
Appeal Decision

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

Appeal Ref: APP/U1105/W/19/3243651

Flat 1, 6 Alston Terrace, Exmouth, Devon EX8 1BH

- 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 C Olisa against the decision of East Devon District Council.
 - The application Ref 19/1267/FUL, dated 7 June 2019, was refused by notice dated 4 September 2019.
 - The development proposed is the subdivision of Flat 1 into Flats 1a and 1b.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have used the date of the planning application given on the appeal form and decision notice, as the date on the planning application form states 29 May 2018, which does not appear to correspond with the date of the submission according to the majority of the evidence. The information presented indicates that the subdivision into two flats has already occurred¹ and I have determined the appeal on this basis.
3. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both parties agreed to the appeal proceeding on this basis.

Main Issue

4. The main issue is whether the site is an appropriate location for additional housing with regard to flood risk.

Reasons

Flood Risk

5. There is no dispute between the parties that the appeal falls within Flood Zone 2 according to the records of the Environment Agency. On that basis, it is categorised as at a medium probability of flooding². Policy EN21 of the East Devon Local Plan 2013-2031, January 2016 (LP) seeks to direct development

¹ Section 3, Planning Application Form & 'Site, Basement and Ground Floor Plan As Existing' drawing reference 19-0805 S1

² Planning Practice Guidance, Paragraph 065 Reference ID: 7-065-20140306

to areas of the district within Flood Zone 1 wherever possible, as it is at a low risk of flooding. It is only if there is no reasonably available site in Flood Zone 1 that locating the development in Flood Zone 2 and then Flood Zone 3 will be considered. As such a sequential approach is advocated regarding the location of most development.

6. This accords with policy in the National Planning Policy Framework (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.
7. It is not shown that the subdivision of existing dwellings is one of the limited exceptions to the application of the sequential test in either policy EN21 of the LP or paragraph 164 of the Framework. Moreover, paragraph ID:7-046-20140306 of the PPG expressly clarifies that the exception made for householder development excludes any proposed development that would create a separate dwelling within the curtilage of the existing dwelling eg subdivision of houses into flats. Accordingly, notwithstanding the limited physical alterations involved, both local and national policy require a sequential approach to apply in this case. Furthermore, even though the subdivision has already taken place, this does not dispense with the requirement to apply the sequential test as set out in local and national policy.
8. The Council considers that the search area for the sequential test for an additional dwelling should be District wide which includes land at a lower risk of flooding. There is nothing before me to suggest that the appellant has undertaken such a search. Furthermore, the retrospective nature of the proposal suggests otherwise, which is reinforced by the appellant's indication that he is not seeking to look wider than converting the property he already owns³. Be that as it may, this falls significantly short of demonstrating the requisite sequential approach. 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.
9. In support of the proposal the appellant asserts that Flat 1 had four bedrooms and that the proposal for two flats, each with one bedroom would have fewer occupants overall, thereby reducing the harm should the property flood. However, the evidence does not show that the number of bedrooms within a dwelling is determinative as to the number of future occupants, albeit that I acknowledge that there is likely to be a correlation. Furthermore, the number of occupants in a given dwelling is not a matter that could be reasonably controlled by planning condition.
10. In addition, the subdivision of dwellings increases the density of development, whereby land tends to be occupied more intensively or efficiently. This is reinforced by the approach in the PPG which makes it clear that the subdivision of dwellings is explicitly covered by the sequential test. Moreover, it is clear from the PPG, that the approach to flood risk set out in the Framework is not

³ Paragraph 2, Appellant's Statement

just applicable to people, but also to the property itself⁴. Sub-division is likely to increase the number of kitchens, bathrooms and overall household contents that might be affected. In this case, two households will be disrupted and displaced in the event of a flood and given that they are located on the ground floor and basement, this represents the greatest risk within the building. These factors in combination indicate that subdivision does increase the extent of harm should flooding occur.

11. My attention is drawn to money that is being spent on flood defence works. Nevertheless, the limited information provided does not specify the nature of the works, nor whether they will ameliorate the risk of flooding at the appeal site. It is not shown that as a result, the Flood Zone rating is likely to change to the lowest risk in the immediate future and therefore, this is of limited weight.
12. Reference is made to other residential development proceeding in the area⁵. Based on the limited information provided in relation to the three examples given, one is yet to be determined, and the Flood Zone information for all of the sites is absent. Therefore, it is not clear whether the sequential test applied to any or all of the examples, nor in the event that it was, what information was supplied in that regard. Accordingly, I am unable to make a meaningful comparison with the proposal before me and as such, these examples carry little weight. In any event, I have determined the application on its own merits.
13. 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 policy EN21 of the LP as well as the Framework and PPG, which seek to direct new development, in the first instance, to areas at the lowest risk of flooding.

Other Matters

14. The appeal proposal would provide an additional small dwelling in an accessible location which would make more efficient use of the land. Nevertheless, given the modest scale of the development such benefits would be limited in nature and therefore, would not outweigh the harm identified.
15. I note that the proposal was supported by a local councillor and received no objections from other residents. Nevertheless, I am required to make my own assessment and these factors do not lead me to a different conclusion.
16. The appellant raises concerns regarding the level of communication with the Council. However, this is a matter outside of the scope of my determination on the merits of the proposal.
17. The appellant has provided an undertaking under section 111 of the Local Government Act 1972 setting out that a financial contribution of £201.61 towards habitat mitigation for the Pebblebed Heaths and Exe Estuary Special Protection Area has been paid to the Council. However, notwithstanding the limited information in relation to this matter, concerns regarding the accuracy of the date on the agreement and the absence of an annexed plan referred to

⁴ PPG Paragraph 001 Reference ID 7-001-20140306 – 'What is the general planning approach to development and flood risk?'

⁵ Planning references 19/1143/COU 45 Morton Road; 17/2860/FUL 42 Morton Road and 19/1753/MFUL Sams Funhouse, St Andrews Road - Document 11, Appellant's Statement

in the undertaking itself, as I am dismissing for other reasons it is not necessary for me to consider this matter further.

Conclusion

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

Helen O'Connor

Inspector