
Appeal Decision

Site visit made on 3 July 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 7th July 2017

Appeal Ref: APP/D1590/W/17/3168000

5 Acacia Drive, Thorpe Bay, Southend-on-Sea SS1 3JU

- 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 & Mrs R Malanga against the decision of Southend-on-Sea Borough Council.
 - The application Ref 16/01630/FUL, dated 5 September 2016, was refused by notice dated 29 November 2016.
 - The development proposed is described as 'replacement of the existing chalet bungalow with a pair of two bedroom semi-detached dwellings with associated parking'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The risk from flooding including whether the proposed development would meet the sequential and exception tests and whether it would provide adequate drainage; and
 - The effect of the proposed development on the character and appearance of the area.

Reasons

The risk from flooding including whether the proposed development would meet the sequential and exception tests and whether it would provide adequate drainage

3. It is a point of agreement between the Council and appellant that the appeal site is located within Flood Zone 3a. Consequently, it is necessary for the appellant to demonstrate that both the sequential and exception tests have been correctly applied to the proposal, which would incorporate a net gain in the number of homes. The aim of the sequential test is set out in Paragraph 101 of the National Planning Policy Framework (the 'Framework'), which states that development should not be permitted if there are reasonably available sites that would be appropriate for the proposed development in areas with a lower probability of flooding.
4. The National Planning Practice Guide includes advice on applying the sequential test in Paragraphs 033 and 034. It states that a pragmatic approach on the availability of alternative sites should be taken and the area over which the

sequential test should be applied will be defined by local circumstances. This can include the catchment area of the type of development, the need to sustain a local community within a large flood zone or local planning objectives such as the regeneration of a particular area. The developer should justify with evidence to the local planning authority what area of search has been used. However, the sequential test, including the search area, is open to scrutiny and the final decision on the extent of the search area does not rest solely with the developer as this could result in an unreasonably small or inappropriate area being used.

5. The appellant has provided a sequential assessment that is focussed on the Thorpe Bay area. The assessment concludes that there are not any sites within the search area that are currently subject to a planning application, identified in the SHLAA¹ or allocated in the local plan, which would be both suitable for a small windfall development and sequentially preferable to the appeal site. As background to these findings the appellant refers to the Core Strategy's requirement of 1,400 dwellings for Shoeburyness with a notable proportion of these needing to be windfall sites such as the appeal scheme. It is unclear whether the appeal site falls within Shoeburyness for the purposes of the development plan.
6. However, the appellant has not defined the Thorpe Bay area for the purpose of the sequential assessment and thus the area to which it has been applied. There is a general lack of substantive evidence to support the designation of the Thorpe Bay area as the sequential test area. For example, there is nothing before me to suggest the Thorpe Bay area, depending on how this is defined, needs additional houses of the type proposed, that the development has a functional requirement to be located there or that the proposal is supported by relevant objectives in the development plan. This is apart from a general requirement for windfall sites in the borough, but there is nothing to suggest it would be inappropriate to consider the provision of windfall development at a borough wide level.
7. In this respect, I favour the Council's suggestion that the search area should be borough wide, particularly as this would incorporate regeneration areas. The development plan² directs most growth to these regeneration areas and therefore this is a local circumstance of note that would suggest these areas should be included in the sequential assessment. There is nothing of substance before me that would indicate otherwise.
8. As a consequence, I am not satisfied the appellant has supported his sequential assessment with adequate evidence. In particular, the search area for considering sequentially preferable sites has not been robustly demonstrated or justified. As a consequence the appellant has not established that there are not sequentially preferable sites reasonably available. Thus, the sequential test has not been passed and therefore, in accordance with Paragraph 102 of the Framework, the exception test cannot be applied as a means of attempting to justify residential development in flood zone 3a.

¹ Strategic Housing Land Availability Assessment (SHLAA)

² See Policy KP1 of the Core Strategy which states the primary focus of development will be Southend Town Centre and Central Area and in addition to this, the Seafront, Shoeburyness and three defined Priority Urban Areas.

9. I therefore conclude that the proposal would be at risk of flooding and this risk has not been adequately justified. The proposal would therefore be contrary to Policy KP1 of the Southend Core Strategy 2007 (CS), which aims to sequentially direct relevant development away from areas at risk of flooding. Policy KP1 pre dates the Framework but it can be afforded significant weight as it is broadly consistent with the sequential requirements set out in Paragraph 101 of that document.
10. In respect of drainage, Policy KP2 of the CS states that all development proposals should demonstrate how they incorporate 'sustainable urban drainage systems' (SuDS) to mitigate the increase in surface water run-off, and, where relevant, how they will avoid or mitigate tidal or fluvial flood risk. The appellant has not addressed this point save for an indication that it is a matter that can be addressed through the imposition of a planning condition. However, in the absence, at the very least, of indicative details explaining how this requirement could be met, a planning condition would be unreasonable as it may not be possible to achieve what it would set out. As such, I conclude that the proposal would conflict with Policy KP2 of the CS and this weighs against the appeal scheme, especially as Paragraph 103 of the Framework gives priority to SuDS systems.

The effect of the proposal on the character and appearance of the area

11. The appeal site encompasses a chalet style bungalow located within a site that is untypically large in the context of Arcadia Drive, especially the width. The appeal site is bounded to the north by the rail line and to the west by a newly constructed block of flats, which drops in height adjacent to the appeal site. There is a mixture of properties in Arcadia Road but they tend to be detached and positioned to face the road in a discernible building line.
12. The Council have concluded that the general siting and scale of the proposal would be acceptable. It has not taken issue with the semi-detached form and has found the front and side elevations to be acceptable even though the Council suggests they are 'not proportionately flawless'. I have no reason to depart from this rather generous description of the appeal scheme, which would exhibit particularly deep cross-wings. The Council's main concerns are with the rear elevation of the proposal. In particular, the flat roof dormer and the misaligned eaves.
13. The Council has raised legitimate concerns with the proposal, which would have awkward design details that are unnecessary on a newly designed building unencumbered by having to retrofit additional floor space. Nevertheless, the rear elevation of the appeal scheme would not be prominent in public views and therefore it would not be a strident feature when viewed from the public realm. The rear elevation would be visible from passing trains but these would be fleeting views due to the distance, speed of movement and intervening landscaping. The rear elevation would also be partially visible from Thorpe Hall Avenue in the proximity of the rail bridge when looking over the adjoining car park. However, the flat roof would be partially obscured by the deep cross wing and the view would be a distant one. As such, the street scene of Thorpe Hall Avenue would not be harmed by the proposal.
14. The Council are also concerned by the lack of planting and soft landscaping to the front garden, which would result in the frontage appearing hard and discordant in the context of the suburban character of Arcadia Avenue. This is

a conclusion I share. Nevertheless, the provision of some form of hard standings in a front garden is not untypical and, notwithstanding the submitted drawings, it would be reasonable and necessary to impose a planning condition to secure a landscaping/planting scheme for the front garden as mitigation had the proposal been otherwise acceptable.

15. On balance, I conclude that the proposal would preserve the character and appearance of the area. It would therefore adhere to Policies KP2 and CP4 of the CS, Policies DM1 and DM3 of the DMP and the Design and Townscape Guide SPD1, which together seek to secure development that is well designed and preserves or enhances the character of the borough. This is consistent with Paragraphs 17 and 58 of the Framework.

Other Matters

16. The block of flats directly to the west of the appeal site were apparently granted in 2014 under planning application reference 14/01434/FULM. The appellant has suggested that this development included a sequential and exception test and drainage details were secured through a planning condition. I have no reason to doubt this. However, I have not been presented with the details of this application and why it was approved. I am therefore unable to gauge whether it would be inconsistent decision making for me to dismiss the appeal scheme when a block of flats have been approved in close proximity. In the absence of such details, I have considered the appeal scheme on its own merits and have found it to be unacceptable for the reasons given.
17. The appeal scheme would result in a net increase in houses and this is a benefit that would support housing supply and choice as well as the local economy. However, these are benefits that could be accrued by development outside of a flood zone and therefore they are not determinative, especially as the Council has an adequate housing land supply.
18. A petition has been submitted in support of the appeal scheme suggesting that the proposal would be an enhancement of the area. The existing bungalow is not incongruous in the context of Arcadia Drive, which is architecturally varied and includes bungalows. Moreover, the proposal, whilst not unpleasant, would be a rather conventional design. Thus, the appeal scheme would not be an enhancement of the street scene that would otherwise justify me setting aside other planning objectives, including a sequential approach to residential development in flood zones.

Conclusion

19. The proposal would preserve the character and appearance of the area. However, this would not outweigh the conflict with local and national policies relating to flood risk. Thus, I conclude that the appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR