



Appeal Decision

Site visit made on 30 November 2022

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal Ref: APP/C1435/W/21/3285807

Wallsend House, Richmond Road, Pevensey Bay BN24 6AU

- 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 A Mackelden of Fivewalk Homes against the decision of Wealden District Council.
 - The application Ref WD/2020/2502/F, dated 2 November 2020, was refused by notice dated 15 September 2021.
 - The development proposed is described as roof extension to form two bedroom flat, and change of use of existing office to one bedroom flat.
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Decision

1. The appeal is dismissed insofar as it is related to the roof extension to form a 2 bedroom flat. The appeal is allowed insofar as its related to the change of use of the existing ground floor office to a 1 bedroom flat at Wallsend House, Pevensey Bay BN24 6AU in accordance with the terms of the application, Ref WD/2020/2502/F, dated 2 November 2020, so far as relevant to that part of the development hereby permitted and subject to the attached schedule of conditions.

Procedural Matter

2. For the following reasons, I find the change of use of the existing office to a 1 bedroom flat acceptable, and it is clearly severable both physically and functionally from the proposed roof extension. Therefore, I intend to issue a split decision in this case and grant planning permission for the conversion of the existing office only.

Main Issue

3. The main issue is whether the proposed development would be a flood risk in regard to the relevant policies.

Reasons

4. Wealden Core Strategy Local Plan (CSLP) objective SPO10 seeks to ensure the safety of residents by avoiding the allocation of land for housing in areas subject to medium or high flood risk, taking into account the predicted impact of climate change. However, there are no development plan policies before me which deal with flood risk specifically, although the ethos of Wealden Local Plan (WLP) Policy EN1 seeks to promote sustainable development regarding the effect of proposals on the environment. It is therefore necessary to assess this issue against the relevant policies in the Framework.

5. The appeal site is a flat roofed, detached building with 3 floors. The lower ground floor which houses a public library, a ground floor with 2 flats and an office, and a first floor with 4 further flats.
6. The proposal would constitute a change of use of the existing ground floor office into a 1 bedroom flat, and the erection of a roof extension to provide a 2 bedroom flat. The proposed roof extension would constitute new development and would be a comparatively large addition to the existing building, altering the roof shape entirely and creating a whole new floor of accommodation.
7. The main parties agree the appeal building is within flood zone '3a High Probability' at risk from tidal and sea flooding, and that the proposed residential use would be classified as 'more vulnerable' within flood risk vulnerability classification set out in annex 3 of the National Planning Policy Framework (the Framework). There is nothing before me to conclude otherwise.
8. As the appeal site is in a high risk area for flooding and it is not shown that the site has been allocated for additional housing by a sequential test (ST) undertaken at the plan making stage, National Planning Policy Guidance¹ (NPPG) states the ST should be applied at application stage.
9. The appellant's site-specific flood risk assessment (FRA) does not undertake a ST for the site. It concludes an ST is not necessary because Paragraph 168 of the Framework states that applications for some minor development and changes of use should not be subject to sequential or exception tests but should still meet the requirements for a site-specific flood risk assessment.
10. Although I agree with this position for the proposed change of use of the office, the proposed roof extension, as new residential development, is not excluded. I therefore find it necessary for the ST to be applied to this element of the proposal.
11. It is the Council's position that there are sites within the district which can accommodate new residential development in low risk flood zones. The appellant also agrees that there may be sites available elsewhere, that are sequentially preferable. There is nothing before me to justify that the appeal site is the only suitable location for the proposed development, or that there are no other reasonably available sites appropriate for residential development in areas with a lower risk of flooding. Consequently, I find the proposed roof extension to fail the ST. As such it is unnecessary to consider the subsequent Exception Test (ET).
12. The appellant considers the appeal site is appropriate for new residential development as it is brownfield site, and the proposal would benefit the existing community and businesses within Pevensy Bay. Although the efficient use of land and supporting the economy are matters of importance in the Framework, they do not outweigh the considerable harm that could be caused by intensifying development within high risk flood areas.
13. It is not disputed that the proposed roof extension would be above existing residential units and any likely flood level predictions. There is nothing before

¹ National Planning Policy Guidance 'Flood risk and coastal change' Paragraph 027 Reference ID: 7-027-20220825
Revision Date 25 08 2022

me, however, to indicate that the existing uses, and therefore the proposed unit would be safe from flooding over its lifetime. Nevertheless, it is first important to minimise the flood risk of any development by undertaking the ST before considering mitigation or management of any remaining risk. For the proposed roof extension, this has not been carried out.

14. Conversely, in accordance with Paragraph 168 of the Framework, the proposed change of use of the office to a flat would not require to be assessed by ST or ET. It is supported by an FRA which the Environment Agency (EA) does not object to, and the Local Lead Flood Authority (LLFA) agree would be acceptable with a relevant condition. Therefore, I find this element of the proposal has been appropriately assessed in accordance with the relevant policy requirements.
15. It is appreciated that the appellant's FRA also covers the proposed roof extension and the EA and LLFA do not specifically object to this element of the proposal. Nevertheless, this does not overcome the need for an ST to ensure the appeal site is the most appropriate location for the proposed additional 2 bedroom flat.
16. It is also appreciated that the Council do not have a 5 year housing land supply, however as set out in the NPPG², the absence of housing land supply is not a relevant consideration for the ST when applied to individual applications.
17. My attention has been drawn to a previous applications for additional dwellings on the appeal site (WD/2014/1691/F), and 3 appeals 164 Coast Road (APP/C1435/W/19/3240856); land at 189 Coast Road (APP/C1435/W/21/3277573); and The Holy Rood Catholic Church (APP/C1435/W/21/3276480). All of which sought residential development in the same flood risk area as the appeal site and show a tension within how the ST has been considered. The previous application and 164 Coast Road were dismissed on grounds not relating to flooding; land at 189 Coast Road was approved but has since been challenged and that challenge upheld; and Holy Rood Church was dismissed. In all 4 cases limited details have been provided and there is nothing before me to show how the specific circumstances of each case support or oppose the ST evidence in this case.
18. Consequently, I find that by failure to sequentially review other potential locations, it cannot be proven that the proposed roof extension would not be a flood risk. This is contrary to Paragraphs 159 and 162 of the Framework, insofar as they deal with steering new development to areas with the lowest risk of flooding, the relevant parts of the NPPG, and CSLP spatial planning objective SPO10 and WLP Policy EN1.
19. However, the proposed change of use of the office would be acceptable. It would comply with Paragraphs 159, 167 and 168 of the Framework insofar as they allow exceptions to the ST and ET with an appropriate FRA, the relevant parts of the NPPG, and CSLP spatial planning objective SPO10 and WLP Policy EN1.

² National Planning Policy Guidance 'Flood risk and coastal change' Paragraph 028 Reference ID: 7-028-20220825
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20. The Council has also considered the proposal against Paragraphs 164 and 165 of the Framework, which set out the ET. However, the ET is not applicable to either part of the proposal for the reasons set out above.

Other Matters

21. My attention has been drawn to the proximity of the appeal site to the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). The Council did not object to the appeal scheme in this regard and confirm its location is beyond the zone of influence so is not considered to provide a pathway of effect for recreational disturbance. With nothing to contrary before me, I am, therefore, satisfied the proposal would not adversely affect the integrity of the SPA or SAC.
22. The appellant has stated the proposed design would improve the appearance of the appeal building, and this has also not been objected to. However good design should form part of any new development and so does not constitute a benefit of the scheme.
23. The appellant states that the case officer considered approving the scheme before the Council ultimately issued the refusal. A Council is not, however, bound to accept the recommendations of their officer, either formally or informally.
24. Matters relating to construction disruption for existing occupants and tenants would relate, in the main to the proposed roof extension. The limited and mainly internal and limited would not be so disruptive as to warrant mitigation.

Planning Balance

25. The Council cannot demonstrate a 5 year housing land supply. Therefore Paragraph 11(d) of the Framework indicates that permission should be granted, 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. Areas at risk of flooding are considered a protected area of particular importance³ and as I have set out in the main issue, the proposed roof extension would not comply with the Framework on this matter. Consequently, the presumption to grant permission is not engaged.

Conditions

26. The Council has suggested 4 conditions, and the LLFA, a further 1 condition during the application process. I have considered all 5 against advice in the Framework and NPPG and have amended them for consistency and clarity. In addition to securing commencement within the relevant statutory timeframe, I have imposed conditions requiring adherence to the approved plans but only in relation to the part of the proposed development considered acceptable.
27. Condition 3 will ensure any external materials relating to the proposed ground floor change of use would match those of the existing building, including the materials relating to the bin storage and parking area. Conditions 4 and 5 will ensure the appropriate parking and waste storage is provided, with the bin storage requiring additional details as the plans show it for 2 flats, where it is only required for 1 flat. I have also attached condition 6 in light of the LLFA's

³ As specified in footnote 7 of the National Planning Policy Framework

comments to ensure that the appropriate flood protection measures can be secured.

Conclusion

28. For the reasons given above and having considered the development plan along with all other relevant material considerations including the approach in the Framework, I conclude that the appeal should be allowed insofar as it relates to the change of use of the existing ground floor office to a 1 bedroom flat and dismissed insofar as it relates to the roof extension to form a 2 bedroom flat.

RJ Redford

INSPECTOR

SCHEDULE OF CONDITION

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they are relevant to the part of the development hereby permitted, and all elements regarding the roof extension to form a two bedroom flat are disregarded: 3139 01 A; 3139 10 C; and 3139 08 C.
- 3) The development hereby permitted shall use materials in the construction of the external surfaces that match those used in the existing building.
- 4) The new dwelling shall not be occupied until 1 additional car parking space has been laid out within the site in accordance with the space marked 7 on the Proposed Block Plan on drawing 3139 01 A. It shall thereafter be retained for the parking of vehicles.
- 5) The new dwelling shall not be occupied until refuse and recyclable materials storage facilities have been installed in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and those facilities shall thereafter be retained for the storage of refuse.
- 6) The new dwelling shall not be occupied until a connection to the Environment Agency Flood Warnings Direct Service and basic flood protection measures have been installed in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that connection and measures shall thereafter be retained.

END OF SCHEDULE