



Appeal Decision

Site visit made on 15 October 2021

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2021

Appeal Ref: APP/P1560/W/21/3271776

Land adjacent to 21 Waterside, Brightlingsea CO7 0AY

- 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 Mrs Tracey Baldwin against the decision of Tendring District Council.
 - The application Ref 20/01377/FUL, dated 01 October 2020, was refused by notice dated 21 December 2020.
 - The development proposed is 'erection of 2 semi-detached houses with parking spaces on a vacant site'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development was amended following submission of the application; I have utilised the amended description.
3. The latest iteration of the National Planning Policy Framework (the Framework) was published on 20 July 2021, after the application which is subject to this appeal was determined.
4. Section 1 of the Local Plan for Tendring (LPT S1), adopted on 26 January 2021, shortly after the application which is subject to this appeal was determined. A different housing target applies following the adoption of LPT S1. The Council now maintains that it can demonstrate a five-year supply of deliverable housing land with appropriate buffer.

Main Issue

5. The main issue is whether or not the site is suitable for residential development having regard to the risk of flooding.

Reasons

6. The appeal site is a parcel of undeveloped, vacant land on the northern side of Waterside. It was previously occupied by a sail making business and was used for storage purposes. It lies within the settlement boundary of Brightlingsea, where there is no objection in principle to a residential development.
7. The site is a short distance from the harbour at the mouth of the River Colne. It lies within Flood Zone 3a which the Planning Practice Guidance (PPG) defines as having a high probability of flooding. The National Planning Policy

Framework (the Framework) sets strict tests to protect people and property from flooding. Where these tests are not met, national policy is clear that new development should not be allowed.

8. 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 (whether existing or future). Paragraph 162 states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source, 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 (sequentially preferable).
9. Paragraph 163 sets out that only if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. Therefore, the exception test is the second stage of assessment and is only to be applied if the sequential test is satisfied. Paragraph 167 requires that, where appropriate, applications should be supported by a site-specific flood risk assessment and development should only be supported where in light of that assessment, as well as the sequential and exception tests, the proposal would meet a number of criteria.
10. The appeal scheme is supported by a Flood Risk Assessment (FRA) which incorporates a Sequential Test (ST). The Council maintains that other sites are sequentially preferable. The PPG advises that when applying an ST, a pragmatic approach on the availability of alternatives should be taken, and it is therefore unhelpful that the Council has not addressed the ST and identified which sites within it, or not included within it, that it considers are sequentially preferable. Nor has the Council specifically indicated the likelihood of planning permission being granted for development of those sites which were discounted in the ST due to doubt in this respect.
11. The ST reviewed a total of 246 sites and considered whether those sites were appropriate and reasonably available for development, based on whether they are developable and deliverable. A total of 217 sites were taken from the Strategic Housing Land Availability Assessment (SHLAA) and regard was given to the Tendring District Council Sequential Test Report (May 2017), which provides an analysis of flood risk at all the sites identified in the SHLAA.
12. Of the 216 SHLAA sites, 92 were discounted on flood risk grounds. Of the remaining 125 sites, only 8 were considered comparable in size to the appeal site (the rest being over 10 times larger than the appeal site). The final 8 sites were analysed in more detail and were discounted due to site specific constraints, including the less sustainable location of the sites, effects on protected trees and ecology, viability, land use, no longer developable due to redevelopment, and undeliverability due to outstanding legal issues.
13. One of these sites, Land South West of Weeley Road, Little Clacton, was disregarded as greenfield land which would raise greater risk of surface water flooding once developed than the appeal site. It is not clear, however, whether the site is at higher or lower risk of flooding than the appeal site (flood zone classification) and whether surface water flooding could be sustainably managed. This site is further down the settlement hierarchy than the appeal site, but it is also not clear whether the principle of new residential development is unacceptable at this site.

14. The ST also identified a further 22 sites which were currently advertised for sale with extant or expired planning permissions. Of these, 13 were discounted due to flood risk. The remaining 9 were analysed in more detail. Of these, some were discounted for similar reasons to the SHLAA sites. The justification given for some discounted sites warrants further exploration.
15. Kirby Road, Great Holland CO13 0JD was discounted because planning permission for dwellings was approved because the Council could not demonstrate a land supply and, the Appellant thought the site appeared cramped, which could affect deliverability. Whilst a site which is less sustainably located than the appeal site may be disregarded as undevelopable due to its limited likelihood of achieving a planning permission for residential development, the ST suggests that this site does benefit from an extant permission. The density of the site and its capacity to accommodate that amount of residential development would have been considerations for the application (albeit the permission appears to have been granted in outline).
16. Plot One at The Street, Ramsey CO12 5LF was discounted because it is within Flood Zone 2 and access and egress from the site could be 'tricky'. The Sequential Test does not, however, conclude that this site is at higher risk of flooding than the Flood Zone 3a appeal site, nor that the issues of access could not be overcome in line with the Exception Test, akin with the appeal scheme. The ST also refers to green field surface water flooding. This site was discounted on the basis that the extant permission is for only a single dwelling and the site is in a less sustainable location which would make it unsuitable for accommodating the appeal proposal; however, there is also a Plot Two at The Street, Ramsey CO12 5LF.
17. The Sequential Test also considered 7 sites that were advertised for sale without planning permission, 5 of which were discounted on flood risk grounds. The remaining 2 sites were discounted as unsuitable for the development proposed and unviable, though Herbert Road, Clacton-on-Sea was not assessed for the acceptability of residential development in principle and was discounted on the basis that it is therefore not developable or deliverable.
18. It is therefore apparent that some sites discounted within the Sequential Test may be appropriate and reasonably available for development and at lower risk of flooding.
19. Moreover, the appeal proposal is a resubmission of a scheme which was previously dismissed at appeal¹ in March 2020. The Inspector for that appeal concluded that the proposal failed the sequential test due to 6 sequentially preferable sites which benefitted from planning permission. These sites had been identified by the Council. It is regrettable that the Sequential Test for the current appeal does not address whether these sites are still developable and deliverable, though it is reasonable to conclude that they were at the time the appeal was dismissed in March 2020. The Appellant has noted that of the six sites, only one remains in the SHLAA (although the Inspector for the previous appeal implied in their decision that the sites were not within the SHLAA in any case). The Appellant has therefore assumed the other 5 have been built out, but has not adequately excluded them in this regard, nor has the remaining one site, Samsons Road, been excluded for any reason.

¹ APP/P1560/W/19/3242577.

20. The Council has drawn my attention to two appeal decisions. However, I have not been provided with details of those proposals nor any assessment as to their relevance to the circumstances of this case, other than that they identify sequential testing to be a necessary element of assessing development in areas at risk of flooding.
21. Taking all these factors into account, I find that there are other sites that are available for residential development within Brightlingsea and the wider District which have a lower risk of flooding. For this reason, the proposal fails the sequential test.
22. I am aware that this will be a disappointment to the Appellant, who has taken further measures to address sequential testing following the previous appeal. The Appellant has also gone to some lengths to demonstrate that the proposal has been designed to meet the Exception Test².
23. I conclude that the proposal is unacceptable due to its location within an area of high flood risk. The proposal therefore fails to comply with the Framework, saved policy QL3 of the Local Plan, adopted 2007, and emerging policy PPL1 of Section 2 of the Local Plan for Tendring (LPT S2). These policies seek, amongst other things, to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk.

Other considerations

24. The appeal site is within the Brightlingsea Conservation Area (BCA). I therefore have a duty to consider the effect of the proposal on the character or appearance of the BCA. The site currently creates an unsightly gap in the street scene and its redevelopment would enhance the BCA. The site also abuts the Waterside Urban Regeneration Area, so its redevelopment could also support the revitalisation of that area. However, these positive aspects of the scheme cannot be used to determine the catchment area for the Sequential Test and could only be taken into consideration in the Exception Test, had the proposal passed the Sequential Test.

Conclusions

25. The proposal would conflict the adopted and emerging policies of the development plan in relation to flood risk. It would also be contrary to Government advice set out in the Framework and PPG to protect people and property from the risk of flooding. There are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The appeal is accordingly dismissed.

Kim Langford Tejrar

INSPECTOR

² The proposal would also be subject to the Framework paragraph 167 criteria.