



Appeal Decision

Site visit made on 13 June 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/P5870/W/22/3312553

Land adjacent to 18 Wandle Road, Hackbridge SM6 7EQ

- 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 Dr Massood Mashoof of EDS Consultancy Limited against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2021/01742, dated 20 August 2021, was refused by notice dated 30 September 2022.
 - The development proposed is to build a new two storey dwelling to include SuDS measures and flooding protection measures with provision of refuse and cycle stores.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be acceptable on flood risk grounds.

Reasons

3. From the submitted evidence, there appears no dispute between the parties that the appeal site lies within Flood Zone 3b (the functional floodplain). The proposed development would provide one new dwelling, which for the purposes of assessment would be classified as a 'more vulnerable' use.
4. The appellant's submitted Flood Risk Assessment (FRA) has applied the sequential test (the ST) as set out in paragraph 162 of the National Planning Policy Framework (the Framework), which seeks to steer new development to areas with the lowest risk of flooding from any source. The FRA advises that no sequentially preferable sites in areas at lower risk of flooding are available, and I am provided with no evidence of the Council disagreeing with this view.
5. The FRA goes on to apply the exception test (the ET). Paragraph 164 of the Framework establishes that to pass the ET, it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk, and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
6. The proposal incorporates several measures that seek to address the requirements of Paragraph 164. I note that the Council's Sustainability Officer, initially advised that the proposals had the potential to meet the ET subject to conditions, but these comments were superseded by a further representation expressing an objection to the proposals.

7. However, the greater issue is the site's agreed location within Flood Zone 3b. Paragraph 159 of the Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
8. Table 2 of the Planning Practice Guidance (the PPG), as reproduced in the FRA, sets out that development for more vulnerable uses should not be permitted in Flood Zone 3b. Table 2 is clear that only development for essential infrastructure (subject to the exception test) and water compatible uses may be acceptable in Flood Zone 3b, subject to other additional criteria. Development within highly vulnerable, more vulnerable and less vulnerable categories should not be permitted even if the ET is met.
9. Accordingly, the issue of whether or not the proposal would meet the ST and ET is not determinative to the appeal. Whilst I acknowledge that the proposed development may provide certain sustainability benefits and would contribute to the provision of housing, these matters would provide only very limited benefit when weighed against the fundamental matter of its siting. The proposed development would be unacceptable because it seeks to provide a new, more vulnerable use within Flood Zone 3b.
10. For the above reasons, the proposal would comprise inappropriate development in Flood Zone 3b and would therefore be unacceptable on flood risk grounds. The proposed development would conflict with Policies SI 12 and SI 13 of The London Plan – March 2021, Policy 32 of the Sutton Local Plan 2016-2031 – February 2018, and the provisions of the Framework, which together seek to avoid inappropriate development in flood risk areas, to ensure flood risk is minimised and mitigated and that residual risk is addressed, and to achieve sustainable drainage.

Other Matters

11. The appellant has pointed to two 'local precedents' of developments that have been granted in the vicinity of the appeal site under application references D2017/76944/FUL and DM2022/01533.
12. The officer report for D2017/76944/FUL, which was granted planning permission, does not specifically refer to the site being in Flood Zone 3b. Accordingly, the pertinent issues may have been different for this previous application.
13. DM2022/01533 was refused, but for reasons other than flood risk. However, the Council acknowledge that the Sustainability Officer objected to this proposal on flood risk grounds and, with hindsight, this should have comprised an additional reason for refusal.
14. Notwithstanding the above decisions, the issue of whether the correct processes were followed, or the policies were correctly applied at the time of the decisions being taken, is not determinative to this appeal. I must determine the current appeal against relevant policies and based on its individual circumstances, and I have found that the proposals would not be acceptable in this regard. Accordingly, these examples are of limited weight in my decision.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

P Storey

INSPECTOR