



Appeal Decision

Site visit made on 5 July 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2023

Appeal Ref: APP/C1435/W/22/3299159

**Land to South of Marine Terrace between Coasters & The Mariners,
Pevensey BN24 6EQ**

- 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 Wahad against the decision of Wealden District Council.
 - The application Ref WD/2021/2533/F, dated 27 September 2021, was refused by notice dated 8 March 2022.
 - The development proposed is construction of a new-build four-bedroom dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: whether the proposal would be suitably located in terms of its risk from flooding, and; the effect of the proposal on the character and appearance of the area.

Reasons

Flood Risk

3. The appeal site is located within Flood Zone 3 with a high probability of flooding. Given the location of the site, the primary source of flooding is from tidal sources. The proposed new dwelling would be a 'more vulnerable' development type as defined by Annex 3 of the National Planning Policy Framework (the Framework) and for these reasons the Sequential Test must be applied.
4. The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Planning Practice Guidance (the PPG) advises that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
5. The PPG advises that for individual planning applications, the area to apply the Sequential Test will be defined by local circumstances relating to the catchment area for the type of development proposed. It gives the example that, where there are large areas in Flood Zones 2 and 3 and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives. The appellant has suggested that the test

area in this case be limited to the Pevensey Bay area, which is largely within Flood Zone 3.

6. Pevensey Bay is identified by the Core Strategy¹ as a Local Service Centre and one with a more limited supply of social and economic infrastructure where residents depend upon other centres to meet a broad range of needs with some form of accessibility to those centres. This suggests a degree of connectivity with other settlements in order to meet the needs of its residents. In addition, the Council's Housing Needs Assessment identifies Pevensey Bay as part of a wider Housing Market Area (HMA) which includes other settlements with interconnectivity, for example in terms of commuting to Eastbourne. As such, the evidence would suggest that the catchment area for housing need not be limited to Pevensey Bay itself.
7. Furthermore, Pevensey Bay benefits from an existing residential population, as well as visitors and holiday makers who travel to the area. There is not substantive evidence to suggest that these groups together do not already sustain the community or that there is a need for it to be sustained through additional housing.
8. Given these characteristics, and in the absence of evidence to the contrary, it is not apparent that the proposed dwelling is needed to sustain the existing community of Pevensey Bay. As such, I am not satisfied that the Sequential Test needs to be applied at such a localised level, nor that sustaining a community at flood risk by introducing more vulnerable development is necessary.
9. Even if a smaller test area were accepted, I note the Council's assertion that there are still some areas of land within Pevensey Bay which lie within Flood Zone 1. While the appellant states that other development opportunities in this area have been explored, there is not substantive evidence of these. As such I cannot be satisfied that there are not reasonably available alternatives in the Pevensey Bay area.
10. Notwithstanding the appellant's case for a smaller search area, consideration of alternative sites within the wider Eastbourne HMA has been undertaken. This uses the Council's Strategic Housing and Economic Land Availability Assessment (SHELAA) 2019 as a basis and identifies many sites which have not been considered as suitable for development for the purposes of the SHELAA. The sites identified as suitable by the SHELAA have then been considered in turn, with the vast majority found to be too large for the provision of a single dwellinghouse. Consideration has also been given to the sites in the draft SHELAA for Eastbourne, many of which have been discounted for the same reason or found to be unavailable for unspecified reasons.
11. However, I do not consider that a focus on the SHELAA's to be appropriate for seeking alternative sites for a single dwelling as these focus on finding sites capable of accommodating five or more dwellings. The appellant's findings, that many of those sites in the SHELAA's are too large for a single dwelling, is therefore to be expected. The PPG states that considering a reasonably available site could include part of a larger site and, as such, this would not necessarily provide reason for it to be discounted.

¹ Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan, adopted 2013

12. While the Council accept that it does not have a 5 year housing land supply, there is not substantive evidence to demonstrate that this will require development within areas of high flood risk. The PPG also states that the absence of a 5 year land supply is not a relevant consideration for the sequential test for individual applications.
13. I have had regard to the consultation response of the Environment Agency which suggests mitigation measures for flood risk. Its response, however, does not endorse the approach to the Sequential Test, for which the PPG identifies the responsibility lies with the relevant decision maker.
14. The main parties refer to other appeal decisions relating to housing proposals on nearby sites. I note that the appeal at 189 Coast Road² has been subject to redetermination and the appellant accepts in their final comments that the appeals relating to 189 Coast Road and Holy Rood Catholic Church³ are not directly comparable to the appeal scheme.
15. An appeal decision relating to 164 Coast Road⁴ is alleged to be more relevant, given the same quantum of development was proposed. This supported a more narrow catchment area for the Sequential Test on the basis that development outside Pevensey Bay would not help to sustain the existing community and businesses. I do not have details of the evidence which led to that Inspector's decision but I note the focus on that proposal helping, rather than being needed, to sustain the community, which is different to the wording of the PPG before me. For these reasons it does not provide reason to alter the above judgements.
16. For the reasons given, it cannot be established that reasonably available sites appropriate for the proposed development do not exist in areas with a lower risk of flooding and the Sequential Test is not passed. Accordingly, the site is not a suitable location for the proposed new house having regard to flood risk. The proposal would not comply with Saved Policy EN1 of the Wealden Local Plan 1998 or Policies SP010 and WCS14 of the Core Strategy 2013, which include that the Council will apply national policy and guidance with regard to sustainable development and avoid use of land for housing in areas subject to high flood risk having regard to its location and effect on the environment.
17. The PPG states that the Exception Test need only be applied if required and after the Sequential Test, and that both elements need to be satisfied in order to grant planning permission. As such, it is not necessary to consider the Exception Test.

Character and Appearance

18. The appeal site forms part of the frontage which lines the top of the shingle beach and which comprises buildings of varying scale, position and design, which create a varied and informal frontage of rear elevations. This frontage maintains a spacious character arising from the spaces between the buildings and the predominantly open character of their plots leading to the beach. These attributes contribute positively to the character and appearance of the area and local distinctiveness.

² APP/C1435/W/21/3277573

³ APP/C1435/W/21/3276480

⁴ APP/C1435/W/19/3240856

19. By contrast, Marine Terrace has a more enclosed character arising from the continuous terrace of properties, small front gardens and boundary treatments which line its northern side. The proposal would not cause visual harm to Marine Terrace given these characteristics.
20. The appeal site is positioned between two existing dwellings each comprising two storeys and occupying much of their plot widths. The proposal would have the appearance of three storeys, with the top storey set partially within the roof slopes. As a consequence, its eaves and ridge heights would be higher than those neighbouring buildings. While the surrounding beach frontage allows scope for variation in this respect, in combination with the positioning of the proposed house and proximity to the two neighbouring buildings, it would create a cramped appearance. This would be in stark contrast with the more spacious attributes of the beach frontage and heavily at odds with its established character.
21. The design and layout of the building responds to the need to mitigate flood risk which affects the treatment and use of the various floor levels. However there is not substantive evidence that these harmful characteristics are necessary to provide a viable dwelling on the site, nor that other less harmful options are not available. The existing site is partially overgrown and includes a shed which is in poor condition. However, I do not find the existing condition of the site to significantly detract from the character of the area and its condition would not provide a justification for the visual harms arising from the appeal scheme, which would be substantial and long lasting. I acknowledge the architectural treatment of the building, its detailing and materials would be of high quality, however these would not mitigate for the effects of the scale and positioning described above.
22. For the reasons given, the proposal would cause harm to the character and appearance of the area. It would conflict with Saved Policy EN27 of the Wealden Local Plan 1998 and the objectives of the Framework which require development, among other things, to promote local distinctiveness and be sympathetic to local character including the surrounding built environment and landscape setting.

Other Matters

23. The Council accept that it does not have an up to date 5 year housing land supply and the provisions of paragraph 11d) of the Framework are relevant to the appeal. However, the application of policies in the Framework, insofar as they relate to areas at risk of flooding, provide a clear reason for refusing the development proposed. The proposal does not therefore benefit from the presumption in favour of sustainable development.
24. Nonetheless, the proposal would make a contribution towards the local housing stock and to the national objective to boost the supply of homes. As a small site, it is one which the Framework acknowledges can make an important contribution to meeting the housing requirement of an area and the proposal would make use of an under-utilised site. The new home would be within an existing settlement with good accessibility to nearby services and facilities and would provide a unit of family accommodation for which there is identified local need. It would also generate economic benefits through the creation of construction jobs as well as ongoing expenditure into the local economy. There could also be improvements to risk of crime through removing the existing cut-

through and access to the sides of the neighbouring properties. While these factors weigh in favour of the development, they would not outweigh the harms identified in respect of the main issues above.

25. Where the proposal has been found to be policy compliant in other respects, for example in relation to living conditions and parking, these are neutral matters, rather than weighing in favour of the development.
26. The proposal has the potential to have adverse effects on the Ashdown Forest Special Area of Conservation through changes to air quality arising from additional vehicle movements through the area. However, Regulation 63(1) of the Habitats Regulations⁵ indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is dismissed on other grounds it is not therefore necessary to address this in any further detail.

Conclusion

27. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is dismissed.

C Shearing

INSPECTOR

⁵ The Conservation of Habitats and Species Regulations 2017