



Appeal Decision

Site visit made on 26 September 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2023

Appeal Ref: APP/D1265/W/23/3316590

27 Huntick Estate, Lytchett Matravers, Dorset BH16 6EB

- 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 AJ Land Consultancy Ltd against the decision of Dorset Council.
 - The application Ref 6/2021/0376, dated 29 June 2021, was refused by notice dated 31 August 2022.
 - The development proposed is sever land and erect 1 no 3 bed detached house with parking.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the location is appropriate for the proposal, having regard to the impacts and risks of flooding.

Reasons

3. The site consists of land that was once part of the garden of 27 Huntick Estate (No 27) which has been subsequently subdivided to form a separate plot. It lies within a modern housing estate. The proposal seeks to erect a two-storey dwelling on this land.
4. The site lies within Flood Zone 1, at low risk from river and sea flooding. No site-specific modelling of flood risk of the site has been undertaken. However, Environment Agency (EA) mapping shows that the site is subject to a surface water flow path and ponding to a maximum depth of 300mm at the 1 in 100-year extent. The EA equates this to a low-to-medium level of risk. As such, I consider that this level of risk cannot be discounted.
5. Measures are proposed within the appellant's Drainage and Flood Risk Statement to mitigate against flood risk. These include that the finished floor levels of the proposed dwelling and patio would be set to a height above 300mm. A surface water drainage system is also proposed, connecting to the system within the garden of No 27 itself. Alternatively, if this connection cannot be secured, agreement would be sought with Wessex Water for discharge of water into the public system.
6. On this basis, the Council's Drainage Engineer did not object to the proposal. The Local Lead Flood Authority (LLFA) also did not object and recommended a pre-commencement condition to secure these measures. However, the

Planning Practice Guidance¹ (PPG) makes clear that where flood risk is a consideration, the decision-making process should first consider avoidance.

7. Furthermore, even with a planning condition securing mitigation measures, and in circumstances where the proposal could be made safe throughout its lifetime, the PPG advises² that the National Planning Policy Framework (the Framework) and its sequential test must be satisfied. This requires the appellant to show that there are no other sites appropriate for the proposal within an area at a lower risk of flooding. As such, only if no other sites are available should control and mitigation in respect of site-specific measures be considered.
8. My attention has been drawn to the High Court decision of *Wathen-Fayed*³ in respect of this issue. Amongst other matters, the judgment found that it was not irrational for that Inspector to have used discretion in respect of whether to apply the sequential test, having regard to factors such as the view of the LLFA, the advice of the FRA and the Strategic Flood Risk Assessment. The Court also found no reason why conditional controls should not also be brought into account.
9. However, although the Framework remains unchanged for these purposes, the findings of the Court relate to a previous version of the PPG. This has been superseded by an amended version, which makes clear the importance of the sequential test. It advises that the test is the most effective way of addressing flood risk by (amongst other things) placing the least reliance on property-level resilience features. The PPG continues to refer to the need for pragmatism for example for small extensions, but this is not relevant to the proposal. As such, the judgement of the Court is now of only limited relevance to the proposal.
10. The appeal site was subject to an earlier application and dismissed appeal⁴ for two dwellings. The Council refused permission, partly because of concerns about the viability of the-then proposed drainage arrangements. Following the submission of further details, the Inspector in that case considered that the issue could be addressed by way of a planning condition.
11. However, the concerns of the Council at that time did not relate to the sequential test and this was not something that the Inspector referred to. Similarly, the sequential test was not a matter raised by the Council or another Inspector in considering a proposed bungalow at 11 Huntick Estate⁵. These decisions are an important material consideration, as is the need for consistency in decision-making. However, this must be set against the requirement to properly apply the policies of the Development Plan and the Framework, having regard to the advice of the PPG. As such, the decisions do not provide a good reason to not apply the sequential test to the proposal.
12. Planning permission⁶ has been granted for a double garage building on the same footprint as the proposal, which could be built as an alternative to it. However, I have little reason to believe that it would be worse in terms of flood risk than the proposal. Indeed, because the garage would not be occupied as a

¹ Paragraph: 004 Reference ID: 7-004-20220825

² Paragraph: 023 Reference ID: 7-023-20220825

³ *Wathen-Fayed v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 92

⁴ PINS reference APP/D1265/W/21/3266945

⁵ PINS reference APP/B1225/W/19/3231954

⁶ LPA reference P/FUL/2022/05484

dwelling, it may well result in less flood risk to its users than the proposal. This permission does not therefore justify the proposal.

13. For these reasons, I conclude that the sequential test should be applied in this case. No assessment of potential alternative sites has been demonstrated by the appellant. Accordingly, the sequential test of the Framework is not satisfied. As a matter which is fundamental to determining whether planning permission should be granted, compliance with the sequential test cannot be left to a planning condition. Therefore, I am not satisfied that the location is appropriate for the proposal, having regard to the impacts and risks of flooding.
14. It follows that the proposal would conflict with Policy FR of the Purbeck Local Plan Part 1, adopted November 2012, which requires that the impact of flooding is managed by locating development in accordance with the Purbeck Strategic Flood Risk Assessment. This states that the Council will apply the sequential test to proposals which have not been allocated through the Local Plan. For similar reasons, the proposal would also be contrary to the Framework and the PPG. I therefore give this conflict substantial weight.

Other Considerations

15. The Council accepts that it cannot currently demonstrate a five-year housing land supply, which I understand is equivalent to just 1.23 years. As such, it is necessary for me to determine whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits inherent in providing an additional dwelling to assist the Council in addressing its undersupply, as set out in paragraph 11 of the Framework.
16. The proposal would conflict with Policy FR, which is consistent with the Framework, and so it would conflict with the Development Plan as a whole. Against that, the proposal would make a positive contribution to the supply of housing. However, due to the proposal being for only a single dwelling, such benefits would be small. Accordingly, I give this benefit only limited weight.
17. Construction of the proposal would bring economic benefits, for instance to those employed in the building industry. Its future occupiers would also make a positive social and economic contribution. The proposal would constitute windfall development, making more efficient use of land and reducing pressure to develop elsewhere. It would also be within a key service village, and so well located for services and facilities. Even so, given the size of the proposal, these benefits would be minor. I therefore give them limited weight.

Other Matters

18. The Council's second reason for refusal refers to the location of the site within the catchment area of Poole Harbour, which is designated as a Special Protection Area (SPA), a Site of Special Scientific Interest (SSSI) and a Ramsar site. As such, it is protected pursuant to the Conservation of Habitats Regulations 2017 as amended.
19. Had I found no harm in respect of the other issues, as competent authority I would have carried out an Appropriate Assessment in respect of the potential effects of the proposal on the SPA, SSSI and Ramsar site. However, as I have found against the appellant on other substantive grounds, this matter need not be considered any further in this case.

Planning Balance and Conclusion

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise. Given the harm that I have identified, for the reasons I have already given, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
21. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR