
Appeal Decision

Site visit made on 7 December 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2021

Appeal Ref: APP/D1265/W/21/3272196

Land off Sunnydale Road, Swanage, Dorset BH19 2JA

- 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 Rob Westhead of Bayview Developments South Limited against the decision of Dorset Council.
 - The application Ref 6/2019/0320, dated 25 May 2019, was refused by notice dated 5 February 2021.
 - The development proposed is residential development of 2no. 3 bedroom bungalows with parking and associated garden amenity.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Rob Westhead of Bayview Developments South Limited against Dorset Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Government published the revised National Planning Policy Framework (the Framework) in July 2021. The main parties have had the opportunity to refer to it as part of the appeal process. However, the refusal reason on the Council's decision notice specifically refers to paragraphs 155 and 163 of the 2019 version of the Framework. Similar wording regarding planning and flood risk is found in corresponding paragraphs 159 and 167 of the revised Framework, and it does not otherwise make fundamental changes to their content. On that basis, I am satisfied that no one would be prejudiced by my having regard to the revised Framework.

Main Issue

4. The main issue is whether the site provides an appropriate location for additional housing having particular regard to flood risk.

Reasons

Flood Risk

5. 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. However, if development is necessary in such areas then

it should be made safe for its lifetime without increasing flood risk elsewhere. Planning Practice Guidance (PPG) provides further explanation of the Government's general approach¹ which includes the following steps. Firstly, to assess the flood risk and then avoid higher risks by taking a sequential approach. Only where development needs to be in locations where there is a risk of flooding, as alternative sites are not available, does it become necessary to ensure that the development is safe and resilient to flood and will not increase flood risk overall.

6. The appeal site lies within Flood Zone 1² of the Environment Agency's maps for fluvial and tidal flood risk. However, PPG³ confirms that for the purposes of applying the Framework, flood risk includes all sources of flooding. The Environment Agency's flood map for surface water⁴ shows notable sections of the appeal site at high and medium risk of surface water flooding. The flood modelling⁵ undertaken in relation to the appeal site concludes, amongst other things, that the lower lying parts of the site are prone to flooding during the rainfall events modelled.
7. This is reinforced by the considerable number of representations and photographs received from local residents detailing their experiences of frequent surface water flooding incidents at and near the site. The Council indicates that 6 floods affected the application site during 2020⁶. The general, risk-based approach to the location of development is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The aim should be to keep development out of medium and high flood risk areas and other areas affected by other sources of flooding where possible. It follows that the sequential test should be applied in this case.
8. Paragraph 162 of the Framework confirms 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. However, the parties disagree as to whether the proposal passes the sequential test. The principal areas of dispute relate to the area of search for alternative sites, and thereafter whether there are any reasonably available appropriate sites for the proposed development.
9. The appellants have limited their area of search to within the settlement boundary for Swanage⁷ as defined in the Swanage Local Plan, June 2017 as they contend this would be consistent with the vision for Swanage in that document and the town has a high degree of self-containment. However, the more relevant development plan policy in relation to flood risk is contained in policy FR of the Purbeck Local Plan, Part 1, November 2012 (LP) and the LP includes Swanage within a wider strategic area referred to as South East Purbeck. Policy FR of the LP stipulates that the impact of flooding will be managed by locating development in accordance with Purbeck's Strategic Flood

¹ Paragraph 001 Reference ID: 7-001-20140306

² Figure 5-1, Flood Risk Assessment prepared by JBA Consulting December 2019

³ Paragraph 002 Reference ID: 7-002-20140306

⁴ Figure 5-2, Flood Risk Assessment prepared by JBA Consulting December 2019

⁵ Hydraulic Modelling Report prepared by JBA Consulting dated March 2020

⁶ Council Planning Report – page 7

⁷ Sequential Test prepared by CL Planning dated 10.8.20

Risk Assessment (SFRA). The SFRA⁸ aligns with the sequential risk based approach to the location of development outlined in national policy.

10. Based on the evidence before me, neither the LP nor SFRA suggest that the catchment area when applying the sequential test should be restricted to the settlement boundary nearest to the proposed development site. Paragraph 162 of the Framework states that the SFRA will provide the basis for applying the sequential test. Therefore, whilst I acknowledge that within South East Purbeck, Swanage as the largest settlement, would be the main focus for such a search, it does not follow that it must be confined to it.
11. Moreover, the LP contains a vision⁹ for South East Purbeck, which whilst it includes Swanage, covers a wider area. This would be consistent with broadening the area of search in this case. It is not otherwise shown why it would be critical to locate an additional two market dwellings only within Swanage. Hence, I am not persuaded that the area of search should be unduly constrained to the settlement boundary of Swanage. To do otherwise could unnecessarily jeopardise the general planning approach to flood risk and development previously mentioned.
12. Furthermore, even within the scope of the sequential test that has been carried out, I have doubts that a more concerted effort would fail to reveal any reasonably available sites for two dwellings. PPG advocates that a pragmatic approach¹⁰ on the availability of alternative sites should be taken but stops short of setting specific criteria. To my mind a pragmatic approach would involve a reasonable degree of flexibility in the parameters of such a search.
13. Cognisant that each development site will have unique characteristics, setting the search parameters too tightly would be unjustifiably restrictive and be inconsistent with the general approach to flood risk in national policy. Hence, whilst the plot size and form of the proposed scheme are relevant factors, they should not necessarily be absolute requirements. Essentially, the proposal is for two, three bed dwellings with gardens and parking provision. There could be several alternative ways of accommodating such development and therefore, it is not shown for example why an alternative site must provide for detached dwellings.
14. The sequential exercise submitted states that sites identified in the annual monitoring report with planning permission have been reviewed¹¹. It notes that most offer scope for a single dwelling, but it is not clear whether this involved an estimation of the potential capacity of each site as part of the exercise, or simply pertained to the planning permission granted. As such, I am not assured that the sites specifically considered do contain all those sites capable of accommodating two dwellings. Environment Agency guidance¹² for applicants on undertaking an assessment of alternative sites suggests that for each potential site there should be an estimate of approximate capacity.
15. The guidance also goes on to suggest that developers can look for windfall sites themselves. The sequential exercise provided concedes that the possibility of a

⁸ Strategic Flood Risk Assessment, Level 1, January 2018

⁹ Paragraph 7.5.10

¹⁰ Paragraph 033 Reference ID: 7-033-20140306

¹¹ Page 7, Sequential Test prepared by CL Planning dated 10.8.20

¹² <https://www.gov.uk/guidance/flood-risk-assessment-the-sequential-test-for-applicants#information-about-alternative-sites>

windfall plot arising cannot be ruled out¹³, which is reinforced by evidence of recent planning permissions for small scale residential development in Swanage¹⁴. The market opportunities review carried out in relation to sites for sale in Swanage resulted in 188 properties¹⁵. However, little detail is provided as to the nature or potential of those individual sites that would perform better than the appeal site in relation to flood risk. Rather, they are collectively discounted citing generic concerns of character, viability, heritage and access constraints. In my view, such an approach is too perfunctory as given the unique nature of land, most development sites will have some planning constraints that will need to be taken into account. It does not necessarily follow that constraints are insurmountable.

16. The appellants have also discounted sites where there is planning permission which they consider is likely to be implemented. Two appeal decisions have been brought to my attention whereby the Inspectors concerned considered when potential alternative sites cease to be available as part of a sequential test. In the appeal concerning Wyre Borough Council, the Inspector was applying specific local guidance to say that a site is not reasonably available if it has a valid planning permission likely to be implemented, and qualifying criteria were given to identify such cases. However, the guidance pertaining to a different district is not directly transferable to others and therefore, carries little weight in this case. Nevertheless, I accept that where construction work on a planning permission has commenced, the site is no longer available. In this regard my approach is consistent with the Cotswold District Council appeal decision highlighted.
17. Even so, overall, the catchment area for searching for reasonably available sites was overly restricted, and within the exercise carried out I am not satisfied that a sufficiently robust approach has been taken to identifying and evaluating sites. Consequently, based on the evidence before me, I am not sufficiently assured that no reasonably available sites at lower risk of flooding exist and hence, it has not been demonstrated that the sequential test has been passed.
18. The appellants point to the detailed reports¹⁶ provided regarding flood risk which they assert show that the development would be safe and would not increase flood risk elsewhere. However, consistent with the general approach to flood risk already outlined, establishing the flood safety of the development is only requisite once the sequential test is passed. Consequently, it is not necessary for me to reach a finding on this point as it would not be determinative to my finding on the main issue.
19. Accordingly, I find that the site would not be an appropriate location for additional housing having particular regard to flood risk as it would fail the sequential, risk-based approach to the location of development. Therefore, it would conflict with policy FR of the LP.

¹³ Page 7, Sequential Test prepared by CL Planning dated 10.8.20

¹⁴ Paragraph 4.15, Council's Statement of Case

¹⁵ Page 11, Sequential Test prepared by CL Planning dated 10.8.20

¹⁶ Paragraph 8.27, Appellants' Statement of Case

Other Matters

20. The Housing Delivery Test 2020 for the Council's predecessor authority was 74%¹⁷. In these circumstances footnote 8 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. Paragraph 11 d) i) states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 confirms that the Framework policies relating to areas at risk of flooding would provide a clear reason for refusing the proposal. Given my findings in this regard, the presumption in favour of sustainable development does not apply in this case.
21. The appeal proposal would provide additional housing in a reasonably accessible location which would make more efficient use of the land and assist in boosting the supply of housing in the area. In light of the housing delivery test, I am mindful that small sites can often be delivered relatively quickly which counts in its favour.
22. In addition, the construction of the development and the spending of the future occupants of the development would bring economic benefits to the wider area. Nevertheless, the extent of benefits accrued from two additional dwellings would be limited, and therefore, they attract a commensurate amount of weight. Hence, they would not outweigh the significant weight given to the conflict with the development plan policy relating to flood risk.
23. Reference is made to the proposal being otherwise acceptable in terms of its design and the likely impact on biodiversity. Be that as it may, policy compliance in relation to these other issues would be required in any event and an absence of harm does not amount to a positive benefit.

Conclusion

24. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁸. No compelling reasons have been shown to justify my determining the development other than in accordance with the adopted development plan.
25. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹⁷ Paragraph 5.24, Appellants' Statement of Case

¹⁸ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.