



Appeal Decision

Site visit made on 4 May 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2022

Appeal Ref: APP/U2235/W/21/3277626

Birch Cottage, Maidstone Road, Staplehurst TN12 0RG

- 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 and Mrs Barrie Alder against the decision of Maidstone Borough Council.
 - The application Ref 20/502064/FULL, dated 14 May 2020, was refused by notice dated 3 March 2021.
 - The development proposed is 'Replacement of stable building and barn, which have planning permission for use as three holiday-lets, with a new, smaller building for use as a single holiday let.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. There are no substantive changes relevant to the appeal before me and therefore no interested parties would be prejudiced by my consideration of the 2021 version of the Framework.
3. The development has been commenced and the timber frames for the walls and roof have been installed. External cladding has also been installed to some of the walls.

Main Issue

4. The main issue is whether the proposed development would be at an unacceptable risk of flooding.

Reasons

5. The main parties agree that the appeal site is within Flood Zone 3b, which is functional floodplain. The site formally comprised a stable block (Building 1), which has been demolished, and a smaller storage building (Building 2) of which some walls and the roof frame still remain. As a 'more vulnerable' use according to the Framework and Planning Practice Guidance, the development should not be permitted.
6. In the absence of information to demonstrate that the development could be located in an area of lower flood risk, or that the development is necessary in this area, the appeal scheme would fail to meet the aims of the sequential test. As such, it would conflict with paragraph 159 of the Framework which states that inappropriate development in areas at risk of flooding should be avoided

by directing it away from areas at highest risk. It would also conflict with paragraph 162 which states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development with a lower risk of flooding. On the basis of the information before me I find no reason why there could not be a more suitable location for a holiday let, in an area at lesser flood risk.

7. The proposed development would include mitigation measures beyond those of the earlier planning permissions, and these would provide increased safety for future users beyond those earlier developments. However, this mitigation and management would not provide sufficient justification for the location of the development, which is an inherent part of the tests set out within the Framework and Planning Practice Guidance.
8. It has not therefore been satisfactorily demonstrated that the development proposed would be in a suitable location in terms of flood risk and this would cause harm to the safety of future users. This conflicts with the objectives of the Framework, as discussed above.
9. There would not however be conflict with Policy DM1 of the Maidstone Borough Local Plan 2017. This policy states that mitigation can be provided as an alternative to avoiding inappropriate development in areas at risk of flooding. I find this to be inconsistent with the objectives of the Framework and I return to this matter below.

Other Matters

10. Due to the demolition which occurred, the planning permission for the conversion of Building 1 (ref 19/501764/FULL) could no longer be implemented. While it included less flood mitigation measures than now proposed, this is no longer a fallback position and as such I afford it very limited weight. With regard to Building 2, even if the planning permission for the conversion (ref 18/503022/FULL) remains extant and is a legitimate fallback position for the appellant, the policy tests surrounding a conversion and change of use are materially different to the proposed new build before me. This is particularly as changes of use do not require a sequential test, as set out in Planning Practice Guidance. Furthermore, Building 1 is significantly smaller and would likely have a lower level of occupancy than the unit now proposed. Due to the difference in circumstances in that assessment and this appeal, I afford the planning permission for Building 2 limited weight.
11. The proposal would result in a reduction in the footprint of development on the site compared to the earlier situation before Building 1 was demolished, which in turn could increase the storage capacity of the flood plain. However, as Building 1 has already been demolished, I attach limited weight to the benefit of a reduced footprint on the site compared to the previous situation. There would be some benefit to the permeability of the site through the removal of existing hard surfaces. However, this benefit does not outweigh the harm to the safety of future occupiers or indeed address whether the proposed development should be on the appeal site in the first instance.
12. The appellant has another holiday let within their curtilage close to the appeal site, which received planning permission as a rebuild in 2012. While similar circumstances apply, I am not convinced that the grant of planning permission in 2012, under earlier development plan policies, sufficiently outweighs the

harm identified here. While the use was described by the Council as 'transient', there is no reason why the holiday let now proposed could not be occupied regularly and the transient nature of movements would not reduce the threat to the safety of its occupants from flooding.

13. The appellant has drawn my attention to other nearby examples for residential development within the floodplain. However, a number of these permissions pre-date the publication of the first Framework in 2012 and I do not consider these set a precedent for the appeal scheme. The example relating to a prior notification for change of use, would not have been subject to the same policy requirements as discussed above.

Conclusion.

14. I attach substantial weight to the safety of future occupiers of the proposed development in respect of flood risk. I have not found conflict with the relevant development plan policy, DM1. However, I find this is not consistent with the Framework. As a consequence, I would refer to the circumstances of paragraph 11 of the Framework which mean I would, in regard to the particular circumstances of the case, grant planning permission 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. In this case, I have found that the appeal scheme would be at an unacceptable risk of flooding which is a specific policy of the Framework identified by footnote 7 of paragraph 11 which provides said clear reason. As such the proposal would not benefit from the presumption in favour of sustainable development.
15. Having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

C Shearing

INSPECTOR