
Appeal Decision

Site visit made on 10 March 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2020

Appeal Ref: APP/N1920/W/19/3241714
7 Chiltern Avenue, Bushey WD23 4PY

- 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 Graham Williams against the decision of Hertsmere Borough Council.
 - The application Ref 19/0879/FUL, dated 4 June 2019, was refused by notice dated 1 November 2019.
 - The development proposed is the construction of a detached 2 storey, 3-bed dwelling to include access from Chiltern Close.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have taken the site address and description of development from that given in the appeal form. In the case of the former, it was missing from the original planning application form, and in the case of the latter, that given on the appeal form is more succinct.

Main Issues

3. The main issues are whether the site is an appropriate location for additional housing with regard to flood risk, and the effect of the proposal on the living conditions of the occupants of 15 Coldharbour Lane, with particular regards to privacy and outlook.

Reasons

Flood Risk

4. The appeal site is adjacent to the culverted King George Drain that lies under Chiltern Close. The Flood Risk Assessment¹ confirms that the site falls within Flood Zone 3 of the Environment Agency flood map. Therefore, it is categorised as at a high risk of flooding. Policies SP1 and CS16 of the Hertsmere Local Plan, Development Plan Document, Core Strategy, January 2013 (CS) and policies SADM13 and SADM14 of the Hertsmere Local Plan, Site Allocations and Development Management Policies Plan, November 2016 (LP), amongst other matters, seek to direct development to areas at lower risk of flooding by avoiding development in the floodplain and river corridors unless the sequential and exception tests set out in the National Planning Policy Framework (the

¹ Section 3, Flood Risk Assessment prepared by Hydro-Logic Services 22.5.19

Framework) have been passed. It follows that a sequential test should be applied to residential development within Flood Zone 3.

5. This accords with advice in the Framework and Planning Practice Guidance (PPG) whereby the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Furthermore, paragraph 158 of the Framework stipulates 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.
6. The Council considers that the search area for the sequential test should be Borough wide. Hertsmere Borough has four principal settlements comprising Borehamwood, Bushey, Potters Bar and Radlett as well as smaller settlements where modest residential development might be supported in principle. The evidence does not show that these locations do not contain land within Flood Zone 1, the lowest risk of flooding. There is little evidence before me to explain why a Borough wide catchment area would not be a reasonable search area to cater for the modest nature of the development proposed. This is reinforced by the approach in the Hertfordshire and North London Flood Risk Sequential and Exception Test, Environment Agency Guide for Local Planning Authorities.
7. There is no definition within the Framework of what constitutes a 'reasonably available site' within paragraph 158. However, national guidance² via the PPG is provided for applicants who may need to undertake a sequential test. Given that this is specific to the application of the sequential test and is directly relevant to the circumstances of the proposal before me, it carries considerable weight. As such, the definitions in the Framework relating to the terms 'deliverable' and 'developable' highlighted by the appellant, are of limited relevance by comparison and therefore, carry limited weight in relation to the application of paragraph 158. Additionally, the supporting text of the LP³ refers to the PPG as providing important flood risk advice to developers and the Council when determining planning applications, and specifically mentions the sequential test.
8. The national guidance suggests several steps should be followed when identifying potential alternative sites as part of the sequential test. These include sites with planning permission, as well as windfall sites and states that: *'You can look for windfall sites yourself and you should also check if your local planning authority has information about possible windfall sites (eg urban capacity studies).'*
9. The PPG advocates that a pragmatic approach on the availability of alternative sites should be taken but does not set specific criteria to establish whether an alternative site is reasonably available⁴. I have some concerns regarding the submitted sequential test⁵ when considered in light of the above national guidance. Firstly, a significant list of sites for sale are included as revealed by an on-line search. However, there is only limited information given in relation to the sites, which does not accord with the national guidance for the preparation of a sequential test. For example, the flood zone of each site is not

² www.gov.uk/guidance/flood-risk-assessment-the-sequential-test-for-applicants

³ Paragraph 4.26

⁴ Paragraph 033 Reference ID 7-033-20140306

⁵ Dated 18 September 2019

specified, neither is there an estimate of capacity or indication of the likely constraints.

10. Furthermore, the appellant has applied a set of criteria⁶ to discount sites and on the information provided, there is little basis in local or national policy to support some of the qualification criteria used. It includes discounting sites that already have planning permission. This contradicts the advice in the national guidance in establishing potential alternative sites. It is not fully explained why the pool of potential sites should be so restricted, especially as planning permission is often sought as a pre-cursor to the sale of land, which is borne out by a considerable number of sites listed in the sequential test as being sold with planning permissions for residential development.
11. Additionally, another criterion used in the sequential test seeks a plot area of at least 282.85sqm. Taking a pragmatic approach would require some flexibility as to how a single house might be accommodated at alternative sites. As such, even if the sites listed did not have a plot of 282.85sqm, there is nothing before me to show that a single three-bedroom dwelling could not be reasonably accommodated at any of the sites in an alternative arrangement. Therefore, based on the evidence presented, I cannot rule out the possibility that some of the sites could constitute an alternative location for a single, 3-bed dwelling either individually or as part of a larger scheme.
12. Although the appellant discounts some suggested potential alternative sites⁷ mentioned by the Council he does not appear to have considered potential windfall sites, unless they are being marketed. Moreover, a range of site constraints are not uncommon in infill residential schemes. On this basis, I am not assured that the constraints highlighted by the appellant could not be appropriately addressed or surmounted with suitably designed proposals.
13. I acknowledge that the appellant has personal preferences and budget limitations regarding land ownership, the nature of the construction project and development costs. Nevertheless, this is true of any development project and these factors are of limited weight when considering the broad ranging objective in the Framework of steering new development to areas of lower risk. Therefore, overall, based on the evidence submitted I am not assured that a robust sequential test has been undertaken to show that there are no reasonably available sites for a single dwelling, in areas at a lower risk of flooding.
14. A Flood Risk Assessment prepared by Hydro-Logic Services (FRA) has been provided to show that with mitigation measures the development would be safe and would not increase flood risk elsewhere. Neither the Environment Agency nor the Council object to the substance of the FRA. However, establishing the flood safety of the development is only requisite once the sequential test is passed. The findings of the FRA do not dispense with that requirement.
15. Reference is made to the comments of a case officer on a previous withdrawn planning application⁸ having accepted that the sequential test for a similar development had been passed. Be that as it may, I am required to form my judgement on the merits of the proposal before me, based on the entirety of

⁶ Page 5 Sequential test 18.9.19

⁷ Adjacent to 3a Coldharbour Lane, 24 Wayside Avenue, 1 Sparrows Way

⁸ Reference 16/1552/FUL

the evidence provided. The comments of the previous case officer did not relate to a formal decision of the Council and appear to have been made some years ago. As such, they carry little weight.

16. The appellant asserts that there have been a substantial number of properties that have been developed within the broader flood zone stretching across Bushey. However, residential development allocations made as part of an adopted development plan would normally follow a sequential risk-based approach regarding the location of development in order to comply with the Framework. Specific examples have not been put forward which inhibits a comparison with the scheme before me. Therefore, this factor attracts limited weight and would not fully justify the location of the appeal proposal.
17. Accordingly, on the basis of the evidence before me I am not satisfied that the sequential test has been passed, and therefore, the proposal would conflict with policies SP1 and CS16 of the CS, policies SADM13 and SADM14 of the LP as well as the Framework and PPG, which include objectives to direct new development, in the first instance, to areas at the lowest risk of flooding.

Living conditions

18. Due to the limited depth of the appeal site, the rear elevation of the proposed dwelling would be located close to the north-west boundary which adjoins the rear boundary of 15 Coldharbour Lane. Notwithstanding that the proposal incorporates some of the roof space for upper floor accommodation, the structure would be of sufficient height to provide two storeys with a significant proportion above the approximately 1.8 metre high boundary fence. This would introduce a roof slope and ridge into an area where, other than minor domestic outbuildings, there is presently an absence of built form.
19. At my site visit I observed the presence of an existing high evergreen hedgerow within the rear garden of No.15 which presently provides a screen between No.15 and the appeal site. However, given that the hedgerow is not within the appeal site, the height, or even the existence of the hedgerow is not something that can be guaranteed by the appellant in the long term. Furthermore, the proximity of the proposal to the boundary is likely to require some reduction of the hedgerow. As such I have given its presence and present height limited weight.
20. The rear elevation would broadly align with the footprint of No.15 and the combination of the height of the proposal with its proximity to the boundary, would have a significant and unduly enclosing effect upon the residents of No.15 when looking out from their rear facing windows and using their rear garden. This would be unacceptably harmful to their outlook and therefore, detrimental to their living conditions. On this basis it would fall short of providing a high standard of amenity for the residents of No.15 which would be contrary to the advice in paragraph 127 f) of the Framework.
21. There is approximately 18 metres separation distance between the respective rear elevations of the proposed dwelling and No.15⁹. I accept that this together with the existence of the boundary fence, high level windows and the use of rooflights in the rear facing elevation would prevent direct overlooking from the proposed dwelling into the garden and house of No.15. Nevertheless, this

⁹ Proposed Block plan on drawing no.003 Revision 05

would not address, nor outweigh my concerns regarding the harm to the outlook for the neighbouring residents.

22. The Council refers to Part D of the Hertsmere Planning and Design Guide Supplementary Planning Guide, 2013 (SPD) within its refusal reason on the decision notice which suggests a minimum 20 metre separation between the respective rear elevations would be necessary to protect privacy. However, the Hertsmere Draft Planning and Design Guide Supplementary Planning Document, 2016 has also been brought to my attention, whereby the Council have indicated that, notwithstanding that the draft document has not yet been adopted, in the interim they will use the 2016 version in their decision making. Although 20m separation is still suggested, the latter version is less prescriptive and acknowledges that lesser or greater separation distances may be more appropriate in some cases. As indicated above, the separation distance was not the only relevant factor in this case. On this basis, a reasonable level of privacy would be safeguarded which is the underlying standard referred to in both versions of the SPD.
23. At my site visit I also observed the proposal from the adjacent property at 2A Chiltern Close. Whilst the development would be visible from some upper floor windows, the built form would be sufficiently distant so as to maintain a reasonable degree of privacy and outlook for the occupants.
24. Accordingly, although I consider that levels of privacy would be adequate, I find that the development would be unacceptably harmful to the outlook of the occupants of 15 Coldharbour Lane. This would be contrary to policy SADM30 of the LP, which in setting out design principles, requires development, amongst other things, to have only a limited impact upon the amenity of neighbours in terms of outlook.

Other Matters

25. The appeal proposal would provide an additional family house in an accessible location which would make more efficient use of the land. It would also provide the appellant the opportunity to construct his own house which in turn would release his present rented accommodation for others to use. Nevertheless, given the modest scale of the development such benefits would be limited in nature and therefore, would not outweigh the harm identified.
26. The appellant considers that the proposal is acceptable in terms of its general appearance, internal room and garden space, parking provision, refuse storage provision and landscaping. Be that as it may, the absence of harm in those regards do not weigh in favour of the proposal as they would be required in any event, to meet other local and national policies. As such, these factors do not lead me to a different conclusion.

Conclusion

27. For the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector