



Appeal Decision

Site visit made on 2 August 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2021

Appeal Ref: APP/Z3635/W/20/3265504

Land adjacent to 119 Penton Road, Staines-upon-Thames TW18 2LL

- 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 Jonathan & Mrs Valerie Brian against the decision of Spelthorne Borough Council.
 - The application Ref 20/01092/FUL, dated 14 September 2020, was refused by notice dated 3 December 2020.
 - The development proposed is erection of 2 detached dwellings on land adjacent to 119 Penton Road, Staines.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address in the banner heading is taken from the decision notice and the appeal form as this more precisely and accurately reflects the address of the appeal site.
3. The name of the appellants on the planning appeal form differs from that stated on the planning application form. However, the appellants have confirmed that the name given on the application form was incorrect and I have proceeded on that basis as reflected in the above heading.
4. During the course of the appeal, a revised National Planning Policy Framework (the Framework) was published. The parties have had an opportunity to comment on the implications of the revised Framework in relation to this case during the appeal process. I have proceeded accordingly.
5. The Council's decision notice in its first reason for refusal omits a policy reference. However, it is apparent from the Council's officer report that the relevant policy is Policy LO1 of the Spelthorne Core Strategy and Policies Development Plan Document 2009 (CSPD). I have therefore taken this policy into account in my decision.

Main Issues

6. The main issues are:
 - whether the appeal site would be suitable for housing with particular regard to flood risk; and

- the effect of the proposed development on protected trees.

Reasons

Flooding

7. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The Framework sets out at footnote 55 to paragraph 167 that a site-specific flood risk assessment should be provided for all development within Flood Zones 2 and 3. This provides the basis for applying both the sequential test, which seeks to steer new development to areas with the lowest risk of flooding, and the exception test, as applicable.
8. Policy LO1 of the CSPD sets out the Council's approach to development and flooding. It states that residential uses within Flood Zone 3a will not be permitted where flood risks cannot be overcome. Whilst this policy pre-dates the Framework, it is broadly consistent with its approach.
9. The appeal site is partially located within Flood Zone 1 and Flood Zone 2 with a low and medium probability of flooding respectively. However, the site is located on a 'dry island' which means it is surrounded by land within either Flood Zones 3a and 3b. Flood Zone 3a is land that has a 1 in 100 or greater annual probability of river flooding, therefore a high probability. Flood Zone 3b is the functional floodplain with a 1 in 20 year probability of flooding.
10. The Council's Flooding Supplementary Planning Document 2012 (the SPD) states that dry islands should be treated the same as for the level of flood risk in the area surrounding them, regardless of their size. This is because during periods of prolonged flooding people living on dry islands may become cut off from the surrounding area by flood waters and may require the assistance of the emergency services. The proposal should therefore be assessed as an application for residential development within Flood Zone 3 as this surrounds the site.
11. The appellants dispute that the appeal site is surrounded by Flood Zone 3b. The area of dispute is along Wheatsheaf Lane and Avondale Avenue which would provide the evacuation route from the appeal site to an area wholly outside Flood Zone 3. The submitted Environment Agency flood maps¹ indicate that this location falls within Flood Zone 3a not Flood Zone 3b as asserted by the Council. It would nevertheless still be a dry island. I have therefore proceeded to determine the appeal in accordance with the guidance for dry islands as set out in the SPD.
12. The Planning Practice Guidance² (PPG) sets out that buildings used for dwelling houses are a more vulnerable use. It advises that proposals for more vulnerable uses in Flood Zone 3a are subject to assessment against the exception test, which must be undertaken following passing of the sequential test.

¹ DAS, Figure 4.9: EA Flood Map Showing Extents of 1% AEP Flood Event Only (15/06/2020)

² Paragraph: 066 Reference ID: 7-066-20140306

13. The appellants have undertaken a sequential test. This was based on an assessment of sites located with Flood Zones 1 and 2 with capacity to accommodate two additional dwellings across the whole Borough. The appellants have used the Council's Strategic Land Availability Assessment 2019 (SLAA) to identify sites for the sequential test. They identified 52 sites which have capacity for between five and ten dwellings. They concluded that none of these sites are available and suitable for the application proposed.
14. The appellants argue that they own the appeal site and any other similar sites would require significant acquisition and other associated costs which would impact the viability of the scheme. However, this is a private matter for the appellants and does not justify discounting available sites that could accommodate the proposal with a lower risk of flooding. Indeed, if I were to accept this argument, this would fundamentally undermine the sequential risk-based approach, as it would be extremely difficult, if not impossible, to identify an alternative site on this basis.
15. The SLAA would not identify small windfall sites of the scale of the appeal proposal although it recognises the contribution of these to housing supply. In relying on sites within the SLAA, the appellants have identified significantly larger sites than the appeal site which has the capacity for two dwellings. They are not therefore comparable. These sites have then been discounted on the basis that they either have permission or capacity for significantly more units. This adds weight to my concern that the site search has been incorrectly based on sites that are not of a directly comparable size to the appeal site.
16. The Council considers that suitable sites in Flood Zones 1 or 2 are likely to be available due to the small size of the development, I take a similar view. However, no information about other potential sites has been provided. In this regard, I find the appellants' assessment to be narrow.
17. For these reasons, I am not satisfied that it has been demonstrated that there are no alternative sites for the proposed development that would be at less risk from flooding. I therefore find that the sequential test is not passed. Since I have found the proposal fails the sequential test, it is unnecessary for me to go on to consider whether the exception test is met.
18. Notwithstanding my findings in respect of the sequential test, I am mindful that the Council did not refuse the scheme on this basis, but due to the absence of a dry means of safe access and egress for future occupiers and substantial evidence has been put to me in this regard. I have therefore also considered this matter to which I turn to next.
19. The SPD requires a dry means of escape for occupants. This is more restrictive than the approach set out in the PPG which advises at paragraph 39³ that access routes should allow occupants to safely access and exit their dwellings in design flood conditions which should, where possible, be located above design flood levels and avoiding flow paths. Where this is not possible, limited depths of flooding may be acceptable, provided that the proposed access is designed with appropriate signage etc to make it safe. The accepted depth for safe access will vary depending on flood velocities and the risk of debris within the floodwater.

³ Paragraph: 039 Reference ID: 7-039-20140306

20. The submitted flood evacuation plan shows an evacuation route via Wheatsheaf Lane and Avondale Avenue, passing through an area of flooding at this junction. This distance through the flood waters along this route is indicated to be around 70 metres long. The water depth is calculated to reach between 4 centimetres and just under 17 centimetres and the water to be moving at a low velocity due to its location on the fringes of the flood area. The appellants have set out this would have a very low hazard rating⁴.
21. The PPG recognises that dry access will not always be possible. However, whilst the depth and velocity of the water may only fall within a very low hazard rating, the distance through which occupants would need to traverse at the height of a flood would be significant. The flood waters would be quite likely dirty and possibly contaminated by sewage. They may contain hidden obstacles, such as holes in the road, drains or other debris carried by flood waters. Over this distance, it seems to me that this would present a hazard to more vulnerable occupants, such as the young, elderly or those with disabilities who may reside at the proposed development.
22. The evacuation route would remain dry for several days following a flood. The submitted information indicates it would still be dry after 10.5 days but at the peak of the flood, at 13.5 days, it would be flooded. I appreciate that it would take a number of days for the route to become flooded. However, there are no available controls to ensure that future occupants heed early warnings and evacuate before the route were to flood. Consequently, future occupants may end up requiring the assistance of emergency services during a major flood event, such as to help them evacuate or to provide vital supplies or assistance.
23. Furthermore, I am mindful that the hazard rating along the evacuation route would be likely to increase with climate change which adds to my concern that the proposed development would not provide safe access to and from the properties during a flood event and for the lifetime of the development.
24. This leads me to conclude that the proposed development would not be suitable for housing with particular regard to flood risk and the provision of a safe means of access or escape during flooding. It would therefore conflict with Policy LO1 of the CSPD and the Framework as referred to above.

Protected trees

25. Penton Road is characterised by street trees spaced at regular intervals along the road. These contribute to the verdant character of the street, provide a softening of the urban environment and make a positive contribution to the visual amenity of the area. To the front of the appeal site on the public footpath there are two trees, a large, mature Plane tree and a smaller Lime tree. These are protected by a Tree Preservation Order⁵ (TPO). Both trees make a significant contribution to the visual amenity and character of the surrounding area. This is not disputed by the parties.
26. Each of the proposed houses would have two parking spaces at the front. These would require the formation of a dropped kerb onto the highway. The submitted drawings indicate that this would be within the root protection area

⁴ Based on Environment Agency and the Department for Environment Food and Rural Affairs research: FD2321/TR1 'Flood Risks to People' and FD2321/7400/PR 'Supplementary Note on Flood Hazard Ratings and Thresholds for Development and Planning Control Purposes'

⁵ TPO267/2020 – T1 & T2

- (RPA) of both the trees. In addition, connection of services within the highway would also be required which would traverse the RPA of the protected trees.
27. The RPA of the London Plane extends across much of the width of the site, with the additional RPA of the Lime tree, the whole width. Notwithstanding that the appellants' arboricultural specialist has indicated that London Plane and Lime trees are very hardy deep rooting trees, I observed at my site visit that there is considerable surface lifting of the tarmac pavement around these trees, particularly the London Plane. This suggests that several of the tree roots are sitting very close to the surface in order to seek the water and air they require.
28. It is proposed to replace the existing tarmac surface with a flexible and porous material which would allow water and air to penetrate to the root system below. The appellants have submitted an Arboricultural Impact Assessment (AIA) which sets out that installation of this surface would not require excavation but would sit above the existing ground level. The AIA indicates that this would need to be to a thickness of 100 millimetres to be able to accommodate cars, 4 wheel drives and vehicles up to 6 tons or 75 millimetres for vehicles up to 1.5 tons.
29. I have not been provided with any technical drawings detailing how these works would be carried out specifically in relation to the appeal site. I have no information about the depth of the existing surface materials to be removed and how it compares to the required depth of the replacement surfacing. In the absence of this and given that the trees' roots are significantly raised, I do not see how this replacement surface can be installed without some disturbance to the root system of both trees.
30. The footpath outside the appeal site is uneven due to the position of the roots close to the surface. As suggested by the appellant, this is a potential trip hazard. The proposed works may help to stabilise the trees' roots in this area which could alleviate this hazard. Whilst the installation of the porous surface would be likely to improve access to water and air for the trees, if damage to the roots were to occur, this benefit would be unlikely to outweigh the harm that would arise.
31. In order to form the dropped kerb, the footpath would have to be lowered. Given the proximity of the roots to the surface, it seems likely that some of these roots would need to be removed to accommodate the required change in level of the footpath. I have no substantive evidence to suggest otherwise.
32. One of the proposed parking spaces would be directly behind the London Plane tree. Due to the size and position of this tree, it would be likely to limit the manoeuvrability of vehicles into the parking spaces which may also lead to pressure for its removal.
33. The proposed dwellings would require connections to services and utilities. The appellants have suggested that this would be through the use of a vacuum excavator or an airspade which would remove the soil from around the roots without damaging them. Any such operations would be supervised by a consultant arboriculturalist. To my knowledge, these tools are regularly used by the industry for such tasks and can excavate without damage to roots. It seems to me that through the appropriate use of these tools and with the correct supervision, connections to services would be possible without undue harm to the trees' rooting systems.

34. The appellants suggest that as the finished floor levels inside the proposed dwellings would be raised in order to mitigate flood events, there would be little requirement to significantly drop the paving levels for the access onto the property. However, this would not negate the need for a dropped kerb at the edge of the footpath and the highway which would be within the RPA of the protected trees which I have found would be harmful.
35. The TPO was served during the period the planning application was under consideration by the council and has since been confirmed. The existence of a TPO on trees does not preclude the ability to work on or around the protected trees but requires any such works to be agreed with the Council. No such works have been agreed.
36. The appellants have indicated that they have found the lack of engagement from the Council in regards to the tree works to be regrettable. I have no firm evidence that the Council has not engaged with the appellants. In any event, this is predominantly a procedural matter and does not alter my findings in respect of the merits of the case.
37. This leads me to conclude that the proposed development would significantly harm the protected trees. It would therefore be contrary to Policy EN7 of the CSPD which seeks to safeguard healthy trees of amenity value through the promotion of tree preservation orders. It would also conflict the Framework which recognises the important contribution trees make to the character and quality of the urban environment and seeks to protect them.

Planning Balance and Conclusion

38. I have found that the location of the proposed development would be unsuitable as it has not been satisfactorily demonstrated that there are no sequentially preferable sites at less risk of flooding than the appeal site. As such, the provisions of paragraph 11 (d) (ii) of the Framework do not apply.
39. However, even if it did, my findings in respect of both main issues, including the conflict with the development plan policies, would significantly and demonstrably outweigh the benefits of the appeal scheme.
40. For these reasons, I conclude the appeal should be dismissed.

Rachael Pipkin

INSPECTOR