

Appeal Decision

Site visit made on 9 January 2017

by Jonathan Hockley BA(Hons) DipTP MRTPI

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

Decision date: 31st January 2017

Appeal Ref: APP/B1930/W/16/3158890

15 Station Road, Wheathampstead, Hertfordshire AL3 8BU

- 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 Jarvis Homes Ltd against the decision of St Albans City & District Council.
 - The application Ref 5/15/1787, dated 17 June 2015, was refused by notice dated 19 April 2016.
 - The development proposed is the erection of four, two-bedroom flats within a single building, demolition of brick wall to enable improvements to site access, parking and associated works.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether there are reasonably available sites for the proposed development in areas with a lower probability of flooding.

Reasons

3. The appeal site lies close to the centre of Wheathampstead and currently consists of two access roads, an existing parking area, parking courtyard and an area of unkempt grassland. The proposal seeks to construct a roughly square hipped roof building housing four flats and demolish an existing wall between the access roads, allowing the northerly access to be used for the access to the flats and provide parking spaces in front of the building and along the area of the existing southerly access.
4. The site lies approximately 40m north of the River Lee. A Flood Risk Assessment¹ shows that a large proportion of the western end of the site, including the area where the vast majority of the proposed residential block will be situated is located in Flood Zone 3a (FZ3a), with most of the rest of the site, including the building access and the access to Station Road falling within Flood Zone 2 (FZ2). A small part of the site on the southern boundary, directly adjacent to the south west corner of the proposed building falls within Flood Zone 3b (FZ3b). I note that these levels do not take into account recent flood mitigation works which are noted will reduce peak water levels within the site. However, I also note that the Environment Agency state that these reduced levels could not be used to support the FRA.

¹ Flood Risk Assessment for 1-15 Station Road, Wheathampstead, October 2015

5. Within FZ2 areas, there is a medium probability of flooding, with an annual probability of between 1:100 and 1:1000 of river flooding; within FZ3a this probability increases to more than 1:100 and there is a high probability of risk of flooding. FZ3b is designated as functional floodplain, where water is stored or flows in times of flood. Residential dwellings are classified as 'more vulnerable' to flood risk. The National Planning Policy Framework (the Framework) requires that sequential tests be applied when choosing the location of new development and the layout of development, aiming to promote development in low flood risk areas. The exception test is used where no suitable development areas can be found in lower risk areas.
6. The Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower probability of flooding. Planning Practice Guidance advises that the aim is to steer new development to Flood Zone 1 (FZ1), but where there are no reasonably available sites in FZ1, reasonably available sites in FZ2 can be considered. Only when there are no reasonably available sites in either FZ1 or FZ2 should the suitability of sites in FZ3 be considered. Following consideration of the FRA the Environment Agency state that in this case provided that the development passes both the sequential and part one of the exception test, and is carried out in line with the FRA then they have no concerns with the grant of planning permission.
7. For the purposes of the sequential test, the appellant has considered the Council boundary to be the area that the test should be applied to. They note that the Council are unable to demonstrate a 5 year supply of deliverable housing sites and that in such circumstances relevant policies for the supply of housing should not be considered up to date. They note that the deficit of supply cannot be considered marginal; being a 3.62 year supply and also that there is a large shortfall for years 6-10. The appellant considers that given such a shortfall it is beyond argument that there is a lack of sequentially preferable sites and that the appeal site is required to come forward.
8. Whilst at a base level this argument has a certain logic to it, I consider that the lack of a demonstrable five year supply of deliverable housing sites merely equates to just that – a lack of a five year supply of housing sites. This does not, to my mind mean that the sequential test has been satisfied. Such an argument would allow development on areas with high flood risk across the country where authorities cannot demonstrate such a supply. Furthermore footnote 9 of the Framework states that flooding policies within the Framework are an instance where development should be restricted, even if the development plan is vacant, silent or out of date, indicating that if paragraph 49 of the Framework is engaged with regards to a lack of a 5 year housing land supply and housing policies, then this does not overrule concerns over flooding.
9. The appellant also considers the various sections of the Council's five year housing trajectory. Their search includes sites of capacity of up to 9 dwellings which are deliverable within 5 years and within settlement boundaries (or brownfield sites within the Green Belt). 2 sites are identified which are under construction, and are not therefore reasonably available. 12 sites are identified which have planning permission, and the appellant is of the view that they are not therefore available as the Council must have

discussed the sites with their relevant owners or developers and they must have informed them of their timetable for completion within 5 years. However, I do not agree with such reasoning. I note that the Council state that predicted years of completion can be based upon the date of the grant of planning permission as opposed to a specific commitment from the landowner. The sites are reasonably available for construction – merely because they are or may not be for sale, which has not been ascertained by the appellant, does not necessarily mean that they are not reasonably available. The sites would seem to provide opportunities for development of a similar size in the same Council area and are situated, on the basis of the information I have, in areas with little or no risk from flooding, in preference to the site which lies within an area at medium and high risk of flooding.

10. Furthermore a search of various local agents has resulted in 5 potential sites. Details are provided of why these sites are not suitable. However, the proposal, being 4 flats in one 2 storey building would seem to be superficially similar to the Sandridge scheme (3 bedroom chalet bungalow) and the Vesta Avenue proposal. In these respects I note that much of the plot size of the appeal site is constituted by the lengthy access area from Station Road.
11. Given the above I am therefore of the view that the proposal does not meet the sequential test. In such circumstances it is not necessary to consider the exception test. I therefore conclude that, on the basis of the totality of the evidence provided, there are reasonably available sites available for the proposed development in the area with a lower probability of flooding. The proposal would be contrary to the Framework and to policy 84 of the St Albans District Local Plan Review 1994, which states that in areas liable to flood, development will not normally be permitted.

Other Matters

12. The appellant notes that the Framework seeks to boost significantly the supply of housing and it embodies a presumption in favour of sustainable development. The provision of four dwellings in an accessible area would provide certain economic and social benefits, through the development of the scheme, and through the future use of the building through its occupants. The scheme would also contribute socially in a small way to the acknowledged lack of housing supply in the area. However, such benefits would be relatively limited and would not outweigh matters of flood risk, such that the proposal would not constitute sustainable development.
13. I note that the proposal would have finished floor levels sited 600mm above the modelled 100 year plus climate change flood levels. Such details could be conditioned. However, the FRA details how flood depths up to 210mm would be likely to occur within the car parking area for the scheme, with flood depths of up to 290mm along the safe access and egress route, and notes that both figures are below the 300mm threshold where cars may start floating away and hazard to people becomes 'danger for some' category. However, in the latter case, the flood depths are predicted to be within just 10mm, or 1cm of this level. Furthermore I note that the window to the living/dining area of one of the proposed ground floor units would directly overlook FZ3b (functional floodplain) and the patio to this unit would border

this area. This confirms my overall view on the unsuitability of the site for the proposal.

Conclusion

14. I have concluded that on the basis of the totality of the evidence provided, there are reasonably available sites available for the proposed development in the area with a lower probability of flooding. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jon Hockley

INSPECTOR