



Appeal Decision

Site visit made on 31 July 2019

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal Ref: APP/L2250/W/19/3227462
10 Range Road, Hythe, Kent, CT21 6HQ.

- 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 Dan Henwood against the decision of Folkestone & Hythe District Council.
 - The application Ref Y18/1343/FH, dated 15 October 2018, was refused by notice dated 25 January 2019.
 - The development proposed is described as proposed dwelling on land adjacent to 10 Range Road.
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Decision

1. The appeal is allowed and planning permission is granted for a dwelling on land adjacent to 10 Range Road Hythe, Kent, CT21 6HQ in accordance with the terms of the application, Ref Y18/1343/FH, dated 15 October 2018 and the plans submitted with it, subject to the conditions set out in the schedule attached to this decision.

Reasons

2. The main issue is whether the scheme would increase the number of persons and properties at risk from flooding and if so whether such risks are outweighed by other factors.

Reasons

3. The appeal site is located within an established residential area set back from the seafront in Hythe and the proposal is to construct a two and a half storey, three bedroom dwelling on an area of former garden land which adjoins 10 Grange Road.
4. The site is shown to be within flood zone 1 as identified by the Environment Agency, who have raised no concerns relating to the proposal. However, the Council's Strategic Flood Risk assessment 2015 (SFRA), which takes into account climate change and the existing sea defences indicates that whilst the site is not at risk of overtopping under the 1 in 200 year event in 2015 or 2075, it has potential for risk of flooding from overtopping in 2115.
5. The SFRA advises that a site specific Flood Risk Assessment (FRA) will only be required for small sites if they lie within an area defined by a Critical Drainage

- Zone or the Overtopping Hazard Zone, which relates to sites within 50 metres of the defence crest for sites that lie within zone 1.
6. Policy Core Strategy SS3 b) of the Shepway Core Strategy Local Plan (CS) states that a sequential approach should be taken as required for applicable uses set out in the National Planning Policy Framework (the Framework). The Framework states that a site specific FRA should be provided for land which has been identified by the Environment Agency as having critical drainage problems, or where a SFRA has identified it as being at increased risk in the future.
 7. The Framework goes on to state that local plans should apply a sequential, risk based approach to the location of development to avoid, where possible, flood risk to people and property by applying the sequential test and if necessary, applying the exception test. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Paragraph 033 Reference ID:7-033-20140306 of the National Planning Practice Guidance (PPG) advises that it should not normally be necessary to apply a sequential test unless the SFRA for the area, or other more recent information indicates there may be flooding issues now or in the future.
 8. The appellant submitted a FRA at the application stage and further evidence at the appeal stage. From this evidence it can be ascertained that the site lies within flood zone 1 as identified by the Environment Agency, who have not raised any concerns or suggested any necessary mitigation in relation to the proposal. Contrary to the SFRA, the initial FRA undertaken on behalf of the appellant, concluded that the proposed development is considered to be safe from a flood risk perspective and that the risk of the appeal site flooding due to over topping would be negligible. This took into account that the ground level has been raised to accommodate a new development located between the appeal site and the coast. It also found that the identified residual risk from flooding could be dealt with by water resilience measures built into the development.
 9. Subsequently, following the preparation of a more detailed numerical flood model it was concluded that the appeal site falls outside the predicted flood extents for an event with a 1 in 200 year return period, including an allowance for 100 years of climate change. This modelling takes account of recent developments which could impact on the potential for the appeal site to flood and includes detailed flood models which more accurately quantify the risk of flooding on the appeal site and its immediate surroundings, than the SFRA. For these reasons I give it greater weight than the SFRA and I find that it has been demonstrated that the appeal site is located entirely within flood zone 1 and in an area that is at low risk of flooding.
 10. Having regard to this, I agree with the Council that the site is sequentially comparable in safety to other sites within the locality which fall within flood zone 1 and which are not identified in the SFRA as being at risk of flooding. Accordingly, I find that the Sequential Test is passed.
 11. Paragraph 159 of the Framework states that if it is not possible for development to be located in zones with a lower risk of flooding the exception test may need to be applied. As advised in the PPG the Exception Test can be used to support certain developments in flood zones 2 and 3 if found appropriate following the sequential test. The need for an Exception Test will

depend on the potential vulnerability of the site and of the development proposed. It should only be applied in accordance with the Flood Risk Vulnerability Classification set out in table 3 attached to paragraph 067 reference ID:067-20140306 of the PPG. This table clearly states that an exception test is not required for housing developments on sites that fall wholly within flood zone 1. As the appeal site falls within flood zone 1, which is the lowest flood zone, there is no need to apply the Exception Test to the proposal.

12. Residual flood risks include those associated with storm events greater than the 1 in 200 year design event and or the failure of flood management infrastructure. In relation to the appeal site they are addressed in sections 7, 8 and 10 of the appellants FRA. The FRA states that overtopping is considered to be a residual risk associated with storm events higher than the design event. To address this table 5 in the FRA includes various appropriate flood risk management measures to minimise the risk of flooding at the site and to reduce the risk of flooding off-site as a result of the development proposals.
13. The more recent sensitivity testing found that, in a worst case scenario, any wave overtopping rate would need to be increased beyond reasonable levels before flood water would be able to reach the site. This recent sensitivity testing report does not suggest any changes to the recommended flood risk management measures recommended in the FRA. However, the appellant has subsequently confirmed that RMB Consultants have stated that as the appeal site is proven to be at no risk of flooding in a 1 in 200 year flooding scenario and the suggested residual risks are for scenarios way beyond the 200 year and up to 1 in a 1000 year scenario, the residual flood risk measures cited should not be necessary. The Council has not disagreed with this view.
14. As a result of these factors I find that the flood risk management measures set out in Table 5 in the FRA and the suggested flood resilience measures set out on page 42 of the FRA are unnecessary.
15. For these reasons I conclude on the main issue that the scheme would not increase the number of persons and properties at risk from flooding. It would therefore comply with policy SS3 of the Core Strategy and the Framework.

Other matters

16. In relation to character and appearance the proposed dwelling would respect the form, appearance, building lines and plot sizes of the adjacent cottages. As a result, the proposed development would be readily assimilated into the local environment, subject to the colour, tone and finish of the external materials used.
17. The Council has suggested the imposition of conditions relating to external materials, land contamination, water efficiency, boundary treatment and the provision of cycle storage facilities. These conditions are all necessary to prevent and mitigate ground contamination, to encourage sustainable means of travel, to ensure the development respects the character and appearance of the locality and in the interests of water efficiency. However, in the interests of precision and enforceability I have amended the wording of some of the suggested conditions. In addition, I also consider that a condition which requires the development to be carried out in accordance with the submitted drawings is required for the avoidance of doubt.

Conclusion

18. Having regard to the conclusion on the main issue and having regard to all other matters the appeal is allowed.

Elizabeth Lawrence

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18_32_01, 18_32_04, 18_32_05, 18_32_06, 18_32_07 and 18_32_08.
- 3) Prior to the commencement of the development hereby permitted details of the colours, tones and finishes of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.
- 5)
 - a) Prior to the commencement of the development hereby permitted a desk top study shall be undertaken and submitted to and approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.
 - b) If a desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include
 - A survey of the extent, scale and nature of contamination,
 - An assessment of the potential risks to human health,
 - Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Ground waters and surface waters,

- Ecological systems,
- Archaeological sites and ancient monuments, and
- An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11).

- c) If investigation and risk assessment shows that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the Local Planning Authority. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.
- d) Prior to the commencement of the development hereby permitted, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.
- e) In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the local planning authority.
- 6) Prior to the first occupation of the dwelling hereby approved details of all boundary treatments shall be submitted to and approved in writing by the local planning authority and shall have been fully implemented in accordance with the approved details.
- 7) Prior to the first occupation of the dwelling hereby permitted the cycle storage facilities shown on drawing No. 18_32_05 shall be provided and thereafter shall be retained and made available for the storage of cycles.