



Appeal Decision

Site visit made on 16 January 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Appeal Ref: APP/D1265/W/23/3324863

45 Elmhurst Road, West Moors, Dorset BH22 0DJ

- 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 M Wesby against the decision of Dorset Council.
 - The application Ref P/FUL/2022/07989, dated 21 December 2022, was refused by notice dated 2 May 2023.
 - The development proposed is sever plot and erect 1no bungalow.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal satisfies national and local policy for flood risk, with particular regard to the sequential test.

Reasons

3. Policy ME6 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy (Core Strategy) states when assessing new development, local authorities will apply the sequential test set out in the National Planning Policy Framework. The National Planning Policy Framework – December 2023 (the Framework) requires that inappropriate development in areas of risk of flooding should be avoided by directing development away from areas at the highest risk.
4. The aim of the sequential test seeks to ensure that this risk-based approach is followed and to steer new development to the areas with the lowest risk of flooding from any source. This means avoiding, so far as possible, development in current or future medium and high flood risk areas, including areas at risk of surface water flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
5. The appellant raises concerns about the general area analysis applied in this case. However, the Flood Risk Assessment highlights that the site lies in an area with the potential for high ground water levels, with underlying geology classified as having a high susceptibility to groundwater flooding, with ground water expected very close to the surface. Also, the site is identified as being at medium risk from surface water flooding.

6. The proposed development would be small. However, the development would not be any of the types of development that Paragraph 174 and corresponding footnote 60 of the Framework state should not be subject to a sequential test.
7. The appellant has not submitted a sequential assessment in support of this proposal. This aside, the Council's assessment adopts a search area of West Moors Parish. This is a relatively focused area and appears proportionate for the type of development proposed.
8. The appellant asserts that all the land around West Moors is identified as high risk. However, the Council's assessment shows that there is a reasonably available site, 7 Abbey Road, at lower risk of flooding than the appeal property, which has an extant permission for semi-detached bungalows. Also, when the search area is extended to nearby parishes, other examples of reasonably available sites of a lower risk of flooding than the appeal property have also been identified.
9. The appellant has stated the need to stay in the local area and does not consider the site at No 7 viable due to the costs necessary to purchase that site, and the associated legal and design costs that may be necessary. Be this as it may, Planning Practice Guidance states that lower risk sites do not need to be owned by the applicant to be considered 'reasonably available'.
10. Furthermore, in addition to not submitting a sequential assessment, no compelling evidence has been advanced that significantly challenges the findings of the Council's sequential assessment. As such, the appellant has failed to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas of lower risk of flooding than the appeal property. Consequently, the sequential test has not been passed in this appeal.
11. The proposal is supported by a Surface Water Strategy and the proposed dwelling would have suspended floors, no basement, and it is asserted that the finished floor levels would address flood risk. It has also been stated that the groundwater percolates quickly and there is good potential for soakaway at the property. However, even if I accepted that this was the case, a sequential test must be passed, even where it is shown that the development can be made safe throughout its lifetime without increasing flood risk elsewhere.
12. Examples of plot subdivisions in this area have been highlighted. However, very limited information has been provided to allow the consideration of this matter in detail. This aside, at least one of these three developments (at Uplands Road) predate current guidance on this matter.
13. It is also stated that this matter was not raised in respect of a previous similar proposal at the appeal property. However, the Council has clarified that it now has improved understanding of this issue, and that flooding information has been updated since that previous proposal was determined. In any event, a medium risk of flooding has been identified at the appeal property and flood risk policy is relevant in this case. These matters have not altered my findings for these reasons.
14. In light of the above, I find that the proposal would not satisfy national and local policy for flood risk, with particular regard to the sequential test. The proposal would not accord with Policy ME6 of the Core Strategy and provisions of the Framework in respect of this matter.

Other Matters

15. The appellant suggests that structures can be constructed, under permitted development rights, at the property, which could have a greater impact than the proposal. However, such rights are subject to conditions, limitations, and restrictions, which in respect of incidental buildings to the existing dwelling, limits development to 50 % of the curtilage and within 2 m of the boundary. Moreover, limited information has been submitted to allow consideration as to whether such permitted development rights would address the needs of the appellant and whether permitted development would be significantly more harmful than development proposed in this appeal. I attach limited weight to this matter for this reason.
16. I have due regard for the appellant's personal circumstances in this case and have kept the interest of family members with protected characteristics at the forefront of my mind. However, the level of regard depends on the importance of the decision for the lives of persons with the protected characteristic. The principle of proportionality therefore applies.
17. I am not convinced that this potentially harmful development would be the only means to address the appellant's family needs. This matter weighs against the appeal proposal. On this basis, refusing planning permission would be proportionate and necessary, and for the reasons stated, the effect of dismissing the appeal would not have a disproportionate impact on the appellant's family and those with protected characteristics in this case. As a consequence, this matter would not outweigh the harm identified in respect of the conflict with the local and national flood risk policy.
18. The Council is unable to demonstrate a 5 year housing land supply. The provisions set out in Paragraph 11 of the Framework are therefore relevant.
19. The appellant asserts that all previous reasons for refusal have been addressed and that the proposal would be acceptable in terms of living conditions, highways and appearance. However, even if I accepted this was so, development should be acceptable in these respects, and these are neutral factors.
20. Also, it is stated that this proposal would be self-build. However, no mechanism has been submitted to ensure this outcome. Therefore, this matter does not weigh in favour of this proposal.
21. The proposed dwelling would add to the mix and supply of much needed housing in the area and would contribute in small part to the Government's objective to significantly boost the supply of homes. The proposal would incorporate sustainable drainage systems. The benefit of income from renting the dwelling would be largely limited to the owner of the property. That said, there would be economic benefits through the construction phase and from future occupants supporting local services. The proposal would be an efficient use of land and as a small windfall site it could be built quickly. The property is also in a built-up area close to some services.
22. However, given the scale of the development, these social, environmental and economic benefits would be limited. Moreover, the adverse impacts of the proposal, with regards addressing flood risk, would significantly and demonstrably outweigh the limited benefits, when assessed against policies in the Framework taken as a

whole. This would be so, even when these benefits are considered collectively. The presumption in favour of development therefore does not apply.

23. The appeal property is within the zone of influence of the Dorset Heathland Special Protection Area. This proposal would result in a net increase of residential units, and, in combination with other plans and projects, would likely have a significant adverse effect on the integrity of the protected habitat, through increased recreational pressures. However, as I am dismissing on other grounds, it is not necessary to consider this matter further in this appeal.

Conclusion

24. Having regard to the development plan and other material considerations, including the Framework, the appeal should be dismissed.

A J Sutton

INSPECTOR