



Appeal Decision

Site visit made on 11 May 2021

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 AUGUST 2021

Appeal Ref: APP/L2250/W/20/3245294

Land adjacent 13 Herons Way, Hythe CT21 6QS

- 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 N Tolson against the decision of Folkestone and Hythe District Council.
 - The application Ref Y19/1176/FH, dated 16 October 2019, was refused by notice dated 10 December 2019.
 - The development proposed is the erection of no. 3 dwellings with associated parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of no. 3 dwellings with associated parking and landscaping at Land adjacent 13 Herons Way, Hythe CT21 6QS in accordance with the terms of the application, Ref Y19/1176/FH, dated 16 October 2019, subject to the conditions in the attached schedule.

Preliminary Matter

2. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021. The main parties were given the opportunity to comment on the Framework insofar as the revisions to the Framework relate to this appeal.

Main Issue

3. The main issue is whether the proposal passes the flood risk sequential assessment and exception tests taking into account the fact that the site falls within flood zone 3.

Reasons

4. Paragraph 159 of the Framework states amongst other things that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph 162 of the Framework confirms that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
5. The appellant has submitted a site specific flood risk assessment (FRA). As the appeal site falls within Flood Zone 3, as annotated on the Environmental

Agency flood risk map, the FRA also includes a sequential assessment of sites within the Folkestone and Hythe Urban Character Area and Hythe that might be reasonably available to accommodate the proposed development including areas with a lower risk of flooding. There is no dispute between the parties that the sequential assessment search area is appropriate, and I have no reason to disagree.

6. A total of five comparator sites of a similar size to the appeal site were found. Four of those sites were discounted from the sequential assessment because they were contrary to the development plan, unavailable or undeliverable. One comparator site was identified for the sequential test assessment, which is of a similar size and scope of the application site and was considered to be available due to its 'call for sites' submission. The comparator site is within the same level of flood risk as the appeal site, and both the appeal site and comparator site are located within an 'extreme' hazard rating area as defined on the SFRA 2115 Map. Accordingly, I find that there are no reasonably available sites appropriate for the proposed development in an area with a lower risk of flooding. Therefore, the Sequential Test is passed.
7. The proposed dwellings would be in the 'more vulnerable' category of Table 3 of the flood risk and coastal change chapter of the NPPG. Therefore, and as I have concluded that it is not possible for the development to be located in zones with a lower risk of flooding, it is necessary to apply the exception test as outlined in paragraph 164 of the Framework. For the exception test to be passed, it should be demonstrated that a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime taking into account the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
8. In respect of part b) of the exception test, works are being carried out in respect of the Hythe Ranges sea defence scheme, which is a major coastal flood defence between Hythe and Dymchurch. The flood defence improvements comprise strengthening of the existing embankment with extensive shingle recharge and the construction of a rock revetment which will reduce the risk of a breach occurring and provide the requisite 1 in 200 year level of protection. Once the flood defence improvement works have been completed, the site will be adequately protected against a 1 in 200 year tidal flood scenario and flood protection will be improved to better protect against a flood event with a 0.5% chance of occurring in any given year. Subject to these works being completed the Environment Agency has expressed a view that the development would be safe for its lifetime. It would be possible to include a condition restricting occupation of the dwellings until such time as the works have been completed and notification of such provided by the Environment Agency. Subject to these measures I find that the proposal would be safe for its lifetime.
9. The development would include a Sustainable Urban Drainage System, runoff from the roofs and hardstanding would be accommodated on-site within permeable paving and runoff rates would be restricted to less than 5l/s by using orifice plate. There is sufficient space available within the proposed scheme to provide a sustainable option for discharging surface water runoff from the site, and therefore not leading to an increase in flood risk elsewhere.

10. A number of measures would be put in place so that in the event of an extreme flood event occurring the extent of any flood damage would be minimised, and the buildings suitably flood resilient. These measures would include ensuring that the ground floor of the development would be for less vulnerable uses only such as parking, storage and WC's. All living and sleeping accommodation would be located on the upper floors of the development. The upper floor of the development would be located above the predicated level under a breach scenario to provide safe refuge for occupants in the unlikely event of the residual risk scenario. The threshold of each property would be set a minimum of 150mm above ground level to limit the ingress of water as a precautionary measure in the unlikely event of a failure of the local drainage system. The buildings themselves would be flood resilient with concrete floors and block/brick external and internal wall construction. All incoming services (meters etc) would be placed at first floor level with separate switched services to all sockets/outlets below this level to enable any part of the service system below this extreme flood level to be isolated in the event of an impending flood.
11. The appeal site is located within an area that receives flood warnings. Whilst the occurrence of a breach in the defences is unpredictable, the risk of an extreme coastal event is associated with tidal conditions, which can often be predicted 12 hours in advance. Therefore, occupants of the new dwellings would be encouraged to sign up to the EA's flooding warning service.
12. In respect of part a) of the exception test, the appellant submitted a Sustainability Appraisal (SA) which identifies those effects of the development which would be significant. It differentiates between significant effects and other minor effects, includes a mixed effect for a objective where there is potential for both positive and negative effects. The SA identified that there would be one significant positive effect, ten minor positive effects, one minor negative effect, one mixed effect and nine negligible effects of the proposed development. I note that mitigation measures would be included to reduce the effect from being significantly negative to minor negative. Accordingly, on balance, I find that there would be more wider sustainability benefits that would outweigh the flood risk and accordingly the exception test is passed.
13. For the above reasons, I conclude that sequential assessment and exception tests have been passed and that subject to the implementation of flood risk mitigation measures in the FRA, the development would be safe for its lifetime. Therefore, the proposal would accord with the flood risk requirements of policy SS3 of the Shepway Core Strategy Local Plan which requires development to be safe and meets with the sequential approach within the applicable character area, and the exception test set out in the Framework.

Other Matters

14. The buildings would reflect the style of the wider area which is formed of several rows of terraced houses, similar in scale and form. Whilst the detailing would vary slightly from the uniformed terraces within Herons Way, I am satisfied that the proportions and characteristics would sit comfortably within the street scene and wider area.
15. The development would sit alongside No 13 Herons Way, respecting the front and rear building lines of the existing terrace and separated by an access between them. To the rear of the site are No 5 and 6 Finch Grove. Whilst the

gardens of the properties would back onto the development, separation distances of some 20m would be retained. There are existing levels of mutual overlooking within the area due to its residential nature. As such I find that the proposal would not result in a harmful loss of privacy to surrounding occupiers, nor would it create an overbearing development.

16. Each unit would have an internal garage on the ground floor with additional parking to the front. The driveway area would connect to an existing access which would allow vehicles to enter and exit the site safely.
17. The site is formed of dense vegetation and mature trees which have the potential for wildlife habitats. I have very limited evidence that protected species have been identified on the site. The proposal would retain all existing trees other than one that is identified as already being damaged. It would be possible to secure a condition to protect trees during construction, and to secure details of biodiversity. In addition, a condition securing landscape enhancement to allow the development to settle into the site could be included.
18. I have carefully considered the issues raised by interested parties, however those representations do not individually or collectively lead me to reach a different conclusion in respect of the appeal.

Conclusion and Conditions

19. I have found that the proposal would satisfy the Sequential Test and Exception Test as set out in the Framework and would comply with the development plan when taken as a whole. Accordingly, the appeal should succeed.

Conditions

20. I have specified the plans for certainty. Conditions relating to materials and landscaping are necessary to ensure that the development reflects the character of the street and sits comfortably within the area. Conditions relating to identification and if necessary, treatment of contamination are necessary as the site is located adjacent to the railway and therefore it is necessary to ensure that measures are in place to identify and remedy any contamination to ensure that the site can be used for residential purposes. A condition securing parking is necessary to ensure that the development does not have an adverse impact on highway safety. A condition requiring cycle spaces is necessary to ensure that alternative modes of transport are encouraged. Conditions relating to lighting, biodiversity and tree protection are necessary to ensure that the appeal supports biodiversity and does not have an adverse effect on the environment. A condition securing water efficiency measure is included to ensure that the development is energy efficient. A condition requiring compliance with the Flood Risk Assessment is necessary to ensure that the development is safe for its lifetime and does not result in an increased risk of flooding elsewhere. A condition is included to restrict occupation until the Dymchurch Redoubt and Fishermans Beach section of the Hythe Ranges sea defences renovation has been completed. This is necessary to ensure that the development is safe for its lifetime.
21. For the reasons above, and having regard to all other matters raised, I conclude that the appeal is allowed.

J Ayres

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18/0597-12 Rev A; 18/0597-11 Rev A; 18/0597-10 Rev A; Topographical Survey DWG. No. 1 of 1; and site location plan.
- 3) In accordance with the requirements of policies CSD5 and SS3 of the Shepway Core Strategy Local Plan 2013 which identify Shepway as a water scarcity area and require all new dwellings to incorporate water efficiency measures, the development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.
- 4)
 1. No works and other than site surveys or investigative work shall commence until a desk top study has been undertaken and submitted to and approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.
 2. If a desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include - A survey of the extent, scale and nature of contamination - An assessment of the potential risks to - Human health - Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, - Adjoining land, - Ground waters and surface waters, - Ecological systems, - Archaeological sites and ancient monuments and - An appraisal of remedial options and identification of the preferred option(s). All work pursuant to this Condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11).
 3. If investigation and risk assessment shows that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in

writing by the Local Planning Authority prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

4. Prior to commencement of any development above slab level, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.
5. In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.
- 5) Incorporation of flood resilient construction methods in accordance with a 'Water Exclusion Strategy' as detailed in the Flood Risk Assessment of RMB Consultants (Civil Engineering) Ltd May 2019.
- 6) A plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any property hereby permitted. The boundary treatment shall be completed before the building is occupied or in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 7) Prior to the first occupation of each dwelling, secure, covered cycle parking spaces shall be provided, in full, within the site at a ratio of one space per bedroom, per dwelling.
- 8) The facilities for the parking of vehicles to meet current Kent Highways vehicle parking standards as shown on the approved drawings shall be provided in full before the development is first occupied and shall be kept available for residential parking purposes in connection with the development at all times thereafter.

- 9) Prior to first occupation of any unit or units, a lighting design plan for biodiversity will be submitted to, and approved in writing by, the local planning authority. The plan will show where external lighting will be installed, and associated lux levels, so that it can be clearly demonstrated that areas to be lit will not disturb bat activity. All external lighting will be installed in accordance with the specifications and location set out in the plan and will be maintained thereafter in accordance with the plan.
- 10) Within six months of works commencing, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the Local Planning Authority. This will include recommendations as detailed in section 4.6.2 of the Extended Phase 1 Habitat Survey Report (Corylus Ecology June 2018). The approved details will be implemented and thereafter retained.
- 11) The recommendations relating to tree protection contained within the Invicta Arboriculture Pre-development Tree Survey and Report 10 July 2018 shall be enacted in full, prior to the commencement of development and thereafter retained for the duration of the development.
- 12) The development hereby permitted shall be carried out in accordance with the mitigation measures contained within the Flood Risk Assessment (prepared by Kirsty Thomas BSc (Hons) MCIWEM, dated June 2018).
- 13) Prior to first occupation of any dwelling or dwellings hereby permitted, confirmation of the substantial completion of the Dymchurch redoubt to Fisherman's Beach portion of the Hythe Ranges sea defences renovation shall be submitted to the Local Planning Authority, in writing.

END OF SCHEDULE