
Appeal Decision

Site visit made on 27 September 2016

by B Bowker Mplan MRTPI

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

Decision date: 21 October 2016

Appeal Ref: APP/U1105/W/16/3147609

Land North of Cat Aclew, Station Road, Colyton, Devon EX24 6EY

- 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 Mr Anthony Carthy against the decision of East Devon District Council.
 - The application Ref 15/2020/OUT, dated 28 August 2015, was refused by notice dated 5 October 2015.
 - The development proposed is erection of 2 equity share family houses for local families.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by East Devon District Council against Mr Anthony Carthy. This application is the subject of a separate Decision.

Main Issue

3. The main issue is 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.

Reasons

4. The appeal site comprises a grass area of land bounded by a mixture of hedgerow, stone wall and fencing. The site slopes gently away from Station Road, and is surrounded by residential development to the north and east, and an open field and the River Coly to its south and west.
5. I have been made aware of a previous appeal at the site¹ in which the appellant sought to challenge the Environment Agency flood zone 3 and 2 classification of the site. The appellant's case is similar to that put forward in previous appeal, which involved use of JFlow data and contention that the flood classification is based on historical evidence that has not taken into account the 1980s Flood Alleviation Scheme. The previous appeal was dismissed on the grounds of flood risk. However, the appellant states that recent comments from the Environment Agency (EA) and demolition of a house adjacent the River Coly were not before or highlighted to the previous Inspector.

¹ APP/U1105/A/14/2223051

6. The comments from the EA dated 30 November 2015 note that they would consider any challenge to the flood classification of the site, providing the parties can agree an acceptable flood modelling approach. The comments also note that given the precautionary approach to flooding, any change would have to be significant, unambiguous, and convincing to override an historic flood record and thus modify the flood map. However, the evidence required by the EA to accept a change in flood classification is not before me. As the flood classification of a site is a matter to establish whether the principle of development is acceptable in terms of flood risk, the appellant's suggested condition regarding flood modelling is not acceptable.
7. Taken the above into account, based on the evidence before me, the site remains in flood zone 2 and 3. Paragraphs 100- 103 of the National Planning Policy Framework (the Framework) requires planning applications within flood zones 2 and 3 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.
8. 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. For the exception test to be passed, the proposal would have to demonstrate sustainable community benefits that outweigh flood risk and be accompanied by a site specific Flood Risk Assessment (FRA) demonstrating that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.
9. I agree with the Council that the submitted sequential test does not demonstrate that there are no other alternative sites available for the proposal. I have considered the appellant's contention that the proposal would meet the needs of those ineligible for affordable housing and that affordable housing at the Mount View site is fully occupied. However, the Council's evidence suggests there is no need for shared ownership homes and highlights that the two sites in Colyton with affordable housing are for people with local connections.
10. Therefore, based on the evidence before me, it has not been demonstrated that there is no other reasonably available sites for the proposal. In addition, I also note that the EA have objected to the submitted FRA. Therefore, if the proposal was supported by an acceptable sequential test, it would in any event fail the subsequent exception test as outlined in the Framework.
11. 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 not meet the requirements of East Devon Local Plan (EDLP) Policy EN21 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.

Other Matters

12. I have taken into account the submitted draft Unilateral Undertaking (UU), including the Councils related comments, and the appellant willingness to fulfil

it despite the recent reinstatement of national policy². However, as the appeal is failing in relation to the main issue, a UU to secure shared equity housing in the overall balance would not have changed the appeal outcome. Consequently, I have not pursued this matter further.

13. It has also been put to me that the housing targets outlined in the EDLP are not being met, and consequently the Council will soon be unable to demonstrate a five year supply of housing land. However, no substantive evidence is put forward by the appellant to support this assertion.
14. Even if I were to conclude there is a shortfall in 5 year supply as suggested by the appellant and that relevant policies for the supply of housing should not be considered up-to-date, the paragraph 14, bullet point 4, indent 2 of the Framework states that locations at risk of flooding is a specific policy that indicates development should be restricted.
15. I acknowledge that the proposal occupies a sustainable location in terms of its access to services and facilities, and that no harm is identified in relation to the Area of Outstanding Natural Beauty. In addition, the Framework seeks to boost significantly the supply of housing and in this light the appellant draws my attention to an appeal at Exton. However, these modest benefits and considerations are outweighed by the harm identified in relation to flood risk, to which I attach significant weight.

Conclusion

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

B Bowker

INSPECTOR

² Written Ministerial Statement, 28 November 2014