
Appeal Decision

Site visit made on 7 June 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 06 July 2017

Appeal Ref: APP/U1620/W/17/3169864
72 New Street, Gloucester GL1 5BA

- 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 Robert Hughes against the decision of Gloucester City Council.
 - The application Ref 16/00998/FUL, dated 12 August 2016, was refused by notice dated 21 October 2016.
 - The development proposed is described as "*new infill terrace house to vacant plot at 72 New Street*".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Plans illustrating an alternative scheme for the site were submitted with the appeal but the appeal process should not be used to evolve a scheme. The alternative scheme involves revisions that are not of a minor nature and as such I cannot guarantee that no party would be prejudiced by my consideration of its content. Therefore, I have not taken it into account in the determination of this appeal.
 3. The appellant has submitted a Flood Risk Assessment Report (FRA) dated February 2017 during the appeal process. All parties are aware of, and have had the opportunity to comment on, this information and they are not therefore prejudiced by my consideration of it. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.
 4. The second reason of refusal on the Council's decision notice relates to the failure to provide an ecological assessment. However, the appellant has submitted an ecological report during the appeal process and consequently the Council have withdrawn the second reason for refusal and I do not address this matter in the reasoning below.
 5. The Council has made reference to Policy INF3 of the emerging Joint Core Strategy in its Statement of Case but I have not been provided with a copy of this policy. In light of this and its emerging status I give it little weight.
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Main Issue

6. The main issue is whether the proposal represents an acceptable form of development having regard to its flood zone location, the provisions of local policy and the National Planning Policy Framework (the Framework).

Reasons

7. The appeal site is located within the built-up area of the city of Gloucester. It presently forms part of the grounds associated with 72 New Road, a traditional end terrace house that is currently vacant and in a dilapidated state. Sud Brook runs to the north of Weston Road and the appeal site. The site is within Flood Zone 3 (FZ 3) but the 2 main parties cannot agree as to whether the site is within FZ 3a or FZ 3b. However, even if I accept the appellant's argument that the site is within FZ 3a it would still have a high probability of flooding. Furthermore, buildings used for dwelling houses are defined in the Technical Guidance on Flood Risk¹ as a more vulnerable use which is only appropriate development in FZ 3, subject to passing the Sequential Test and the Exception Test.
8. Policy FRP.1a of the Second Deposit City of Gloucester Local Plan 2002 (LP) states that development will be permitted where an appropriate FRA has been carried out and the proposed development meets a number of criteria including that there are no other reasonable options available in a lower risk zone. This policy is broadly compatible with the Framework and as such I give it full weight.
9. The Planning Practice Guidance (PPG) and the Framework indicate that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk by the application of the Sequential Test. The PPG² states that '*only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required*'. In this case I have no evidence before me to indicate that a Sequential Test has been carried out for the site at the strategic level (i.e. Local Plan).
10. Footnote 20 of the Framework indicates that a site-specific FRA is required for all proposals for new development in FZ 3. The PPG states that one of the objectives of a site-specific FRA is to establish the evidence for application of the Sequential Test. I acknowledge that the submitted FRA concludes that the proposed development would be operated with minimal risk from flooding, would not increase flood risk elsewhere and is compliant with the requirements of the Framework. However, it does not provide sufficient evidence to indicate that a Sequential Test has been applied. Consequently it is not in compliance with the Framework in this respect. Moreover, paragraph 103 of the Framework makes it clear that the FRA is only considered after the application of the Sequential Test and if required the Exception Test.
11. On the basis of the evidence before me, in the absence of a Sequential Test, I am unable to conclude that there are no reasonably available alternative sites

¹ Flood Risk Vulnerability Classification in Table 2 of the Technical Guidance to the Framework

² Paragraph: 019 Reference ID: 7-019-20140306

for a dwelling in lower flood risk areas. It follows that the proposal would not comply with LP Policy FR.1a and paragraphs 100, 101 and 103 of the Framework which seek to direct development away from areas of highest flood risk.

Other Matters

12. The proposal would be of a similar massing and would be constructed in a style that would reflect the vernacular architecture of the immediate vicinity of the site. However, a lack of harm in this respect is a neutral consideration and does not weigh for or against the proposal.
13. I note the appellant's concern regarding difficulties communicating with the Council. However, that is not a matter for my consideration in the context of this appeal decision.
14. The appellant has drawn my attention to other developments that have been built or approved in the area. However, I do not have the full details of the circumstances that led to these proposals being accepted and so cannot be sure that they represent a direct parallel to the appeal proposal. Moreover, since the matter under consideration in this appeal is specific to the site and its immediate surroundings I have given them limited weight. In any case, I am required to determine the appeal on its own merits.
15. The Council confirms it is unable to demonstrate a 5 year supply of deliverable housing sites. However, in terms of the presumption in favour of sustainable development set out at paragraph 14 of the Framework, it is the second limb of bullet point 4 that would be applicable in this instance, namely '*...granting planning permission unless: ... specific policies in this Framework indicate development should be restricted.*'
16. For the purposes of paragraph 14 examples of the Framework's restrictive policies are set out in footnote 9 and locations at risk of flooding is cited as one of the examples. In my reasoning above I have found that there would be conflict with the Framework's flood risk policy. The proposal cannot therefore be considered sustainable development for which the Framework presumes in favour.

Conclusion

17. For the above reasons, and having had regard to all other matters raised, I conclude that the development would not comply with the development plan and the appeal should be dismissed.

D. Boffin

INSPECTOR