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# Appeal Decision

Site visit made on 15 June 2023

**by Rachel Hall BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 August 2023**

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**Appeal Ref: APP/K3415/W/22/3311894**

**Land to Rear of 9-15 Tolson Avenue, Fazeley, Tamworth B78 3RU**

- 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 Paul Willars against the decision of Lichfield District Council.
  - The application Ref 21/01405/FUL, dated 30 July 2021, was refused by notice dated 24 May 2022.
  - The development proposed is '3 bedroom detached bungalow with detached garage'.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - whether it has been demonstrated that the proposal is acceptable with respect to flood risk; and
  - the effect of the proposed development on the living conditions of the occupants of 3 Barlow Mews and 15 Tolson Avenue, with particular regard to privacy in their private outside space.

## Reasons

### *Flood Risk*

3. The main parties agree that the appeal site is located within flood zone 3a of the River Tame. Paragraph 167 of the National Planning Policy Framework (Framework) confirms that development should only be allowed in areas at risk of flooding where a site specific flood risk assessment, and the sequential and exception tests, as applicable, demonstrate certain criteria (a to e) are met. In addition, paragraph 162 of the Framework advises that development should not be permitted if there are reasonable available sites appropriate for the proposed development in areas with a lower risk of flooding. Also, that the sequential test aims to steer development to areas with the lowest risk of flooding.
4. As a proposal for a single new dwelling, the appeal scheme does not comprise one of the types of development that are excluded from requiring a sequential test, such as householder development or a change of use (Framework, footnote 56). Paragraph 27<sup>1</sup> of the Planning Practice Guidance (PPG) also confirms that the Sequential Test should be applied to 'Major' and 'Non-major

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<sup>1</sup> Reference ID: 7-027-20220825

development' proposed in areas at risk of flooding unless the site has been allocated for development, is in an area at low risk from all sources of flooding or is exempt as specified in Framework footnote 56. None of these criteria apply in this instance, therefore it is clear that a sequential test is required. Paragraph 23<sup>2</sup> of the PPG also confirms that, even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.

5. In any event, no sequential test is before me to indicate whether there may be other reasonably available sites appropriate for the proposed single dwelling in areas of lower flood risk. In the absence of a sequential test and given the site's location in zone 3a which has a high probability of flooding, I have no alternative but to conclude that the proposal is not acceptable with respect to flood risk.
6. Even if I was able to conclude that the sequential test had been satisfied, to be acceptable with respect to flood risk, the proposal would need to pass the exception test. In accordance with paragraph 164 of the Framework, this requires that the development provides wider sustainability benefits to the community that outweigh the flood risk (criterion a); and the development will be safe for its lifetime, and where possible, will reduce flood risk overall (criterion b).
7. The proposal would deliver one new home on a vacant site in an existing residential area. Reference is made to development of the site removing the potential for antisocial behaviour, albeit no substantive evidence is before me to indicate that such behaviour is a particular issue in this case. Therefore, it has not been demonstrated that the wider sustainability benefits to the community from development of this site would outweigh the flood risk. Consequently criterion a) of the exception test has not been satisfied.
8. I note that the Council's final comments supports comments made by the EA which included concerns relating to the safety of the proposed site access during a 1 in 100 year fluvial flood level event, including an allowance for climate change. Whereas the appellant considers that a combination of a flood warning scheme, a safe route to land in flood zone 1 and finished floor levels of 63.20mAOD would be sufficient to make the development safe for its lifetime. However, whether or not those measures would be sufficient to satisfy criterion b), in the absence of sufficient sustainability benefits to the wider community, the exception test has not been passed.
9. Therefore, it has not been demonstrated that the proposal is acceptable with respect to flood risk. As such, it would conflict with Core Policy 3 of the Lichfield District Local Plan Strategy 2015 (Local Plan) which aims to deliver sustainable development, which includes guiding development away from areas of flood risk. It would also conflict with Core Policy 1 of the Local Plan in failing to demonstrate that the proposal would minimise pressure on areas at risk of flooding. Given the flood risk concerns, I also find conflict with Core Policy 2 of the Local Plan which generally seeks to ensure developments improve economic, social and environmental conditions. Policy SC1 of the Local Plan which deals with carbon reduction standards is not directly relevant to this main issue. The proposal would also conflict with paragraph 162 of the

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Framework which seeks to steer new development to areas with the lowest risk of flooding.

*Living conditions with respect to privacy*

10. The proposed front elevation on the submitted plan shows two bedroom windows. These would face towards the rear elevations of houses on Buxton Avenue. In addition, the proposed rear elevation of the house would contain the lounge and kitchen windows. These would face towards the rear of houses and gardens on Brook End and Tolson Avenue which are two storey houses. A finished floor level of 62.20mAOD is shown on the submitted block plan (Ref 012010/3 Rev A). This is said to equate to approximately 1.5m above the average existing ground level on site. As such, these proposed windows would be situated higher than windows on a typical single storey house.
11. Whilst not compliant with separation distances set out in the Council's Sustainable Design SPD (2015) (SPD), I observed that a degree of overlooking from first floor windows into neighbouring rear gardens is not unusual here. Furthermore, the presence of garden buildings in existing gardens on Brook End would obscure visibility from the proposed rear windows to a certain extent.
12. However, the proposed rear terrace is also shown positioned level with the finished floor level and would consequently be circa 1.5m above ground level. It therefore appears reasonably likely that it would afford views into the private outdoor space at the rear of 3 Barlow Mews and 15 Tolson Avenue at relatively close range. Given the elevated position of the terrace, evidence that the existing boundary fence would prevent overlooking is not sufficiently persuasive. Moreover, given the modest private outdoor space available for occupants of those dwellings, and No 3 in particular, I consider that this would appear intrusive from the rear gardens of those dwellings.
13. Consequently, the proposed rear terrace would result in unacceptable harm to the living conditions of the occupants of 3 Barlow Mews and 15 Tolson Avenue with respect to privacy in their private outside space. Therefore the proposal would conflict with Policy BE1 of the Local Plan which generally requires that developments achieve high quality design. It would also be contrary to paragraph 130 of the Framework for proposals to achieve a high standard of amenity for existing and future users. For the reasons given, the proposed rear terrace would conflict with the general aspiration within the SPD for proposals to achieve good design and living standards.

**Other Matters**

14. I note that the Lead Local Flood Authority acknowledged the Environment Agency's response to the planning application and did not wish to comment further. The appellant submits that the presence of other relatively recently approved housing constructed at lower ground levels would outweigh the perceived harm from flood risk in respect of this appeal. Details of those schemes and any supporting evidence in respect of their flood risk assessments is not before me. In any event, I have determined this scheme on the evidence in respect of the appeal site. Consequently the presence of those other houses, and whether or not they have flooded, is not sufficient to justify allowing a new home within flood zone 3a without first considering the potential for the proposed dwelling to be located in an area at lower risk of flooding. The

presence of flood defences does not mean that a proposal is safe, only that while the defence is maintained the risk is reduced.

15. The proposal would provide one new dwelling in a location with access to services and facilities by sustainable transport modes. It would contribute to the supply of housing in the district and the Government's objective to boost housing supply. Small sites can make an important contribution to housing supply and can be built out relatively quickly. The house could be constructed to high environmental standards and use sustainable materials. Furthermore, the construction of the dwelling would provide short term benefits to the local and wider economy; and the occupants would be likely to stimulate consumer spending, boost local labour supply and help to support local services, which would all constitute modest benefits in social and economic terms. An absence of harm in respect of its effect on the character and appearance of the surrounding area and highway safety are neutral considerations.
16. Nevertheless, for the reasons given the proposal would conflict with the development plan taken as a whole. Material considerations do not indicate the decision should be made other than in accordance with the development plan.

### **Conclusion**

17. Therefore, for the reasons given, the appeal should not succeed.

*Rachel Hall*

INSPECTOR