



Appeal Decision

Site visit made on 17 May 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Appeal Ref: APP/Z5630/W/21/3274582

Land to the rear of, 16 Cambridge Road, Kingston upon Thames KT1 3JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Mr Karl Schooling against the Royal Borough of Kingston upon Thames.
- The application Ref 21/00064/FUL, is dated 11 January 2021.
- The development proposed is demolition of disused building and erection of a single-storey (1b1p) dwelling house.

Decision

1. The appeal is dismissed and planning permission is refused.

Applications for costs

2. An application for costs was made by Mr Karl Schooling against the Royal Borough of Kingston upon Thames. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council has not provided a statement of case, nor has it provided details of the development plan and other policies relevant to this appeal. I have therefore relied upon the details submitted in the appellant's evidence which includes the refusal notice for a previous application¹ at the site (the previous application). That scheme is the same as the appeal proposal in terms of its appearance, scale and layout, with the main difference between the schemes being the lack of assessment information in relation to flooding. I have therefore considered the policies referred to by the Council in determining the previous application, which are publicly available on its website.
4. Following the submission of the planning application and the appeal coming before me, the new London Plan² and a revised Framework³ were published and I have had regard to these documents.

Background and Main Issue

5. This appeal has been lodged following the Council's failure to determine the application for a single storey dwelling within the relevant timescale.

¹ 20/00111/FUL

² The London Plan 2021

³ National Planning Policy Framework (2021)

6. The previous application at the site was refused as a Sequential Test assessment was not submitted to demonstrate the proposal's acceptability within Flood Risk Zone (FRZ) 2. The officer's report in relation to that previous application indicated that the scheme was acceptable in terms of its effect on local character, neighbouring amenity, and local parking conditions. The appeal scheme has not materially changed in terms of its appearance, scale and layout. Therefore, in the absence of a statement of case or an indication of the Council's recommendation, my assessment of the appeal would likely hinge on whether the scheme addresses the matter of flooding previously raised.
7. In light of the above, the main issue in this appeal is whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the development plan, the National Planning Policy Framework (Framework) and associated guidance.

Reasons

8. The appeal site comprises a long and narrow parcel of land located to the rear of residential properties fronting Cambridge Road. The existing single storey building at the site would be replaced by a marginally larger structure intended for residential use.
9. The submitted Flood Risk Assessment (FRA) identifies the appeal site being partly within FRZ1 and FRZ2. The latter having a high probability of flood risk. Residential uses, insofar as they relate to FRZ2 areas, are categorised as 'more vulnerable' as per Annex 3 of the Framework. Paragraph 162 of the Framework states that development should not be permitted in an area of high flood risk if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding i.e. the Sequential Test.
10. Paragraph 163 of the Framework states that the Exceptions Test may have to be applied if it is not possible for development to be located in areas with lower flood risk and that this test should also be informed by a site-specific FRA. The Planning Practice Guidance (PPG) also highlights that a Flood Risk Assessment (FRA) should establish the evidence to allow the local planning authority to apply the Sequential Test, if necessary and in relation to the Exception Test, if applicable⁴. The Guidance also states that in the first place it is the responsibility of the Local Planning Authority (LPA) to consider if the Sequential Test has been satisfied, informed by evidence provided by the developer⁵. As a result of the appeal site's location in FRZ2, the Sequential Test as set forth in the Framework should be applied to the scheme.
11. When undertaking a Sequential Test, Environment Agency guidance⁶ advises that developers contact the LPA to identify a search area for available alternative sites suitable for development. These could include sites allocated in the development plan or those granted planning permission in the area. Windfall sites can also form part of this search. The capacity and number of housing units that can be accommodated on those alternative sites should also be considered, in addition to any issues that prevent development on those sites and whether these issues could be overcome. Supporting documentation about the alternative sites should be included.

⁴ Paragraph: 030 Reference ID: 7-030-20140306

⁵ Paragraph: 034 Reference ID: 7-034-20140306

⁶ Flood Risk and Coastal Change, Environment Agency and Department for Environment, Food and Rural Affairs, published 6 March 2015

12. The appeal has been accompanied by a site-specific Sequential Test⁷. It concludes that the scheme passes the test based on the lack of allocated sites in lower flood risk areas, a lack of comparable sites in the area, while highlighting the need for housing and the proposal's sustainability credentials. Furthermore, it indicates that a larger percentage of the Council's allocated sites are in FRZ2 and FRZ3 and these would need to be reviewed to consider new climate change allowances. Such a review may render, those allocations, which previously passed on flood risk grounds, unviable.
13. Despite the appellant's assertions, I have no details of an identified search area, or specific details of the location of allocated sites, sites benefiting from planning permission and windfall sites consented by the Council. Moreover, although there are allocated sites referred to within high flood risk areas, it has not been made clear whether they would have appropriate measures in place that would make those alternative sites suitable, nor do I have before me any details of their capacity in terms of number of units. Also, I have not been directed to the relevant sections of the Council's development plan, guidance and assessment documents that confirm, in the appellant's view, that there is a lack of allocated sites in lower flood risk areas.
14. The appellant has referred to schemes approved by the Council in higher flood risk areas passing the Sequential Test. Whilst that may be the case, I have no specific details of those cases or the information that informed those decisions.
15. In the absence of any detailed analysis and background information to inform the Sequential Test, I cannot reach a firm conclusion on the reasonable availability of other sites suitable for the development which are located within an area at a lower risk of flooding. As such, there is no need for me to consider the exception test.
16. Whilst I am also mindful that the appellant's FRA indicates that there would be no significant change to the impermeable area of the site, the proposal would incorporate a flood resilient construction, while safe egress to a lower risk flood area can be provided, this does not overcome the need to apply the Sequential Test.
17. For the reasons detailed above, the location of the site is not acceptable in terms of the risk of flooding, with particular regard to the Sequential Test. It would fail to accord with the provisions of Policy DM4 of the Council's Core Strategy (2012) and Policy SI12 of the London Plan where they require, amongst other things, developments subject to flood risks to be considered in accordance with local and national guidance, while current and expected flood risks should be managed in a sustainable way. For similar reasons, the proposal would also be inconsistent with the provisions in the Framework, the PPG and the Environment Agency guidance in relation to planning and flood risk.

Other Matters

18. There are concerns from interested parties in the locality regarding the proposal's effect on local character, living conditions and parking in the area. However, as the main issue provides a clear reason for dismissing the appeal, there is no need for me to consider the implications of the development on

⁷ Sequential Test Planning Statement prepared by Ark Environmental Consultancy, November 2020

those matters, since my findings on those issues would not change the appeal outcome.

19. I note that the Council does not currently have an up to date 5-year housing land supply. Despite this, the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Areas at risk of flooding, which the appeal site is within, is an example of such areas/assets and the proposal is contrary to the relevant policies of the Framework in regard to these.

Planning Balance and Conclusion

20. Given the lack of detail and analysis in the appellant's Sequential Test to indicate that there are no reasonable alternatives to developing in such an area, the proposal conflicts with the development plan, when taken as a whole.
21. The main public benefits would result from an economic contribution to the area by constructing the proposal as well as spending by future residents. A secondary benefit would be the addition of a further dwelling to the local housing supply. However, the combination of these beneficial aspects does not outweigh the identified harm or indicate that a decision should be taken other than in accordance with the development plan.
22. For the reasons given above I conclude that the appeal should be dismissed, and planning permission refused.

RE Jones

INSPECTOR