Appeal Decision

Site visit made on 22 February 2023

by P. D. Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2023

Appeal Ref: APP/X1545/W/22/3307619
Beachway, 156 Goldhanger Road, Heybridge, Essex CM9 4QS.

- 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 Robert King against the decision of Maldon District Council.
- The application Ref FUL/MAL/22/00384 dated 2 March 2022, was refused by notice dated 9 September 2022.
- The development proposed is erection of detached dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
   - the effect of the proposal in terms of flood risk; and
   - whether the proposal makes adequate provision for coastal mitigation.

Reasons

3. No 156 Goldhanger Road is a traditionally designed, two storey, semi-detached house on the junction of Goldhanger Road and Coopers Avenue. The land the subject of this appeal was originally part of the long garden to No 156 but at the time of the site visit had been separated into an independent plot which fronts onto Coopers Avenue. The plot lies adjacent to No 1 Coopers Avenue and is divided from neighbouring garden land to the rear by a close boarded fence. The frontage to Coopers Avenue is bounded by a low hedge.

4. Coopers Close is a modern estate of mainly detached two storey houses in a similar styling and materials to that proposed on the appeal site.

Flood Risk

5. Using the Government's Interactive Flood Mapping the site lies within Flood Zone 3 which extends over the whole of the surrounding area including approach roads. The area is at risk from tidal flooding from the Blackwater Estuary / Heybridge Basin and to an extent fluvial flood risk from Spicketts Brook, the course of which runs close to the site. The *Maldon Strategic Flood Risk Assessment* analysis of the tidal flood risk suggests that a breach in tidal defences could result in a flood depth across the appeal site of more than 2 metres in depth with a high hazard rating across the area. The Flood Risk Vulnerability Classification in the *Technical Guidance* accompanying the *National Planning Policy Framework* (the Framework) makes it clear that residential use falls into the 'more vulnerable' category of use. *Planning Practice Guidance* (PPG) in its Flood Risk and Coastal Change section at

Table 2 Flood Risk Vulnerability and Flood Zone Compatibility makes it clear that in Flood Zone 3 'more vulnerable' development must pass the exception test. The Framework requires that a site-specific Flood Risk Assessment (FRA) is carried out and that the proposal is assessed against the sequential and, where appropriate, the exception tests.

6. A basic FRA for the site and proposal was submitted by the appellants at the time of the application. The FRA states that, because there were clearly other sites sequentially preferable and because the site was not greenfield, being within an existing residential estate, the sequential test was not carried out. This is not a valid reason for not applying a test required by national policy.

7. The PPG makes it clear that when applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. For example it would be impractical to suggest alternative locations for an extension to an existing house and indeed the extension currently under construction at No 156 would fall into this category. However, in respect of new residential accommodation, there are clearly other areas allocated for residential development further north in Heybridge in Flood zone 1 with a significantly lower probability of flooding. As such I am not satisfied that the sequential test is met.

8. Even if I was to accept the case that there was a reason the sequential test need not be applied, the exception test would still need to be passed. Two criteria must be met. Firstly that the development would provide wider sustainability benefits to the community that outweigh flood risk and secondly that the development would be safe without increasing flood risk elsewhere and where possible would reduce flood risk overall.

9. With regard to the first element of the test, I acknowledge that there would be a minor benefit to housing supply locally but not such that would in itself offer a wider sustainability benefit to the community.

10. Regarding the second element of the exceptions test, I am not persuaded that the flood risk would be reduced overall. Compared to the situation where there is no house on site, establishing permanent residential accommodation on the site means that there would be more people on site at risk at any one time. I acknowledge that the appellants consider that flood warnings would allow the site to be evacuated along with the rest of the Coopers Avenue area. However most of the surrounding area, including access roads, has the same risk of flooding as the appeal site in the event of a breach to tidal defences and as such there would be no guaranteed emergency safe route off the site to land at less risk of flooding. Although it has been put to me that emergency access would be possible from the north there is no clear evidence before me that demonstrates this and the SFRA mapping does not show this. Thus future occupants would be dependent on sufficient advance warning to safely evacuate the site in advance of rising water levels. Moreover, the appellant has made no effort, other than to state that no sleeping accommodation would be located on the ground floor, to demonstrate that the design is one that would be flood resilient and no reassurance that designing out flood risk would not actually increase flood risk elsewhere.

11. I have been referred to other cases in the same flood zone where the appellants claim permanent dwellings have been allowed, specifically the house opposite on Coopers Avenue sited to the rear of No 158 Goldhanger Road. I acknowledge this development is similar to what is now proposed; however, this and other properties were developed before the Framework and PPG were introduced setting out the national policy approach to development and flood risk and before the

Maldon Local Plan was adopted in 2017. Development was not therefore subject to the current MLP Policy D5 regarding flood risk. I have therefore determined the appeal case on its own merits.

12. It has been put to me that conditions could be applied to any development requiring a flood response and evacuation plan. However, this would only deal with part of the problem in the circumstances of a flood event it would not resolve the cumulative harm of putting more and more development into Flood Zone 3. That is the concern in this case and the appellant has failed to demonstrate both how the development itself could be made safe and how it would not impact further on the flood risk in the surrounding area.

13. The tests in the appeal case have not been met, the development would be at significant risk in the event of a flood and the proposal is therefore contrary to both MLP Policy D5 and the Framework.

Delivering Coastal Mitigation

14. One of the reasons for refusal related to the fact that no mechanism was proposed to secure a contribution to costs relating to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (ECRAMS).

15. In respect of the contribution to coastal mitigation the requirement arises from MLP policy N2 which states that if any protected species and / or priority habitats / species or significant local wildlife are found on site, or their habitat may be affected by the proposed development, the proposal must make provision to mitigate any negative biodiversity impacts it may create.

16. ECRAMS calculates the cost of appropriate mitigation to offset the impact of recreational pressures on the Essex Coast from new development to be £137.71 per dwelling, which is the contribution sought by the Council in this case.

17. As the present proposal would provide a new unit of residential accommodation capable of accommodating a family it is clear that a contribution towards coastal mitigation would be necessary, directly related to the development and the financial contribution which would be put towards it would appear to be reasonably related in scale and kind. In view of the need to monitor the obligation, I am also satisfied that a modest monitoring charge would be necessary and reasonable in this case. I am therefore satisfied that the contributions would meet the three tests set out in paragraph 56 of the Framework and CIL Regulations.

18. The appellant disputes the need for such a contribution and has not provided a completed unilateral undertaking to make the contribution despite the opportunity to do so. It has been put to me that the financial contribution could be secured by way of condition. However, guidance in the PPG regarding the use of conditions makes it clear that off-site financial contributions secured by condition would not meet the tests for conditions and the PPG further states that "*A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases*". As a planning obligation would be necessary to make the development acceptable in planning terms and as it would not be appropriate to secure an obligation by way of a condition, I conclude therefore that the development would fail to make adequate provision towards coastal mitigation and therefore would be in conflict with MLP Policy N2 and the ECRAMS.

19. Even if the obligation had been completed or I was to agree to impose a negatively worded condition to secure an obligation this of itself would not be reason to allow the appeal and would not outweigh the significant harm arising from the development in respect of flood risk.

Other Matters

20. It has been put to me that the proposal would result in the provision of one house in a sustainable location within the settlement boundary of Heybridge and in that way it would make a modest contribution to meeting housing needs in Maldon District as a whole.

21. The Council admits that its 5 year Housing Land Supply Assessment confirms that only 3.26 years housing supply is available but that the published *Housing Delivery Target* (HDT) results for Maldon in 2022 show that in the last 3 years the District achieved above the target requirement (154%). Nevertheless, the Council accepts that policies of the MLP influencing housing supply are not operating as required and the 'tilted balance' set out in the Framework at Paragraph 11d) is therefore engaged.

22. With the Framework's 'tilted balance' triggered it is important to apply that balance. Paragraph 11d) of the Framework provides that the presumption in favour of sustainable development should apply other than in two circumstances. The first of these relates to where the development would conflict with Framework policies to protect areas or assets of particular importance and would apply in this case. Footnote 8 to paragraph 11 of the Framework includes areas at risk of flooding as an area of particular importance and as stated above the national policy in respect of flood risk has not been met.

23. I accept that the Framework recognises the value of small sites for housing delivery at paragraph 69 and at section 11 emphasises the need for effective use of land. The supply of further housing would therefore be important even though in this case it is only one unit. I also acknowledge that the proposed design and its relationship to neighbouring properties would be acceptable. However, weighed against this benefit of additional housing, for the reasons above, development of the site would have an adverse impact on flood risk within the area with no clear design response from the appellant.

24. I have been invited to conclude that the development would perform well against the three sustainability objectives set out in the Framework. However, whilst it may have minor positive benefits in respect of social and economic objectives, as above it fundamentally fails to meet the environmental objective. Continued development within Flood Zone 3 in an area of known and severe flood risk cannot be considered environmentally sustainable.

Conclusion

25. In reaching my decision I have had regard to the matters before me. Notwithstanding the slight benefit the development would bring in adding to housing supply, this proposal conflicts with both the Framework and Development Plan policies. For the reasons above the appeal should be dismissed.

P. D. Biggers

INSPECTOR