



Appeal Decision

Site visit made on 11 June 2019

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

Appeal Ref: APP/D0515/W18/3218952

Land adjacent 33 Shaftesbury Avenue, March, PE15 8SA.

- 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 and Mrs J Manchett against the decision of Fenland District Council.
 - The application Ref F/YR18/0397/F, dated 3 April 2018, was refused by notice dated 13 July 2018.
 - The development proposed is residential dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the location of the proposed development in relation to flood risk.

Reasons

3. The starting point is the policies of the development plan. Policy LP3 of the Fenland Local Plan (2014) identifies March as a Primary Market Town where much of the district's new housing development will take place. Policy LP2 seeks to deliver high quality environments, ensuring that people are not put at identified risks from development thereby avoiding adverse impacts in the interests of health and wellbeing. However, it is Policy LP14 (part B) that is particularly relevant to the issue in this case. This policy requires that all development should adopt a sequential approach to flood risk from all forms of flooding. "*Development in areas known to be at risk from any form of flooding will only be permitted following: (a) the successful completion of a sequential test (if necessary), having regard to actual and residual flood risks; (b) an exception test (if necessary)*" [elements (c) and (d) need not be set out here].
4. In addition Policy H2 (c) of the March Neighbourhood Plan states that proposals will be supported where: "*the site is at low risk of flooding (ie not within land designated Flood Zone 2 or 3 by the Environment Agency)*", and that "*Development within flood zones 2 and 3 will only be considered where appropriate sequential and exception tests have been met*". This policy and Policy LP14 (B), whilst preceding the latest National Planning Policy Framework (the Framework) February 2019, conform to its paragraphs 155 – 165.

5. The appeal site lies within flood zone 2, which is an area of medium risk. For the appellant it is pointed out that the site is closely adjacent to flood zone 1, and indeed it appears that part of the site is within that zone. It is also said that there is no observable difference in land levels across the existing curtilage of 33 Shaftsbury Avenue, although there has been no topographical survey to back this statement. If there is the possibility that the boundary between zones 1 and 2 does not accurately reflect actual detailed levels on Shaftsbury Avenue, it could be the case that the area shown as being in zone 1 should in fact be within zone 2, or of course the other way around. However, since there is no accurate survey data, I can place no reliance on what appears to be the case by observation.
6. It is therefore necessary to follow Policy LP 14, part B, requiring development proposals in higher flood risk areas to undergo a sequential test to demonstrate through evidence that the proposal cannot be delivered elsewhere in the settlement at lower risk of flooding.
7. The appeal application documents included a Flood Risk Assessment. However, under the heading 'The Site & Sequential Test', at paragraph 3.4 of the document, it is stated that "*The Sequential Test and Exception Test will require to be applied by the Local Planning Authority but the development may be permitted as being protected against the 1 in 100 year return period event and meeting the requirements of NPPF*". In fact, it is for the applicant to provide a satisfactory sequential test, and subsequently a further document was submitted (November 2018) specifically dealing with Flood Risk Sequential / Exception Tests.
8. This document explains (paragraph 3.2.2) that the 'Rightmove Property Availability Market Place' on the internet was consulted and indicates that within the town of March no reasonably available sites in a lower flood zone are registered for sale for development of the nature sought. There are 2 sites that already have planning permission and a third parcel on the western extremity of the search area. It was considered that all 3 do not have the advantages of the appeal site. In addition (paragraph 3.2.3) the local area has been searched and no sites are available, either from advertisements or through visual inspection. Appendix 5 of this document includes screenshots of the Rightmove search that appears to show that the search was restricted to a half-mile radius of postcode PE15 8SA.
9. The Cambridge Flood and Water Supplementary Planning Document of 2016 sets out the sequential test, which has been amended by the Approach to Sequential Test for Housing adopted by Fenland District Council in May 2018. The latter document requires that the area of search will be the town or village that the proposal will sustain. I consider that this is in accord with the Framework and Planning Practice Guidance (PPG) of 2014 (Flood Risk and Coastal Change Section). As set out in the PPG, the 2 parts to the exception test require proposed development to show that it will provide wider sustainability benefits to the community that outweigh flood risk, and that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall. Therefore it is the community (in this case March) that should be the area of search.
10. The results of the sequential test put forward do not conform to these requirements in terms of the area that was searched. Nor, it seems to me,

should the sites available with planning permission shown on Rightmove be dismissed. There is no particular requirement put forward for seeking planning permission on the garden land of the appellants other than the normal desire to take advantage of a development opportunity. Thus in terms of the public interest, the appeal proposal is probably on all fours with the development opportunities disclosed by Rightmove.

Conclusion

11. The site lies within flood zone 2, which is an area of medium risk. The applicant has failed to demonstrate that the development could not be delivered in an area of lower flood risk and thereby it fails to accord with the requirements of Policy LP14 (part B) of Fenland Local Plan and Policy H2 (c) of the March Neighbourhood Plan and the policies of the Framework. I appreciate that Shaftsbury Avenue is a residential street, although I also note that, as a cul-de-sac, its only access to the wider highway network is to the south where the land comes within flood zone 3 (high probability of flooding). I have taken account of all other matters raised, including the intention to raise finished ground floor level by 300mm above existing ground level and the suggestion that without the development the land could deteriorate through lack of maintenance. However, these matters do not overcome the considerations that I have dealt with above. I conclude that the appeal should be dismissed.

Terrence Kemmann-Lane

INSPECTOR