



Appeal Decision

Site visit made on 9 October 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2023

Appeal Ref: APP/Z0116/W/23/3320912

Land to rear of 32 and 34 Somermead, Bedminster, Bristol BS3 5QS

- 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 M Lane against the decision of Bristol City Council.
- The application Ref 20/01827/F, dated 28 April 2020, was refused by notice dated 17 January 2023.
- The development proposed is Construction of 2 No. offices with storage over.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - Whether the proposal would deliver adequate renewable energy having regard to relevant development plan policies.

Reasons

Flood Risk

3. The appeal site is a small plot of land at the rear of residential properties. It is understood to have permission for a garage and appears an area of hardstanding with some boundary fencing. The site is accessed by a single-track lane and bounds the Malago River.
4. The appeal site is within Flood Zone 2 which is described as having a medium probability of flooding.¹ The proposal would comprise two commercial units which is classified a less vulnerable form of development with regards flood risk vulnerability.²
5. Paragraph 159 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

¹ Ref: Planning Practice Guidance: Paragraph: 078 Reference ID: 7-078-20220825

² Ref: Annex 3 of the National Planning Policy Framework

6. Policy BCS16 of the Bristol Development Framework Core Strategy (Core Strategy) states that development in Bristol will follow a sequential approach to flood risk management, giving priority to the development of sites with the lowest risk of flooding. This is generally consistent with the provisions of the Framework on this matter which, at Paragraph 162, clarifies that 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 permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
7. Amongst other matters, Planning Practice Guidance (PPG) advises that the applicant needs to identify whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or economic land availability assessments, such as sites currently available on the open market. The applicant may also need to check on the current status of relevant sites to determine if they can be considered 'reasonably available'.³
8. The Flood Risk Sequential Assessment and Exception Test report submitted by the appellant states that four commercial estate agents were contacted and that this comprises the scope and area of search for the assessment. No response was received from these agents. Contacting agents was advised by the planning officer and this is reflective of the guidance set out in the Bristol Flood Risk Sequential Test Practice Note (Practice Note) for the scale and type of development proposed in this case. However, the evidence before me suggests that the four agents were contacted on just one day.
9. While there is no prescribed approach for sequential assessments, even taking account of local circumstances and adopting a pragmatic and proportional approach, it would not be unreasonably onerous to contact these agents on further occasions. Also, there is no evidence before me to indicate that these are the only commercial agents in this area. Moreover, the Practice Note, in addition to contacting agents, provides guidance about potential sources of reasonably available sites. I find no evidence that those sources, beyond contacting a few local estate agents on one day, were explored in this case.
10. The information submitted in respect of this matter is therefore extremely limited, and as such, insufficient to conclude that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Consequently, as the appellant's Sequential Assessment is not supported by adequate evidence that establishes that there are not sequentially preferable sites that are reasonably available, the sequential test has not been passed in this appeal.
11. As already stated, an Exception Test has been submitted with this proposal. However, Table 2 of the PPG confirms that an Exception Test is not required in this case.⁴ So this matter has not been determinative in this appeal. In any event, while the proposal would result in the redevelopment of a site, I find nothing before me that indicates this development would be essential for regeneration or necessary to meet the development requirements of the city.

³ Ref: Planning Practice Guidance: Paragraph: 029 Reference ID: 7-029-20220825

⁴ Ref: Planning Practice Guidance: Paragraph: 079 Reference ID: 7-079-20220825

12. The appellant highlights that safe refuge in a flood event could be provided at the first floor of the commercial units. The appellant is also willing to improve the surface of the lane and install lighting to ensure safe egress from the site in such an occurrence. This could be secured by condition subject to these measures being deemed acceptable in terms of potential impacts on the local area. There is also a willingness to sign up to an early warning system. The proposal is also supported by a site-specific flood risk assessment, and the Environment Agency has removed its original objection to the proposal, subject to conditions.
13. However, even if I agreed that the measures stated above would be acceptable and even where a flood risk assessment shows a development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. I find for the reasons outlined above this requirement has not been satisfied in this case.
14. In light of the above, in the absence of sufficient evidence I find the proposal would not comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding. In this regard the proposal fails to accord with Policy BCS16 Core Strategy which requires proposals to follow a sequential approach to flood risk management. The proposal would also not accord with provisions of the Framework and guidance set out in the Practice Note with regards this issue.

Renewable Energy

15. The proposal is supported by a sustainability statement which includes an energy strategy. The statement indicates an intent to maximise energy efficiencies and proposes on-site renewables in the development. Supporting information shows calculations of potential CO₂ emissions and building performance of the commercial units, with reference to Building Regulations baseline. Information also suggests the potential for on-site renewable energy generation, with reference to photovoltaics panels, as well as the potential saving on residual emissions from the use of renewable by at least 20%. This is generally reflective of the issues, measures and targets outlined in Core Strategy Policies that seek to ensure that development is energy efficient and mitigate and adapt to climate change.
16. The Council queries the quality and veracity of the evidence submitted in respect of this matter. However, while there may be some errors in the submitted statement, I find nothing before me to show that the climate change measures sought in Core Strategy Policies could not be achieved in this development. Moreover, there is nothing to suggest that appropriate sustainability and energy measures could not be secured by condition in this case. This would give certainty that these measures would be delivered as part of this development.
17. In light of the above, I find that the proposal could deliver adequate renewable energy having regard to relevant development plan policies. In this respect, the proposal would accord with Policies BCS13, BCS14 and BCS15 of the Core Strategy. These Policies collectively state that development should contribute to both mitigation and adaption to climate change and meeting targets to reduce carbon dioxide emissions. These Policies require, amongst other matters, that development will be expected to provide sufficient renewable

energy generation to reduce carbon emissions from residual energy use in the building by at least 20%.

Other Matters

18. The proposal would add to the mix of uses in the area and there would be economic benefits from providing commercial units. However, these benefits would be small given the scale of the development and would not outweigh the conflict identified in this case in respect to flood risk policy.
19. The proposal would also use previously developed land. In respect of this matter reference is made to Policy CS14, which appears to be an error. This aside, there is local and national policy support for this matter. However, while this weighs in favour of the proposal, there is nothing in national and local policy or technical guidance that suggests this benefit negates the requirement to pass the sequential test.
20. The Council has not raised concerns about neighbours' living conditions or highways, subject to conditions. However, development should not give rise to such harms and therefore these are neutral factors.
21. Attention has been drawn to a permission for flats at the Plume of Feathers. That property has been described as adjoining the appeal site. I observed that this is not the case. This aside, in addition to a few garages, the appeal site is adjacent to 1 – 4 Malago View. These properties are also adjacent to the river. However, limited details about the consenting of these properties have been provided to allow consideration of this matter.
22. My attention has also been drawn to Policy DM32 of the Bristol Local Plan - Sites Allocations and Development Management Policies which relates to recycling and refuse provision. However, this matter does not appear in dispute, subject to conditions.
23. Concerns have been raised about the length of time and approach to determining the application. Some of the delay appears to be accounted for by the change in personnel which can be a factor beyond the control of the Council. Also, the officer's report addresses the main issues in this case and the reasons for refusal are substantiated with relevant national and local planning policy. I agree with the Council's conclusion in respect of the sequential test and as such the Council has not unnecessarily delayed development that should have been permitted. These matters have not altered my findings for this reason.

Conclusion

24. For the reasons stated above and having regard to the development plan, and material considerations, the appeal should be dismissed.

A J Sutton

INSPECTOR