
Appeal Decision

Site visit made on 11 October 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 3rd November 2016

Appeal Ref: APP/J2210/W/16/3153740

Maynard House, 17 Fordwich Road, Sturry, Kent CT2 0BW

- 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 Ms Claudine Lear against the decision of Canterbury City Council.
 - The application Ref CA/15/02328/FUL, dated 28 October 2015, was refused by notice dated 7 April 2016.
 - The development proposed is the erection of a detached dwelling, with associated parking and refuse storage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was amended prior to its determination by the Council and I have determined the appeal on the basis of the revised scheme as it was this set of proposals that the Council based its decision on.

Main Issue

3. The main issue is whether the proposal would accord with the policy of directing new development to areas with the lowest probability of flooding, in accordance with the Sequential Test set out in the National Planning Policy Framework (the Framework).

Reasons

Background

4. The development would involve the construction of a two bedroom chalet bungalow within a level amenity/garden area to the rear of Maynard House (No 17), a property that has been converted into five flats. To the rear of the site there three backland bungalows, Nos 7, 9 and 15. The appeal site is situated within the built up area of Sturry and forms part of the Sturry Conservation Area (the CA), which at this point is residential in character.
 5. The site is in an area classified as Flood Zone 3a (high probability of flooding) by the Environment Agency, albeit there is no evidence of this area having been the subject of recent flooding. The submitted Flood Risk Assessment (FRA) advises that the area does not benefit from existing flood defences and is outside a functioning floodplain. The site has an average level of approximately 3.840 metres AOD and the predicted 1:100 year event level at the front of No 17, allowing for climate change, is 4.144 metres AOD. In
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response to the predicted flood level the dwelling has been designed to have a ground level of 4.440 metres AOD¹.

National and local flood risk planning policy

6. Paragraphs 100 and 101 of the Framework state that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk, but where development is necessary it should be made safe without the increasing the risk of flooding elsewhere. To minimise the risk of vulnerable properties being flooded the Framework promotes the undertaking of sequential testing. If following a sequential test it is not possible for a development to be located in zones with a lower probability of flooding, an exception test should be undertaken. Exception tests should demonstrate that a development provides wider sustainability benefits to the community that outweigh the flood risk and a site specific FRA must show that a scheme will be safe for its lifetime, taking account of the vulnerability of its users without increasing the risk of flooding elsewhere.
7. The flood risk and coastal section of the Planning Practice Guidance (the PPG) provides further guidance and at paragraph 031 this guidance indicates that FRAs should be proportionate to the degree of flood risk and the scale, nature and location of the development. In terms of the assessment of individual planning applications paragraph 033 advises that where the use of a site would not be in accordance with the development plan the area to be subjected to sequential testing will be defined by local circumstances relating to the catchment area for the type of development in question.
8. The PPG recognises that for some forms of development catchment areas will be readily identifiable, while in other instances where extensive areas are within Flood Zones 2 and 3, and development is needed in those areas to sustain an existing community, then sites outside those areas are unlikely to provide reasonable alternatives. Paragraph 033 goes on to advise that in applying the sequential test a pragmatic approach on the availability of alternatives should be taken.
9. While the PPG gives some guidance on the extent of catchment areas that might be applied for the purposes of sequential testing, it does not indicate what might be appropriate in the case of a single market housing unit.
10. With respect to local policy the reason for refusal only cites conflict with Policy CC5 of the Council's emerging Local Plan, the Canterbury District Local Plan Publication Draft of June 2014. The emerging Local Plan's examination hearings commenced in 2015 and were then adjourned, with further hearings have been held in September 2016. It is expected that the examining Inspector will issue a preliminary report no earlier than November 2016 and the Council has already indicated that it intends to make further main modifications. Those modifications are to be subject to consultation prior to the publication of the examining Inspector's final report.
11. As the emerging Local Plan continues to be subject to change I consider that limited weight can be attached to Policy CC5 and that this policy cannot be treated as being determinative in this instance. Given those circumstances, and at my request, the Council has provided details of saved Policy C32 of the

¹ As notated on the block plan – drawing 02/02/2014C revision D

Canterbury District Local Plan First Review (the Local Plan) of 2006, because this is the most relevant currently extant local policy. The appellant has been given the opportunity to comment on Policy C32's provisions and I have taken account of the comments received in that regard.

12. In my opinion Policy C32 is only partially consistent with the Framework because, while it discourages development on non-previously developed land within Flood Zones 2 and 3, it does not require sequential testing to be undertaken and only makes reference to exception testing. Given Policy C32's partial consistency with the Framework, I find that reduced weight should be applied to it.

Whether the approach to sequential testing has been adequate

13. For the purposes of sequential testing the appellant contends that this should reasonably be limited to the villages of Sturry and Fordwich (a restricted test). The Council is of the view that the sequential testing should be undertaken on a district wide basis. The originally submitted FRA, however, does not include a sequential test and instead goes straight into the process of exception testing.
14. However, passing the exception test is somewhat academic given that the Framework firstly requires that the sequential test is passed. The appellant contends that undertaking a district wide sequential test for a single windfall dwelling is unjustified and would be a disproportionate response and argues that undertaking a restricted test would be appropriate, on the basis of it covering the area where the appellant wishes to build a house.
15. While no formal restricted sequential test has been undertaken as part of an FRA, the appellant has submitted that because most of Sturry and Fordwich lie within Flood Zone 3a, alternative sites for the development at a lower level of risk could not be found. Sturry and Fordwich, however, cover a quite extensive area and given the limited scale of the proposed development and the size of the area concerned I am not persuaded by the evidence that there are necessarily no other suitable sites available.
16. In support of its approach to sequential testing, the appellant relies upon comments obtained from two local agents. That advice indicates that there is limited local availability for comparable plots, while there is strong demand for them. However, I consider this evidence to be of limited assistance, because it does not address the demand for sites in quantitative terms and as such does not demonstrate that there is a significant level of unmet need in Sturry and/or Fordwich that this development could contribute towards meeting. Nor does the marketing agents' evidence provide much assistance in demonstrating that there are no sequentially preferable sites either in Sturry or Fordwich or across a less restricted area. Having regard to the provisions of paragraph 033 of the PPG, I am of the opinion that the marketing agent's evidence does not, of itself, justify the catchment area for any sequential testing being limited solely to Sturry and Fordwich.
17. I am mindful of the alleged inconsistencies in the approach taken by the Council with respect to its determination of the applications concerning No 17's conversion and the redevelopment of the former Fordwich garage site. However, both of those applications date back to an era when there was less sensitivity surrounding developments subject to flood risk. In any event I

must determine the appeal on the basis of the particular circumstances of the case. I therefore find that the approach taken in the determination of these historic applications neither justifies no formal sequential testing being undertaken nor the application of a spatially restricted test.

18. For the reasons given above I am not persuaded that sequential testing for this development should be limited to Sturry and Fordwich. I also consider that even if the principle of a restricted test was to be accepted that the evidence that has been provided does not demonstrate that the appeal site is currently the most sequentially preferable. I therefore conclude that there would be conflict with national policy, most particularly that contained within paragraphs 100 and 101 of the Framework. I also find there to be conflict with Policy C32 of the Local Plan in that the development would concern Flood Zone 3 land.

Other Matters

19. The development would involve the provision of a dwelling within a predominantly residential part of the CA and its design would be in keeping with the CA's appearance. I therefore find that the development would preserve the character and appearance of the CA. The absence of harm in this respect is therefore a neutral matter.
20. There is significant disagreement as to whether the Council can demonstrate the availability of a five year supply of deliverable housing sites (HLS), a matter that is currently being considered by the Inspector who is examining soundness of the emerging Local Plan, following the closure of the most recent round of hearings. Under a situation of there being no HLS then development plan policies for the supply of housing, in line with paragraph 49 of the Framework, should not be considered as being up-to-date. For the purposes of decision taking that would mean that the presumption in favour of permitting sustainable development should be applied, as highlighted in paragraph 14 of the Framework and in particular its fourth bullet would become engaged.
21. There are, however, two limbs to paragraph 14's fourth bullet point and, in the event of there being no HLS, it is the second of those limbs that would be applicable in this instance, namely 'where the development plan is ... out-of-date, granting planning permission unless: ... specific policies in this Framework indicate development should be restricted.' For the purposes of paragraph 14 examples of the Framework's restrictive policies are set out in its ninth footnote and the flood risk policy is cited as one of the examples.
22. In my reasoning above I have found that there would be conflict with the Framework's flood risk policy. Accordingly whether there is or is not an HLS is not determinative in this instance, because national policy indicates that this development should be restricted. In any event the contribution to the policy objective of boosting the supply of housing would be a very modest one and I find it to be outweighed by the harm that I have identified.

Conclusion

23. I have found that the requirement for a sequential test has not been met, resulting in conflict with the Framework. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR