



Appeal Decision

Site visit made on 31 January 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2022

Appeal Ref: APP/C1435/W/21/3276480

The Holy Rood Catholic Church, Castle Drive, Pevensey Bay BN24 6JP

- 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 T Richardson against the decision of Wealden District Council.
 - The application Ref WD/2020/1338/F, dated 23 May 2020, was refused by notice dated 21 December 2020.
 - The development proposed is conversion of existing building to 2 no. four bedroom dwellings and construction of 2 no. new four bedroom dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs T Richardson against Wealden District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. With the appeal the appellant submitted revised plans to omit raised decking and make a minor adjustment to car parking spaces. The development would not be substantially different. Having regard to the 'Wheatcroft Principles'¹, no party would be prejudiced and I have, therefore, considered the appeal on the basis of the revised plans.
4. The Council has referred to the Ashdown Forest Special Protection Area (the SPA) and the Ashdown Forest Special Area of Conservation (the SAC). I deal with these considerations in 'other matters' below.
5. The main parties were able to comment on the revised National Planning Policy Framework (the Framework), which came into force on 20 July 2021. I have taken comments received into account in determining the appeal.

Main Issue

6. The main issue is whether the site would be a suitable location for the proposed housing development, having regard to flood risk and the Sequential Test.

Reasons

7. The appeal site contains a modern disused church and its car park. It is in the defined 'development boundary' for Pevensey Bay where, in principle, new

¹ *Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]*

housing is acceptable. The proposal would convert the church into a pair of semi-detached houses with two detached houses erected on one side, in the car park. In light of the Council's strategic flood risk assessment, the appellant's site specific flood risk assessment and comments from the Environment Agency, the main parties agree that the site is in Flood Zone 3a, with a high probability of tidal flooding from the sea. Moreover, that the development is for a 'more vulnerable' dwellinghouse use². I have no cause to find otherwise.

8. Given the above, the Sequential Test must be applied. It aims to steer new development to areas with the lowest risk of flooding from any source. The Framework also sets out 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. Planning Practice Guidance (PPG) states³ 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.
9. Wealden district covers a large area, including a long way inland. Pevensey Bay is in a smaller housing market area (the HMA) which includes the coast. The HMA is not a closed domain and in part also crosses into another Council area. However, for the purposes of the Council's development plan and assessment of housing need, provision and supply, the HMA is the smallest recognised geographical area in this part of the district covering the site. Consequently, in that context, and in terms of the type of development proposed, it is an appropriate catchment area for the Sequential Test.
10. The PPG also states that where there are large areas in Flood Zones 2 and 3 and development is (not just in type, but also) needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives.
11. In terms of reasonable alternatives, Pevensey Bay is 'almost entirely', thus not entirely, within Flood Zone 3a. Albeit that sites for housing in Pevensey Bay, but outside of Flood Zone 3a, are 'unlikely to be easily found', it is not clear to me what Flood Zone these parts are in, or their extent, or whether any are available or appropriate for housing development. In addition, even allowing for land within countryside or environmental designations⁴, large parts of the HMA are unconstrained by flood risk. These parts have settlements where housing development can be delivered, including within the part of the HMA closer to Pevensey Bay, and also provide employment opportunities and services.
12. In terms of need, Pevensey Bay is a 'local service centre'. It is, by definition in the Council's development plan, a settlement with 'a more limited supply of social and economic infrastructure where residents depend upon other centres to meet a broad range of needs with some form of accessibility to those centres'. I have no reason to doubt that the size of the resident population therefore already supports local facilities and services commensurate with this settlement status, particularly for some day-to-day living needs. Indeed, the development plan does not identify any significant housing growth at Pevensey Bay. The Council's new local plan⁵ has been withdrawn so it remains to be seen

² Framework Annex 3: Flood risk vulnerability classification

³ PPG paragraph ID: 7-033-20140306

⁴ An AONB and a RAMSAR

⁵ The submission Wealden Local Plan 2019

what planning and housing strategy is eventually adopted and how this affects Pevensey Bay.

13. Some local businesses are tourism and visitor orientated. While local residents may also support these, even if their main operation is inherently 'highly seasonal' they are nonetheless therefore not entirely dependent on a resident population. There is no objective evidence before me that new housing development is needed in Pevensey Bay to compensate for this cyclical effect or to suggest that tourism does not pervade in Pevensey Bay more year round, as is otherwise a generally accepted national trend. Nor is there any objective evidence before me that local facilities and services are anyway in any sustained short or long term decline⁶, or are unable or inadequate to meet the needs of the existing resident population and despite Pevensey Bay being a coastal settlement. It has also not been shown that facilities and services need to be enhanced to establish Pevensey Bay as a higher order settlement or that it needs to be regenerated in this, or any other, way.
14. I am not, therefore, satisfied that the appellant has justified that there is a 'fragile economy', a 'need to underpin and support the future of Pevensey Bay' or that a pragmatic approach to the application of the Sequential Test in this case is needed to 'avoid'⁷ an inevitable decline of the established settlement'. Indeed, the appellant's submissions referring to its 'wide range' of local facilities, 'quite extensive' services and 'good accessibility' do not, on the face of it, suggest a settlement in stasis or decline.
15. In addition, even if it is a non-designated heritage asset (as the appellant suggests) there is no objective evidence that a change of use and conversion of the church alone would not be 'commercially viable'. Nor that two new dwellings are necessary to deliver development 'at all' on the site or to retain this local 'landmark' building or, conversely, that refusing planning permission for the current proposal means the site would become derelict. I have not been provided with any firm intention to use the church for another community orientated purpose and no evidence that such other uses as have been suggested by the appellant would cause materially more adverse impacts than use of the site as a church.
16. Consequently, the appellant has not demonstrated that there are no reasonable alternative sites or any compelling need or necessity for the development to sustain the existing community. Accordingly, there is no other local circumstance in this appeal to suggest that the catchment area of the Sequential Test for this housing proposal should be limited to any smaller or arbitrary area, or an individual settlement, such as Pevensey Bay. Moreover, no apparent reason why 'by its nature the sequential test is based on a settlement wide situation', as the appellant suggests.
17. I have been referred to a recent appeal decision⁸ for a new house elsewhere in Pevensey Bay. That decision, and the so-called 'narrow' scope of the Sequential Test catchment area, was made on the basis of the evidence before that Inspector. I appreciate that in the current appeal, and on the evidence before me, I have found a 'wider' scope. However, even if it had been established in

⁶ Beyond an expected normal turnover of premises in a local commercial property market or beyond the exceptional effects of the Covid-19 pandemic

⁷ Appellant's emphasis

⁸ APP/C1435/W/19/3240856

the current appeal that housing development on suitable alternative land elsewhere, outside of Pevensey Bay, would not help to sustain the existing community and businesses in Pevensey Bay, it has nonetheless not been justified that there is a prima facie local need to sustain the existing community and businesses by additional housing development in Pevensey Bay, or over and above the influence already exerted by the existing resident population. Nor why a smaller catchment area than the HMA is appropriate for the type of development proposed. Both of these considerations, and in these terms, were not, on the face of it, matters before the previous Inspector.

18. I have also been provided with a copy of the Council's decision notice relating to an older planning permission for a dwelling elsewhere in Pevensey Bay⁹. The planning merits of that case and the Council's reasons for its decision, including flood risk, are not before me and I cannot, therefore, be certain that it is directly comparable. In contrast, I have been provided with two appeal decisions¹⁰ of a similar vintage to the Council's decision for housing development in Pevensey Bay. I note that these appeals were dismissed, including for reasons of flood risk in circumstances that were not dissimilar in many respects to the current appeal. In another Council decision¹¹, the site was partly outside Flood Zone 3a so it is not comparable. I have, in any event, determined the current appeal on the individual planning merits of the proposal.
19. Taking all of the above into account, I find that the proposal does not meet the Sequential Test and, accordingly, the site is not a suitable location for the proposed (new build housing) development having regard to flood risk. Consequently, it would not comply with Policy EN1 of the Council's Local Plan¹² or with Policies SPO10 and WCS14 of its Core Strategy¹³. These policies include that the Council will apply national policy in the Framework with regard to sustainable development and avoid use of land for housing in areas subject to high flood risk having regard to its location and effect on the environment.
20. The PPG confirms that the Exception Test should only be applied if required, and after the Sequential Test, and that both elements need to be satisfied to grant planning permission¹⁴. Given my findings on the Sequential Test, it is not necessary for me to consider the Exception Test.

Other Matters

Ashdown Forest

21. The appeal site is not within a zone of influence of the SPA. It is, though, within a zone of influence of the SAC which is designated due to the presence of European dry heath, North Atlantic wet heath and great crested newts. In essence, the conservation objectives for the SAC are to ensure the favourable conservation status of its qualifying features by, amongst other things, maintaining or restoring its qualifying habitats.
22. The heathland is vulnerable to atmospheric pollution, including vehicle emissions. A significant effect on the heathland would be likely to occur from

⁹ WD/2009/2063/O

¹⁰ APP/C1435/A/10/2127560 and APP/C1435/A/10/2126609

¹¹ WD/2020/1604/F

¹² Wealden District Council – Wealden Local Plan, December 1998

¹³ Wealden District (incorporating part of the South Downs National Park) Core Strategy Local Plan, February 2013

¹⁴ PPG paragraph ID: 7-035-20140306

the proposed increase in residential development alone, or in combination with other plans and projects, in an area where increased traffic flows associated with new development would occur on roads which go through, or run adjacent to, the SAC. The Council explains that Natural England was satisfied that development proposed under its now withdrawn local plan¹⁵, which sought to deliver approximately 14,000 homes and 22,500m² of business floorspace, would not adversely affect the integrity of the SAC due to air quality impacts. I return to the SAC below.

Raised decking

23. In the revised plans the rear raised decking to plots 3 and 4 have been omitted. This would alleviate the possibility of unrestricted elevated views by future occupiers of these houses towards adjoining dwellings and rear gardens.

Car parking spaces

24. In the revised plans the width of two car parking spaces on plot 4 have been adjusted. This would give better separation to a boundary wall or fence. The omission of the rear raised decking would also improve access to the spaces. As a result, notwithstanding that they would be less than 3m wide, I consider that they would be useable.

Additional interested party comments

25. The two-storey parts of the houses would be separated from the existing dwellings to the south by at least 21m. While there would be some mutual overlooking from upper floor windows into opposing gardens, and some opposing views between upper floor windows, given this significant distance it would not result in unacceptable loss of privacy.
26. Notwithstanding the internal ground floor levels of the proposed houses, the dwellings and gardens to the south are also elevated above site level. In places existing boundary fences are low or chain link. While there may be restrictive deeds in respect of boundary treatments for the occupiers of these dwellings, a condition could secure boundary fences or walls erected within the site along this common boundary. This would ensure that even from the closest single storey parts of the proposed houses there would be no unacceptable mutual overlooking or loss of privacy. It would also alleviate the effects of vehicle headlights.

Planning Balance

27. The Council has a 3.28 year supply of housing land. It cannot, therefore, currently demonstrate a five-year housing land supply. However, in this appeal the application of policies in the Framework that protect areas of particular importance (at risk of flooding) provide a clear reason for refusing the development. Accordingly, by virtue of footnote 7, Framework paragraph 11 d) is not engaged.
28. In terms of benefits, the provision of four family sized dwellings, including two by re-use of an existing building, on a sustainably located site within the built-up area of Pevensey Bay, would make a modest contribution to housing supply in the district. It would be aligned with objectives of the Framework to

¹⁵ The Submission Wealden Local Plan 2019

significantly boost the supply of homes. The social, economic and environmental benefits associated with building and occupying the houses, including CIL¹⁶, Council Tax (including Parish precept) and new homes bonus payments, and that new residents of the development would likely make use of local facilities and services, are factors which, commensurate with the modest scale of the proposal, carry moderate weight in favour of the proposal.

29. The site is not in a Conservation Area or in the setting of a listed building. The development would be high-quality in design and external appearance and not have any unacceptable adverse impacts on the character or appearance of the area or on the living conditions of the existing occupiers of nearby dwellings. It would harness the embedded energy in the existing building and reduce the amount of impermeable area on the site. The absence of harm, or compliance with the Council's development plan and the Framework in these regards are therefore neutral factors in my decision.
30. However, while the Framework recognises that small, windfall or under-utilised brownfield sites and efficient, effective or optimal use of land can make an important contribution to meeting housing requirements, including that great weight should be given to the benefits of using suitable sites within existing settlements for homes, the Framework also has other objectives. Notably, it seeks to avoid inappropriate development in areas at risk of flooding unless it is necessary. In this appeal the development would not be appropriate or necessary. It would conflict with the Council's relevant development plan policies and diminish the Council's objectives in these respects. These are consistent with aims of the Framework to balance meeting housing needs with the objectives of sustainable development. Consequently, I give substantial weight to the harm that I have identified in the main issue above.
31. Notwithstanding that the benefits would be aligned with the Framework, and the scale of shortfall in the Council's five-year housing land supply, the adverse impacts of the proposed development would, therefore, outweigh the benefits.
32. Since I intend to dismiss the appeal for these reasons, there is no need for me to consider the SAC any further.

Conclusion

33. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
34. Therefore, for the reasons given above I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR

¹⁶ The Community Infrastructure Levy Regulations 2010 (as amended)