



Appeal Decision

Site Visit made on 27 April 2021

by Stewart Glassar BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal Ref: APP/L2250/W/20/3254593

5 Marine Avenue, Dymchurch, TN29 0TR

- 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 Chris Stace (Mont Calm Asset Management Ltd) against the decision of Folkestone and Hythe District Council.
 - The application Ref Y19/1072/FH, dated 17 September 2019, was refused by notice dated 27 May 2020.
 - The development proposed is for an extension to existing property to provide first-floor sleeping accommodation and an additional dwelling unit.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Between the determination of the planning application and the appeal coming before me, the Council adopted the Places and Policies Local Plan in September 2020. The policies of that document relevant to this appeal are HB1, HB3 and HB8, referred to in the evidence of both parties as emerging policies. The Council has confirmed that the saved policies of the 2006 Local Plan have been superseded. The appellant has had an opportunity to make any comments in this regard. I have therefore taken the adopted Local Plan policies into consideration when reaching my conclusions.

Main Issues

3. The main issues are a) whether the proposed development would provide satisfactory living conditions for future occupiers of the southern plot with regard to garden size; b) the effect of the proposal on the living conditions of occupiers of neighbouring properties with particular regard to whether the proposal would result in overlooking and be overbearing; and c) whether or not there would be any flood risks associated with the proposed development.

Reasons

Living Conditions of Future Occupiers

4. The Council operates a measurable standard in relation to private garden areas. Neither of the proposed plots would meet the standard with regard to overall length, and so a judgement has to be made in relation to the size and functionality of the gardens. Whilst the northern plot offers a large side garden to compensate for the short rear garden area, the same cannot be said for the southern plot.

5. The area to the front of the southern dwelling would include a car parking space, a sheltered bin store and a small grassed area enclosed by a 900mm high wall. It would therefore offer some usable garden area, but it would not be particularly private. There would be a strip of land along the side of the dwelling, which is shown as hardstanding and whose main function would appear to be to provide access between the front and rear gardens. The proposed rear garden is nominally shown on the drawings as being partly hardstanding and partly lawned, with the lawned area being no larger than the lawned area to the front of the proposed dwelling. Whilst it would be more private than the front garden, the rear garden as a whole would be small and its limited depth would make it somewhat restrictive for what is potentially four-person, family accommodation. Taking these factors into account, I conclude that in this instance the garden area would fall short of what is reasonably required for the size of property and the needs of the future occupiers it would be likely to serve.
6. I acknowledge the information supplied by the appellant in relation to garden sizes. However, each case must be determined on its own merits and the submitted research findings are not sufficient reason to justify permitting a development which would, based on its individual circumstances, provide an inadequate level of private garden area.
7. The appellant suggests the garden provided for the southern house would be equivalent to the size required by Policy HB3. However, that would appear to be the total garden, including the side and front areas and so not directly comparable to the garden area sought by the Local Plan. The front garden would not be private and the area to the side would, it seems to me, function mainly as an access route to the rear garden. Although Policy HB3 of the Local Plan does not specifically refer to garden areas for dwellings as being 'usable' or define usability, the requirements specified in the policy carry an implicit assumption that the size of the garden would be usable relative to the dwelling being proposed. As I have concluded, the proposed dwelling would potentially be available for family accommodation but the size and configuration of the garden would be insufficient for the range of uses that a family may reasonably require.
8. The proximity to the beach has been identified as a mitigating factor for the size of the garden. However, the beach is a public area and that environment would not be a direct substitute for a suitably sized private garden area.
9. It has been suggested that if the scheme were reconfigured to have the building located centrally within the plot this would overcome the concerns regarding garden sizes. However, such a change may raise other issues to which the Council and interested parties have not had an opportunity to comment. Such a change would therefore be beyond the scope of this appeal and my considerations.
10. Accordingly, I find that this would cause harm to the living conditions of future occupiers of the southern plot with regard to garden size. As such, the proposed development would be contrary to Policy HB3 of the Local Plan¹, which amongst other things, seeks to ensure that an amount of private garden area is provided which is commensurate with the size of dwelling. Similarly, the

¹ Places and Policies Local Plan (2020)

proposed development would be contrary to the Framework², specifically at paragraph 127, which seeks amongst other things, to ensure new developments provide a high standard of amenity for future occupiers.

Living Conditions of Neighbours

11. The proposed building would have two dormers in the rear roof, one for each dwelling's master bedroom. The limited depth of the site places the dormers in relatively close proximity to the rear elevation of No.2 Willop Way.
12. Given the position of the proposed dormers, there is unlikely to be any direct window-to-window overlooking with the two rooflights in the neighbour's rear roof slope. The neighbouring property is positioned such that it has little rear garden and given the boundary fence and angle of view from the dormers, direct views into this neighbour's rear elevation or garden would be limited. As such, the proposal would not result in unacceptable levels of overlooking.
13. Similarly, the angle of sight from the roof lights and the position of the boundary fencing would be likely to block most views of the appeal proposal from the neighbour's rear garden or patio doors. Although the neighbour might see the proposed building, it would not have a harmful, overbearing effect on the living conditions of the neighbours.
14. I am therefore satisfied that in this particular configuration, the proposal would not result in overlooking nor be overbearing and so would not harm the living conditions of neighbours. Accordingly, it would not be contrary to Policies HB1 and HB8 of the Local Plan which, amongst other things, seek to ensure that new developments do not harm the living conditions of existing neighbours.

Flood Risk

15. The Council state that the site is in flood risk zones 2 and 3. The appellant's flood risk assessment includes an extract from the Environment Agency Flood Zone Map, which indicates that the appeal site is within flood risk zone 3. Given this information, I am satisfied that the site is in flood zone 3 and therefore, in accordance with paragraph 157 of the Framework a sequential test and if necessary, an exceptions test are required. The development, by virtue of proposing an additional dwelling, is not exempt from these tests.
16. The sequential test is required to steer development to areas with the lowest probability of flooding. Paragraph 158 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with lower risk of flooding.
17. The Council identified five extant developments in the Romney Marsh character area (3 replacement dwellings, an extension to form a flat and an agricultural to residential prior approval). None were assessed by the Council as being reasonably similar to the appeal proposal, and on that basis, the Council concluded that the sequential test was passed.
18. However, the Council also note that the District has a housing land supply figure in excess of 7 years. It is therefore not clear to me on what basis the Council has looked at just five extant developments in the Romney Marsh character area rather than taking a wider approach as to the availability of

² National Planning policy Framework (2019)

alternative sites in relation to the sequential test. Given the housing land supply figures, there may well be sites available that could be developed for housing and which have a lower risk of flooding than the appeal site but this issue does not appear to have been fully explored. On this basis I must conclude that there is insufficient evidence before me to demonstrate that there are no alternatives to the appeal site which have a lower risk of flooding.

19. I therefore find that it has not been demonstrated that the appeal proposal would not represent a flood risk. Accordingly, it would be contrary to Policy SS3 of the Core Strategy³ which requires development to meet the sequential test and ensure there is a minimum risk to flooding. It would also fail to accord with the Framework's aim at paragraph 158 of ensuring development is directed away from areas of highest flood risk.
20. As it has not been demonstrated that the proposal passes the sequential test, I make no judgement regarding the details submitted in relation to the exceptions test or the need for the additional dwelling in order to fund the flood risk improvements to the existing dwelling. The appellant refers to other sites which have received planning permission for residential development within flood risk zones but I do not have the details of those schemes before me and therefore cannot be sure that they represent a direct parallel particularly with regard to location. In any case, I have determined the appeal on its own merits.

Other Matters

21. The appellant points to the absence of objections from neighbours. I also acknowledge the appellant's frustration with the Council regarding the discussion of possible amendments, pre-application advice and communication. However, these matters in themselves do not mean that the current scheme is acceptable and does not in any event absolve me from making an assessment as to its effects in regard to the main issues of the case.
22. The appeal proposal would involve the addition of one new dwelling. However, the Council is able to demonstrate a 5-year housing supply. Therefore, I could attach only a modest amount of weight to the provision of an additional dwelling. There would be other benefits associated with the provision of a new dwelling but these would be affected by the scale of the proposal and some would be time limited. The weight I could therefore attach to these matters is limited and would, in any event, not outweigh the harm and conflict with the development plan that I have found and to which I ascribe substantial weight.

Conclusion

23. Whilst I have not found harm in relation to the living conditions of neighbouring occupants, I have found harm in relation to the provision of garden space for future occupants of the southern dwelling. I have also not been provided with sufficient information to confirm that the site would pass the sequential test in relation to flood risk and that there are no better sites available for a new residential development.
24. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the National Planning Policy Framework, which outweigh this finding.

³ Shepway Core Strategy Local Plan (2013)

25. For these reasons, I conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR