



Appeal Decision

Site visit made on 15 November 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2023

Appeal Ref: APP/N5090/W/22/3299668

10 Crossway, London, NW9 6RA

- 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 Mike Beral against the decision of the Council of the London Borough of Barnet.
 - The application Ref: 21/4855/FUL, dated 6 September 2021, was refused by notice dated 25 February 2022.
 - The development proposed is described as: Demolition of existing detached garages. Construction of a pair of semi-detached houses.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the appeal site is a suitable location for the proposed development, having regard to the potential for flooding.

Reasons

3. The appeal scheme proposes the erection of two houses on a site within the curtilage of number 10 Crossway which is currently occupied by a large, detached, garage. The sole matter in dispute between the parties is whether the site is a suitable location for new housing, having regard to the potential for flooding.
4. A watercourse known as the Silk Stream runs a short distance to the east of the appeal site. It is common ground that the appeal site is within Flood Zones 2 and 3 with a medium and high risk of flooding respectively. The consultation response received from the Environment Agency in respect of the planning application also notes that the appeal site lies within Flood Zone 3.
5. Policy SI 12 of the London Plan 2021 (the London Plan) sets out that current and expected flood risk from all sources should be managed in a sustainable and cost-effective way, that development proposals should ensure that flood risk is minimised and mitigated, and that residual risk is addressed. Policy DM04 of the Barnet Development Management Policies Development Plan Document 2012 (the DMP) requires that all new development in areas at risk from fluvial flooding must demonstrate application of the sequential approach set out in the National Planning Policy Framework (the Framework) and provide information on the known flood risk potential of the application site. Although Policy DM04 references the 2012 version of the Framework, the wording of the

relevant paragraphs is repeated in generally similar terms in the current version.

6. The Framework requires that inappropriate development should be avoided in areas at risk of flooding by directing development away from areas at highest risk. It sets out a sequential test to steer new development to areas with the lowest risk of flooding. Where it is not possible for development to be located in areas with the lowest risk of flooding, the Framework sets out an exception test. This requires that development demonstrates that it would provide wider sustainability benefits to the community that outweigh the flood risk, and that the development will be safe for its lifetime without increasing flood risk elsewhere and, where possible, reducing flood risk overall.
7. The planning application was accompanied by a site specific flood risk assessment (FRA) and a report setting out the results of a sequential test and an exception test (Sequential Test Report). The Sequential Test Report states out that the scope and approach of the report was discussed with the Council prior to its preparation. The Sequential Test Report also sets out the parameters of the search including, amongst other matters, the site size and potential housing yield, and the information sources to be used.
8. The Sequential Test Report concludes that following a commercial property search, a search of the Council's Brownfield Land Register, a search of the Council's 5 Year Housing Land Supply document, and a planning applications search that there were no suitable and available sites that met the search parameters within the Council's administrative area.
9. Whilst the Council is critical of the findings of the Report, it has not presented any substantive evidence of suitable or available alternative sites to gainsay the findings in the report. Although the information contained in the report could have been more fulsome, the report is clear about what the search parameters were and that no sites were identified that fell within these. There is nothing before me which would indicate that the Sequential Test Report is not an accurate reflection of the situation in respect of small sites meeting the agreed search parameters. I am therefore satisfied that the sequential test has been passed.
10. If the sequential test is passed, the Framework then requires consideration of the exception test. The first limb of the exception test requires that the development demonstrates that it would provide wider sustainability benefits to the community that outweigh the flood risk. The proposal was accompanied by a site specific FRA, the technical findings of which are not challenged by the Council.
11. The FRA indicates that the flood risk would appear to be predominantly from fluvial flooding originating from the Silk Stream, the course of which is approximately 45 metres east of the appeal site. The FRA notes that there are no specific, engineered, flood defences in the vicinity of the appeal site and this was apparent from my observations when I visited the site. It additionally identifies that there is a risk to the site from pluvial, or surface water flooding. The FRA also concludes that there is little evidence to suggest that the site is susceptible to groundwater or sewer surcharge flooding. The appeal site is not within the functional floodplain or within, or close to, an identified flood water storage area. The FRA notes that the site is outside of the historical flood extents recorded in 1992, 2007, and 2015.

12. The appellant identifies a number of potential benefits that would result from the development of the site including: contributing to housing supply and providing much needed 2 bedroom homes; re-use of a previously developed site, supporting local schools and colleges, reduced car travel due to the proximity to shops and services; creation of a significant number of direct and indirect jobs; generating additional council tax revenue; and a community infrastructure levy (CIL) payment.
13. It is not in dispute that the appeal site is identified as being at high risk of flooding from the Silk Stream and from pluvial flooding. The site has not been affected by previous recorded flood events, however, this does not indicate that it would not be susceptible to future flood events. The FRA does, nevertheless, set out a number of design features of the proposal intended to mitigate the consequences of the appeal site becoming inundated.
14. Whilst there may be a number of benefits from the scheme, it is only for two houses. The Council states that it has a deliverable five year housing land supply, and this is not disputed by the appellant. The five year supply of housing land is a minimum requirement, however, two houses would not represent a substantial addition. In any event, the site is not particularly needed to make up a shortfall in land supply. There is no evidence before me with regard to the size or type of housing that is needed in the Borough, or what the potential revenue from Council tax and CIL might be. Although the scheme would generate, or maintain, some jobs during the construction period and result in some additional local spending, due to the small size of the scheme, neither would be significant. The small scale of the scheme would not necessarily generate additional indirect employment, although it might make a modest contribution towards sustaining existing jobs. Similarly, whilst 2 bedroom properties could house small families, the number of potential additional students for local schools and colleges would be very small. The appeal site is part of the garden of number 10 Crossway and, as such, is not previously developed land as defined in the Framework. Visual improvements to the site could be achieved without the proposed development.
15. As a consequence, the decision on whether there are wider sustainability benefits to the community which outweigh the flood risk is a finely balanced one in this case. Whilst the designed in mitigation tempers the high risk from flooding somewhat, due to the small size of the scheme and the other factors outlined above, the sustainability benefits to the community are, at best, very modest. I therefore find that, based on the evidence before me, these would not outweigh the flood risk and as a result the first limb of the exception test is not met.
16. The FRA concludes that subject to designed in flood resilience measures and the production of a flood evacuation plan that the site would be safe. The Environment Agency were consulted and did not object to the proposal subject to the measures in the FRA being implemented. The Council do not dispute this point and I have no reason to find otherwise based on what I have read and what I saw when I visited the site and surrounding area. Although the proposal would satisfy the second part of the exception test, the Framework is clear that both elements should be satisfied for development to be permitted. The appeal must fail for this reason.

17. The Council's reason for refusal also refers to Policy NPPF, Policy CS5, and Policy CS13 of the Barnet Core Strategy 2012 (the Core Strategy). Policy CS NPPF is a general policy which reflects the presumption in favour of sustainable development set out in the Framework. This policy does not refer directly to flooding or flood risk but is tangentially relevant to the proposal in respect of the approach to be taken to decision making.
18. Core Strategy CS5 expects new development to protect and enhance the character of the Borough. This Policy does not make reference to flood risk, and I have noted that the Council have not objected to the appearance and design of the proposed development. The Council's submissions do not set out in what way the proposed development offends this policy and, consequently, I do not consider that it is relevant to the decision.
19. Core Strategy Policy CS13 seeks to minimise the potential for fluvial and surface flooding by ensuring development does not cause harm to the water environment, water quality, and drainage systems. There is nothing in the evidence that would indicate that the proposal would cause harm in respect of any of these matters.
20. Whilst the proposal would not conflict with these policies, this does not alter my overall finding that the development does not pass the exception test and does not comply with other policies in the London Plan or DMP.
21. I therefore conclude that the appeal site is a not a suitable location for the proposed development, having regard to the potential for flooding. It would not comply with the relevant requirements of London Plan Policy SI 12 and Policy DM04 of the DMP, or the requirements of the Framework.

Conclusion

22. I have found that the appeal site would not be a suitable location for the development proposed and would conflict with the policies in the development plan which are most important to determining the appeal, notwithstanding that it may comply with other policies. The suitability of the site for residential development is a fundamental matter and, as a result, the proposal would conflict with the development plan when taken as a whole. No other considerations have been identified which would indicate that planning permission should be granted for a proposal that does not comply with the development plan.
23. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR