



Appeal Decision

Site visit made on 15 October 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2020

Appeal Ref: APP/Z3635/W/19/3242759

Land and buildings at the back of 32, 34 and 36 Commercial Road, Staines, Middlesex TW18 2QL

Grid Ref Easting: 504211, Grid Ref Northing: 170608

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr and Mrs VH and JM Gamester against the decision of Spelthorne Borough Council.
 - The application Ref 19/00679/PIP, dated 3 May 2019, was refused by notice dated 14 June 2019.
 - The development proposed is demolish existing derelict garages and replace with residential dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As explained in the Planning Practice Guidance (the 'PPG'), the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for the proposed development from the technical detail. The scope of the first stage, that is to establish whether a site is suitable in principle for development, is limited to location, land use and amount of development.
3. In respect of residential development, an applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, permission in principle has been sought for the erection of a minimum of one and a maximum of four dwellings at the appeal site. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the above referenced Order and the PPG.
4. It has been brought to my attention that updated flood maps for the Spelthorne area have been published by the Environment Agency (the 'EA'). The updated maps were published after the determination of the original planning application and show that the appeal site is located in Flood Zone 2. It was previously located in both Flood Zone 2 and Flood Zone 3. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.

5. The appellant has submitted a site-specific flood risk assessment ('FRA') as part of the appeal. As the document does not evolve the scheme, and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I determine the appeal in accordance with this document. For the avoidance of doubt, I have therefore taken account of this document in the determination of the appeal.

Main Issue

6. The main issue is whether the appeal site is suitable for housing having regard to local and national policies relating to development in areas at risk of flooding.

Reasons

7. The appeal site is situated within Flood Zone 2, which is defined by the PPG as having a medium probability of flooding.
8. Paragraph 155 of the National Planning Policy Framework (the 'Framework') states that "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere".
9. Paragraph 158 of the Framework states that "The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment ('SFRA') will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding".
10. Criterion (e) of Policy LO1 of the Spelthorne Core Strategy and Policies Development Plan Document (Adopted February 2009) (the 'CS') states that the Council will not permit residential development or change of use or other 'more vulnerable' uses within Flood Zone 3a or 'highly vulnerable uses' within Flood Zone 2. Moreover, the policy requires development at risk of flooding to be designed to be flood resilient/resistant and to be supported by an appropriate FRA.
11. Section 4) a) iii) of the Council's Flooding Supplementary Planning Document (Adopted July 2012) (the 'SPD') explains the Council's application of the sequential approach and states at paragraph 4.9 that "Studies of Land availability for housing and employment have shown that in Spelthorne land in both Zones 1 and 2 will be needed to meet housing needs over the next 15 years and therefore sites in either zone will be acceptable".
12. In this instance, the proposed development is a 'more vulnerable' use¹, which is an appropriate use within Flood Zone 2, as set out by Criterion (e) of Policy LO1 of the CS.

¹ See Table 2: Flood risk vulnerability classification (PPG Paragraph: 066 Reference ID: 7-066-20140306)

13. The supporting text to Policy LO1 explains that the Council's SFRA was prepared in 2006 and the flood risk areas were modelled using EA data available at that time. It then explains that updated data was published by the EA in December 2007 and February 2008, respectively, which formed the basis for the Flood Zones shown on the Council's Proposals Map. The supporting text goes on to state that the Council will use the 2007/2008 data or any subsequent more up to date flooding data in applying Policy LO1 of the CS.
14. Whilst I recognise that the Council's application of Policy LO1 of the CS will be based on the latest flood risk data from the EA, the Council's SFRA, which forms a part of the evidence base for Policy LO1 of the CS, is based on flood risk data that is now out-of-date. Given the latest changes to the EA's flood maps for Spelthorne, it is unclear whether land in both Zones 1 and 2 will now be needed to meet the Borough's future housing needs, or whether such development could be solely accommodated within Zone 1. Consequently, the Council's application of the sequential approach in Spelthorne, as set out by Criterion (e) of Policy LO1 of the CS and the SPD is out of date.
15. Therefore, having regard to paragraph 213 of the Framework, the flood risk policies, as set out within Chapter 14 of the Framework, should be afforded greater weight than Policy LO1 of the CS for the purposes of determining this appeal because Criterion (e) of Policy LO1 of the CS is out of date.
16. Nevertheless, the policy criteria which require development at risk of flooding to be designed to be flood resilient/resistant and to be supported by an appropriate FRA are consistent with the Framework.
17. The appeal proposal is not supported by a site-specific sequential test. Therefore, I am unable to conclude that there are no other reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.
18. The appellant argues that a sequential test could be undertaken at the technical details stage. However, as this matter goes to the heart of the acceptability of the proposed development (i.e. whether the proposed land use would be acceptable at this location) it would not be suitable for the sequential assessment to be undertaken at the technical details stage.
19. In any event, even if I were to afford significant weight to Criterion (e) of Policy LO1 of the CS and conclude that the proposal passed the sequential test, whilst the appellant's FRA explains what flood resilient/resistant construction methods could be incorporated to make the development safe for its lifetime, it fails to demonstrate that flood risk will not increase elsewhere as a consequence of the proposed development.
20. In the absence of an up-to-date sequential test and substantive evidence to demonstrate that the proposed development would not increase flood risk elsewhere, I am unable to conclude that the proposed residential land use is suitable in this location. Accordingly, the proposal conflicts with paragraph 155 of the Framework.
21. Moreover, I cannot conclude that the proposal would accord with Criterion (h) of Policy LO1 of the CS, which requires development to be supported by an appropriate FRA.

Other Matters

22. The Council's appeal statement raises concerns about the effect of the proposal on the character and appearance of the area. However, this did not form a reason for refusal on the Council's decision notice. Given my decision to dismiss this appeal, it is not necessary to consider this matter any further.
23. The Council and the County Highway Authority (the 'CHA') contend that the width of the existing vehicular access is substandard to serve a residential development of up to four dwellings at the appeal site. Nevertheless, given the existing use of the site as a garage block, the CHA state that the site could safely accommodate a maximum of one dwelling. However, no substantive evidence has been submitted by either of the main parties regarding the extent of the existing vehicle movements to and from the appeal site. Given that I have been unable to conclude that the proposed development is acceptable in flood risk terms, it is not necessary for me to determine the acceptability or otherwise of the vehicular access.

Planning Balance

24. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.
25. It is not disputed that the Council cannot demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11(d)(i) of the Framework states that the presumption in favour of sustainable development should be engaged unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
26. Footnote 6 of the Framework provides a complete and exhaustive list of those Framework policies to which paragraph 11(d)(i) refers, which includes policies relating to development located within areas at risk of flooding or coastal change.
27. Given my findings in relation to flooding and the conflict that I have identified with paragraph 155 of the Framework, which provides a clear reason for refusing planning permission, the presumption in favour of sustainable development does not apply.

Conclusion

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

Christopher Miell

INSPECTOR