



Appeal Decision

Site visit made on 18 February 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/X1545/W/19/3241477

Land between Quoin and The Palms, Moorhen Avenue, St. Lawrence, Southminster CM0 7LT

- 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 C Goodwin against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/00273, dated 23 February 2019, was refused by notice dated 3 June 2019.
 - The development proposed is a new build single family dwellinghouse.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue are:
 - whether or not the appeal site would be a suitable location for a dwelling, with particular regard to flood risk; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Flood Risk

3. This proposal seeks to construct a new, two storey, self-build dwelling at a site located within Flood Zone 3a. There are existing flood defences in the surrounding area which could be maintained or improved by certain projects in the future. However, the Planning Practice Guidance (PPG) indicates that this proposal would be on land which has a high probability of flooding. The development is also classified as being 'more vulnerable' to flooding by the PPG.
4. Amongst other things, Policy D5 of the Maldon District Approved Local Development Plan (LDP) states that, to minimise the risk of flooding, all development must be located in areas where its use is compatible with national planning policy. Schemes must also demonstrate that a Sequential Test and, where necessary, an Exception Test have been satisfactorily undertaken in accordance with national planning policy.
5. Paragraph 155 of the National Planning Policy Framework (the Framework) advises that inappropriate development in areas at risk of flooding should be

avoided by directing development away from areas at highest risk. This is substantiated in Paragraph 158, which outlines the need for development to pass a Sequential Test to steer new development to areas with the lowest risk of flooding. The Sequential Test must be passed before the Exception Test can be applied. In addition, the PPG states that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.

6. The appellant has carried out a Sequential Test for this scheme. However, this was only performed within the Mayland Ward, which covers a relatively small part of the District. To my mind, the extent of this test should not be constrained by land ownership or by the self-build nature of the proposal and, for housing, should cover the entirety of the District. In the absence of a larger search area, I therefore cannot be certain that there are no other reasonably available sites for this proposal within Flood Zones 1 or 2 within the District. Neither do I have any substantive evidence to show that there are no other suitable alternative locations within the Council's planned supply of housing sites. Consequently, I am not satisfied that an appropriate Sequential Test has been carried out.
7. I note that the proposal would incorporate elements to mitigate the impact of a flood event, such as raised finished floor levels. A condition could also be imposed to ensure that surface water is suitably disposed from the site. Furthermore, I acknowledge the scheme's wider sustainability benefits. Nonetheless, these factors do not address the fundamental problem that the proposal would undermine the Framework's and the PPG's objective of avoiding development in higher flood risk locations in the first instance.
8. The appellant's Flood Smart Appeal report draws my attention to several developments granted in the surrounding area. However, these appear to concern the replacement of existing dwellings and schemes within Flood Zone 1. They are therefore not directly comparable to the appeal proposal, which I have assessed on its own individual planning merits in any event.
9. For the reasons given, I am not content that the appeal site would be a suitable location for a dwelling in terms of flood risk. The proposal would therefore conflict with Policy D5 of the LDP which seeks to direct growth towards lower flood risk areas. It would also be contrary to the advice of the Framework and the PPG which have similar objectives.

Character and Appearance

10. Moorhen Avenue is characterised by a mix of detached bungalows, chalet bungalows and two storey properties. These are constructed in a variety of architectural styles. The appeal site is located towards the middle of this street and is a predominately open, rectangular, plot of land. It is positioned in-between a two storey dwelling (The Palms) to the north east and a single storey property (Quoin) to the south west. I also note that a replacement two storey dwelling has been recently granted at appeal at Yo-Ho, which is adjacent to The Palms.
11. The proposed dwelling would be similar in height, depth and width compared to The Palms and the replacement dwelling approved at Yo-Ho. The Council has raised no objection to its scale and I see no reason to conclude otherwise on this matter. In terms of its design, I acknowledge that the proposal would

include features that differ from nearby properties, such as an exaggerated roof pitch to one side and a side facing dormer window. However, in my view its overall design, including its varying eaves levels and front projecting gable feature, would not appear substantially out of character within this varied streetscene. Neither would the proposal appear visually intrusive given its set back positioning.

12. For these reasons, I conclude that the proposal would not harm the character and appearance of the area. It would therefore accord with Policy D1 of the LDP insofar as it seeks to ensure that development is appropriate in terms of height, size, scale and design and is responsive to local character. It would also accord with the design objectives of the Framework insofar as they seek to ensure that developments are sympathetic to local character.

Other Consideration – European Designated Sites

13. It would appear that the appeal site is within a Zone of Influence for one or more European designated sites. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. In this instance, the Council has raised no objection to the scheme's impact in this regard and has not requested any mitigation.
14. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. As the competent authority, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties to seek further information in order to undertake an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Other Matter

15. I acknowledge that the Government is generally supportive of self-build developments. However, it would not be possible to bind this requirement to successors in title (should the proposed dwelling be sold in the future) through the imposition of an appropriately worded condition. I am therefore not persuaded that there is a suitable mechanism before me to ensure that the proposal would indeed be carried out as a self-build project. This therefore carries limited weight in my assessment.

Planning Balance

16. The appellant appears to dispute the Council's ability to demonstrate a five year supply of deliverable housing land (5YHLS). Nevertheless, the proposal for a single dwelling would make only a minimal contribution to the Council's housing stock. Similarly, the economic benefits of the proposal would also be minimal and would primarily relate to short-term employment during the construction period. In this context, I give limited weight to these social and economic benefits. The inclusion of features to reduce carbon emissions, such as photovoltaic panels, would also result in a limited environmental benefit.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

17. I have found that the proposal would not harm the character and appearance of the area. However, this is a requirement of the development plan and is therefore a neutral factor in the overall balance.
18. On the other hand, I am not satisfied that an appropriate Sequential Test has been carried out. I therefore cannot be certain that there are no other alternative locations for this proposed development that are at a lower risk of flooding than the appeal site. The scheme would therefore undermine local and national planning policy objectives in terms of steering development to lower flood risk areas. This carries significant weight against the proposal.
19. Taking the above factors into consideration, the adverse effects would outweigh the benefits associated with the provision of one dwelling. Having regard to paragraph 11(d)(i) of the Framework, there is also a clear reason to dismiss the appeal, even if the Council was unable to demonstrate a 5YHLS. The proposal conflicts with the development plan and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

Conclusion

20. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

M Heron

INSPECTOR