



Appeal Decision

Site visit made on 27 August 2020

by S D Castle BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2020

Appeal Ref: APP/P1560/W/20/3249701

109 Aylesbury Drive, Holland-on-Sea CO15 5RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Sorrell against the decision of Tendring District Council.
 - The application Ref 19/01199/OUT, dated 09 August 2019, was refused by notice dated 13 January 2020.
 - The development proposed is one detached bungalow.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought with all matters reserved. I have determined the appeal on this basis.
3. The development plan for Tendring consists of the Saved Policies of the adopted Tendring Local Plan 2007 (LP). The Tendring District Local Plan 2013-2033 and Beyond Publication Draft (DLP) is an emerging policy document, currently with Section 1 requiring modification before Section 2, which contains district-specific development management policies, can be examined. The policies of the DLP therefore have limited weight at this time.

Main Issue

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

Reasons

5. The Environment Agency (EA) advises that the site is located within Flood Zone 3a (FZ3a), an area defined as having a high probability of flooding. LP Policy QL3 requires the sequential test to be applied within FZ3a to demonstrate that there are no reasonably available sites in a lower flood risk area. LP Policy QL3 broadly accords with the National Planning Policy Framework (the Framework) requirement that development should not be permitted if a sequential test demonstrates that there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. DLP Policy PPL1 states that all development proposals will be considered against the Framework's sequential test, to direct development toward sites at the lowest risk of flooding, unless they involve land specifically allocated for development on the Policies Map or Local Maps.

6. The Council advises that the site is within the settlement development boundary for Clacton-on-Sea as defined by the LP and the DLP. Whilst LP Policy QL1 and DLP Policy SPL2 support development within settlement boundaries to encourage sustainable patterns of growth, detailed consideration against other relevant policies, including those related to flood risk, remain applicable. As such, it follows that a sequential test should be applied to this proposed residential development on a windfall site within FZ3a.
7. National guidance¹ advises that sites with planning permission, as well as windfall sites should be considered as potentially alternative sites. The Council advises that the search area for the sequential test should be limited to land within the Clacton-on-Sea settlement development boundary. Within this search area, the Council advises that there are a number of extant planning permissions for similar housing developments as the proposal. The Council's evidence includes the addresses of 6 sites, the associated planning reference numbers and the number of dwellings proposed at each site.
8. The appellant's submissions do not comment on whether the permissions cited by the Council should be counted as valid alternative sites for the purposes of the sequential test. Instead, the appellant asserts that whilst there are clearly many locations of lower flood risk where the development could be located, there are not enough of these available to enable the Council to meet its required housing supply. As such, the appellant asserts that the sequential test has been passed. In this regard, I have been provided with no substantive evidence to indicate that the Council's housing needs are not capable of being accommodated on land lying within low risk flood areas. The appellant has not provided an assessment of alternative sites within a specific geographic area. The Council has provided some, albeit limited, evidence of available sites within the Clacton-on-Sea settlement development boundary. I am not persuaded, therefore, that there are no reasonably available sites for a single dwelling in areas at a lower risk of flooding. The sequential test has not been passed.
9. I acknowledge that the site is shown on EA flood maps as within an area benefitting from existing flood defences. I also recognise that the appellant's Flood Risk Assessment (FRA) has sought to demonstrate acceptable levels of risk would be achieved if the flood defences are maintained and mitigation measures, including increased floor levels and a flood evacuation plan, are implemented. Notwithstanding these considerations, establishing the flood safety of the development is only requisite once the sequential test is passed. The findings of the FRA do not dispense with that requirement and, consequently, the flood risk exceptions test does not apply in this instance.
10. Therefore, the proposal would be contrary to LP Policy QL3 in so far as it requires the sequential test to be applied within FZ3a to demonstrate that there are no reasonably available sites in a lower flood risk area. It would also fail to accord with the Framework requirement that development should be steered to areas with the lowest risk of flooding and should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. For similar reasons the proposal would be contrary to DLP Policy PPL1.

¹ www.gov.uk/guidance/flood-risk-assessment-the-sequential-test-for-applicants

Planning Balance

11. Paragraph 11(d)(i) of the Framework indicates that planning permission should be granted, where the development plan is absent, silent or relevant policies are out-of-date, unless application of policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development proposed. Footnote 6 of Paragraph 11(d)(i) identifies areas at risk of flooding as being of particular importance. The identified conflict with the Framework, including paragraphs 155 and 158, with regards to flood risk provide clear reasons for refusing the development. As such, the tilted balance is not applicable in this instance.
12. It is common ground that the Council cannot demonstrate a 5 year supply of deliverable housing sites. I acknowledge that the proposal would contribute towards housing supply in a location with good access to services and facilities by sustainable transport modes. Being for one property, however, it would only make a very limited contribution to housing supply and this significantly limits the weight I attach to this benefit.
13. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations (including the Framework) indicate otherwise. As such, I give significant weight to the identified conflict with the development plan with regards to minimising and managing flood risk. To allow housing on the appeal site would be to disregard the policies of the development plan, the emerging local plan and the Framework in so far as they all seek to steer development to areas with the lowest risk of flooding.
14. Overall, there are no material considerations, either individually or in combination, of sufficient weight to outweigh the identified conflict with the development plan, nor do they indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

15. For the reasons given above, the appeal is dismissed.

S D Castle

INSPECTOR