
Appeal Decision

Site visit made on 21 November 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 12th December 2017

Appeal Ref: APP/J2210/W/17/3179977

Land adjacent to 44A St Mary's Grove, Seasalter, Kent CT5 4AF

- 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 G Smedley against the decision of Canterbury City Council.
 - The application Ref CA/16/01955/FUL, dated 16 August 2016, was refused by notice dated 13 January 2017.
 - The development proposed is erection of detached dwelling house.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the Council's decision the Canterbury District Local Plan 2017 (LP) has been adopted. Policies CC5, SP1, LB5 and LB9 referred to in the Council's decision are part of the adopted LP with Policy SP7 now numbered SP6. My decision is based on these recently adopted LP policies.

Main Issues

3. The main issues are whether the proposal would:
 - Be appropriately located in relation to flood risk.
 - Secure adequate measures to mitigate its impact on the Thames, Medway and Swale Estuaries and Thanet Coast and Sandwich Bay SPA and Ramsar Sites.

Reasons

Whether appropriately located in relation to flood risk

4. The proposal relates to a vacant plot within a stretch of varied but generally closely and similarly arranged dwellings. This residential development fronts onto and is served by a private road with the dwellings along this side having mainly small rear gardens backing onto a railway line. The scheme provides for a single chalet bungalow which would generally follow the prevailing scale and pattern of development.
5. The site is within an existing built-up residential part of Seasalter and this forms the western extent of the urban boundary of the main town of Whitstable. Seasalter is a coastal settlement with the sea to the north and the

undeveloped low-lying levels to the west. The levels are mapped by the Environmental Agency (EA) as Flood Zone 3 indicating a high probability of risk of flooding. The Flood Zone 3 area extends into parts of the adjacent built-up residential areas on the western edge of Seasalter. The Flood Zone 3 area is fringed by land within Flood Zone 2 where there is a medium probability of flooding.

6. The appeal site falls partly within Flood Zone 2 with about one third of the plot in the section fronting the road outside of this and falling within Flood Zone 1 with a low probability of flooding. The dwelling would be sited towards the road and a large part within Flood Zone 1. However, as a significant proportion of the built footprint would be outside Flood Zone 1 this proposal is considered to be development falling within Flood Zone 2.
7. The supporting text in paragraph 7.27 of the LP advises that the Council will apply a sequential risk-based approach to new development in line with the National Planning Policy Framework (the Framework), the accompanying national Planning Practice Guidance (PPG) and the Strategic Flood Risk Assessment for this area. It goes on to say that the starting point will be for new development to avoid areas where there is a high risk of flooding and to locate new development in areas where there is no or low risk of flooding and if this is not possible the Sequential Test will be applied as outlined in the Framework, followed if necessary by the Exception Test.
8. LP Policy CC5 is relevant to this proposal. This states that on sites that have not been previously developed within the EA Zones 2 and 3, new development will only be permitted if it can be demonstrated that it satisfies the requirements of the Sequential Test and, where required, the Exception Test.
9. Paragraph 101 of the Framework states that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding and that it should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The advice in paragraph 33 of the PPG is that for individual planning applications the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed and that a pragmatic approach on the availability of alternatives should be taken. For the availability of housing at a lower risk of flooding I agree with the Council's stance that the Sequential Test should be applied to the entire District. The evidence provided by the appellant has considered the availability of alternative housing sites and concluded that over the District as a whole there are many in theory suitable but not necessarily achievable.
10. The appellant's search focused on comparable permissions for single dwellings due to be built out between 2017, 2018 and beyond taken from the Council's Housing Land Supply position set out in the 2017 Local Plan Modifications document. Of the 52 individual dwelling consents found 5 were discounted as being in areas of higher flood risk than the appeal site. The search was then narrowed to within 10 miles of Seasalter where the two single dwelling plots identified for sale were found to be in higher flood risk locations.
11. I am not persuaded that the current availability of single dwelling plots of a lower flood risk than the appeal site is sufficient for this proposal to pass the Sequential Test. To meet housing supply needs the Council will depend mainly on planning permissions for larger residential sites. Sites for individual

dwelling would not be allocated in the LP and come forward as windfall developments at an irregular rate. The appellant acknowledges this by stating that there are a significant number of plots within Flood Zone 1 located within the District but no way of knowing or confirming if they would be brought forward. Whilst this might be the case I do not find it provides reasonable grounds for concluding that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. As a consequence the proposal would not satisfy the Sequential Test and it is not necessary to go on to consider the Exception Test.

12. The appellant has provided quite recent examples of three dwellings permitted by the Council. One house was allowed¹ nearby along the same side of St Mary's Grove which falls entirely within Flood Zone 2 and which I saw was under construction at the time of my visit. Two dwellings have also been quite recently approved² on the other side of the railway line on sites within Flood Zone 3 which indicates a high probability of flooding. In providing the evidence for the application of the Sequential Test the appellant has also sought my consideration of five quite recent Council permissions for yet to be implemented single dwellings found to be within areas of higher flood risk than the appeal site. However, all these permissions preceded the recently adopted LP and my decision must relate to the individual merits of this proposal based on current development plan policy.
13. The evidence submitted fails to demonstrate that there are no reasonably available sites with a lower probability of flooding and therefore the proposal would fail the Sequential Test contrary to LP Policy CC5, Section 10 of the Framework and the advice of the PPG. Therefore I conclude the development would not be appropriately located in relation to flood risk.

Whether securing adequate mitigation measures for impact on the SPA/Ramsar Sites

14. Provided with the appeal is a draft Section 106 Unilateral Undertaking (UU) for the collection of a suitable financial contribution towards the Thanet Coast and Swale Strategic Access Monitoring and Management Plans. The Council has confirmed the contribution to be suitable from which I infer that this would secure the delivery of necessary measures to mitigate the impacts of the proposed development on the Thames, Medway and Swale Estuaries and Thanet Coast and Sandwich Bay SPA and Ramsar Sites. However, the UU has not been signed and completed and therefore it cannot be concluded that the mitigation has been secured or that the proposal would comply with LP policies SP1, SP6, LB5 and LB9.

Conclusion

15. For the reasons set out above, having taken into consideration all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR

¹ Council reference CA/15/02285/FUL

² Council references CA/12/01489/FUL and CA/12/00129/F