
Appeal Decision

Site visit made on 1 September 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 10 September 2020

Appeal Ref: APP/U1430/W/20/3253454
149 Pottingfield Road, Rye TN31 7BW

- 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 S Gozna and Mr Peters against the decision of Rother District Council.
 - The application Ref RR/2019/2578/P, dated 13 November 2019, was refused by notice dated 9 April 2020.
 - The development proposed is demolition of existing attached garage to be replaced with a self-contained end of terrace 2 bed family dwelling house and alteration to host dwelling to change it to a 3 bed mid terraced house.
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Decision

1. I dismiss the appeal.

Main Issue

2. This is the effect of the proposal on the aims of policies which seek to reduce the risk of harm through flooding.

Reasons

3. The proposal includes conversion of the existing 2-bedroom house to a 3-bedroom house, by sub-dividing the front bedroom and altering the window arrangements. The Council state that this does not require permission and that work can proceed whether or not the proposed new dwelling is built.
4. Turning to the proposed new dwelling, the site is within Flood Zone 3 and Policy EN7 of the Rother Local Plan Core Strategy concerns flood risk and development, aiming to avoid inappropriate development in areas of current and future risk from flooding, with criteria under which development will be permitted. The Rye Neighbourhood Plan was 'made' in July 2019 and is part of the Development Plan for the appeal site area. Policy F1 is entitled 'reducing flood risk' and states that the sequential test and exception text will be applied and sets out the requirements of flood risk assessments. National policy is contained in chapter 14 of the National Planning Policy Framework, and paragraphs 150, 160 and 161 have been referred to by the Council.
5. Flood Zone 3 is defined in the Planning Practice Guidance as having a high risk of river or sea flooding, and a dwelling is classified as 'more vulnerable'. (Paragraphs: 065 Reference ID: 70965-20140306 and 066 Reference ID: 7-066-20140306). Table 3 on 'compatibility' lists Flood Zone 3a as requiring the exception test, and Flood Zone 3b as not permitting residential development.

6. The new dwelling would be located on land currently occupied by a garage attached to number 149. The Council take no issue with the effect on the character and appearance of the area or neighbour amenity, and the proposal would appear as an acceptable continuation of the existing terrace.
7. There is a Flood Risk Assessment as required, which records the floor level at the threshold of the existing house at 2.62mAOD and whilst the site benefits from flood defences, the Environment Agency consider it at risk from fluvial flooding in a 1 in 100 year event with an allowance for climate change. The design flood level at the site is stated at 3.16mAOD and the ground floor of the new dwelling should be 0.3m above that level, or should be for non-habitable uses only, with living and sleeping accommodation on the first floor.
8. Whilst the flood risk assessment states that the drawings show all habitable accommodation on the first floor, this is not correct in that the layout shows a lounge/garden room on the ground floor, with 2 bedrooms, a kitchen and a bathroom of the first floor. This somewhat unusual arrangement does not show any family living room on the first floor and the kitchen would allow only a limited dining area. The Environment Agency reference to habitable rooms is not just bedrooms, and the layout does not meet the requirement.
9. Whilst there may be good reason why the appellant wishes to develop this site, and does not have access personally to another site outside Flood Zone 3, that is not to say that no such site exists for a single house; clearly other sites would exist and the proposal therefore fails the sequential test.
10. On the exception test, there is an allowance in the Neighbourhood Plan for 22 windfall dwellings and the provision of a single dwelling would assist the District Council in its housing land supply, which is currently less than the required 5-years. However, the layout of the rooms previously referred to would not pass the second part of the test.
11. The Council's housing land supply position leads to the 'tilted balance' in paragraph 11d of the Framework being engaged. This states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 lists policies concerning areas at risk of flooding, and for the reasons set out above, policies in the Framework on flood risk do provide a clear reason for not allowing this proposal.
12. The appellant has given numerous examples of permission being granted in similar locations, and also cites the fact that all other properties in Pottingfield Road have living accommodation on the ground floor. However, the permissions are stated to have been for extensions or replacement dwellings, and the other nearby houses already exist. The harm identified here is through the development of an additional dwelling and hence an additional risk through flooding, with an additional possible call on emergency services should a flood event occur, and it is those risks that local and national policies seek to avoid. It is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR