



Appeal Decision

Site visit made on 22 September 2020

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14th October 2020

Appeal Ref: APP/E2001/W/20/3247527

Land north of 335 Main Road, Bilton, HU11 4DS

- 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 Steve Marshall against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/03140/PLF, dated 11 September 2019, was refused by notice dated 28 November 2019.
 - The development proposed is the construction of a detached dormer bungalow.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The Council has confirmed that its reason for refusal mistakenly made reference to Policy A5 of the *East Riding Local Plan 2012-2029* (April 2016) (LP), the correct reference being LP Policy A1. This is a matter upon which the appellant has had an opportunity to comment and I have taken account of the submissions made by both parties.
3. There appears to be some uncertainty as to whether the appellant and Council agreed the change in the description of development from that shown on the planning application form to that used in the Council's Decision Notice. Under the circumstances, I have used the original description in the summary information above. Nonetheless, the application plans show that the proposed development would include a new dwelling with associated access and parking, and I have taken this into account.

Main Issue

4. I consider that the main issue in this case is the effect of the proposal with respect to flood risk.

Reasons

5. No. 335 is a dormer bungalow, which fronts onto the northern side of Main Road. The appeal site comprises the rear section of the back garden of No. 335 together with a strip of garden that runs along the eastern side of the house, between Main Road and the back garden of the property. The proposal involves the construction of a detached dormer bungalow and parking area in the rear section of the site, which would be accessed from Main Road.

6. The national *Planning Practice Guidance* (PPG) confirms that strict tests are to be applied to protect people and property from flooding and where those tests are not met, national policy is clear that new development should not be allowed. The required approach includes applying the Sequential Test for specific development proposals and, if needed, the Exception Test. The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding, Flood Zone 1. This test seeks to ensure that only where there are no reasonably available sites in Flood Zones 1 and 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.
7. The appellant's *Flood Risk-The Sequential and Exception Test* (FRS) indicates that the area within which the site is located benefits from established flood defences to some extent. However, the Council's *Strategic Flood Risk Assessment* identifies that the long-term structural integrity of defences can never be fully guaranteed and homes within defended areas will always face a residual risk of possible failure. The Flood Zones, 1-3, shown on the Environment Agency's Flood Map refer to the probability of river and sea flooding, ignoring the presence of defences. With reference to that Flood Map, the FRS confirms that the appeal site, No. 335 and neighbouring properties are located within Flood Zone 3a. This is the basis upon which the Sequential Test is applied.
8. The PPG indicates that when applying the Sequential Test, a pragmatic approach should be taken when assessing the availability of alternatives. It indicates, for example, in considering planning applications for extensions to an existing business it might be impractical to suggest that there are more suitable alternative locations for development elsewhere. To my mind, the proposed development, which would involve a single detached dwelling, does not have specific locational requirements in that sense. The PPG states that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. The Council's *Flood Risk Note for the Planning Application Process, 2017* (FRN) recommends that housing market sub-areas should be used as the starting point for considering the area of search for housing proposals. Given the nature of the proposed development, I regard that as a pragmatic approach. The site lies within the Holderness and Southern Coastal Market Area as defined by the FRN.
9. Furthermore, the FRN indicates that alternative sites should not be dismissed simply on the basis that they are larger than the proposed site or that they already have planning permission, in relation to which development has yet to commence. In my judgement, the stance set out in the FRN is appropriate in the circumstances of the current case, as it does not automatically follow that such sites could not accommodate the proposed single dwelling. However, a contrary approach has been taken to site assessment by the FRS and it rules out a number of sites in the Holderness and Southern Coastal Market Area on that basis, some of which are in Flood Zone 1. Against that background, it appears to me that a number of the sites identified by the FRS, which do not fall within Flood Zone 3a, cannot be ruled out as reasonably available alternatives to the appeal site. I consider therefore, that the Sequential Test has not been met. The appellant acknowledges that under the terms set out in the FRN, the Sequential Test has not been met.

10. I note the view of the appellant that, as required by the Exception Test, it would be possible to put measures in place to make the development safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. However, I give those matters little weight, as the Exception Test is not applicable in circumstances where the Sequential Test has been failed. I also give little weight to the absence of an objection to the scheme from the Environment Agency (EA), as the application of the Sequential and Exception Tests are matters for the Local Planning Authority, not the EA.
11. I conclude that the appeal scheme would have an unacceptable effect on flood risk and it would conflict with the aims of LP Policies ENV6 and A1 as well as the Framework, which seek between them to proactively manage flood risk and to direct development towards areas at lowest risk of flooding. Although LP Policy A5 contains similar requirements with respect to flood risk management to LP Policy A1, the site is not within the area to which it refers and so I consider that LP Policy A5 is of little relevance in this case.

Other matters

12. The appellant does not dispute that the Council is able to demonstrate a five-year supply of deliverable housing sites. Whilst I understand that the level of supply is only marginally greater, I have not been provided with any compelling evidence to show that it would be likely to fall below the five year supply level in the foreseeable future and so I give little weight to the appellant's contention that it may.
13. The appellant has indicated that under permitted development rights, he could construct an ancillary outbuilding in his rear garden with a larger footprint than that of the proposed dwelling and could also hard surface his rear garden without providing any surface water runoff. He considers that this potentially amounts to a fallback position. I acknowledge that, in comparison with the appeal scheme, the suggested works would have the potential to have a greater impact as regards flood risk, not least as a building with a larger footprint would be likely to displace more flood water. However, there is no evidence before me to show that there is greater than a theoretical possibility that the suggested development might take place in the event of the appeal being dismissed. Therefore, I give it little weight as a fallback position.
14. The first-floor rear window of the proposal would face towards the rear gardens and elevations of a number of properties along Ravenspur Road. However, I consider that the separation distances would be sufficient to limit the potential for overlooking of those neighbouring properties from the proposed dwelling to an acceptable level. To my mind, the scheme would not cause material harm to the privacy enjoyed by the residents of those properties.
15. I share the view of the Council that the proposed development would not harm the character of the area or highway safety. The scheme would make more efficient use of land in housing density terms and would contribute to the supply of housing in an established residential area and at a location from which jobs, shops and services are likely to be reasonably accessible by modes of transport other than the car. Furthermore, it would be likely to benefit the local economy, including through construction related jobs and spending as well as household expenditure supporting local shops and services. However, the level of benefit associated with a single dwelling would be limited

and would be likely to be associated to some extent with reasonably available alternative sites elsewhere. Whilst with reference to the above factors, the scheme would gain some support from the Development Plan, in light of my conclusion on the main issue, I consider on balance that the scheme would conflict with the Development Plan taken as a whole and it would not amount to sustainable development under the terms of the Framework.

Conclusion

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

I Jenkins

INSPECTOR