



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: 22nd December 2017

Appeal Ref: APP/V2255/W/17/3181733

70 High Street, Blue Town, Sheerness, Kent ME12 1RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Michael Morgan against Swale Borough Council.
 - The application Ref 16/505002/FULL, is dated 10 June 2016.
 - The development proposed is a three-storey, two bedroom dwelling house.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal was made against the failure of the Council to determine the application within the prescribed period. Following the appeal the case was reported to Swale Borough Council Planning Committee on 9 November 2017 which agreed that had the Council been in a position to determine the application it would have been refused for the following reason:

The proposal would introduce more vulnerable residential accommodation into an area of Flood Zone 3 which is at risk of flooding to a depth of 2.1m when climate change is considered in the 1 in 200 year event. As such, it would give rise to significant and unacceptable risk to human life not outweighed by the benefits of the proposal. The proposal would therefore be contrary to policies DM 14 and DM 21 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) and to the advice of paragraphs 99 and 100 of the National Planning Policy Framework (the Framework).

3. Having considered this reason, and the other evidence provided, the main issue in the appeal is considered to be whether the development would be appropriately designed to mitigate the risk of flooding.

Reasons

4. The proposal relates to a single-storey workshop building which is adjacent and built up to a semi-detached pair of period three-storey dwellings. The site is in the older part of Blue Town and within a conservation area. The existing building would be replaced by a new three-storey dwelling of a design matching the pair next to the site but built to a lower roof height.
5. Blue Town, along with the rest of the built-up part of Sheerness on the west end of the Isle of Sheppey, falls within Flood Zone 3 in the Environment

Agency's (EA) flood maps, indicating a high risk of flooding. This built-up area does however benefit from flood defences. Paragraph 100 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. This involves applying a Sequential Test to steer new development to areas with the lowest probability of flooding.

6. If, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Framework requires the Exception Test to be applied if appropriate. Two requirements are necessary to pass the Exception Test. Firstly, it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared. Secondly, a site-specific flood risk assessment (FRA) must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
7. Because the site is within a high risk Flood Zone 3 location and involves a less vulnerable workshop use being replaced by more vulnerable residential accommodation, the Council required the appellant to produce a FRA¹. The Council has not referred to the Sequential Test but, as the proposal relates to previously-developed land within a wider urban area that falls entirely within Flood Zone 3, I am satisfied in this case that there is no reasonable alternative for this development in a location at a lower probability of flooding. However, to be considered acceptable in relation to flood risk the proposal should satisfy the Exception Test.
8. The EA has objected to this proposal as failing to meet the second part of the Exception Test. The EA has noted that the FRA shows the site to be defended to the 1 in 1000 year event but that there remains a risk of flooding when climate change is accounted for during the 1 in 200 year event. These show that flooding would potentially affect 2.1m in depth in the climate change scenario and so the EA concludes that residential development at ground floor is not appropriate at this location other than by raising it above this level or moving all such uses to first floor and above.
9. Based on the actual flood risk, which the FRA considers low, the mitigation suggested by the EA is found by this report to be impractical. In addition to main living and sleeping accommodation being above ground floor and a raised floor threshold of 75 – 250mm to prevent surface water entry in the event of a localised flood event, both of which are provided for in the submitted plans, the FRA also recommends further flood resistance and resilience design measures, sign up to EA floodline warnings and a surface water management strategy.
10. The appellant has not provided any further statement of case or detailed proposals as to how these additional FRA recommendations might be addressed so as to outweigh the EA concerns. The Council considers that in failing the EA requirements the proposal would give rise to unacceptable risk to human life, which is not outweighed by the benefits of the visual improvement of the site

¹ Flood Risk Assessment for the Proposed Development of 70 High Street, Blue Town, Sheerness, Kent. Herrington Consulting Limited November 2016.

and the provision of an additional dwelling in a sustainable location. I agree that without adequate mitigation this proposal would not otherwise provide the wider sustainability benefits to the community that outweigh flood risk and consequently the second part of the Exception Test would not be met.

11. On the basis of the details submitted I must conclude that the development would not be appropriately designed to mitigate the risk of flooding. As a consequence the proposal would be contrary to LP policies DM 14 and DM 21 and to paragraphs 99 and 100 of the Framework.

Conclusion

12. For the reasons given, having taken into consideration all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR