



Appeal Decision

Site visit made on 27 September 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Appeal Ref: APP/D1265/W/23/3320134

Sunningdale Lodden, Shaftesbury Road, Gillingham, Dorset SP8 4JY

- 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 James Scott against the decision of Dorset Council.
 - The application Ref P/FUL/2022/04663, dated 25 July 2022, was refused by notice dated 2 March 2023.
 - The development proposed is described as “demolish existing two-storey house and replace with new two-storey dwelling”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the decision notice, reference is made to a dwelling at 110 Addison Close. However, the Council has confirmed that this number was an error and that the correct address is 100 Addison Close (No 100) and the appellant’s case is made with reference to No 100. I have determined the appeal accordingly.

Main Issues

3. The main issues are:
 - whether the proposed development would be appropriately located in respect of flood risk;
 - the effect of the proposed development on the character and appearance of the area; and
 - the effect of the proposed development on the living conditions of the occupants of No 100, with particular reference to privacy.

Reasons

Flood risk

4. The appeal site is located close to the River Lodden. The main parties agree that part of the site lies within the functional floodplain, comprising flood zones 2 and 3, and is subject to the risk of fluvial and surface water flooding. As set out in paragraph 167 of the Framework, when determining planning applications, decision-makers should ensure that flood risk is not increased elsewhere.
5. In accordance with footnote 55 of the Framework, a site-specific flood risk assessment (the FRA) was submitted as part of the application, including additional information in response to the previously refused planning

application¹ and subsequently dismissed appeal². The FRA concludes that the proposed dwelling, carport and the surrounding area would not be adversely affected by future flooding. However, limited information and analysis are provided within the FRA, nor does it incorporate the Environment Agency's advice³, to justify this conclusion. Furthermore, it is not clear if an assessment of whether the proposed development would lead to an increase in flooding from surface water was undertaken, including an indication of the possible future flood risk when considering climate change.

6. Whilst recognising that flood risk mapping is not an exact science, the Flood Plan⁴ submitted with the application overlays the proposed development onto the flood zone. Although the appellant states that the replacement dwelling would be sited entirely within flood zone 1, the Flood Plan indicates it would be located immediately adjacent to the edge of flood zone 2. Given the resolution of the flood zone mapping combined with the limited detail of the proposed dwelling shown on the Flood Plan, I am unable to conclude with certainty that the proposed dwelling would not be partially located in flood zone 2. Therefore, it has not been demonstrated that the proposed development would not increase the vulnerability of the residential use of the site.
7. The proposed carport with studio/office space above, labelled as 'proposed garage' on the application plans would also be substantially located within flood zone 2. Regardless of whether or not the studio/office space constitutes a habitable room, it has not been satisfactorily demonstrated that the proposed garage would not increase the flood risk elsewhere.
8. Various mitigation measures are proposed in the FRA and shown on the Flood Plan, including a wall to the front boundary, raised site levels, banking to the garden area and a possible area for flood compensation through the lowering of part of the garden. However, the FRA lacks substantive evidence, analysis or calculations to justify the ability of these proposed measures to alleviate the effect of flooding on the proposed dwelling. Moreover, the FRA states that any increase in flood levels downstream resulting from the water displaced by the alleviation measures would be extremely minimal. As such, the evidence before me does not demonstrate that the proposed development would not be at risk from flooding nor lead to an increase in flood risk elsewhere. The use of a condition requiring the provision of a Flood Emergency Plan would not be sufficient to make the proposed development acceptable.
9. During the appeal, the Council confirmed that it is no longer defending the need for a sequential test. Whilst footnote 56 of the Framework sets out the types of development where a sequential test would not be required, thereby allowing some flexibility in approach to decision making, this does not include a replacement dwelling. In the absence of sufficient substantive detail in the FRA to conclude the proposed development is at low risk from all sources of flooding, a sequential test should be applied, irrespective of the site's lawful use.
10. I conclude that the proposed development would not be appropriately located in respect of flood risk, contrary to Policy 3 of the Local Plan which promotes

¹ Council ref: 2/2015/1411/FUL, dated 18 November 2015

² Appeal ref: APP/N1215/W/16/3147101, dated 25 July 2016

³ Preparing a flood risk assessment: standing advice, prepared by the Environment Agency and Department for Environment, Food and Rural Affairs, published 1 April 2012 and updated 8 February 2022

⁴ As shown on Drawing No. 1551 – Flood Plan, dated August 2022

the avoidance of development in areas of risk of flooding. It would also conflict with Chapter 14 of the Framework which sets out how development should be directed away from areas with the highest flood risk.

11. The Council refer to conflict with the Gillingham Neighbourhood Plan 2016-2031 (the Neighbourhood Plan) however I have not been directed to a specific policy. As such, the Neighbourhood Plan is not determinative in this main issue.

Character and appearance

12. The main parties agree that the surrounding area is characterised by a mix of dwelling types, sizes and architectural styles. The existing dwelling comprises a two-storey detached building which is larger than the terraces further along the B3081 Newbury/Shafesbury Road (the B3081) and Addison Close to the rear, with a single-storey detached garage to the side. Its irregularly shaped footprint and the combination of painted render and pebble-dash exterior also contribute to this variety.
13. Albeit located on part of the footprint of the existing property, the proposed dwelling would be substantially larger in area, bulk and massing than the existing building. Its overall scale would contrast starkly with the existing mix of dwelling sizes nearby, being significantly bigger than any other property I observed in the area. Irrespective of the lack of a specific design guide or that local planning policy does not preclude the development of brownfield sites, the scale and mass of the proposed dwelling would be a discordant feature in the local context. The use of a palette of external materials which reflects those found within the vicinity of the appeal site would not diminish this effect.
14. Combined with the open space of the adjacent Lower Lodden Meadow, the garden area on the site forms part of a break in built form associated with the River Lodden corridor, either side of the B3081. Two modest-sized wooden garden sheds are located within the garden, although positioned closer to the site boundary furthest away from the River Lodden, and the existing dwelling.
15. Although the proposed dwelling would introduce built form further into this break, it would not extend beyond the location of the existing sheds or the rear boundary of properties on Addison Close nearby, maintaining the break in built form. However, the proposed garage would be located close to the front site boundary and nearer to the River Lodden end of the site. It would be significantly larger in height and massing than other carport/garages in the surrounding area, comprising three parking bays with a large studio/office above. Whilst the existing front boundary hedge and landscape features would partially screen the proposed garage, its two-storey height and close siting to the front site boundary means it would be a prominent and discordant feature in an otherwise open area. Furthermore, it would be an intrusive feature in views from the wider River Lodden corridor, including the Lower Lodden Meadow.
16. My attention has been drawn to paragraph 38 of the Framework which promotes positive and creative approaches to decisions and that applications for sustainable development should be approved where possible. However, even if the appellant considers the Council to have taken a cautious position whilst recognising the subjective nature of design, the substantial scale of the proposed development would be discordant to the surrounding context. It would detract from, rather than improve, the area's character and appearance.

17. I conclude that the proposed development would cause unacceptable harm to the character and appearance of the area, contrary to policies 4, 7 and 24 of the Local Plan. In combination, these policies seek to ensure development is designed to improve the character and quality of the area, whilst respecting the distinctiveness of the locality, including the natural environment. It would also conflict with Policy 24 of the Neighbourhood Plan which stipulates that, in general, new development should not exceed the massing of existing buildings in the immediate locality.

Living conditions

18. The rear boundary of the appeal site adjoins a wide footpath that extends from the end of Addison Close, beyond which is located No 100. During my site visit, from the medium-sized clear glazed bathroom window on the first floor of the existing dwelling, I observed largely unrestricted views into the garden of No 100, over the close board fence on the side boundary. A similar view would be possible from one of the existing bedrooms. This relationship, therefore, limits the amount of privacy currently afforded to occupiers of No 100, particularly when using the garden.
19. As the proposed development would include four windows at the upper floor level, the number of locations where views into the garden would be possible would be increased. The rear elevation of the replacement dwelling would also be sited closer to No 100 than the existing dwelling. As such, irrespective of the oblique angle of the rear garden of No 100, the closer siting of the replacement dwelling would increase the amount of garden visible from the rear windows. Even if obscured glazing was to be used in the bathroom window and despite acknowledging that a certain degree of mutual overlooking is expected in residential areas, the resultant loss of privacy would be detrimental to the occupiers of No 100.
20. Consequently, I conclude that the proposed development would cause detrimental harm to the living conditions of occupiers of No 100, with particular reference to privacy. It would be contrary to Policy 25 of the Local Plan which permits development only where it is designed to protect the privacy of occupants of neighbouring properties.
21. Whilst the Council refer to Policy 24 of the Neighbourhood Plan on the decision notice, as this policy does not include matters specifically related to privacy, it is not determinative in this case.

Other Matters

22. The proposed development would provide social benefits from the continued occupation of a dwelling on the site and the diversification of housing stock in the area. Economic benefits through the provision of jobs during the construction of the dwelling, in the short term, and through supporting local services, facilities and businesses in the longer term. From an environmental perspective, benefits would be derived from a high-quality, thermally efficient dwelling within an accessible location.
23. My attention has been drawn to the fact that permitted development rights include the construction of a garage. Therefore, there is more than a theoretical possibility that a garage could be built on the site. However, its scale, height and siting would be restricted by the conditions set out in Class E

of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. This would result in a significantly smaller garage than currently proposed. Given this, the proposed development would cause greater harm to the character and appearance of the area. I therefore attach limited weight to this fallback scenario.

24. Whilst the proposed development would provide increased space and an upgraded standard of accommodation for the appellant and their family, it has not been demonstrated that the appeal scheme represents the only way this could be achieved on the site.

Planning Balance and Conclusion

25. The Framework establishes that inappropriate development in areas at risk of flooding should be avoided and that development should not lead to an increase in flood risk elsewhere. As Policy 3 of the Local Plan is broadly consistent with the Framework in this regard, I give the proposed development's conflict with it significant weight.
26. Policies 4, 7 and 24 of the Local Plan amplify the Framework's objective of ensuring development is sympathetic to local character, including the surrounding built environment and landscape setting. In respect of living conditions, the Framework seeks to ensure developments have a high standard of amenity for existing and future users. Policy 25 of the Local Plan reiterates this objective. As the proposed development would be contrary to policies 4, 7, 24 and 25 of the Local Plan, I attach moderate weight to this conflict.
27. The latest housing delivery test for North Dorset falls below the 75%⁵ threshold. In such circumstances, paragraph 11di of the Framework states that the presumption in favour of sustainable development applies unless the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development. This includes areas at risk of flooding (footnote 7).
28. Having regard to my findings that the proposed development would not be appropriately located in respect of flood risk, the application of the Framework's policies regarding areas at risk of flooding provides a clear reason for refusing the proposed development. Consequently, despite the latest housing delivery test measurements, the presumption in favour of sustainable development contained in the Framework would not weigh in support of this case.
29. Therefore, I conclude that the proposed development is contrary to the development plan as a whole and material considerations, including the provisions of the Framework, do not indicate that the proposed development should be determined other than in accordance with the development plan.
30. For the reasons set out above, having had regard to all relevant matters raised, I conclude that the appeal should be dismissed.

Juliet Rogers

INSPECTOR

⁵ Housing Delivery Test: 2021 Measurement