



Appeal Decision

Site visit made on 15 November 2021

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2021

Appeal Ref: APP/H2265/W/21/3271020

Land at entrance to car park, Vale Road, Tonbridge TN9 1SG

- 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 Yod Ltd against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/20/01795/FL, dated 7 August 2020, was refused by notice dated 12 November 2020.
 - The development proposed is for the erection of a four-storey building comprising 12 flats and associated car parking, cycle parking and refuse storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The *National Planning Policy Framework* (the Framework) represents the Government's up-to-date planning policies for England and how they should be applied. The Government published a revised Framework on 20 July 2021 and is a material consideration for development proposals. I note however, in this case, that the main parties have made no further comments in respect of these changes.

Main Issues

3. The main issues are the effect of the proposal on:
 - the character and appearance of the area, and;
 - whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the Framework.

Reasons

Character and appearance

4. The appeal site is a former surface car park located in Flood Zone 3 near to the shops and retail units of Tonbridge High Street at the roundabout junction of Vale Road and Angel Lane. The site is currently occupied by a car wash and valeting business. Tonbridge railway station can be found to the south of the site while the River Medway is a short distance to the north. The built environment in the surrounding area is typified by mid to low-level retail units, surface and multi-storey car parks, a petrol filling station and other retail and commercial type uses including goods delivery areas/loading bays.

5. The proposal is to construct a four-storey development of 12 flats with ground floor car parking, cycle parking and refuse storage.
6. The main parties agree that the principle of development on the appeal site in this urban type area is accepted. However, the proposal would be of some considerable scale and mass in comparison to the surrounding built form which is more modest in height. Indeed, whether the proposal would be more attractive than the current use of the site as a car-wash or not, and although the appellant contends that the proposal would make best use of the site, I find to the contrary. The four-storey residential development would extend across the majority of the width and breadth of the plot and would appear cramped and overly prominent in this specific location, particularly when viewed from the roundabout adjacent to Tonbridge Library and by those leaving and entering the well-used station car-park and nearby supermarket.
7. Moreover, while I acknowledge that the choice of differing local vernacular materials to each 'wing' has been selected in an attempt to add interest and to 'break-down' the mass of the proposal, the fact remains that the gable ends and convoluted and differing heights of the proposed roofscape would be in stark contrast to the surrounding buildings which have more simple rooflines.
8. Furthermore, notwithstanding the limited residential development that can be seen relatively nearby, for example that which backs onto the station car-park, the proposal would not only be at odds with the shops and retail units lining the High Street, but also the immediate and predominant character of the area, which I noticed at my site visit was typified by commercial and industrial type units.
9. Therefore, I conclude that when considered as a whole, the height, bulk and form of the residential proposal would be highly incongruous with the surrounding area.
10. Consequently, the proposal is contrary to Policies CP24 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy 2007, (TMCS) and SQ1 of the Tonbridge and Malling Borough Council Managing Development and the Environment Development Plan Document 2010, which say, amongst other things, that all development must be well designed and of a high quality in terms of detailing and use of appropriate materials, and must through its scale, density, layout, siting, character and appearance be designed to respect the site and its surroundings.
11. For similar reasons the development would not meet the requirements of Paragraph 130 (c) of the Framework which says that planning policies and decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

Flood risk

12. While there is no recorded objection to the proposal by the Environment Agency (EA) subject to conditions, and the appellant contends within the submitted Flood Risk Assessment (FRA) that the site is within Flood Zone 2, the EA has nonetheless confirmed that the proposal would be located in Flood Zone 3, and is described as an area with a high probability of flooding that benefits from flood defences.

13. The Framework sets out strict tests to protect people and property from flooding, and advises that where these tests are not met new development should not be allowed. As the appeal site is within a flood risk zone with a high probability of flooding the sequential approach set out in Paragraphs 162-165 of the Framework are relevant in the determination of this appeal. The aim of the Sequential Test (ST) is to steer new development to areas with the lowest probability of flooding, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The steps to be followed are set out in detail in the national *Planning Practice Guidance*. However, while I note that the majority of the town centre development is in a flood risk zone and the existence of nearby flood defences, in this specific case even if the ST were to be applied to the proposed development it would not meet the requirements of the test.
14. Indeed, notwithstanding that the car parking would be at ground level, the water resilient materials proposed, and the suggested arrangements for safe access and egress, the appellants FRA nonetheless concedes that, 'it may be the case that there is potential for the provision of residential accommodation (*sic*) elsewhere with areas inherently at lower flood risk'. However, I have limited evidence before me as to where an alternative location for the proposed development may or may not be found. Accordingly, the proposal does not meet the aims of the ST.
15. For these reasons, I conclude that the proposal would be unacceptable in flood risk terms, contrary to Policy CP10 of the TMCS, which aims include that within the floodplain development should first seek to make use of areas of no or low to risk to flooding, and the relevant Paragraphs of the Framework related to planning and flood risk.

Planning Balance and Other Matters

16. The main parties agree that the Council cannot demonstrate a five-year housing land supply. Nevertheless, as I have found above that the site is at flood risk the 'tilted balance' required in Paragraph 11(d) of the Framework is not engaged as a consequence of Footnote 7. However, even if this were not to be the case, I find the adverse impacts of the proposal on the character and appearance of the area significantly and demonstrably outweigh the benefits, and furthermore, I am not persuaded that the development would provide wider sustainability benefits to the community that would outweigh the flood risk, which include the provision of 12 new dwellings and the other benefits set out in the appellant's submitted unilateral undertaking. My opinion remains firm even if relevant conditions were to be imposed.

Conclusions

17. For the reasons given above I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR