



Appeal Decision

Site visit made on 10 October 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/U1105/W/23/3319921

Kings Arms Farm, Nags Head Road, Gittisham, Devon EX14 3AP

- 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 Clouter against the decision of East Devon District Council.
 - The application Ref 22/1622/FUL, dated 22 July 2022, was refused by notice dated 10 February 2023.
 - The development proposed is described as Two storey Residential Home for Vulnerable People set in grounds of Existing Home for Vulnerable People.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council refer to the proposed development as involving the construction of a two-storey 18-unit residential home for vulnerable people. However, I have determined the appeal as per the above description of development, which is taken from the planning application form, because it sufficiently describes the development proposed.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the surrounding area; and
 - whether the proposed development would be suitably located in relation to flood risk, with particular regard to the sequential test.

Reasons

Character and appearance

4. Although on the edge of Honiton, the appeal site is in the open countryside as defined by the East Devon Local Plan 2013 to 2031 (LP). I observed on my site visit that the A30 dual carriageway also provides a clear physical boundary to the more built-up land to the south-east, with land on the same side of the A30 as the site being rural and containing only limited, scattered development. Despite the intrusiveness of the A30 (including its associated noise and signage) and the presence of the overpass and off ramp (which is partly screened by trees and vegetation), the surrounding area which the site relates to therefore has a rural character and open, verdant appearance. The urban form of the A30 does not change this, with the countryside forming the

backdrop to the site and reading as the dominating feature in which the appeal proposal would be experienced in. With a generally traditional form with pitched roofs, existing properties in the locality have a modest presence in the locality and reflect their countryside context. With the relatively limited scale and traditional design of existing built form on the plot and the open nature of the rest of it, the site contributes positively to its rural surroundings.

5. Despite the roof form limiting its overall height, the proposed development would extend across much of the site's width, dominate the existing property and read as a significant, blocky, bulky feature. Although some outbuildings would be removed and a garden area would be provided between the existing and proposed buildings, the appeal proposal would significantly increase the extent and scale of development on the site and reduce its open nature. Although the appeal proposal may be finished to a high quality and has been designed by a chartered architect, the functional design would not reflect existing properties in the area in which the site is experienced and would draw attention to the building. With trees having recently been removed from the site and the proposed development being visible via the access point and above the existing building's single storey elements for example, the appeal proposal would be a very visible addition in the locality.
6. The proposed development would therefore appear as an incongruous addition at odds with its context. In coming to this view, I have taken into account its set back; that its eaves height and (where feasible) external finishes would be similar to the existing property; the Council's suggested conditions would secure details of external materials and landscaping; that it would deliver the required space for assisted living accommodation; and its roof design would be energy efficient and provide sound protection. The presence of the A30 and other highways and the lack of historical rural features for the scheme to reference do also not lead me to a different conclusion.
7. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area. I therefore find that it conflicts with LP Policy D1 and Strategy 7. Amongst other aspects, these require development to relate well to their context and not harm the area's characteristics and distinctive landscape qualities. The proposal would also be inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places and the guidance in the National Design Guide regarding proposals relating well to their context.

Flood risk

8. Much of the site is in Flood Zone 1 and therefore has a low probability of flooding. However, part of the proposed building would be situated in Flood Zone 2, which is defined by the Planning Practice Guidance (PPG) as being at medium probability of flooding. The submitted Flood Risk Assessment (FRA) also identifies that the site is at risk of flooding from storm water as well as the River Otter. The main parties agree that the proposed development falls within the 'more vulnerable' flood risk classification as per Annex 3 of the Framework.
9. To avoid flood risk to people and property where possible, the Framework identifies that a sequential, risk-based approach to the location of development should be applied. When required, the approach involves applying the sequential test and then, if necessary, the exception test. The sequential test aims to steer new development to areas with the lowest risk of flooding.

Setting out that 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 Framework identifies that the sequential test should be used in areas known to be at risk of flooding. If, after taking wider sustainable development objectives into account, it is found that the development cannot be located in lower flood risk areas, the Framework directs that the exception test may then have to be applied. The need for the exception test depends on the development's flood risk vulnerability classification, as per the Framework, and the site's potential vulnerability to flooding.

10. At paragraph 168, the Framework identifies that applications for "some minor development and changes of use" should not be subject to the sequential or exception tests. Footnote 56 clarifies the scope of this, with it listing the types of minor development not subject to those tests as including householder development and small non-residential extensions (with a footprint of less than 250m²). Broadly consistent with this, LP Policy EN21 defines what minor development is in the context of applying the sequential approach.
11. Accordingly, all other development at risk of flooding – irrespective of whether it does not fall within the definition of 'major' development in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) – may need to be subject to the sequential and, where necessary, exception tests. This is confirmed by the PPG (paragraph: 027 Reference ID: 7-027-20220825, Revision date: 25 08 2022) setting out that the sequential test should be applied to 'Major' and 'Non-major development' proposed in areas at risk of flooding unless, amongst other aspects, the application is for a development type that is exempt from the test as specified in Framework footnote 56.
12. For the purposes of determining whether a sequential test is necessary in this instance, the fact that the appeal proposal is not classed as 'major' development and is said to be a minor development for an unattached annex building is therefore not determinative. The use of the word 'includes' in footnote 56 and LP Policy EN21 does not lead me to a different conclusion because Framework paragraph 168 refers to "some" minor development and it is clear to me that the types of development listed in the footnote and defined in the LP policy are definitive rather than just examples. In coming to this view, I have taken into account that LP Policy EN21 neither precludes the type of development proposed nor explicitly states that a sequential test is required for it. With table 2 in the PPG relating to the exception test (the notes accompanying the table state that it does not show the application of the sequential test, which should be applied first), it is also not relevant to whether the sequential test is needed.
13. Involving the erection of a 16-bed residential home, the proposed development is neither for a change of use nor does it involve householder development or a small non-residential extension. It is therefore not a development type exempt from the sequential test as detailed in local policy, the Framework and the PPG. Confirming this, the Environment Agency's (EA) standing advice, available via the PPG, also includes a closed list of exemptions where the sequential test does not need to be applied to development in flood risk areas, none of which apply in this case.

14. With part of the appeal proposal at risk of flooding due to its location in Flood Zone 2, a sequential test is therefore required. That only a part of the proposed development would be in Flood Zone 2 and its extent within the area at medium probability of flooding would be less than 250m² do not change this.
15. Although the appellants' FRA addendum is titled 'Flood Risk Assessment – Sequential Test', it contains little in the way of information about alternative sites, despite that being the focus of the sequential approach. Instead, it includes extraneous reference to the consideration within sequential tests of table 2, determines that no further assessment is required and simply sets out that the appeal site, being in control of the appellants, has a very real prospect of being available at the point in time envisaged for the development. The evidence before me does also not indicate that the proposed development can only be located on the appeal site and that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. In coming to this view, I have taken into account that an appropriate search area has not been agreed between the main parties and that it is said that the appeal proposal would substantially increase the practical and financial sustainability of the site's existing use.
16. Accordingly, there is little substantive evidence before me which indicates that the proposed housing of vulnerable people in an area at medium probability of flooding cannot be avoided. The lack of need for the exception test in this instance does not change this. Table 2 of the PPG not identifying that the flood risk vulnerability of the proposed development is incompatible with flood zone 2 does also not lead me to a different conclusion because that table does not cover the application of the sequential test.
17. The EA's objection to the scheme does not relate to flood risk and the sequential test. However, the PPG does not identify the need to consult the EA on this matter for the type of development proposed. It is also clear that it is for the decision maker to consider whether the sequential test is passed and that the planning authority will need to determine an appropriate area of search based on the development type proposed and relevant spatial policies. The lack of objection from the EA regarding flooding and the sequential test does not therefore indicate that the development is acceptable in relation to this matter. Furthermore, the EA's standing advice sets out that permission should be refused if the sequential and exception tests are not done or satisfied. The Council's suggested condition requiring compliance with the FRA and addendum does also not indicate that the sequential test is not necessary and that the proposal is acceptable in relation to flood risk policy and guidance.
18. Accordingly, I conclude that the proposed development would not be suitably located in relation to flood risk, with particular regard to the sequential test. I therefore find that it conflicts with LP Policy EN21. Amongst other aspects, this sets out that a sequential approach will be taken to considering whether new developments will be permitted in areas subject to flooding. The proposal would also be inconsistent with the provisions in the Framework in relation to planning and flood risk, and the PPG.

Other matters

19. The appellants indicate that the Council did not identify design concerns until several weeks after validating the planning application, did not give them an opportunity to address this or the flood risk issues, and only identified at

appeal stage the need for the sequential test to cover the district. Be that as it may, this is not determinative as to the acceptability of the appeal proposal, which I have determined on its merits and the evidence before me.

20. It has been put to me that the planning conditions suggested by the Council during the appeal indicate that the proposed development is essentially acceptable and that the Council's concerns are unjustified. However, conditions suggested at appeal are given on a without prejudice basis and, even though measures could be used to mitigate the risk and effects of flooding, the Council's suggested condition relating to compliance with the FRA and addendum does not indicate that the appeal proposal is acceptable in relation to flood risk policy and guidance. Similarly, the third and fourth suggested conditions do not indicate that the proposal would be acceptable in relation to its effect on the character and appearance of the locality. The conditions suggested thus do not address the harm and issues I have identified above.

Planning Balance

21. There is no objection to the principle of development and the Council indicates there is policy support for the provision of care homes. From the available evidence, this includes LP Strategy 4 which seeks balanced communities by, amongst other aspects, securing social and community facilities and keeping the community vibrant and viable. Delivering a residential home for vulnerable people, the proposal would provide this. Nevertheless, the harm I have identified above and the conflict with the aforementioned development plan policies leads me to conclude that the appeal proposal, despite according with LP Strategy 4, conflicts with the development plan as a whole.
22. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010. The Act sets out the relevant protected characteristics, which includes age and disability. Since there is the potential for my decision to affect persons with protected characteristics, I have had due regard to the three principles set out in Section 149 of the Act.
23. In dismissing the appeal, the proposed residential home for vulnerable people, which would be lived in by the appellants' daughter (who would own it in trust) and a group of similar young people, would not be granted planning permission. This would mean the provision of additional independent supported accommodation, which is said to be very limited and needed but not available in the local area, would not be provided on the site. The practical and viability advantages that it is said the appeal proposal would bring to the site's existing use as a residential care home for vulnerable adults would also not arise. These matters attract significant weight.
24. However, having due regard to this and to the need to eliminate prohibited conduct (including discrimination), advance equality of opportunity and foster good relations, the adverse impacts of dismissing the scheme on those with protected characteristics would still be justified and the decision would be necessary and appropriate having regard to the requirements of the adopted development plan and national policy and guidance. Dismissing the appeal would thus not have a detrimental impact that would amount to discrimination. Furthermore, I have little substantive evidence that the site provides the only available option and that new accommodation of the required nature but which accords with policy could not be provided elsewhere in the area in which it is

needed. It has also not been alleged that the continuation of the existing use on the site relies on the development proceeding as proposed.

25. The existing property is in lawful use as a residential care home for vulnerable adults and is managed by a charity that supports people with learning disabilities, autism and mental health needs. The appellants, who are not a developer, have for many years owned and operated the building to provide accommodation for vulnerable people who are part of the community.
26. The proposed residential home, which the appellants' daughter would live in, is said to be a scarcely available resource and would provide needed additional assisted living accommodation for vulnerable people in an accessible location on the edge of Honiton. It would provide employment from the building's construction and subsequent operation. It has been put to me that the proposal would also substantially increase the practical and financial sustainability of the existing use. In addition to these social and economic benefits, the submitted evidence indicates that the design of the proposed building has been driven by the needs of future residents, the roof design would provide for energy efficiency and sound protection, and the garden courtyard could be used by both existing and future occupiers. The scheme is also supported by a Ward member whilst the Parish Council and local people have not objected.
27. Be that as it may, I find that the above matters neither outweigh nor justify the harm I have identified or the conflict with the development plan. Given my findings above, even though the appeal proposal is said to contribute to and accord with the Planning for Growth objectives, the harm it would cause and its conflict with adopted policy means that it also cannot reasonably be described as contributing, in the words of the appellants, to the delivery of sustainability. In addition, it seems to me that a revised scheme which provides the above benefits and for future residents' needs in such accommodation, but which has a design that sufficiently relates to its context and either avoids land at risk of flooding or justifies such a situation, could still be provided in the district. Given only a relatively small part of the site falls within Flood Zone 2 and could thus be avoided in theory, such a scheme could potentially be acceptable on the appeal site, particularly given the Council has indicated that the principle of development is acceptable. However, if it cannot be delivered on the site, the evidence before me does not indicate that the existing use on the site would be unviable and cease.

Conclusion

28. The proposal conflicts with the development plan read as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

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INSPECTOR