



Appeal Decision

Site visit made on 8 October 2019

by S Shapland BSc (Hons) MSc CMILT

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/U1620/W/19/3233888

Sevenside Farm, Walham Lane, Gloucester GL2 9NF

- 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 Mr S Gorman against Gloucester City Council.
 - The application Ref 18/00527/FUL, is dated 1 May 2018.
 - The development proposed two storey extensions to existing House in Multiple Occupation and construction of an additional nine parking spaces.
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Decision

1. The appeal is dismissed and planning permission for proposed two storey extension to existing House in Multiple Occupation and construction of an additional nine parking spaces is refused.

Preliminary and Procedural Matter

2. This appeal relates to the failure of the Council to determine the planning application. However, the Council has confirmed that had it retained jurisdiction to determine the application it would have refused planning permission.

Main Issue

3. Based on the submitted policies, my site visit and the representations from the appellant, Council, consultees and interested parties; the main issue in this appeal is whether the proposed development would be acceptable, having regard to the risk of flooding.

Reasons

4. The appeal site is an existing house of multiple occupation (HMO) located at Sevenside Farm on the outskirts of Gloucester. The appeal site benefits from an extant planning consent for a two storey and single storey extension¹, which increases the total number of rooms to 15. From my site visit it was apparent that this consent has been partially implemented, with the two-storey element being completed. The appeal proposal would be on the same footprint as the extant consent, but would change the single storey element to a two-storey extension. This would increase the total number of rooms to 17. The submitted Flood Risk Assessment (FRA) indicates that the appeal site itself lies within Flood Zone 3. The access to the site along Longhorn Lane is indicated to be within Flood Zone 2.

¹ Planning permission 17/00266/FUL

5. Policy INF2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 states that development proposals must avoid areas at risk of flooding, in accordance with a risk based sequential approach. This policy requires the application of a sequential test of assessment of applications for development giving priority to land in Flood Zone 1.
6. Paragraph 155 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The Framework and the Planning Practice Guidance (PPG) requires a sequential risk-based approach to the location of new development through the use of the Sequential Test. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. It also indicates that a sequential approach should be used in areas known to be at risk from any form of flooding.
7. Table 2 contained within Paragraph 066² of the PPG indicates that dwelling houses are deemed to be a 'more vulnerable' use. Table 3 contained within Paragraph 067³ is clear that for the proposal to be acceptable in Flood Zone 3 with regard to flood risk, both the Sequential Test and Exceptions Test are required to be passed.
8. A Sequential Test has not been undertaken or submitted by the appellant. The appellant contends that a Sequential Test is not necessary for this proposal citing Paragraph 046⁴ of the PPG. Paragraph 046 states that a Sequential Test is not required for 'minor development'. Bullet point 2 states that building alterations, which are defined as development that does not increase the size of buildings, are considered minor development in the context of flood risk. The appellant has stated that they consider this definition is inconclusive, and that as the proposal would not increase the footprint of the building over and above the extant consent on site it can be considered minor development. I do not find this to be the case.
9. Notwithstanding the presence of the extant permission, which I return to later, the appeal before me is for development involving two-storey extension to the existing property. As such in strict terms the appeal proposal does involve the provision of additional built footprint. In any event, the appeal proposal increases the overall size of the property and increases the number of bedrooms and consequently the number of potential occupiers that would be at risk from flooding. Accordingly, it cannot be considered minor development as set out in the PPG.
10. The appellant has cited paragraph 033⁵ of the PPG, and states that it emphasizes the need for pragmatism. In my judgement the PPG indicates that this is in relation to identifying alternative sites in applying the Sequential Test and not whether the test itself should be applied or not. I note that the Council's Drainage Officer and the Environment Agency has not raised any concerns in respect of the proposal. However, this does not overcome the need to pass the Sequential Test.

² Reference ID: 7-066-20140306 Revision Date 06 03 2014

³ Reference ID: 7-067-20140306 Revision Date 06 03 2014

⁴ Reference ID: 7-046-20140306 Revision Date 06 03 2014

⁵ Reference ID: 7-033-20140306 Revision Date 06 03 2014

11. The site has an extant permission for a two storey and ground floor extension, of which the two-storey element has already been completed. This was granted consent before the current development plan was adopted, and from the evidence submitted I cannot be certain of the planning circumstances which lead to that scheme being deemed acceptable. From the evidence before me I am satisfied that should this appeal be dismissed there is more than a reasonable prospect that the appellant would implement this approved scheme. As such the approved scheme does represent a fallback position. The difference between this fallback scheme and appeal proposal before me is effectively two additional bedrooms at first floor level. I afford significant weight to the fallback position. However, the effective consequence of the appeal proposal if allowed would provide two additional bedrooms which would further increase the number of occupants in the building compared to the current position.
12. The appellant has indicated that for the previous application relating to the extant consent the Council did not require a Sequential Test to be completed. Be that as it may, from the evidence provided it is apparent that the Council now acknowledges that a Sequential Test should have been required for the previous application. It is clear to me that the development plan and national policy requires a Sequential Test to be completed.
13. I note that a FRA was submitted as part of the previous application, and was found to be acceptable at the time. Whilst this FRA has been submitted with this proposal it has not been updated to reflect the proposal. As the proposal is not supported by a Sequential Test it has not been demonstrated to my satisfaction that the Sequential Test is passed. Consequently, it is not necessary to therefore go on and consider whether or not the Exceptions Test is met. Taking into account all of the evidence submitted the proposed development would not be acceptable having regard to the risk of flooding.
14. Accordingly, the proposal conflicts with Policy INF2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031, adopted December 2017, and section 14 of the Framework. These seek, amongst other things that development must avoid areas at risk of flooding in accordance with a risk-based sequential approach.

Other matters

15. The appellant suggests that the Council is unable to demonstrate a five-year supply of housing and as such the presumption of sustainable development applies. However, Paragraph 11 d)i is clear that where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 to this paragraph includes areas at risk from flooding. As such the presumption in favour sustainable development is not engaged in this appeal.
16. I note that interested parties have raised concerns about other uses which are currently taking place within the site. However, the lawfulness or not of these other uses is outside the scope of this appeal and is a matter for the Council.

Conclusion

17. For the reasons given above the appeal is dismissed, and planning permission refused.

S Shapland

INSPECTOR