



Appeal Decision

Site visit made on 1 November 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/C1435/W/22/3299553

The Moorings, Seaville Drive, Pevensey Bay BN24 6AP

- 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 D Brazil against the decision of Wealden District Council.
 - The application Ref WD/2020/1604/F, dated 2 September 2020, was refused by notice dated 8 December 2021.
 - The development proposed is demolition of existing building. Proposed erection of 4 No. four-bedroom houses.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

3. The appeal site is positioned near the seafront within the village of Pevensey Bay. The site is split into two areas comprising land between Seaville House and Midships, and 'The Moorings' at the end of Seaville Drive, which includes an existing car park adjacent to the beach.
4. The Moorings is a former restaurant building consisting of three-storeys with the upper two-storeys being a residential unit. The land between Seaville House (a three-storey building divided into flats) and Midships (a chalet bungalow) is currently used for off-road car parking and is located on the eastern side of Seaville Drive.
5. Permission is sought for residential development comprising a terrace of 3 dwellings to replace The Moorings building, and a detached dwelling on the land between Seaville House and Midships. The proposal would also include car parking and outdoor amenity space.
6. The appeal site is located within flood risk zones 1 and 3. The parts located within flood zone 3 includes the beach end of Seaville Drive, where the flood risk zone cuts across the road that would provide access to the proposed terraced dwellings, and the areas for car parking to serve the proposed dwellings and provision of replacement spaces for flats in the neighbouring Seaville House. The proposed detached dwelling would have access to/from the

- public highway that is in flood zone 1, but flood zone 3 would be around 20 metres from its access.
7. The National Planning Policy Framework (Framework) advises at paragraph 159 that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). The Framework¹ and the Planning Policy Guidance² (PPG) aim to steer development to areas with the lowest probability of flooding through a sequential test.
 8. Paragraph 029 of the PPG states that relevant decision makers need to consider whether the sequential test is passed, with reference to the information it holds on land availability. It also states that local planning authorities need to be satisfied that the proposed development would be safe throughout its lifetime and not lead to increased flood risk elsewhere.
 9. When undertaking a Sequential Test, Environment Agency guidance³ advises that developers contact the local planning authority to identify a search area for alternative sites for development. A search for potential alternative sites should include checking the adopted or draft local plan for sites that have already been allocated for development, or sites that have been granted planning permission that are similar to the development being proposed. Windfall sites can also form part of the search. The information should also include the approximate capacity of each potential site and any issues that would prevent development on the site and whether these issues could be overcome. The assessment would need to conclude whether any of the alternative sites identified have a lower risk of flooding than the proposed site.
 10. The appellant has submitted a Flood Risk Assessment & Drainage Strategy (May 2020) (FRA). This states that the land adjacent to Seaville House does not require a sequential test as it is located within Flood Zone 1. However, the FRA confirms that a sequential test is required for the proposed development at 'The Moorings', as land associated with it is located within Flood Zone 3. The FRA indicates that while a sequential test is required, the proposed dwellings would be contained largely within the footprint of the existing building and would be located within Flood Zone 1. However, the proposal's front gardens and parking areas would be located in Flood Zone 3. The FRA states that this demonstrates that a sequential approach has been adopted on the appeal site, to ensure the proposed dwellings are positioned in the areas of the site deemed to be at the lowest risk of flooding.
 11. Nonetheless, parts of the appeal site would be located within and surrounded by flood zone 3. Moreover, the parts of the proposed development within flood zone 3 would be the access and egress routes, vehicular parking and turning areas, and outdoor amenity space for the proposal. Flooding of this area could cause safety risks and great inconvenience to future occupiers. Thus, evidence of flood risk within the appeal site necessitates the need for the sequential test to be applied to the proposal.
 12. Paragraph 023 of the PPG states that *"avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it*

¹ National Planning Policy Framework (2021), Paragraph 162

² Planning Practice Guidance (PPG), Paragraph: 023 Reference ID: 7-023-20220825

³ Guidance: Flood risk assessment: the sequential test for applicants – Environment Agency and Department for Environment, Food & Rural Affairs, updated 28 February 2017.

places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout the lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied."

13. Policy SPO10 of the Core Strategy⁴ advocates the same approach in terms of locating development with regard to flooding and need to provide sufficient evidence to support schemes in higher flood zones.
14. The appeal site has not been allocated in the development plan and the proposed development would not be classified as a minor development⁵ in relation to flood risk.
15. Whilst Pevensey Bay is largely in Flood Zone 3, the Council's Wealden Local Housing Needs Assessment (August 2021) indicates that Pevensey Bay is part of a wider housing market area, which includes land unconstrained by flood risk. However, the submitted FRA does not assess any other suitable sites in lower flood risk areas outside the appellant's ownership locally or within the wider area. In addition, there is no substantial evidence before me that the new housing development is needed in Pevensey Bay.
16. Consequently, there is insufficient evidence to demonstrate that the sequential test has been satisfied. As the sequential test has not been passed, the exceptions test is therefore not applicable in this case. As a result, I am not satisfied that the proposed development would not be at a high risk from flooding.
17. The appellant indicates that the proposal would be a purpose-built development incorporating raised floor levels, and betterment measures to reduce flood risk, including reducing the existing impermeable areas and the introduction of grassed and soft planted areas. The appellant also states that the appeal site has not previously flooded. However, these matters do not negate the need to firstly comply with the sequential test.
18. The appellant indicates that 'The Moorings' has previously been used as a restaurant with car park, and there is a single residential unit on its upper floors. Nevertheless, the proposal would result in an increase in the number of residential dwellings and future occupiers at the appeal site, resulting in an increase in risk of flooding to people and property.
19. I have taken into consideration the other cases raised by the appellant where development was permitted with some degree of flood risk, including a previous appeal case (APP/C1435/W/21/3277573). However, this other appeal was for a change of use from commercial to residential and the erection of one chalet style bungalow, located in a different location to the proposal before me. Moreover, the proposal has its own setting and circumstances with regard to flood risk. Thus, there are notable differences between the two cases which make them not directly comparable. In any event, it is incumbent on me to form my own judgement and I have assessed the proposal on its own merits based on the evidence before me.
20. The appellant has referred to a recent scheme for a caravan park extension in high flood risk area. However, permanent residential use would involve all

⁴ Wealden District (incorporating part of the South Downs National Park) Core Strategy Local Plan (February 2013)

⁵ Planning Practice Guidance (PPG), Paragraph: 051 Reference ID: 7-051-20220825

year-round use of the appeal site compared to a caravan park which is likely to operate as seasonal use. Therefore, it is not directly comparable to the proposal before me.

21. Consequently, the proposal has failed to demonstrate that there are no other sequentially preferable alternative sites for the proposed development. On the basis of the information before me, the proposal does not pass the sequential test and there is no need to consider flood risk in this regard any further.
22. Therefore, the proposal would not comply with local or national planning policy which seeks to steer new development away from areas at the highest risk of flooding. The proposal would be contrary to Saved Policy EN1 of the Local Plan⁶, and Policies SPO10 and WCS14 of the Core Strategy⁷ where they seek to secure sustainable development and avoid the use of land for housing in areas subject to high flood risk, taking into account the predicted impact of climate change.
23. In addition, it would fail to accord with the Framework where it states 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.

Other Matters

24. The Council does not currently have an up to date 5-year housing land supply, with a figure of 3.66 years (including 20%). 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 11d)ii is not engaged.
25. The Environment Agency did not raise an objection to the proposal, subject to conditions. However, as highlighted by the PPG, it is the responsibility of the local planning authority in the first instance to be satisfied that the Sequential Test is appropriately applied. In this case the local planning authority found that the proposal did not meet the Sequential Test. As set out above, from the evidence before me I concur with this view. Consequently, I afford this matter limited weight.
26. The appeal scheme would provide a net gain of 3 additional dwellings to the local housing supply. There would also be job creation through the construction phase and there would be energy efficiencies arising from the proposed development. However, the socio-economic benefits to be attributed to 3 additional dwellings would be modest. As such, I afford limited weight to this.
27. The proposal would secure efficient use of a previously developed site in a sustainable location with ready access to non-car based transport modes. 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.
28. No adverse harm has been identified with regards to the character and appearance of the area, highway safety, ecology, or living conditions of neighbouring occupiers of dwellings. The appeal site is not located within a

⁶ Wealden District Council – Wealden Local Plan (December 1998)

⁷ Wealden District (incorporating part of the South Downs National Park) Core Strategy Local Plan (February 2013)

conservation area or in close proximity to a listed building. However, these are neutral factors and therefore do not weigh in favour of the proposal.

Conclusion

29. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

30. For the reasons given above, I conclude that the appeal is dismissed.

Helen Smith

INSPECTOR