Conclusion

15. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

B Bowker

INSPECTOR