



Appeal Decision

Site visit made on 12 January 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/Q3630/W/21/3276188

307 Green Lane, Chertsey, KT16 9QR

- 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 Green Lane Chertsey (Developments) Ltd against the decision of Runnymede Borough Council.
 - The application Ref RU20/1397, dated 20 September 2020, was refused by notice dated 3 December 2020.
 - The development proposed is a development of 9 chalet bungalows to the rear of 299-311 Green Lane with access via 307 Green Lane.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by the appellant against the Council
This is the subject of a separate decision.

Background

3. There have been numerous applications and appeals relating to the site. Most recently an appeal (Ref: APP/Q3630/W/20/3259370) for 9 chalet bungalows was dismissed. The proposed layout is identical but the site area is slightly smaller as additional land is retained within the garden of 305 Green Lane.
4. The Inspector in that case found that the proposed development would not be harmful to the character and appearance of the area and would not have a harmful effect on trees covered by a Tree Preservation Order (TPO). Given the outcome of that appeal, the Council is no longer pursuing its reason for refusal relating to unreasonable pressure on TPO trees. However, he also concluded that there was a need to demonstrate that there were no sequentially preferable sites for the proposed development with regard to flood risk but that this had not been done. Consequently there was conflict with Local Plan policy and the National Planning Policy Framework.
5. In response to that decision the appellant has produced a sequential and exception test in support of the flood risk assessment.

Main Issue

6. In light of the above, the main issue is whether the proposed development passes the sequential test in relation to flood risk and, if so, whether the exception test is satisfied.

Reasons

7. The Framework establishes that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
8. Similarly Policy EE13 of the Local Plan confirms that new development will be guided to areas of lowest flood risk from all sources of flooding through the application of the sequential test. This approach should not be set aside because the Council has not undertaken sequential tests for recently permitted developments in flood zone 2. More importance should be given to the relevant national and local policy provisions.
9. Detail about the aim of the sequential test, how it should be applied to planning applications and a checklist are included in the Planning Practice Guidance (PPG) on *Flood risk and coastal change*. The PPG advises that a pragmatic approach on the availability of alternatives should be taken.
10. The appeal site is primarily located in flood zone 3 with some areas on the periphery in flood zone 2. The appellant refers to a challenge to the flood map which on a preliminary basis indicates that the site would sit within flood zone 2. There is no further detailed evidence in this respect or any response from the Environment Agency. In any event, a sequential test would also be required for development in flood zone 2. Furthermore, the submitted sequential test proceeds on the basis of the flood map.
11. The appellant maintains that there is no need for a sequential test to be undertaken because of the absence of a five year housing land supply. However, the requirement for a sequential test in national policy and guidance makes no reference to the housing supply position. So, even if there were no five year housing land supply, this does not constitute an exception to the need for a sequential test to be performed. In the past the Council has taken a similar stance to the appellant but there is no basis for this in the Framework or the PPG. The need to undertake a sequential test for the proposed development is therefore not altered by the Council's previous position.
12. The PPG indicates that the area to apply the sequential test across will be defined by local circumstances relating to the catchment area for the type of development proposed. Housing is ubiquitous. There is nothing to indicate that the 9 houses proposed are to serve a particular need in Chertsey. Therefore it is appropriate to search for reasonably available sites across the entire Borough. The Council has recently limited a similar search to the Egham area but the rationale for this is unclear. Indeed, the submitted sequential test confirms that the search area is usually the local planning authority area and this is consistent with the overriding aim of national policy.
13. Any alternative site should be comparable to the proposed development in terms of size. The proposal would deliver 8 additional houses as 307 Green Lane would be demolished to make way for the new access. Identified site capacity in the Local Plan is notional as the number of units could increase or decrease in the light of the detailed design of sites. Therefore a figure of between 6 and 12 units, as adopted by the assessment, is reasonable. In

theory a larger development could also accommodate 8 houses but this may not always be practical. Therefore, for the purposes of this test, it is reasonable to 'filter out' sites that are above or below these figures.

14. The PPG explains that only where there are no reasonably available sites in flood zones 1 and 2 should the suitability of sites in flood zone 3 be considered. This involves assessing sites in flood zone 1 first before taking account of sites in flood zone 2. Sites within both flood zones 1 and 2 are at lower risk of flooding than the appeal site and therefore both should be assessed as part of the sequential test. This should not just be limited to sites in flood zone 1.
15. Similarly the appeal site is in an area of high surface water risk. This does not mean that only sites in areas of very low or low surface water flooding should be viewed as reasonable alternatives. Any sites in the low to medium range would also be sequentially preferable to the appeal site.
16. The submitted sequential test includes a parameter that any alternative site should be deliverable by 2024. There is no definition of what is meant by "reasonably available" in the Framework or PPG. However, for this purpose it makes sense to use the definition of deliverable in the Framework which, amongst other things, requires there to be a reasonable prospect that housing will be delivered on the site within five years. This does not exclude sites without planning permission. There is evidence from three local land agents that there are currently no comparable and alternative sites but this neglects the potential for sites to become available in the near future.
17. There is nothing in national policy or guidance to the effect that alternative sites must be owned by the applicant or be for sale at a fair market value at a price comparable to the original site. Such an approach would constrain the sequential test to an unwarranted degree. This exercise is about locating development in areas that are least likely to flood rather than to protect the economic or commercial interests of landowners and developers. It does not compel a site owner to sell up and become homeless. Therefore sites in different ownership to the appeal site should not automatically be excluded.
18. The submitted sequential test reviewed 41 sites identified either as site allocations in the Local Plan or as SLAA sites in Appendix B. The latter are unallocated sites which did not have planning permission at the time of the adoption of the Local Plan. There is no suggestion that the net should have been cast more widely.
19. According to the appellant some of the 19 SLAA sites are within the Green Belt but the Local Plan Inspector's report commented that they are likely to come forward and they are expected to contribute to the overall supply of housing within the Borough. Four sites assessed in the submitted sequential test meet its criteria apart from the expectation for them to be in the same ownership as the appeal site. As explained above, this is not a reason to reject them.
20. The sites at Ledger Drive, Addlestone (capacity 12 units); Howards Lane, Row Town (capacity 6 units); Trys Hill Farm, Lyne (capacity 6 units) and 9-11 Victoria Street, Englefield (capacity 10 units) are all in flood zone 1 with a very low or low risk of surface water flooding. Their capacity is similar to the appeal site. Whilst it is said that they do not have planning permission the table at Appendix C nonetheless indicates that they are all deliverable by 2024. As

there is no clear reason to preclude them from being developed in the next five years these sites therefore all represent reasonably available alternatives.

21. Moreover, there are five other sites of similar size. One is subject to the delivery of necessary mitigation on the A320 and should be discounted. However, three of the others only scored less than the 80% 'cut off' because the flood and surface water risk was unknown or because the surface water risk was low to medium which would be superior to the appeal site. Therefore the sites at Hurst Lane (capacity 10 units); Woburn Hill (capacity 10 units) and Sandhills and Lyne Lane (capacity 11 units) should not be eliminated without further investigation. Furthermore, it is unclear whether the site at Villa Santa Maria, St Ann's Hill, Chertsey (capacity 9 units) is within flood zone 2 or 3. If it is in flood zone 2 then it should not be ruled out either.
22. Taking account of the evidence provided, including the submitted sequential test, there are therefore reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding than the appeal site. The Environment Agency raises no objection. However, it is for the local planning authority and for me as decision-maker in the appeal to decide whether the sequential test has been passed.
23. The PPG confirms that the exception test should only be applied after the sequential test and that both elements need to be satisfied. The proposed development incorporates voids under the new properties and raised floor levels. These measures do not overcome the fundamental objection to locating the development in an area at risk of flooding. Meeting the exception test does not override the failure to pass the sequential test.
24. In conclusion on this issue the sequential test is not passed and in these circumstances the Framework is clear that development should not be permitted. The proposal would also be contrary to Local Plan Policy EE13 as it would not be located within the lowest area of flood risk.

Other Considerations

25. The Council maintains that at the base date of 31 March 2021 it has a housing land supply of 5.91 years. The requirement is 672 dwellings per annum and supply amounts to 3,972 dwellings. This is disputed by the appellant primarily because the delivery of many of the Local Plan allocations are contingent on the upgrading of the A320. It is alleged that this creates a shortfall of 1,643 dwellings. Furthermore, the appellant questions whether the completion target date of 2024 for the highway improvements is realistic. No detailed update on the progress of the road scheme has been provided by the Council although some sites can come forward before the works are finished.
26. However, as explained by the Inspector in the last appeal, the proposal would be within an area at risk of flooding. As the sequential test has not been passed this provides a clear reason to refuse the development proposed. Therefore, even if there were no five year housing land supply, the presumption in favour of sustainable development set out at paragraph 11 d) of the Framework would not apply. Consequently there is no need for a conclusion to be reached in this appeal in relation to housing supply.
27. Aside from this, the proposal would add 8 dwellings to the stock of housing in Runnymede. Excluding SLAA sites the appellant's spreadsheet indicates that

1,124 dwellings will be delivered over the next five years and it is stated that housing numbers have been over-estimated by 23%. Even if this were the case, national and local policy indicates that it is imperative for new development to avoid flood risk wherever possible. Sites at most risk should only be developed when no other feasible option exists. That is not so here and therefore the benefits of providing additional housing do not outweigh the conflict with the development plan and national policy.

28. The improvements to the A320 include the junction of Holloway Hill/Green Lane/Guildford Road. As part of this scheme it is proposed to replace the existing undersized culvert under Holloway Hill with twin pipes and raise the level of the junction. This would double the capacity of the culvert and improve the conveyance of flood waters northwards. The appellant contends that once this is completed, the appeal site could be removed from flood zones 2 and 3. It is therefore suggested that permission could be granted subject to linking it to the delivery of the junction work.
29. No planning obligation to this effect has been put forward. It is possible to impose a negatively-worded condition to prohibit development until some specified action has taken place. However, the Arcadis drainage team consider the existing flood zone areas of Green Lane would remain as water would still overtop the low point in more extreme rainfall events and as they are lower than Guildford Road¹. There is nothing from the Environment Agency to confirm that the completion of the junction works would alleviate the flood risk. As such, it is not possible to conclude that the proposed development would be acceptable at some point in the future. Therefore the objection to its location would not be overcome and imposing such a condition is not warranted.
30. The appellant submitted a unilateral undertaking to the Council with respect to payments arising from the location of the site within 5km of the Thames Basin Heaths Special Protection Area. An obligation dated 20 May 2021 which refers to this application has been provided. However, as the appeal is to be dismissed, there is no need for further consideration to be given to it or to the Conservation of Habitats and Species Regulations.
31. Concerns have been raised by local residents on several other grounds including overlooking, additional traffic, loss of wildlife habitats and trees, inadequate parking and overdevelopment. These matters have all been considered previously and did not form part of the reasons for refusal. There is no reason to reach a different view to the Council and they therefore do not add to the objection identified.

Conclusion

32. The proposed development fails the sequential test for the location of development in relation to flood risk. It would not accord with the development plan and there are no other material considerations to outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR

¹ Attachment F of appellant's document entitled *Does Runnymede Borough Council have a 5-year housing land supply?*