

Appeal Decision

Site visit made on 16 March 2020

by S M Holden BSc MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/P1560/W/19/3242577

Land adjacent to 21 Waterside, Brightlingsea CO7 0AY

- 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 Tracey Baldwin of Bull & Baldwin Developments Ltd against the decision of Tendring District Council.
 - The application Ref 19/00873/FUL, dated 12 June 2019, was refused by notice dated 11 October 2019.
 - The development proposed is to develop a currently vacant site, to erect two houses as semi-detached units, with parking.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the site is suitable for residential development having regard to the risk of flooding.

Reasons

3. The appeal site is a small parcel of undeveloped, vacant land on the northern side of Waterside. It was previously occupied by a sail making business and used for storage purposes. It lies within the settlement boundary of Brightlingsea where there is no objection in principle to a residential development.
4. The site is a short distance from the harbour at the mouth of the River Colne. It therefore lies within Flood Zone 3a which the Planning Practice Guidance (PPG) defines as having a high probability of flooding. The National Planning Policy Framework (the Framework) sets strict tests to protect people and property from flooding. Where these tests are not met, national policy is clear that new development should not be allowed.
5. Paragraph 155 of the Framework states that development should be directed away from areas at highest risk. This is achieved by first applying the Sequential Test, the aim of which is to steer development to areas with the lowest risk of flooding. Paragraph 158 states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The aim of the Sequential Test is to ensure that only where there are no such sites in Flood Zones 1 or 2 should the suitability of sites in Flood zone 3 be considered. Only if a proposal passes the Sequential Test is it necessary to consider the second stage of the assessment, the Exception Test.

6. A Flood Risk Assessment (FRA) was submitted with the application which referred to the need for a Sequential Test to be passed. The PPG advises that the application of the test will be defined by local circumstances relating to the catchment area for the type of development proposed.
7. The proposal is for a pair of semi-detached dwellings. However, the Council has identified a list of 6 sites within Brightlingsea which have secured planning permission for small scale residential developments. All are considered sequentially preferential to the appeal site as they are further from the harbour and therefore likely to be at a lower risk of flooding. In addition, the Tendring Strategic Housing Land Availability Assessment (SHLAA) identified a number of sites around Brightlingsea where residential development could take place that would not be in areas of high flood risk.
8. Reference has been made by both parties to application 17/00628/FUL which approved a change of use of 4 retail units to residential use. However, I have not been provided with details of that proposal or any assessment of the likely flood risk associated with it. Nevertheless, the change of use of an existing building is likely to be assessed differently to a proposal for a new building. I therefore have no reason to make a direct comparison to the appeal proposal when applying the Sequential Test.
9. Taking all these factors into account, I find there are other sites that are available for residential development within Brightlingsea which have a lower risk of flooding. For this reason, the proposal fails the Sequential Test.
10. I am aware that this will be a disappointment to the appellant who has gone to some lengths to demonstrate that the proposal has been designed to meet the Exception Test. The floor levels within the scheme would be 5.63AOD which is above the 1 in 200 annual probability flood level; floor resilience measures and a Flood Evacuation Plan have also been proposed. However, these would only be relevant to my assessment if the Sequential Test had been passed.
11. I therefore conclude that the proposal is unacceptable due to its location within an area of high flood risk. It therefore fails to comply with saved Policy QL3 of the Tendring District Local Plan (2007) which seeks to avoid inappropriate development in areas at risk of flooding. The proposal also conflicts with the Framework's requirement to direct development away from areas at highest risk of flooding. In addition, it would be contrary to emerging Policy PPL1 of the Tendring District Local Plan 2013-2033 and Beyond which requires proposals to have regard to the tests set out in the Framework to reduce the risk of exposure to flooding.

Other considerations

12. The appeal site lies within the Brightlingsea Conservation Area (BCA). I therefore have a duty to consider the effect of the proposal on the character or appearance of that Area. The site currently creates an unsightly gap in the street scene. Consequently, its redevelopment would enhance the BCA. The site also abuts the Waterside Urban Regeneration Area, so its redevelopment could support for the revitalisation of that area. However, these positive aspects of the scheme cannot be used to determine the catchment area for the Sequential Test and could only be taken into consideration if applying the Exception Test which, for the reasons set out above, is not the case here.

13. I am aware that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. However, Footnote 6 of Paragraph 11 of the Framework makes it clear that where a proposal is in an area at risk of flooding or coastal change that provides a clear reason for refusing the scheme, there is no need to apply the test set out in Paragraph 11(d)(ii).

Conclusion

14. The proposal would conflict with the adopted and emerging policies of the development plan in relation to flood risk. It would also be contrary to Government advice set out in the Framework and PPG to protect people and property from the risk of flooding. There are no other considerations, including the provision of additional homes and the enhancement of the street scene, that outweigh that conflict.
15. For this reason, the appeal is dismissed.

Sheila Holden

INSPECTOR