



Appeal Decision

Site visit made on 11 January 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal Ref: APP/X1165/W/21/3282199

188 Newton Road, Torquay TQ2 7JN

- 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 Graham Kenny against the decision of Torbay Council.
 - The application Ref P/2020/1229, dated 3 December 2020, was refused by notice dated 27 April 2021.
 - The development proposed is the conversion of house into two separate dwelling houses with associated parking.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be in a suitable location having regard to the risk of flooding.

Reasons

3. As noted in the banner heading above, the appeal proposal seeks the conversion of a house into two separate dwellings. The evidence before me indicates that 188 Newton Road was granted planning permission for a two storey side extension in 2018¹ and that the proposal seeks to convert the previously approved side extension into a separate dwelling.
4. The National Planning Policy Framework (July 2021) (the Framework) and Planning Practice Guidance (the PPG) are clear 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) by the application of the Sequential Test. Where, following the Sequential Test, development is necessary in such areas, it should also be subject to the Exception Test. This requires that wider sustainability benefits to the community outweigh the flood risk, and that the development will be safe for its lifetime without increasing flood risk elsewhere.
5. The evidence before me confirms that the appeal site is located within Flood Zone 3 and so is at high risk from flooding. The vulnerability of different types of development to flood risk is detailed at Table 2 of the PPG². This identifies the proposed development as a 'more vulnerable' type of development. Table 3 of the PPG³ goes on to identify that, within Flood Zone 3B, the

¹ Local Planning Authority Reference: P/2017/1222

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

³ Paragraph: 067 Reference ID: 7-067-20140306

proposed development type should not be permitted, with Table 3 further identifying that within Flood Zone 3A the Exception Test would be required.

6. Even in the event that the appeal proposal would be located within Flood Zone 3A, the PPG makes it clear that the Exception Test should only be applied following the application of the Sequential Test⁴. Accordingly, even if the proposal would be located within Flood Zone 3A, the Sequential Test approach outlined at paragraph 162 of the Framework is relevant, and for development to be permitted here, there should be no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
7. Policy ER1 of the Torbay Local Plan (December 2015) (the Local Plan) sets out the Council's approach to flood risk. It states that Torbay has been designated as a Critical Drainage Area where all developments require a basic Flood Risk Assessment (FRA) and that the sequential approach, as outlined in the Framework, must be used to guide new development towards sustainable locations, giving priority to sites with the lowest risk of flooding and taking account of the vulnerability of the proposed land uses.
8. Paragraph 168 of the Framework states that "applications for some minor development and changes of use should not be subject to the sequential or exceptions test", which footnote 56 explains includes householder development, small non-residential extensions with a footprint of less than 250m², and changes of use. I accept that, as pointed out by the Appellant, the appeal proposal is not a 'major development' in the terms set out in the glossary to the Framework.
9. The Framework does not absolutely define what is "minor development" for the purposes of assessing flood risk. However, the PPG confirms that the definition of minor development in relation to flood risk⁵, "excludes any proposed development that would create a separate dwelling within the curtilage of the existing dwelling eg subdivision of houses into flats".
10. The Appellant has put it to me that the proposal does not create a separate dwelling within the curtilage of the existing dwelling, does not result in the formation of flats and should be considered to be a change of use. However, whilst I acknowledge the Appellant's submissions, the proposal does not result in the change from residential use, and therefore does not benefit from the exceptions regarding change of use as provided in paragraph 168 of the Framework and its associated footnote 56.
11. Given that the host building and the associated previously approved side extension would be a single dwelling house and the appeal scheme seeks the subdivision of that single residential unit to create two separate dwellings, in my view the proposal would not fall within the definition of minor development for the purposes of flood risk as provided by the PPG.
12. Taking the above reasons together, in my view a Sequential Test is therefore necessary in relation to the appeal scheme. No Sequential Test has been submitted in support of the proposed development and, accordingly it has not been demonstrated that there are no reasonably available alternative sites in areas with a lower risk of flooding. Whilst I acknowledge that the FRA and Flood Risk Addendum considers the probability of flooding at the site and

⁴ Paragraph: 035 Reference ID: 7-035-20140306

⁵ Paragraph: 046 Reference ID: 7-046-20140306

proposes a surface water drainage strategy and mitigation to reduce the risk of flooding at the site, compliance with the sequential approach to flood risk has not been demonstrated and I have therefore not considered the proposed drainage strategy or mitigation points in further detail.

13. For the above reasons, I find that the proposed development would fail to comply with national planning policy which seeks to steer development from areas at highest risk of flooding. It would therefore conflict with Policy ER1 of the Local Plan and the Framework in respect of flood risk.
14. The submissions in this appeal indicate that the Council cannot demonstrate a three year housing land supply. The presumption in favour of sustainable development outlined at paragraph 11(d) of the Framework is therefore engaged. Amongst other matters, this states that where the policies which are most important for determining the proposal are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
15. However, 'areas at risk of flooding' are listed at footnote 6 of the Framework as one of the situations where specific policies in the Framework provide a clear reason for refusing the development. I have found that policies within the Framework relating to areas at risk of flooding indicate clearly that development should be restricted. Accordingly, and with regard to paragraph 11(d) of the Framework, the presumption in favour of sustainable development does not apply in this case.
16. Notwithstanding this, the appeal proposal would contribute an additional dwelling towards supply, and the Framework seeks to significantly boost the supply of housing to meet needs. The proposed dwelling would be conveniently located with regards to access to services and facilities. However, the appeal scheme would make only a very limited contribution towards supply, and I find that the wider benefits of the contribution of an additional dwelling at this location are insufficient to outweigh the harm arising as a consequence of flood risk.

Conclusion

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

Mr A Spencer-Peet

INSPECTOR