



Appeal Decision

Site visit made on 8 March 2022

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2022

Appeal Ref: APP/Z1510/W/21/3280402

Rear of The Swan PH, 153 Newland Street, Witham CM8 1BE

- 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 J Purdy against the decision of Braintree District Council.
 - The application Ref 19/01287/FUL, dated 25 June 2019, was refused by notice dated 9 February 2021.
 - The development proposed is demolition of single storey function room and erection of a detached dwelling to provide 1 x 2 bed house.
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr J Purdy against the Council. This application is the subject of a separate decision.

Procedural Matter

3. The National Planning Policy Framework (Framework) was revised on 20 July 2021. It replaces the version from 2019 that the Council considered when it determined the application. The appellant and the Council had an opportunity to comment on the bearing of the current version of the Framework on the proposal during the appeal process.

Main Issue

4. The main issue is whether the proposed development is acceptable in respect of flood risk.

Reasons

5. The site includes a building used as a function room and adjacent land to the rear of a public house. There is no dispute that the site is located within Flood Zone 3, which means that it has a high probability of flooding.
6. 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. This is achieved through the application of the sequential test. Its aim is to steer new development to areas with the lowest risk of flooding. Paragraph 162 of the Framework identifies that development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding.

7. Following the application of the sequential test, the exception test may also need to be applied, depending on the potential vulnerability of the site and the type of development proposed. However, paragraph 163 of the Framework and the Planning Practice Guidance on flood risk and coastal change¹ identify that the exception test should only be applied when the sequential test reveals that there are no appropriate sites with a lower risk of flooding.
8. Policy CS8 of the Council's Core Strategy (CS) sets out that national guidance on flood risk should be followed and that the sequential test should be applied. It is generally consistent with the Framework in respect of its approach to flood risk and thus is not out of date. Additionally, Policy LPP78 of the Council's emerging local plan (ELP)² echoes the Framework on flood risk, albeit it attracts limited weight having regard to the stage of its examination.
9. Application of the sequential test is required because of the site's flood zone location, but this has not taken place. Moreover, the appellant notes that there is other land available for residential purposes with a lower risk of flooding. Compelling evidence to the contrary has not been provided. As such, the proposal does not pass the sequential test and there is no need to further consider flood risk or the exception test.
10. The appellant contends that the site currently falls within a 'vulnerable' flooding category, more people can be accommodated in the function room than the proposed dwelling, and the function room is at greater risk of fluvial inundation as it is a single storey building, whereas the dwelling would be located over two storeys. It is also highlighted that a flood evacuation plan has been prepared, and that the development would be flood resilient and resistant, provide a safe means of refuge for the occupiers, and provide wider sustainability benefits to the community that outweigh the flood risk. However, such considerations apply where it is not possible for development to be located in areas with a lower risk of flooding, and do not overcome the need to pass the sequential test in the first instance.
11. It has been highlighted that housing has been granted permission relatively recently in Flood Zone 3. I cannot be sure of the considerations that applied in those cases. Nevertheless, this does not indicate that the sequential test should be disapplied for this proposal.
12. The proposal fails to represent an acceptable form of development having regard to its flood zone location. It is contrary to CS Policy CS8, ELP Policy LPP78 and Chapter 14 of the Framework, which require that development is steered towards areas with the lowest risk of flooding.

Other Matters

13. The site is within the Witham Conservation Area and near to a grade II listed building at Nos 149 and 151 Newland Street. The function room is a small building with limited prominence. The proposed dwelling would be much taller and more prominent but compatible with the surrounding residential development. Overall, the character and appearance of the conservation area would be preserved. Additionally, the listed building's setting would be preserved due to the separation distance between it and the proposed dwelling, and as existing development is located between them.

¹ Reference ID: 7-035-20140306

² Section 2 – Publication Draft Local Plan

14. The officer's report identifies that the site is within the zones of influence of habitats sites, as defined in Annex 2 to the Framework. If I were to conclude that there would be no adverse effect on habitats sites, this would constitute a neutral consideration rather than a benefit weighing in favour of the proposal.
15. The appellant has explained that there are no controls restricting the use of the function room or garden, the former has poor acoustic insulation, and their use has caused friction with the occupiers of nearby housing including sheltered accommodation, as demonstrated by opposition to an approved scheme involving the replacement of the function room with garden³. Although limited evidence has been provided as to the frequency and precise impacts of events and activities in the function room and garden, and thus the extent of their effects on neighbours' living conditions, the proposal is less likely to generate noise, disturbance and other conflicts with the neighbours.
16. In addition, I acknowledge the flood mitigation measures proposed and that the function room is currently at risk of flooding. The proposal would also make use of previously developed land, contribute to housing supply and delivery in an accessible location, and provide economic benefits from the construction process and the future occupiers of the dwelling engaging with local services and amenities. However, the amount of housing proposed is small, and the scale of the development's benefits is limited. These matters do not outweigh my findings for the main issue above.
17. It has been raised that paragraph 120(c) of the Framework sets out that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. However, due to the site's flood zone location and the proposal's failure to pass the sequential test, the site does not constitute suitable land for housing.
18. Paragraph 168 of the Framework states that changes of use should not be subject to the sequential test. It is put forward that the function room could be converted into residential accommodation and that in contrast the proposal would be far more appropriate. However, the proposal is not for a change of use but the creation of a new building. The evidence does not indicate that there is a significant probability that a change of use would be granted permission, or carried out, should this appeal be dismissed. As such, this matter does not indicate in favour of the proposal.
19. The appellant says that he would have no alternative other than to use the function room for events if the appeal is dismissed. Additionally, it is advanced that a residential scheme is the most pragmatic solution for making use of the site having regard to the surroundings, and as office accommodation would be unviable and there is an office surplus in the area. However, although I have been referred to the Council's Economic Viability Study 2017 regarding land values, there is no firm and substantive site specific evidence before me which indicates that the site can only be used as a function room or for housing. These matters do not outweigh my findings in respect of flooding.
20. The Council contends that it can currently demonstrate a 5 year supply of deliverable housing sites. However, it has also referred to an appeal decision that suggests otherwise⁴. In any event, even if the presumption in favour of

³ Council ref: 15/01297/FUL

⁴ Appeal ref: APP/Z1510/W/21/3267825

sustainable development, as set out at paragraph 11(d) of the Framework, is applicable, the application of the policies in the Framework relating to flooding provide a clear reason for refusing the proposal. As such, the Framework does not indicate in favour of the development.

Conclusion

21. The proposal conflicts with the development plan as a whole. Although there are material considerations in favour of the proposal, these do not outweigh the conflict with the development plan.
22. For the above reasons, and having regard to all matters raised, the appeal is dismissed.

Mark Philpott

INSPECTOR