



Appeal Decision

Site visit made on 27 June 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2023

Appeal Ref: APP/H1840/W/23/3314944

The Old Forge, The Cross, Childswickham WR12 7HJ

- 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 Ms P Taylor against the decision of Wychavon District Council.
 - The application Ref W/22/00114/FUL, dated 17 January 2022, was refused by notice dated 4 August 2022.
 - The development proposed is a self-build dwelling, including parking, decking and garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following determination of the application the appellant has submitted a Flood Warning and Evacuation Plan and Unilateral Undertaking (UU) providing a financial contribution towards affordable housing in the district and towards the Environment Agency's (EA) Flood Warning System. I have paid regard to both documents in consideration of the appeal. The Council have been given the opportunity to comment on their contents. Having regard to the Wheatcroft Principles I am satisfied that no interested parties have been prejudiced by my approach.

Main Issues

3. The main issues are:
 - Whether the appeal site provides a suitable location for the proposed development with regard to the risk of flooding; and
 - Whether the affordable housing contribution is required to make the development acceptable in planning terms.

Reasons

Flood risk

4. The appeal site is formed of the rear garden of residential dwelling - The Old Forge, a watercourse known as Badsey Brook flows along one side of the site but at a lower level.
5. The site is located within Flood Zones 2 and 3. The Planning Practice Guidance (PPG) states that Flood Zone 2 has a 'medium probability' of flooding and Flood Zone 3 has a 'high probability' of flooding.

6. The National Planning Policy Framework (the Framework), at paragraph 159, states that inappropriate development in areas at risk of flooding should be avoided by directing development away from such areas. To achieve this, the Framework seeks to steer new development to areas with the lowest risk of flooding through a sequential approach. It goes on to say development should not be permitted in areas of high risk of flooding if there are reasonably available sites appropriate for the proposed development with a lower risk of flooding.
7. I have not been directed to any development plan policy or guidance which sets out the catchment search area. However, the PPG states that the search area for the sequential test will be guided by local circumstances and the relevant catchment for the development type, but not be determined by landownership.
8. Whilst the Council is critical of the appellant's evidence it is clear in respect of the search parameters including identifying that no housing allocations are proposed within or neighbouring Childswickham; no sites within the village are entered on the Brownfield Land Register and no development plots or planning permissions exist locally for a similar development. There is nothing before me to suggest that the appellant's evidence in respect of the sequential test is not an accurate assessment of the current situation.
9. In the event that the sequential test is passed, the Framework 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.
10. The appellant identifies a number of potential benefits that would result from the proposed development. These include the provision of new windfall housing contributing to the local supply, maintaining local services, reduced car travel to and from the village and financial contributions towards affordable housing and the EA's flood warning service.
11. I acknowledge that there may well be a number of benefits resulting from the scheme. Whilst the Council has a housing shortfall the proposal, of a single dwelling, would not represent a substantial addition. Furthermore, there is nothing substantive before me to indicate that the size of the dwelling proposed is needed in the district or that properties are unaffordable locally.
12. 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 proposal includes mitigation measures, due to the small size of the scheme and other factors set out above, the sustainability benefits to the community would be modest. Based on the evidence before me these benefits would not outweigh the medium to high risk of flooding and therefore the first limb of the exception test is not met.
13. Furthermore, I share the Council's concerns in respect of the Flood Warning and Evacuation Plan. Whilst the flood warning alarm is located on a stretch of the brook close to the site the Plan clearly demonstrates that the escape route, in extreme flood events would be at risk of flooding that would cause danger to the future occupier.

14. Consequently, future occupiers would have no option but to rely almost entirely on the early warning system, and if this failed or if flooding occurred whilst they were asleep, they could potentially become stranded and require emergency assistance. Without an access or escape route that could be used safely during flood conditions, the risk posed to future occupiers would not be fully mitigated and there would be unacceptable residual effects.
15. Whilst the appellant contends that the proposed dwelling would provide a comfortable and safe refuge no evidence has been provided that essential services such as electricity, gas, telecommunications, water supply and sewerage would not be compromised at the property during a flood event, irrespective of its duration. In any event I am not persuaded that this precludes the need for an adequate evacuation route.
16. In coming to my decision, I have paid regard to the site-specific flood risk assessment; the appellant's design features intended to mitigate the consequences of the appeal site becoming inundated and the comments of the EA. However, they do not overcome my concerns in respect of this matter.
17. As such, the proposal would not satisfy the second part of the exception test, the Framework is clear that both elements should be satisfied for development to be permitted.
18. Taking all of this into account the proposed development would conflict with Policy SWDP 28 which, amongst other things, requires developments to minimise the impacts of and from all forms of flood risk.

Affordable housing contribution

19. In order to support the appropriate provision of affordable housing in the district criterion B. v. of SWDP Policy 15 states that a financial contribution towards local affordable housing should be made on sites of 5 dwellings or fewer. Paragraph 64 of the Framework permits local planning authorities to seek affordable housing on smaller sites in designated rural areas.
20. The site is located within a designated rural area - and the appellant has provided a signed and dated Unilateral Undertaking by which to deliver a contribution towards affordable housing in the district in accordance with Policy SWDP15.
21. The Council's Affordable Supplementary Planning Document (2016) however indicates that the Council is to implement Policy SWDP 15 in a different manner in respect of affordable housing thresholds.
22. Based on the evidence before me a development of a single dwelling would not trigger a requirement for an affordable housing contribution. However, if I was minded to allow the appeal, such a contribution would be a wider sustainability benefit of the scheme.
23. Therefore, I am satisfied that the contribution is required and would satisfy the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010) in respect of the scheme before me.

Planning Balance

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
25. The Council accept that they cannot demonstrate a five-year supply of deliverable housing land. In such instances Paragraph 11 d) sets out that the most important development policies for determining the application are out-of-date 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.
26. Footnote 7 states that where the risk of flooding provides a clear reason for refusing the development paragraph 11 d) and the presumption in favour of sustainable development is not engaged.
27. In terms of housing supply, I acknowledge that the development would contribute to the district's housing need. The affordable housing payment secured through the submitted planning obligation would contribute towards social housing in the area. The proposal would provide a limited amount of short-term employment during construction of the house, and it may well help to maintain services and facilities locally. Whilst these are benefits, they would be modest.
28. I acknowledge that the proposed development has been advanced as a self-build unit. However, as there is no legal agreement or planning obligation ensuring that the dwelling is carried out as such, I give this negligible weight in coming to my decision.
29. On the other hand, I have found that the site is not a suitable location for new housing with regard to flood risk with the sustainable benefits to the community not outweighing the risk from flooding.
30. I note the appellant's desire to remain in the village close to her ageing parents and I have given her personal circumstances careful consideration. However, I am mindful of the advice contained in the PPG that in general planning is concerned with land use in the public interest. It is also probable that the proposed development would remain long after the current personal circumstances cease to be material. For this reason, I find that this factor is one of neutral consequence in the overall balance.
31. Planning law requires that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this instance the conflict with the development plan is not outweighed by other considerations.

Conclusion

32. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR