
Appeal Decision

Site visit made on 24 January 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 31 January 2017

Appeal Ref: APP/W3520/W/16/3159436

**Land to the rear of Forge Cottage, Church Road, Thurston,
Bury St Edmunds, Suffolk IP31 3RU**

- 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 and Mrs Nice against the decision of Mid Suffolk District Council.
 - The application Ref 1211/15, received by the Council on 31 March 2015, was refused by notice dated 17 August 2016.
 - The development proposed is a 3 bedroomed bungalow and separate garage to meet wheelchair standard requirements.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the proposal accords with national and development plan policies on flood risk.

Reasons

3. The appeal site forms part of the rear garden of Forge Cottage and is free of built development. Following the consideration of a Flood Risk Assessment¹ submitted during the course of the determination of the application, the Environment Agency concluded that the site falls within Flood Zone 2 for the purposes of the Planning Practice Guidance (PPG). This finding is not disputed by the appellant.
4. Policy CS4 of the Council's Core Strategy 2008 (CS) supports proposals which avoid areas of flood risk and adopts a risk based sequential approach to determining the suitability of land for development. The policy goes on to refer to Planning Policy Guidance 25 which has now been superseded by the National Planning Policy Framework (the Framework). Paragraph 100 of the Framework states that inappropriate development should be directed away from areas at highest flood risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Paragraph 101 advises that the Sequential Test should be used in areas known to be at risk from any form of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

¹ G H Bullard and Associates Ref 1375FRA, dated September 2015

5. The development proposed in this case is a three bedroom bungalow which has been designed to be wheelchair accessible and includes storage for a mobility scooter. The proposal seeks to accommodate the need of Mr Nice. The appellant's statement confirms that Mr Nice does not need a wheelchair now or at any specific time in the future. Whilst he has restricted mobility due to the loss of a leg, he is no less mobile than many other older persons. The statement summarises Mr Nice's need, which is for a dwelling with a bedroom adjacent an exit door a short distance from the site entrance and provision for the storage of a mobility scooter or wheelchair. It confirms that Mr Nice would be able to reach a place of safety in the event of a flood. The statement is clear that this description of Mr Nice's need supersedes that given at the application stage.
6. The PPG (paragraph reference ID: 7-033-20140306) advises that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the development proposed and that a pragmatic approach should be taken to the availability of alternative sites. The next paragraph advises that it is for the local planning authority to consider the extent to which the Sequential Test has been satisfied, taking into account the advice of the Environment Agency and evidence from the developer.
7. The Sequential Test submitted in support of the application is based on the availability of development land for a single dwelling. However, there is nothing in the up to date description of Mr Nice's need to show that it could not be met by an existing property. The submitted evidence does not show whether any attempt has been made to establish the availability of suitable existing properties within the defined search area, or the potential to adapt an existing property. Furthermore, the Council's evidence suggests that other development sites may be available in Thurston. There is nothing to suggest that these have been investigated by the appellant.
8. Limited information is provided on the development sites which have been identified in the Sequential Test. Nevertheless a site for five dwellings at Beyton has been identified which is in an area of lower flood risk than the appeal. Whilst a nearby road is said to be at risk from flooding, it is not apparent from the Sequential Test why this site has been discounted. Therefore, even if it accepted that the search should be confined to an area close to Thurston in order to allow Mr Nice to maintain contact with family and friends, it has not been adequately demonstrated that no suitable developments sites or adaptable existing properties are available within that area to meet his needs.
9. Moreover, no mechanism has been suggested to ensure that the proposed dwelling would be occupied by Mr Nice.
10. On the basis of the information available therefore, I consider that the Sequential Test has not been met since it has not been shown that appropriate sites or existing properties are not reasonably available. Whilst the Framework requires a pragmatic approach to the test, given that the appellant is seeking planning permission for development in a location which does not accord with relevant policies on flood risk, it is reasonable to expect a fairly rigorous assessment to be made, taking into account the advice in the Framework and the PPG. Nor has it been satisfactorily shown that it is necessary for the proposed development to be located in an area of flood risk. In these

circumstances, Framework paragraph 100 does not require the Exception Test described in paragraph 102 to be applied.

11. Consequently, I find that the proposal would not accord with national policies on flood risk. Nor would it comply with CS Policy CS4 to the extent that its aims are consistent with the Framework. Framework paragraph 93 advises that, amongst other things, providing resilience to the impacts of climate change is central to economic, social and environmental dimensions of sustainability. As such, the proposal would not amount to sustainable development and would not accord with Policies FC1 and FC1.1 of the Council's Core Strategy Focused Review 2012 insofar as they presume in favour of sustainable development.
12. I have considered the rights of the appellant under Article 8 of the European Convention on Human Rights. Article 8 affords the right to respect for private and family life. In this case it has not been adequately demonstrated that withholding planning permission would lead to interference with Mr Nice's rights. Moreover, Article 8 is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. Any interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: protection from flood risk.

Other Matters

13. The appellant argues that the Council cannot demonstrate a five year supply of housing land and, therefore, that relevant policies for the supply of housing should be considered out of date. The Council has not contested this point. Nevertheless, even if I were to accept that a five year supply cannot be demonstrated, my consideration of the main issue relies on Framework policies on flood risk. Footnote 9 to paragraph 14 of the Framework confirms that such restrictive policies should be taken into account even where relevant development plan policies are out of date.
14. The appellant takes issue with aspects of the planning officer's report on the application. However, my determination is based purely on the planning merits of the proposal.

Conclusion

15. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR