



Appeal Decision

Site visit made on 11 October 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2023

Appeal Ref: APP/Z3635/W/23/3314395

10 Squires Road, Shepperton, Surrey TW17 0LQ

- 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 John Roberts against the decision of Spelthorne Borough Council.
 - The application Ref 22/00580/FUL, dated 21 April 2022, was refused by notice dated 29 September 2022.
 - The development proposed is replacement of single dwelling with three dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the appellant's description of development, taken from the application form, as this more concisely describes the proposal before me.

Main Issue

3. The main issue is whether the proposed development would comply with local and national planning policy, which seek to steer new development away from the areas at the highest risk of flooding.

Reasons

4. The site is identified as falling within Flood Zone 3a, an area with a high probability of flooding. Both Policy LO1 of the Spelthorne Core Strategy and Policies Development Plan Document (CS, 2009) and the National Planning Policy Framework (the Framework) seek to direct development away from areas at risk of flooding. Residential uses, as proposed here, are identified as more vulnerable development within the flood risk vulnerability classification.
5. The appeal scheme is supported by a Flood Risk Assessment (FRA), setting out the forms of flooding considered and the mitigation measures proposed. A Sequential Test forms part of this. This test is necessary to determine whether any other sites would be available to meet the need for development of this nature, outside of areas most at risk of flooding. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
6. The Sequential Test states that a search has been carried out of sequentially preferable sites. The appellant's methodology is said to have included a search of online listings, including Right Move, for suitable plots and a search of sites within the Council's Strategic Land Availability Assessment (SLAA). This is said to have identified no other potential sites of a similar nature.

7. The Framework does not define the extent of a sequential test search area. The Planning Practice Guidance (PPG) advises that the area to apply the sequential test will be defined by local circumstances relating to the catchment area for the type of development proposed and that a pragmatic approach on the availability of alternatives should be taken.
8. Nevertheless, I have no substantive evidence before me to demonstrate the area of search, how that area was defined, or any evidence of the specific sites assessed (such as name and address) or their status. Moreover, the SLAA would not identify smaller windfall sites of a similar scale to the appeal site. Under such circumstances, I cannot find that all other potentially available, and less harmful alternative options in flood risk terms have been reasonably explored, and therefore the requirements of the Sequential Test have not been met.
9. Although the appellant sets out that they have gone beyond the requirements of guidance in searching for potential sites, they have failed to demonstrate this with any evidence. Since I have found the proposal fails the Sequential Test, it is unnecessary for me to go on to consider whether the Exception Test is met.
10. The appellant raises the matter of the Council's 5-year housing land supply, noting that this falls short. I return to this matter subsequently. However, the absence of a 5-year land supply is not a relevant consideration for the Sequential Test for individual applications.
11. I note that the Council's reason for refusal refers, in part, to the absence of a dry means of safe access and egress for future occupiers. I acknowledge that the proposals incorporate an evacuation plan to an approved Rest Centre in the event of flooding. This evacuation plan would be in lieu of a preferred 'dry route' in and out of the site. Such an approach is accepted within the Council's Flooding Supplementary Planning Document (2012). Moreover, the proposal would be of a flood resistant design, such that safe refuge within the proposed development would be possible. I also accept that detailed information relating to surface water drainage may be appropriately dealt with at a later stage, noting the proposed attenuation measures. Nevertheless, the PPG is clear that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing flood risk elsewhere, the Sequential Test still needs to be satisfied.
12. Overall, I conclude that I cannot be satisfied that the proposed development has met the requirements of the Sequential Test, demonstrating there are no other available sites with a lower risk of flooding. Accordingly, the proposed development would be contrary to the relevant provisions of paragraphs 159 and 162 of the Framework and CS Policy LO1, which in summary seek that a sequential test is undertaken to steer new development to areas with the lowest risk of flooding.

Other Matters

13. I acknowledge the appellant's comments that the proposed development would meet other policy objectives, including in respect of design, density, residential amenity, living conditions of future occupants, parking and highways. I also note that the proposal would make use of a small, previously developed site, which is supported by the Framework. These matters are not in dispute

between the Council and appellant and have not led me to an alternative conclusion on the main issue.

14. That other nearby properties exist in the surrounding area, including nearer to water sources, or are situated on the flood plain, are not reasons that lead me to an alternative conclusion on the main issue.
15. There is no dispute that the Council cannot demonstrate an up-to-date supply of housing land. Accordingly, the most relevant development plan policies relating to the supply of housing are out-of-date. The appellant also argues that the Council's flood risk policies are out-of-date. As such, paragraph 11(d) of the Framework is engaged. This states that in such a situation where development plan policies are deemed out-of-date because a 5-year supply of housing land cannot be achieved, planning permission should be granted unless one of two criteria apply. One of these, at bullet (i), clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including areas at risk of flooding, provide a clear reason for refusing the development.
16. As I have found harm in respect of flood risk and this provides a clear reason for refusing the appeal proposal, the presumption in favour of sustainable development would not apply in this particular case.

Conclusion

17. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

A Price

INSPECTOR