



Appeal Decision

Site visit made on 4 October 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/M1520/W/21/3284021

81-83 High Street, Benfleet, Essex, SS7 1ND

- 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 Jack Saunders against the decision of Castle Point Borough Council.
 - The application Ref 20/0814/FUL, dated 6 November 2020, was refused by notice dated 30 March 2021.
 - The development proposed is demolition of existing building and erection of 5No. apartments.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.
3. The Council has advised that the emerging Local Plan has been withdrawn. I, therefore, have not had regard to that Plan in reaching my decision.

Main Issues

4. The main issues raised in respect of the proposed development are: -
 - a) Flood risk having regard to its flood zone location and the provisions of the Framework; and
 - b) The provision of satisfactory living accommodation for its future occupants, having regard to flat and room sizes.

Reasons

Flood risk

5. The Environment Agency advises that its maps show the site to fall within Flood Zone 2. The Planning Practice Guidance (PPG) sets out this to be a site at medium probability of risk of flooding. The Council advises that only a small part of the 'mainland' part of Castle Point Borough is within Flood Zones 2 and 3. Most of the land is within Flood Zone 1, an area with a low probability of risk of flooding. The sequential test requires it to be demonstrated that there are no reasonably available sites in Flood Zone 1 that could accommodate the development.

6. The appellant has produced a site-specific flood risk assessment (FRA) which is required for all proposal for new development in Flood Zones 2 and 3. Paragraph 162 of the Framework states that *'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 allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. ... The sequential approach should be used in areas know to be at risk now or in the future from any form of flooding.'*
7. The PPG advises that in relation to flooding the aim is to steer new development to Flood Zone 1, areas with a low probability of flooding. Where there are no reasonably available sites in Flood Zone 1, then consideration can be given to site in Flood Zone 2. The appellant contends no exception test is required in this instance given the medium probability of flood risk set out in Table 3 within the PPG. However, on my reading of the Framework and PPG the sequential test must be passed before the exception test can be applied.
8. It is contended that it would not be reasonable to consider other locations for such development as the appellant does not have control over other sites to inform such a search. The area over which the sequential test is considered is not fixed. For housing it can relate to the whole area of the local planning authority. It is not acceptable to consider only land that may be in the applicant's ownership or control. On the available evidence I cannot conclude that there would be no other available sites.
9. The Environment Agency has not objected to the flood resilience measures. A Flood Risk Management Technical Note and revised drawings have been submitted in support of the appeal. These have been provided to address comments from the Environment Agency in respect of Flood Risk Management measures. It indicates that a means of safe/dry escape can be provided for the occupants and sleeping accommodation would not be below the identified level requirements. However, it should also be noted that whist not objecting, the EA indicated that this is on the proviso that the Council has taken into account the flood risk considerations which are its responsibility.
10. The acceptability of any flood resilience measure to the EA does not overcome the requirement for the development to meet the sequential test. The sequential test must be passed before the exception test can be applied. The requirements of the sequential test have not been met and it has not been demonstrated that there are no reasonably available sites in Flood Zone 1, which covers most of the Borough, that could accommodate the development.
11. For the above reasons, I conclude that the proposed development would represent an unacceptable form of development having regard to flood risk and its flood zone location taking into account the provisions of the Framework.
12. I have been directed to a planning permission opposite the appeal site where a nine flat development was granted planning permission in 2007 in which the site is said to be defined as being within Flood Zone 3a. I have also been referred to a pair of semi-detached houses and three flats granted at The Forge, High Street around the same time. However, those developments predated the Framework. As such, different considerations may have applied.

Living accommodation

13. The Technical housing standards – nationally described space standards set out minimum space standards to ensure that development is not cramped internally and that room sizes would ensure convenient and efficient room layouts can be achieved. The Council does not have its own adopted local requirement standards in place within development plan policies. Its adopted Residential Design Guidance seeks all new dwellings to provide appropriate internal space and circulation. That document refers to space standards set out within the now superseded 2011 London Plan. Nevertheless, in the absence of such adopted local standards the nationally described space standards set the appropriate thresholds to which new development should adhere.
14. The Council have identified a shortfall in the minimum requirement for the gross internal floor area relating to proposed flat 1 and a shortfall in bedroom size pertaining to proposed flat 3. The shortfall in this instance, while not very substantial, is significant in my view, and would result in cramped accommodation.
15. I have been provided with revised plans in support of the appeal. These seek to address the Council concerns in respect of the shortfall in some flat and room sizes. The Council, although having the opportunity to submit a statement of case in response to the appeal, has not done so. Notwithstanding this, the accommodation schedule that supports the revised plans indicates that each apartment would satisfy the standards with regard to gross internal floor areas. However, the technical requirements also set standards for room sizes and, even if I were to accept these revised plans, I have insufficient information before me to enable me to form a view as to whether or not the room sizes would satisfy the requirements.
16. For those above reasons, I conclude that the proposed development would not provide satisfactory living accommodation for its future occupants, having regard to flat and room sizes. As such, the proposal would conflict with Policy H17 of the Local Plan as the development would not provide appropriate internal space as required by the Residential Design Guidance. It would also conflict with the Framework that requires a high standard of amenity for existing and future users, and I attribute substantial weight to Policy H17 given its alignment with the Framework.

Planning Balance

17. The Council advises that it is unable to demonstrate a five-year supply of deliverable housing sites. The Government's aim is to boost the supply of housing. If there is not a five-year supply of deliverable sites in place, the provisions of paragraph 11d) of the Framework should be applied. I have considered the application of the sequential test having regard to a lack of a five-year supply.
18. The Inspector at the Heybridge Hall appeal September 2010 concluded that the sequential test would be passed on the basis that a continuous five-year housing supply to meet the required target cannot be demonstrated. I have been referred to a High Court Judgment of January 2011 that deals with the application of the sequential test. The appellant contends that the sequential test would be met as a result of the Council's chronic lack of a five-year

housing land supply and delays in the adoption of any emerging plan.

However, both that appeal, and the judgement predate the Framework that clearly indicates the inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk and to manage any residual risk by applying the sequential test first.

19. The vast majority of the Borough is not included within existing settlement boundaries or is defined as Metropolitan Green Belt. Having researched the Council's latest housing trajectory the appellant contends that there are no equally suitable sites located elsewhere in the borough in a lower flood risk category which would be available for redevelopment. The evidence presented to me in respect of this matter is extremely limited. Therefore, there is insufficient evidence before me to enable me to form a view in respect of this claim.
20. I have been directed to a recent response from a Local Plan Inspector in relation to proposed housing allocations in which it is confirmed that there is a lack of land supply within the Borough to meet the identified need for housing in Flood Zone 1 areas in the Plan period. However, the Council has advised that the emerging plan has been withdrawn and this substantially limits any weight that can be attributed to this evidence base.
21. The Council accept they do not have a five-year supply of deliverable housing sites in place. The proposal would provide a meaningful contribution to the housing supply shortfall in the short-term that could be delivered quickly. The site is located in an sustainable urban location. It would re-develop a brownfield site close to the town centre and where there is accessibility to car parks and a train station that would reduce reliance on private motor vehicle. The development would be located outside the Green Belt and would not impact on heritage assets or a conservation area. It would also be in keeping with the character and appearance of the area and provide satisfactory parking to serve the development. In terms of economic benefits, the proposal would bring about income during the construction phase, contribute to local footfall and Council Tax contributions. These hold substantial weight in favour of the proposal.
22. Notwithstanding the above, paragraph 11d)i of the Framework indicates that the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 that corresponds to paragraph 11d)i lists areas at risk of flooding or coastal change amongst those that are of particular importance.
23. The Council's five-year housing land supply position is acute. However, the proposal would be within an area at risk of flooding, and this provides a clear reason to refuse the development proposal. Therefore, the presumption in favour of sustainable development set out in paragraph 11 of the Framework does not apply. Furthermore, the proposal would not provide satisfactory living accommodation for future occupants of the proposed development, and this brings the proposal into conflict with the development plan. I have had regard to the appeal referred to me at London Road in reaching my determination.

Other Matters

24. The Council has highlighted that the proposed development would have a negative impact on wildlife habitat sites and a financial contribution is required

to mitigate the potential adverse effects resulting from the development as a result of increased recreational disturbance. However, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail.

Conclusion

25. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR