



Appeal Decision

Site visit made on 8 August 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/X1735/W/23/3316047

8 Selsmore Avenue, Hayling Island, Hampshire PO11 9PB

- 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 and Mrs Griffiths against the decision of Havant Borough Council.
 - The application Ref APP/22/00746, dated 29 July 2022, was refused by notice dated 24 November 2022.
 - The development proposed is described as the division of site into two to allow the construction of a three bedroomed detached bungalow to the rear, and partial demolition and remodelling of front property.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Within their evidence the main parties have relied on links to various websites. As clearly stated in paragraphs 12.2.3 and 12.3.2 of the Procedural Guide: Planning Appeals – England, statements of case must not contain links to websites, as websites can change over time. I have therefore only taken account of links which direct to specified policies or are used in the source referencing of submitted information.

Background and Main Issue

3. The main issue is whether, having regard to flood risk, the appeal site is an appropriate location for the proposed development.

Reasons

4. The appeal site consists of a semi-detached two storey dwelling with a reasonably large rear garden, located in an established residential area on Hayling Island.
5. Policy CS15 of the Havant Borough Core Strategy (CS) seeks to control, amongst other things, the flood risk of development within areas at risk of flooding now and in the future, as identified on the latest Environment Agency flood risk maps (EA maps) and Strategic Flood Risk Assessment (SFRA) climate change maps. This policy then sets out 6 further assessments for development which falls within these risk areas.
6. Paragraph 159 of the National Planning Policy Framework (the Framework) states development should be directed away from areas at highest flood risk, whether existing or future. Paragraph 167 and footnote 55 of the Framework sets out when a site-specific flood risk assessment (FRA) would be required,

and this includes when land has been identified in an SFRA as having an increased flood risk in the future. Paragraph 168 and footnote 56 of the Framework goes on to state that a FRA would still be required for some minor development, including householder development. Therefore, the Framework supports the overall aims and specific requirements of CS Policy CS15.

7. From the evidence before me it is clear the appeal site is at present within flood zone 1, as shown on the EA maps, so would not currently be considered in an area at risk of flooding. However, the main parties dispute whether the appeal site would be an area at risk of flooding in the future, with the appellant challenging whether the Council has an SFRA.
8. SFRA's can be carried out by one or more local planning authorities and although there is no specific Havant Borough Council SFRA, I am satisfied the borough is covered by the sub-regional SFRA. It is acknowledged the appellant has been unable to find a readily available version of the sub-regional SFRA and considers the Council signposting to it as poor in comparison to other authorities covered by it.
9. However, one of the outcomes sought from an SFRA is the provision of clarity, in a specified geographical area, as to where future flooding may occur. This information is readily available on the Council's digital mapping system. This was updated prior to the issuing of the decision notice, so would have been available to the appellant both during the application process and prior to submission of this appeal. It shows the appeal site as within an area at risk of flooding in 2115.
10. Further to this, Paragraph 7.32 of the supporting text for Policy CS15 refers to CS Appendix 4 which is a map showing the likely impacts of flooding in 2115. This map was compiled on information available at the time of the adoption of the CS in March 2011 and predates the updated version on the Council's digital mapping system. It is of a large scale, but on the balance of probabilities, I am satisfied the appeal site is shown within an area likely to be impacted.
11. As the CS, including Appendix 4, is a publicly available document, its soundness would have been tested through the local plan examination process. Therefore, along with the clarity brought by the digital version, I am satisfied the evidence shows the appeal site would fall into an area at risk of flooding in the future and so the further assessments of CS Policy CS15 need to be addressed.
12. No FRA has been submitted nor any evidence in relation to sequential and exception testing (where required); flood protection, resilience, and resistance measures; flood warning and evacuation plans; or drainage system capability. Nor is there any justification as to why this information has not been submitted beyond the appellant's assertion that the appeal site is not within an area at risk of flooding in the future. Consequently, the further assessments within Policy CS15 cannot be undertaken. It has not, therefore, been demonstrated that the appeal site is a suitable location for the proposed development regarding flood risk.
13. The appellant's reliance on the EA maps to show a lack of future flood risk for the site is noted, and it is appreciated these differ to the mapping produced by the sub-regional SFRA. However, taking a precautionary approach in light of the significant and irreversible harm development within areas of flood risk

could have, and the lack of any proposed mitigation or protection measures, I have considered the most conservative of mapping which in this case is the CS Appendix 4 map and the Council's digital mapping system updated by the sub-regional SFRA.

14. The approval at 11 West Haye Road (reference APP/20/01219) has been brought to my attention. It is acknowledged there are some similarities between it and the scheme before me. However, the Council have confirmed this to be a regrettable and erroneous decision, where it had failed to consider future flood risk. As future flood risk assessment is required by both CS Policy CS15 and the Framework this decision does not alter my findings.
15. The appellant has also submitted several other planning approvals for my consideration. Although I accept the decision makers in these cases were dealing with flood risk issues, there is a considerable variety in how much supporting evidence was submitted and whether the sequential and exception tests were applied. The decisions were based on more than whether the site location was within an area of existing or future flood risk. Whilst consistency is important each case was considered on its own merits and, overall, the examples given merely indicate that the effect of flood risk needs to be determined in the light of the specific circumstances and context of each case. I am not, therefore, persuaded that these are directly comparable to the proposal before me.
16. In conclusions, the appeal site is within an area at risk of future flooding and the proposal has failed to demonstrate that this location would be appropriate for the proposed development. The proposal therefore fails to comply with CS Policy CS15 and the Framework.

Planning Balance

17. The Council cannot demonstrate a 5-year housing land supply and confirms it is currently around 1.81 years, as such it is necessary for me to apply paragraph 11 of the Framework. Paragraph 11 (d) of the Framework indicates that permission should be granted, 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. The application of flood risk policy provides that to be the case here. As such, the proposal would not be the sustainable development for which Paragraph 11 of the Framework indicates a presumption in favour.
18. Nevertheless, the Framework seeks to boost significantly the supply of housing and recognises the importance of small sites in meeting the housing requirement of an area. The proposal would provide 1 dwelling reasonably quickly, due to its small scale. This, along with the associated economic and social benefits, would attract very limited weight.
19. The appeal site falls within the zone of influence of the Solent Special Protection Areas (SPA). These are areas which, as designated by Natural England, need action to be taken concerning nutrient neutrality and recreational pressure. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 require an appropriate assessment (AA) to ensure that the development would not adversely affect the integrity of the SPA. However, clause 63(1) of that regulation states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an

appropriate assessment'. An AA is not, therefore, necessary where there is no intention to grant permission.

20. Nonetheless, it is acknowledged that the appellant has proposed a package of measures to mitigate against any impact on the SPA, which they have secured by unilateral undertaking. This is a course of action the Council do not object too. Therefore, it is likely that the proposal would be capable of not having a harmful effect on the SPA.
21. No harm has also been identified in relation to character and appearance, living conditions of neighbouring residents, parking, and access. Nevertheless, a lack of harm is a neutral factor so cannot weigh for or against the proposal.
22. I do not, therefore, find that the benefits of the scheme would overcome the significant harm identified in the main issue.

Other Matters

23. It is acknowledged that the Local Requirements List October 2020 (LRL) could be construed to indicate that the proposed development would not require an FRA, as it only refers to the EA maps. However, it does refer to CS Policy CS15 and requires a flood risk statement for new development in flood zone 1, including new buildings as proposed. There is no reference to a flood risk statement within the original application submission, the design and access statement or the appellants statement of case. Nevertheless, the LRL is a guide to the minimum requirements for validation purposes and not a finite list of all documents that maybe required, nor the scenarios that require those documents. Issues with the LRL should be brought to the Council's attention, in this case they do not alter my findings.
24. The appellant has referred to various documents not being made available during the application process or latterly amended in light of issues brought up during that application. However, I am required to make my decision in accordance with the information before me.

Conclusion

25. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR