
Appeal Decision

Site visit made on 22 February 2017

by JP Sargent BA(Hons) MA MRTPI

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

Decision date: 17 March 2017

Appeal Ref: APP/P2114/W/16/3152692

The Paddocks, Morton Road, Brading, Isle of Wight PO36 0BJ

- 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 S Lucy against the decision of Isle of Wight Council.
 - The application Ref P/01332/15, dated 29 October 2015, was refused by notice dated 17 December 2015.
 - The development proposed is a new dwelling and turning.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Lucy against the Council, which is the subject of a separate Decision.

Main Issue

3. The main issue with this case is whether the proposal would have an unacceptable effect on flooding and flood risk.

Reasons

4. The *National Planning Policy Framework* (the Framework) states that

'inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere'.

It adds that a Sequential Test should be undertaken

'to steer new development to areas with the lowest probability 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'.

If it is not possible to locate development in areas with a lower probability of flooding an Exception Test should be undertaken to show the scheme provides wider sustainability benefits and would be safe (paragraphs 99, 101 and 102).

5. It is clear from this that housing in such zones is not unacceptable in principle. However, the *Planning Practice Guidance* (PPG) describes these tests in the Framework as *'strict'*, and says that
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'where these tests are not met national policy is clear new development should not be allowed'.

Policy DM14 in the *Island Plan*, and the *Brading Neighbourhood Plan* (which was made in March 2015) are broadly consistent with this position.

6. The Paddocks is a detached dwelling that stands in a row of properties fronting onto Morton Road on the south side of Brading. It has a large curtilage, and the proposal is to demolish the garage to the side and erect a house there. When considering flooding a residential use is defined as *'more vulnerable'* in the PPG and as the property is in a built-up area the site does not fall under the definition of previously developed land found in the Framework.
7. The Appellant has expressed some uncertainty as to whether the site is in fact in Flood Zones 2 and/or 3, by saying it is *'arguably'* outside the flood zones. No firm evidence to support these doubts has been forthcoming though and he has also acknowledged it is *'potentially'* at risk from flooding. However, from the plan accompanying the Council's Strategic Flood Risk Assessment to my mind it is clear and unambiguous that the new house itself (and not just its garden) would be in both of these zones, as it would extend beyond the rear wing of the existing house into Flood Zone 3. It would therefore be in an area at risk from flooding. Moreover, its footprint would diminish the capacity of those flood zones, thereby increasing the likelihood of flooding elsewhere. It is also apparent that much of the surrounding area and most of Brading lies in Flood Zone 1 and so has a lower risk of flooding.
8. In coming to this view I accept that the existing garage is in the Flood Zones, but the size of its footprint is not comparable to that of the proposed house and it is slightly further forward. The shed behind is also to be removed but that does not appear to be a structure that would prevent significant water ingress. Therefore, the effect of the existing outbuildings on the storage capacity is not comparable to that of the scheme, and so any impact from the proposal cannot be said to be merely replicating the existing situation.
9. Moreover, while the Appellant may consider the risks involved are not that great, I have no basis to consider that the flood risk does not fall in the required definitions for the respective Flood Zones in the PPG.
10. A Sequential Test was nonetheless undertaken to establish whether or not there were reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This identified 12 other sites across Brading, and although all but one had a lower flood risk, the development potential of each was discounted for various reasons. On that basis it was contended the scheme did in fact meet the Sequential Test as no site was available that had a lower probability of flooding.
11. To my mind it is suitable that such a test be confined to Brading but, for a number of reasons, I have reservations about its robustness. Firstly, the sites identified were primarily confined to frontage plots and little emphasis was placed on the use of rear gardens. As a result, I am not satisfied that it was a comprehensive assessment of development opportunity across Brading.
12. Moreover, some sites in the Sequential Test were dismissed for reasons that seem too simplistic. For example the constraints on Site 6 were given as

'open space within settlement boundary of Brading adjacent to residential properties and commercial Forge'.

Clearly being in a settlement boundary and adjacent to housing are not generally constraints for residential schemes whilst on the evidence before me and my observations the forge did not appear to be a major and insurmountable source of nuisance. Similarly Site 9 (which was the one site that did not have a lower probability of flooding) was discounted partly because of potential noise impact from the railway. However, the railway does not appear to be heavily used and indeed that site seems to have since been developed for housing in any event.

13. It was also noted that the appeal site is available now and is in a state that means it could be readily developed, while there was no indication the sites identified were to be put forward for development. However, I would expect that greenfield sites on which the owner is pursuing a planning application would generally tend to be available for development, and so that cannot be given significant weight in the assessment process. I also had no specific evidence to show other land owners were not willing to put their sites forward. On this point I note that Site 9 was identified as not being pursued for development yet, as stated, it is now built on.
14. Finally, the Appellant said there was no certainty that planning permission would be granted on the sites identified in the Sequential Test. Whilst that is correct, it cannot, of itself, be a justification for granting planning permission on a site that would be otherwise unacceptable. Indeed, national advice does not state that only sites with planning permission or development plan allocations are to be considered.
15. Therefore, to my mind the Sequential Test has failed to show that there are no reasonably available sites for the development in areas with a lower probability of flooding.
16. The Appellant also contended that mitigation measures were now in place such as the floor levels of the house being above the flood risk level while the residents would always have a means of escape. However, those are matters for an Exception Test that, the Framework notes, should be applied

'if, following application of the Sequential Test, it is not possible... for the development to be located in zones with a lower probability of flooding'.

In the light of my reservations about the Sequential Test, I consider that has not yet been demonstrated. Such matters therefore do not affect whether the property is in the flood zone or whether a Sequential Test has been passed.

17. I have had regard too to the concerns about consistency in relation to 3 other decisions. Planning permission was refused for a house on this site in 2007 with no reference to matters of flooding. However, that was 10 years ago and I have no knowledge of the flooding information that was then available.
18. Reference was also made to 2 cases that have been accepted in flood risk areas elsewhere on the island, in Yarmouth and Newport. It is clearly not for me to re-evaluate fully the merits of the Sequential Tests submitted with those schemes. However, the Yarmouth site was previously developed and so its prospects of increasing flooding elsewhere were less. Moreover, by building housing on what was a police station it was replacing a highly vulnerable use

with one that had the lower classification of more vulnerable. With regard to the Newport case it was found that the Sequential Test was sufficient and persuasive. That clearly is a material difference to the situation before me. Moreover it was a key regeneration site, which would have had some effect on the assessment. I am also aware I am to consider each application on its merits and I am not necessarily bound by previous decisions of the Council.

19. Finally, the Appellant contended that the Council had not taken heed of the comments from the Environment Agency and its Resilience Co-Ordinator. However given my findings that is not a basis for me to come to a different view.
20. Accordingly I conclude that the scheme before me would constitute development in Flood Zone 3 that would be at risk of flooding and would increase the likelihood of flooding elsewhere, and it has not been shown there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Accordingly I conclude the development would conflict with Policy DM14 in the *Island Plan*, the Neighbourhood Plan and the Framework.

Other matters

21. I raise no objections to the principle of a house within this settlement. It was said the development would contribute to the island's 5 year supply of housing land. While that may be so, this one additional dwelling would only result in a modest benefit in that regard. Moreover, although there is an accepted local housing need in Brading, there is no certainty who would occupy the house and the Town Council identified the greatest need as being for 1 and 2 bedroomed properties. Therefore again any contribution the development would make in this regard is limited.
22. Given the spaces between the houses to the south on this side of the road the scheme would not appear cramped. Parking would also be sufficient for these 2 properties in this sustainable location, and opportunity would exist to improve the access arrangements. Finally, the interface distances and the intervening planting mean that, in my opinion, the residents on Nicholas Close behind would not experience unreasonable harm to their living conditions.
23. In the light of the evidence before me, I consider that any impact on the Solent Special Protection Area could be suitably addressed with the intended financial contribution.

Conclusions

24. For the reasons given I conclude the appeal should be dismissed.

J P Sargent

INSPECTOR