
Appeal Decision

Site visit made on 27 January 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/C1435/W/19/3240856

164 Coast Road, Pevensey Bay, East Sussex BN24 6NR

- 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 Mrs Kirsty Parker against the decision of Wealden District Council.
 - The application Ref WD/2019/1368/F, dated 21 June 2019, was refused by notice dated 10 September 2019.
 - The development proposed is erection of new build dwellinghouse (C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The decision notice makes reference to emerging policies from the submission Wealden Local Plan 2019. Since the application was determined the Council has received the Inspector's findings on Stage 1 of the examination of this plan. The Inspector has advised that the plan cannot be taken forward to adoption because it has failed one of the requirements for legal compliance, that of the duty to co-operate.
3. Following the examining Inspector's comments, the Council has withdrawn the second refusal reason relating to the impacts on the Ashdown Forest Special Area of Conservation. I have determined the appeal on the basis that this matter is no longer in dispute.

Main Issues

4. The main issues are:
 - a) the effect of the proposed development on the living conditions of the occupiers of 162 Coast Road, with particular regard to outlook; and
 - b) whether the proposal would comply with national and local planning policy on development and flood risk.

Reasons

Living conditions

5. The site comprises a vacant plot of land between 162 and 166 Coast Road, set amongst a long run of detached dwellinghouses within deep, narrow plots. I observed a varied mix of single-storey homes and chalet bungalows, which are constructed behind a generally consistent building line parallel to the shore.

6. The proposed dwelling would be noticeably taller than the adjacent bungalow at No 162 but it would be comparable in height to No 166. Such relationships are not uncommon elsewhere in the row. However, the new building would extend forward of a bay window on the south-east elevation of No 162. This semi-circular structure, which has some similarities to a garden room, provides a panorama of the coast taking in parts of the appeal site in the foreground.
7. It is an established principle that there is no right to a view over adjoining land. However, the views from the bay window in this case contribute to a pleasant outlook and good living conditions within the property. The proposed dwelling, due to its height and projection beyond the rear building line of No 162, would be oppressive for this neighbour. The staggering of the rear wall to create an open area beneath a roof canopy would not reduce the dominance of the new dwelling.
8. The appellant argues that the impacts should be considered in the context of the use of No 162 as a holiday home visited for short periods during the year, rather than as a primary residence. However, this may not always be the case and does not obviate the need for good standard of amenity in any event.
9. I therefore conclude that the proposal would have an unacceptable adverse impact on the living conditions of the occupiers of 162 Coast Road. It would conflict with Policy SPO13 of the Wealden Core Strategy Local Plan (2013) (WCS) and Saved Policy EN27 of the Wealden Local Plan (1998) (WLP). These policies are consistent with the National Planning Policy Framework (the Framework) in seeking to ensure a high standard of amenity for existing and future users.

Flood risk

10. Framework paragraph 155 explains that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
11. Enshrined within national policy is the sequential test which aims to steer new development to areas with the lowest probability of flooding. Paragraph 158 of the Framework makes clear that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
12. Pevensey Bay is almost entirely within Flood Zone 3 due to the risk of tidal flooding and the appellant does not own any other land in the area. It is thus argued that the sequential test is passed on the basis that there are no other reasonably available sites for the appellant to develop. The Council takes the view that this approach is overly narrow, on the basis that there is sufficient land within Flood Zone 1 for the District's housing needs to be met.
13. The Planning Practice Guidance (PPG) explains that the area to apply the sequential test will be defined by local circumstances relating to the catchment area for the type of development proposed. It gives the example of where there are large areas in Flood Zones 2 and 3 and development is needed in those areas to sustain the existing community. In that circumstance, the PPG states that sites outside those areas are unlikely to provide reasonable alternatives.

14. Those are precisely the circumstances that apply here. Pevensey Bay is defined as a 'Local Service Centre' within the WLP where the principle of some additional housebuilding within the development boundary is acceptable. Whilst I note the suggestion that suitable land exists elsewhere, outside of the zones of highest flood risk, housing development in these locations would not help to sustain the existing community and businesses of Pevensey Bay. The Council has not provided any evidence to show that such alternatives are reasonably available.
15. I acknowledge that there is no development boundary for Pevensey Bay within the submission Wealden Local Plan 2019. However, for the reasons set out above this plan is unlikely to proceed to adoption. Even if the examination were to continue, I have no means of knowing whether the settlement strategy would be found sound, or whether the new local plan would deliver a 5 year supply of deliverable housing sites. Emerging policy therefore carries very limited weight.
16. Framework paragraph 159 states that if it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance.
17. Dwellinghouses are classed within the PPG as 'More vulnerable' and therefore the exception test is required. For the test to be passed it must be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. Both elements of the test should be satisfied for development to be permitted.
18. It is contended on behalf of the appellant that the first strand of the exception test is passed as the scheme would bring forward a number of key benefits. Amongst other things, it would help to meet the demand for housing and self-build plots in particular, make use of derelict land with an environmentally conscious development and bring economic benefits to the construction industry and thereafter to existing businesses in Pevensey Bay through additional consumer spending. The appellant has also supplied a statement which outlines their personal contribution to their current community and sets out the social benefits their household would bring to Pevensey Bay.
19. The Council was only able to demonstrate 3.67 years supply of deliverable housing land at 1st April 2019. Set in the context of such an acute housing shortage, the delivery of any new homes must be treated as a significant benefit, particularly where they accord with the settlement strategy of an adopted development plan. Having regard to this, and the benefits listed above, I consider the first part of the exception test to be satisfied.
20. Although within Flood Zone 3, the site is located on an elevated shingle bank which runs the length of the beach. According to the Environment Agency (EA), the Pevensey Bay sea defences provide a standard of protection of a 1 in 400 year (0.25% Annual Exceedance Probability) flood event. These defences have guaranteed funding until 2025, but the EA has not objected to the proposal and has given no indication that protection will not continue beyond that date.

21. The EA takes the view that the proposal would meet the Framework's requirements in relation to flood risk, provided that a condition is attached to any permission to secure the finished floor levels set out in the site-specific flood risk assessment. This would be 600mm above the design flood level, thus ensuring that the development is safe for its lifetime without increasing flood risk elsewhere. Mitigation for any residual risk could be addressed within the detailed design and a condition could be used to require future occupiers to sign up to the EA's flood warnings service. This would provide forewarning of potential flooding arising from waves overtopping the shingle beach defences associated with tidal levels.
22. Accordingly, I conclude that the proposal meets both the sequential and exception tests and is therefore compliant with national planning policy on development and flood risk. There would be no conflict with WCS Policies SPO10 and WCS14 or Saved WLP Policy EN1 in relation to flood risk.

Conclusion

23. The proposal would comply with national and local policy in respect of development and flood risk. This does not provide a clear reason for refusing permission. The absence of a 5 year supply of deliverable housing sites engages paragraph 11(d) of the Framework. This stipulates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
24. The appeal scheme would cause material harm to the living conditions of the residents of 162 Coast Road, contrary to the development plan and national policy. The impact on the neighbouring occupiers would be permanent and would be of sufficient magnitude to significantly and demonstrably outweigh the benefits, notwithstanding the Council's housing land supply position.
25. For the above reasons, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR