
Appeal Decision

Site visit made on 18 October 2016

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 9th November 2016

Appeal Ref: APP/P1560/W/16/3151967

25 Sladburys Lane, Clacton on Sea, Essex CO15 4BE

- 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 John Roberts against the decision of Tendring District Council.
 - The application Ref 16/00387/OUT, dated 7 March 2016, was refused by notice dated 24 May 2016.
 - The development proposed is erection of three bungalows, together with parking, landscaping and associated ancillary works and alterations to existing bungalow to change existing garage to living accommodation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal concerns an application for outline planning permission including details of access. Appearance, landscaping, layout and scale are reserved for later consideration. The drawings are marked 'sketch' and 'concept' and I have dealt with the appeal on the basis that the drawings are indicative.
3. I have been referred to Policy PLA1 of the Tendring District Local Plan Proposed Submission Draft 2012, as amended by the Tendring District Local Plan Pre-Submission Focussed Changes 2014 ('ELP'). However, I have no information to suggest the plan is likely to be adopted in the near future and as the Inspector has not yet delivered their findings and the policies do not form part of the development plan I have given them only limited weight in my decision.

Main Issue

4. The main issue is whether the site is suitable for housing having regard to local and national policies relating to development in areas at risk of flooding.

Reasons

5. The appeal site comprises part of the residential garden of 25 Sladburys Lane, a single storey detached property that lies in proximity to a stream known as 'Pickers Ditch'. There is no dispute that the site is within Flood Zone 3a. Policy QL3 of the Tendring District Local Plan 2007 ('LP') requires all proposed sites within Flood Zones 2 and 3 to apply the Sequential Test ('ST') and refers to PPS25. Whilst PPS25 was replaced by the National Planning Policy Framework ('the Framework') in 2012 its tests were incorporated into the new document. Policy QL3 is therefore consistent with the Framework.
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6. Paragraph 100 of the Framework makes it clear that the overall aim is to avoid inappropriate development in areas at risk of flooding by directing it away from areas at highest risk but, where development is necessary, making it safe without increasing flood risk elsewhere. Paragraph 101 of that same document explains that development should not be permitted in areas at serious risk from flooding if there are reasonably available sites, appropriate for the proposed development, in areas with a lower probability of flooding, as identified through a ST.
7. The Planning Practice Guidance ('PPG') provides that it is for the developer of an individual application to justify, with evidence, the area of search used to perform the ST¹. The PPG provides that the area to apply the ST across will be defined by local circumstances relating to the catchment area for the type of development proposed. It acknowledges that for some developments this may be clear but that in other cases other criteria may apply and that, overall, a pragmatic approach on the availability of alternatives should be taken.
8. I have been provided with little substantive evidence from the parties in this respect, although the Council refer to four sites with extant planning permission in Clacton, three of which appear to be for very similar forms of development. The sites are at Valley Road, London Road, land off Old Road and Estuary Crescent² and all appear to be in areas with a lower probability of flooding, a point which does not appear to be disputed by the appellant. The appellant's statement also refers to one validated application within Clacton³ for two dwellings but provides no substantive evidence relating to the sites identified by the Council other than to contend they are not available for the appeal development.
9. However, as the decision maker in this appeal, I must satisfy myself in relation to the requirements of the ST on the evidence before me. In my judgement, there are reasonably available sites appropriate for the proposed residential development in areas with a lower probability of flooding and therefore development should not be permitted.
10. With regard to the Exception Test, the Framework makes it clear that this second test should only be applied when the ST is passed. Given that I conclude that the first test has not been passed it is not necessary for me to go on to consider the second.
11. For these reasons, the proposal fails to satisfy the ST and would conflict with the policy of directing new development to areas with the lowest probability of flooding. In this particular case, the site would not therefore be suitable for housing and the proposal would conflict with the aims and objectives of Policy QL3 of the LP and the Framework in terms of directing development to areas of lower flood risk.

Other Matters

12. I note the appellant's reference to the presumption in favour of sustainable development; that it is not in dispute that the Council cannot demonstrate a five year supply of housing land and that it has fallen short of its target in relation to windfall sites. However, the presumption in favour of sustainable

¹ Paragraph 034 - PPG

² Page 6 Council's Delegated Report

³ Paragraph 7.9 of Planning Appeal Statement

development requires that in individual decision taking, where relevant development plan policies are out-of-date, planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits when assessed against the Framework policies as a whole; or specific Framework policies indicate that development should be restricted. The footnote to the second limb of this part of the presumption gives 'locations at risk of flooding' as an example of such a policy.

13. Such matters and the lack of objection from the Environment Agency do not obviate the requirement for the proposal before me to pass the ST at this moment in time and the lack of a five year supply is not determinative in this instance. This is because there are specific Framework policies relating to flood risk which seek to restrict development unless the relevant tests are satisfied. Although I have been referred to a recent Court of Appeal Judgement⁴, which the appellant contends confirms where a five year supply is not demonstrated all policies in the local plan dealing with housing supply should be regarded as out of date, this does not alter my view in this regard.
14. Consequently, given my conclusions on the ST and the conflict with local and national policy the proposal would not be subject to the weighted balance of paragraph 14 of the Framework. In the normal planning balance, the limited benefits from the provision of three dwellings in a not unsustainable location and the compliance with other aspects of the LP in terms of the effect on character and appearance, living conditions and highway safety do not outweigh the conflict with local and national planning policies relating to flooding.

Conclusion

15. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR

⁴ *Suffolk Coastal District Council vs Sos and Richborough Estates Partnerships Limited vs Sos* [2015] EWHC 410 (Admin)