



Appeal Decision

Site visit made on 17 July 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 21 July 2017

Appeal Ref: APP/P1560/W/17/3172030

25 Sladburys Lane, Clacton on Sea, Essex CO15 4BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr J Roberts against the decision of Tendring District Council.
 - The application Ref 16/02086/OUT, dated 20 December 2016, was refused by notice dated 14 February 2017.
 - The development proposed is the erection of three bungalows together with parking, landscaping and associated ancillary works and alterations to existing bungalow to change existing garage to living accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters of detail reserved for future consideration save for the access. Nevertheless, drawings have been submitted detailing a possible layout as well as the scale and appearance of the three homes proposed, which could incorporate a first floor. The appellant has suggested that the drawings are indicative and therefore I have considered them on this basis.

Main Issue

3. The main issue is whether the appeal site is suitable for housing having regard to local and national policies relating to development in areas at risk of flooding.

Reasons

4. The appeal site encompasses part of the residential garden of 25 Sladburys Lane and is located within a defined settlement boundary where the principle of residential development is generally supported through the development plan subject to its impacts. However, it is a point of agreement between the Council and appellant that the appeal site is located within Flood Zone 3a.
5. Saved Policy QL3 of the Tendring District Local Plan 2007 (LP) relates to flooding and states *that development should be located to avoid... flood risk. For this purpose development will not be permitted where sites of lesser flood risk are available to meet the development need.* It goes on to state that the sequential test must be applied to development in Flood Zones 2 and 3 and this must demonstrate there are no reasonably available sites in a lower flood risk area.

6. This approach is consistent with Paragraphs 100 and 101 of the National Planning Policy Framework (the 'Framework'), which directs development away from areas at greatest risk of flooding by setting out a sequential test. Paragraph 101 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. Consequently, it is necessary for the appellant to demonstrate that the sequential test has been correctly applied to the proposal before moving on to consider the exceptions test in Paragraph 102 of the Framework.
7. The appellant has identified a sequential test area (STA) by considering the catchment area of the local primary school and the local medical practice¹ as well as the boundaries of the St Bartholomew's Ward and the area covered by the local residents' association. The boundaries are all different but are focussed on Holland on Sea. The assessment concludes that there are no sites within the STA that are currently subject to a planning application, identified in the SHLAA² 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 Council's reliance on windfall sites, such as the appeal scheme, as a means of demonstrating a five year housing land supply.
8. The National Planning Practice Guide (PPG) includes advice on applying the sequential test in Paragraphs 033 and 034. It states that a pragmatic approach as to 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, it is reasonable to conclude that the sequential test advocated in local and national policy, including the extent of the STA, is open to scrutiny and the final decision on the appropriateness of the search area does not rest solely with the developer as this could result in an unreasonably small STA being used.
9. As established in the preceding paragraph, the PPG states that the STA can be defined by local circumstances relating to the catchment area of a type of development such as the catchment area of a school or the need for affordable housing in a town centre. In these instances, if a particular area needs a new school then it would be logical to apply the sequential test to that catchment area the school would serve or if affordable housing needs to be in a town centre it would not make sense to extend the STA to sites outside the town centre.
10. Consequently, it does not necessarily follow that a school catchment area should be used as the basis of the STA for a different type of non-educational development, namely residential, as that residential development may not need to be within the catchment of the school. In this respect, local circumstances that may indicate a functional requirement for housing to be located in a specific geographical area may derive from the need for housing to regenerate an area, increase pupil numbers at a school or to support a community that has lost services, including those in a District Shopping Centre, as a result of a falling population. Such factors may establish a STA.

¹ Frinton Medical Centre

² Strategic Housing Land Availability Assessment

11. The appellant's attempt to use the local school catchment area as the STA is supported by an inadequate evidence base that provides a clear correlation between the STA and the need for the proposed residential development within it. Likewise, there is no substantive evidence to demonstrate there are local circumstances linking the need for the proposed development and the catchment of the doctor's surgery, the administrative ward or the area of the local residents' association.
12. Moreover, the appellant's submissions are not persuasive that Holland on Sea is a community that currently requires extra housing in the flood zone to sustain itself. If this was the case then it would have been identified in the emerging local plan and addressed through housing allocations at Holland on Sea or the area being identified as some form of regeneration area. I have seen nothing to suggest this is the case. In this respect, it is part of the wider Clacton on Sea conurbation with its extensive array of services and facilities. Thus, the conurbation of Clacton on Sea could form the STA and I note the emerging local plan currently directs 2,780 homes to Clacton.
13. Thus the STA could be reasonably expanded to the urban area of Clacton on Sea or beyond. There is nothing before me to suggest the borough as a whole could not be the search area as this is the area from which the windfall allowance in the development plan is taken as this is the geographical area covered by the SHLAA. Moreover, a specific local circumstance of note is that the development plan directs housing to a number of urban areas throughout the district, it would be logical to include these areas in the STA in the absence of local circumstances that suggest otherwise.
14. As a consequence, I am not satisfied the appellant has supported his sequential assessment with adequate evidence. In particular, the STA for considering sequentially preferable sites has not been robustly justified. The STA is therefore artificially small and this has limited the assessment of suitable alternative sites. 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.
15. The Environment Agency has not objected to the conclusions of the sequential test. But this is unsurprising as they will not normally comment on the appropriateness of a sequential assessment as this is a matter for the decision maker. Therefore, in the absence of a robust sequential assessment the EA's comments are not a determinative matter weighing in favour of the appeal scheme.
16. The Council has referred to a number of alternative sites that could accommodate the appeal scheme but it has not disputed the appellant's proposition that these are not reasonable alternatives. Nevertheless, given that the STA is unreasonably limited in scope, the Council's apparent failure to identify suitable alternatives is not determinative, as the appellant has failed to undertake a proper sequential assessment in the first instance.
17. I therefore conclude that the proposal would be at risk of flooding and this risk has not been adequately justified through an absence of sequentially preferable sites in a logical and robust STA. The proposal would therefore be contrary to Policy QL3 of the LP, which aims to sequentially direct relevant development away from areas

at risk of flooding. Policy QL3 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 therein.

Other Matters

18. There is dispute between the Council and appellant as to whether there is currently a five year housing land supply available in the district. On the balance of the evidence before me it is likely the Council can demonstrate an adequate supply. However, even if I were to accept the appellant's position and engage Paragraph 14 of the Framework then my conclusion on the main issue would still remain unaltered. This is because the tilted balance in Paragraph 14 of the Framework does not apply if specific policies in the Framework indicate development should be restricted. In this case the policies in the Framework relating to flooding are specific policies that restrict development when the sequential test has not been met. As such, the purported absence of a five year housing land supply is not determinative as it does not alter the outcome of my assessment.
19. The appeal scheme would deliver a number of benefits. It would be a windfall development that would support the local economy through construction jobs and the circulation of funds. The proposal would also boost housing supply and support the vitality of the local community. However, as only three dwellings are proposed these benefits are of a limited scale and are thus of limited weight. Consequently, they would not outweigh the harm I have identified, which is contrary to both local and national planning policies.
20. The appellant has referred to a number of other sites where it appears the Council has not applied a sequential approach³. However, the full details of these cases are not before me and therefore I am unable to gauge whether there has been an inconsistency. As such, I have considered the appeal scheme on its own merits and have arrived at the conclusions I have for the reasons already given.

Conclusion

21. 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

³ Council references 16/01358/FUL, 16/01121/FUL, 16/00920/FUL and 16/00921/FUL