



Appeal Decision

Site visit made on 29 November 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/P1133/W/19/3235779

Land behind the Old Post Office, Bonhay Road, Starcross EX6 8NY

- 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 Roger and Clare Sell against the decision of Teignbridge District Council.
 - The application Ref 19/01060/FUL, dated 24 May 2019, was refused by notice dated 29 July 2019.
 - The development proposed is the construction of a three-bedroom family home with associated parking, landscaping and amenities.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the development would be suitably located in relation to flood risk, with particular regard to the sequential test.

Reasons

3. Situated within Flood Zone 3, the appeal site is in an area which has a high probability of flooding. The site's principal source of flood risk relates to potential tidal overtopping from the nearby River Exe. Parts of the site are also at low-medium risk of surface water flooding. As set out in the appellants' Flood Risk Assessment, modelling indicates that tidal flood waters could overtop existing nearby flood defences during a 1 in 200 annual probability event. In such a scenario, flood waters could reach a height of 2.69 metres above ordnance datum (AOD) on the site and that this could increase to 4.54 metres AOD by 2115 after accounting for climate change.
4. The proposed development would provide a new dwelling for the appellants, on a self-build basis with habitable accommodation on the first floor, above the 1 in 200 year flood level modelled for 2115. Planning Practice Guidance (PPG) includes flood risk vulnerability classification, with dwelling houses identified as 'more vulnerable' development.
5. Through a sequential approach, Policy EN4 of the Teignbridge Local Plan 2013-2033 (TLP) guides development to lower areas of flood risk. Consistent with the approach to flood risk in the National Planning Policy Framework (Framework), Policy EN4 sets out that, amongst other aspects, development in Flood Zones 2 and 3 will only be considered if there is no available site in Flood Zone 1.
6. On the scale advised by the Council, the appellants' appeal statement includes a district-wide review of custom and self-build plot availability. Although no

such sites and no major land allocations are identified within Starcross, the review finds that there are 17 plots in the wider area which are available now.

7. The identified plots are not in the immediate locality of the appeal site. The appellants chose Starcross for a number of reasons, including in relation to its accessibility in terms of road, rail and walking, its proximity to the coast and its good broadband speeds in relation to their business interests, and its village location and range of community facilities. They are longstanding residents of the district with extensive social and professional networks and local and regional business interests. They also own no other land, bought the site on the basis of flood defences being put in place in Starcross, and the development would provide them with a self-build dwelling for their young family.
8. Be that as it may, the appellants' personal circumstances do not indicate that narrowing the search area for sequentially preferable sites to only their chosen location of Starcross would be justified in this instance. While there may not be any available plots in the immediate vicinity of the site, those identified are not a significant distance away and are within the district.
9. TLP Policy EN4 sets out that the regeneration or other sustainability benefits of a proposal will be taken into account in the sequential test where such aspects can only be met on a site within Flood Zones 2 or 3. The appellants have put forward a number of considerations in relation to this.
10. The energy efficient and predominantly wooden-framed dwelling would include a wildflower roof and solar photovoltaic panels. The development would not harm the nearby Grade II Listed Buildings on The Strand and, as identified in the Council's Officer Report, the proposed low stone wall would enhance their setting. It has also been put to me that the development would be on under-used, previously developed land, that it would benefit the local economy and community by increasing spend in local shops and through new people joining local groups, that Starcross is a thriving community with a range of businesses and homes and that its various services and facilities are within walking distance of the site. Furthermore, the appeal site is in close proximity to Starcross station and a cycle route, and the other sites identified as available in the appellants' sequential test are further away from a train station.
11. However, it seems to me that the other available sites with a lower risk of flooding would not be significantly less accessible than the appeal site. Although the reinstatement of the boundary wall to the rear of Marine Cottage could only happen in this location, I have little substantive evidence that it is dependent on the appeal proposal and could not happen under other circumstances. The environmental, economic and community benefits would be limited given the scale of the development, such benefits and aspects would also not be unachievable elsewhere, and the development is not needed to sustain the existing community.
12. Accordingly, it seems to me that there are at least 17 plots that could, from the evidence before me, be considered reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The Framework is clear that development should not be permitted in this case.
13. In coming to this view, I have taken account of the appellants' position that it would be illogical to prevent all development within Flood Zones 2 and 3 of Starcross, and that doing so would be contrary to other local policies which,

amongst other aspects, establish that development within settlement limits are generally acceptable and that villages such as Starcross are appropriate locations for limited development. I recognise that the Framework, amongst other aspects, also refers to: the need to cater for people wishing to commission or build their own homes; and identifies the importance of a sufficient amount and variety of land coming forward for housing where it is needed and that windfall sites should be supported, with great weight given to the benefits of suitable sites within existing settlements. However, neither these aspects nor the Council's general support for self-build homes lead me to a different conclusion in relation to the sequential test nor justify development that would be contrary to the development plan.

14. I recognise that nearby flood defences may have recently been improved, may be improved further in the future, that much of Starcross is a risk of flooding and that the development would not increase flooding elsewhere. Attempts have been made to make the dwelling safe from flooding, including by locating habitable accommodation and electrical switch gear on the first floor, above the design flood level. Further flood design measures and drainage arrangements could also be incorporated and secured by condition.
15. However, as there are other sequentially available sites, it is not necessary to proceed to consideration of the exception test and the various aspects set out in clauses a-g of TLP Policy EN4 and the Framework. In any event, for the above reasons and taking into account the classification of the proposed use as more vulnerable to flooding, the development would not provide wider sustainability or regeneration benefits to the community that would outweigh the associated flood risk, as required in clause (a) of Policy EN4. Furthermore, while the Environment Agency did not object to the development, I note that they and the Council raised concerns about the safety of occupiers of the dwelling due to the lack of a safe access and egress route during a flood event.
16. My attention has been drawn to various recent planning permissions for other developments, including various dwellings, in the vicinity of the site. It is suggested that these prove that limited development within the flood zones of Starcross is acceptable. However, as I do not have full details of those developments, I am unable to draw a direct comparison between them and this appeal proposal. Consequently, I give those examples limited weight, and it is necessary to determine this appeal on its merits in any event.
17. For the above reasons, I conclude that the proposed development would not be suitably located in relation to flood risk, with particular regard to the sequential test. I therefore find that it does not comply with TLP Policy EN4. The proposal would also be inconsistent with the provisions of the Framework in relation to planning and flood risk.

Other matters

18. I note the appellants' references to their pre-application discussions with the Council and Environment Agency, the amendments they have made following the previously refused scheme, and their frustration that the Council refused this development on the basis of the sequential test despite not citing it as a refusal reason for the previous scheme. However, these issues are not determinative as to the acceptability of the appeal proposal. I have therefore considered it on its merits, based on the evidence before me.

19. The proximity of the appeal site to European designated nature conservation sites of Dawlish Warren/Exe Estuary means that the development would be likely, in combination with other plans and projects, to have a significant effect on the internationally important interest features of these areas. Mitigation measures are therefore required to make the development acceptable and avoid an adverse effect on the integrity of the designated sites. I note that a legal agreement has been submitted in relation to this. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it could not lead me to a different decision.
20. A number of neighbours have raised other concerns with the proposed development, including in relation to its effect on the living conditions of surrounding occupiers. However, given my conclusions on the main issue and that the appeal is dismissed, there is no need for me to address these in further detail.

Conclusion

21. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR