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## Appeal Decision

Site visit made on 17 September 2019

**by Matthew Woodward BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9<sup>th</sup> October 2019**

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**Appeal Ref: APP/C1570/W/19/3232058**

**Rear of 53 High Street, Saffron Walden, CB10 1AR**

- 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 Brien Walker (Snow Walker) against the decision of Uttlesford District Council.
  - The application Ref UTT/19/0067/FUL, dated 10 January 2019, was refused by notice dated 12 March 2019.
  - The development proposed is described as '2 storey new dwelling'.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the development would be safe from flooding.

### Reasons

3. The appeal site comprises an area of land which lies offset to the rear of, and associated with, 53 High Street. It lies in the heart of Saffron Walden in a predominantly urban setting. There is no dispute between the main parties that the site lies within a defined Development Limit, thus, in principle, would be an acceptable location for housing according to the the Uttlesford Local Plan 2005 (the Local Plan). The Council also considers that the proposed dwelling would not harm the significance of the nearby Grade II\* listed building<sup>1</sup>, or the Saffron Walden Conservation Area, within which the appeal site is located. I have no reason to take a different view.
4. The site is located within Flood Zone 2 on the Environment Agency (EA) flood maps and has a medium flood risk probability. According to the Council, it also lies in Flood Zone 3a on maps associated with the Uttlesford Strategic Flood Risk Assessment 2016 (SFRA), which refines the EA flood maps taking into account local circumstances, and this would mean the site has a high probability of flooding. However, I am unable to corroborate that the site lies in Flood Zone 3a as the SFRA map I have been provided with is not at a readable scale. Nevertheless, the appeal site has at least a medium probability of flooding.
5. The SFRA comprises a high-level assessment and mapping of flood risk from different sources across Uttlesford district. It is a detailed document which has

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<sup>1</sup> 53 High Street 'Number 53 and attached walls' – listing reference 1206038 (Historic England)

been subject to scrutiny and input from the Environment Agency along with a range of other stakeholders. It is a principal guidance document on flood risk matters and to be used to inform the local plan making process, planning applications, and Flood Risk Assessments prepared by developers in support of planning applications. Even though the emerging local plan has not yet been adopted, the SFRA is a primary source of information to guide individual development proposals in flood risk areas. Therefore, I have afforded the SFRA significant weight in the determination of this appeal.

6. The flood report submitted by the appellant with the planning application is entitled 'Non-professional Flood Risk Assessment' (FRA). It contains an analysis of the nearby river and culvert and reasons as to why there is 'virtually no possibility that the site could flood'. However, the analysis undertaken, along with the appeal statement, contains several unqualified statements concerning the nature of the existing culvert and watercourse network located close to the appeal site. Even if I was to accept the statements as accurate, the FRA has not been subject to any analysis or input from the EA, thus I have no confidence that the FRA would be sufficiently robust to determine that the site is at low risk of flooding, thus 'lower' the Flood Zone within which the appeal site falls.
7. Notwithstanding this, the submitted FRA does not question the validity of the SFRA nor its findings which, in part, identify heightened flood risk in the area due to the potential of culverts in Saffron Walden to become blocked, a risk exacerbated by a lack of regular maintenance. As the location of the nearest culvert to the appeal site involves land outside the control of the appellant, and having regard to my foregoing observations, there is nothing in the evidence before me to suggest that I should depart from the EA Flood Zones or those contained in the SFRA. I am satisfied, therefore, that the EA Flood Zone maps and those contained in the SFRA remain extant and that the appeal site lies in a flood risk area.
8. Paragraph 158 of the National Planning Policy Framework (the Framework) states that 'The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding'. Paragraph 33 of the Flood risk and coastal change chapter of the Government's Planning Practice Guidance (PPG) makes it clear that a sequential test is required in this case because of the scale of the development proposed, and the fact it lies within Flood Zone 2 or above.
9. The appellant has undertaken a sequential test. To my mind it is limited in scope. Whilst the appellant states that there are no sites of this type available for sale in the open market close to the centre of Saffron Walden, the assessment does not contain an objective analysis of the sites that were considered, nor does it appear that sites were considered across the wider district, or even across the entire settlement of Saffron Walden. Unlike the medium or high probability of flooding associated with the appeal site, the SFRA map appears to show that a large proportion of Saffron Walden and the surrounding area is at low risk from flooding, which further reinforces the likelihood of alternative sites being available in lower flood risk areas. The sequential approach carried out by the appellant is inadequate and therefore I

am unable to say with any degree of certainty that there are no reasonably available sites for a single dwelling in areas at lower risk from flooding.

10. Paragraph 159 of the Framework requires an 'exception test', which includes consideration that it has been demonstrated that the development would be safe for its lifetime, to be applied where it has been demonstrated that it is not possible for development to be located in zones with a lower risk from flooding. As I find that the proposal fails the sequential test, the requirements of the Framework have not been met. Therefore, whilst the submitted FRA includes several mitigation measures in order to make the development flood safe, including raising the height of it and providing additional barriers to flood water, I do not need to consider these further.
11. I am aware that the Council granted planning permission for a similar development on the appeal site in 2016<sup>2</sup> and it does not appear that circumstances have changed in the meantime. Furthermore, the Council's officer report in respect of the previous planning permission concluded that there would be no unacceptable flood risk. However, I do not know if that application was the subject of a sequential test but even if it was, the sequential test submitted with the appeal scheme is not acceptable. In any event, as the planning permission is no longer extant and was not implemented, it does not represent a fall-back position for the appellant. Therefore, whilst I apply moderate weight to the recent decision made by the Council for a very similar development, it does not outweigh the harm I have identified.
12. I have been provided with evidence to suggest that the appeal site and local properties in the area have not flooded in the past. However, that in itself does not demonstrate that the proposal would be safe from flooding for its lifetime, particularly having regard to a likely increase in flood risk generally due to climate change. I have found that the development does not satisfy the sequential test, and I am not satisfied that the proposed development would be safe from flood risk.
13. In conclusion therefore, the development would represent an unacceptable flood risk as it would fail to address the requirements of Policy GEN3 of the Local Plan which requires that developments are subject to an adequate standard of flood protection. The development would be contrary to paragraph 158 of the Framework as it has not been demonstrated that there are no reasonably available sites with a lower risk of flooding which could provide the additional dwelling unit.

### **Other Matters**

14. Even if I was to accept the appellant's assertion that the Council are unable to demonstrate a 5-year housing land supply, footnote 6 of paragraph 11 of the Framework effectively means that the tilted balance is not engaged where a proposal is at risk from flooding, as is the case here.
15. Third parties have raised concerns relating to a range of matters including highways and parking, air pollution, and the potential of the proposal to unacceptably diminish the living conditions of occupants close by. The Council did not raise any specific concerns in respect of these matters and previously

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<sup>2</sup> Uttlesford District Council planning permission reference - UTT/15/3497/FUL

found a similar proposal acceptable in these regards. In any event, I am dismissing the appeal for the reasons given so I have had no reason to pursue these concerns further.

**Conclusion**

16. For the reasons given above, the appeal is dismissed.

*Matthew Woodward*

INSPECTOR