The Planning Inspectorate

Appeal Decision

Site visit made on 9 August 2017

by J Gilbert MA (Hons) MTP MRTPI

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

Decision date: 17 August 2017

Appeal Ref: APP/B1930/W/17/3173655
1 Branch Road, Park Street, St Albans AL2 2LU

- 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 Flynn against the decision of St Albans City & District Council.
- The application Ref 5/16/2849, dated 21 July 2016, was refused by notice dated 13 February 2017.
- The development proposed is described as "proposed conversion into 3 no. self contained units"

Decision

1. The appeal is dismissed.

Main Issues

2. The main issue in this appeal is whether future occupiers of the proposed development would be safe from flooding and whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

3. The Old School at 1 Branch Road is a locally listed 19th century building located on the corner of Branch Road and Park Street, within the Park Street Conservation Area. It has previously been converted to residential use for 2 flats. The application form indicates that the 2 existing flats each have 2 bedrooms.

4. The appeal site is located within 55m of the River Ver. Although I note the differences between the parties regarding the level of flood risk across the site, the Environment Agency (EA) has advised that the site lies partially within Flood Zone 2 (medium probability of flooding) and mainly in Flood Zone 3 (high probability of flooding). The Council's Strategic Flood Risk Assessment[1] (SFRA) states that the site is in Flood Zone 3b (the functional floodplain). It is not entirely clear from the evidence provided whether the majority of the site lies in Flood Zone 3a (high probability of flooding) or Flood Zone 3b, as the designation for the River Ver within the Council's SFRA is based on topographical models and available soil maps, in the absence of detailed hydraulic modelling. The advice provided in the Planning Practice Guidance[2]

[1] Dacorum Borough Council, St Albans City & District Council, Three Rivers District Council, Watford Borough Council: Strategic Flood Risk Assessment (Date not provided).
[2] Planning Practice Guidance, Section 7, Flood risk and coastal change.

(PPG) varies depending on whether the site lies in Flood Zone 3a or 3b. However, in either case, dwellings are regarded as being 'more vulnerable' in terms of flood risk[3].

5. The proposed development would increase the number of separate residential units on the site from 2 to 3 and would involve the replacement of a single-storey extension to the north-western end of the building. The proposed flats would have living space on the ground floor and bedrooms at first floor level. They would comprise a one bedroom unit, a 2 bedroom unit, and a 3 bedroom unit. Despite no overall increase in floorspace being proposed and consequently no loss of existing floodplain storage, the proposed increase in the number of flats would exclude the proposed development from the definition of 'minor development' in relation to flood risk[4]. This proposed intensification in the number of residential units on the site would increase the number of households to be affected by any future flooding.

6. Paragraph 103 of the National Planning Policy Framework (the Framework) sets out that when determining planning applications it should be ensured that flood risk is not increased elsewhere and development should only be considered appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment (FRA) following the Sequential Test, and if required the Exception Test, it can be demonstrated that: within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning.

7. The PPG[5] states that the suitability of sites in Flood Zone 3 should only be considered if there are no reasonably available sites in Flood Zones 1 or 2 (areas of low and medium probability of flooding). This is referred to as the Sequential Test. I have not been provided with any evidence to show that there are no reasonably available sites within Flood Zones 1 or 2. Consequently, it has not been demonstrated that the Sequential Test has been passed. Allowing further residential development on the site would, therefore, conflict with the advice in the Framework which seeks to steer new development to areas with the lowest probability of flooding. In this instance, I note that the EA has not provided an 'in principle' objection as the proposed development would not result in the loss of any existing floodplain storage as the footprint of the building would not increase.

8. Even if the Sequential Test could be met, proposals for 'more vulnerable' development in Flood Zone 3a would need to pass both parts of the Exception Test[6]. Firstly, it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk. Secondly, the Exception Test requires that an FRA demonstrates that the development would be safe for its lifetime.

9. It could be argued that one wider sustainability benefit to the community would be the renovation of a locally listed building in the Conservation Area. I note

[3] Table 2: Flood risk vulnerability classification, Paragraph Reference: 7-066-20140306
[4] What is meant by "minor development" in relation to flood risk, Paragraph Reference: 7-046-20140306
[5] The aim of the Sequential Test, Paragraph Reference: 7-019-20140306
[6] What is the Exception Test? Paragraph Reference: 7-023-20140306

that the effect of the proposal, including the proposed single-storey element, on the character and appearance of the Conservation Area is not an issue between the main parties. Nevertheless, I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. I consider that the re-use of the building for residential use would put the building to use consistent with its conservation and would therefore make a positive contribution to local character and distinctiveness. However, the building has previously housed 2 residential units. Although it is currently vacant and in a state of disrepair, I have limited evidence as to why it would not be appropriate to renovate the building for use for 2 residential units. In the absence of suitable evidence on wider sustainability benefits, I do not consider that the first part of the Exception Test has been met.

10. Turning to the second part of the Exception Test, an FRA was submitted during the application process. The EA objected to this FRA on the basis that it failed to assess the impact of climate change using the appropriate climate change allowance. As a result, the FRA did not apply appropriate finished floor levels or consider safe access/egress routes based on the correct climate change allowance. The FRA does not contain an accurate flood level on which to base a clear assessment of adequate mitigation measures needed to protect occupants from a 1 in 100 year flood event plus climate change allowance. There is no detailed hydraulic modelling available for the River Ver. The appellant has not undertaken their own modelling and the EA's modelling is not likely to be available until December 2017 at the earliest.

11. I note that further discussions have taken place between the EA and the appellant since the application was refused. The appellant is willing to address the climate change allowance by means of a condition which would be addressed once the hydraulic model is available. Based on the resulting climate change allowance, the appellant would subsequently implement safe access/egress and flood resistance and resilience measures and adjust the emergency plan for the site accordingly. However, this would not overcome the concerns expressed by the EA in their appeal statement.

12. As the hydraulic model has not yet been completed, the EA has confirmed that without its findings, the climate change allowance remains unknown. If the model shows flood risk to be substantially increased, the EA considers it may not be possible to mitigate the risk. As a result of this, I consider that there is insufficient information to determine to a reasonable degree that the proposed development would be safe from flooding. Without knowing the scale and nature of the risks, I have no way of assessing what measures may be necessary and thus whether they could be effectively and reasonably incorporated into the proposed development. Consequently, I consider that it would not be appropriate to deal with such matters by a planning condition. The planning condition would not be sufficiently precise or enforceable to comply with the requirements of paragraph 206 of the Framework.

13. Accordingly, it has not been demonstrated that the future occupiers of the proposed development would be safe from flooding. Therefore, the FRA fails to meet the minimum requirements set out in paragraphs 102 and 103 of the Framework. Thus, there is insufficient evidence to demonstrate that the Exception Test has been satisfied.

14. If the site instead lies within Flood Zone 3b, Table 3 of the PPG[7] provides a matrix of flood risk vulnerability and flood zone 'compatibility', which indicates that only water compatible uses and essential infrastructure should be permitted. This does not include dwellings.

15. I acknowledge that the appellant considers that the site has no historical records of flooding, that it appears to be in an area of low surface water flood risk, and that measures would be taken as part of the proposed development to increase the flood resistance and resilience of the building, including materials, floor levels, flood doors, and electrical services. While I note the appellant's assertion that the building may have been subdivided into 3 dwellings in the past without the benefit of planning permission, I have very little information on this issue and have not been provided with the planning history of the site. I observed during the site visit that the appeal site is currently vacant and subject to building works. It is not the role of this appeal under section 78 of the Town and Country Planning Act 1990 to establish the merits or legalities of an earlier use of the appeal site. Furthermore, any advice at pre-application stage on the suitability of the proposed single-storey extension is a matter for the Council.

16. The appellant has also stated that the EA did not object to the previous application on the site (5/2016/2283). The Council has a statutory duty[8] to consult the EA on development, other than minor development, within Flood Zones 2 and 3. The EA has confirmed that it was not consulted in respect of that withdrawn application. I also understand that the EA first objected to the appeal scheme in October 2016 and has maintained an objection since that time, albeit that EA officers have sought to assist the appellant in developing appropriate mitigation measures. I note that hydraulic modelling is a costly process and that the delays experienced may have caused additional financial costs for the appellant. While frustrating, the timing of the hydraulic modelling and the effect of its findings on the appeal site is a matter for resolution between the parties outside of this decision.

17. The appellant has made reference to an approved planning application close to the appeal site (4/17/0470). I have only been provided with very limited information on this application and do not know its site-specific circumstances. In any event, I am mindful that each proposal should be considered on its own merits. With regard to the presence of the site within a Flood Zone for fluvial flooding, this is a matter which is normally addressed as part of the purchase of a property. None of these matters outweigh or negate the concerns I have set out above regarding the Sequential and Exception Tests and the adequacy of the FRA.

18. Concluding on this main issue, it is not possible from the evidence before me to conclude that the future occupiers of the proposed development would be safe from flooding. It would therefore contravene saved policy 84 of the St Albans District Local Plan Review 1994 (the Local Plan), which states that in areas liable to flood, development or intensification of existing development will not normally be permitted. Although the aforementioned Local Plan is of some age, I find policy 84 to be consistent with the Framework and therefore up to date, insofar as it relates to the provision of new residential development in areas liable to flood. In addition, the proposal would fail to comply with paragraphs

[7] Table 3: Flood risk vulnerability and flood zone 'compatibility', Paragraph Reference: 7-067-20140306
[8] The Town and Country Planning (Development Management Procedure) (England) Order 2015.

102 and 103 of the Framework which require it to be demonstrated that the development will be safe for its lifetime from flooding, and to seek to steer new development to areas with the lowest probability of flooding.

Other Matters

19. There is agreement that the Council cannot demonstrate a 5 year housing land supply (HLS). The site is in Park Street, which is identified as a specified settlement in policy 2 of the Local Plan, where the Local Plan indicates there will be a presumption in favour of housing. I also recognise that the proposed dwelling would be located in an established residential area and that in transportation terms this would be a sustainable location for an additional dwelling. However, the proposed development would deliver a single additional dwelling that would make only a very modest contribution to HLS. As such, the adverse impacts discussed above in respect of flooding would significantly and demonstrably outweigh the limited benefits arising from the provision of one further housing unit on the site. Furthermore, footnote 9 to paragraph 14 of the Framework indicates that policies relating to locations at risk of flooding are included within the group of specific policies within the Framework where development should be restricted.

20. I note the local concerns with regard to refuse storage, amenity, car parking during and after construction, the dangerous state of the roof, dormer windows and the proposed single-storey extension. These matters do not change my findings on this appeal.

Conclusion

21. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

J Gilbert

INSPECTOR