
Appeal Decision

Site visit made on 4 January 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2024

Appeal Ref: APP/P1560/W/23/3322372

41 Sunbeam Avenue, Jaywick CO15 2JJ

- 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 Stuart Reeves against the decision of Tendring District Council.
 - The application Ref 21/01598/FUL, dated 11 August 2021, was refused by notice dated 7 March 2023.
 - The development proposed is conversion from domestic garage/store to C3 dwelling house. Provision for bin and cycle storage, along with additional landscaping to the front and rear.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the Council determined the application, an updated version of the National Planning Policy Framework, December 2023 ('the Framework') has been issued. I have consulted the main parties on this and had regard to any representations received.

Main Issues

3. The main issues are: a) Whether the proposed development would be acceptable in respect of the risk of flooding, and b) Whether the proposed development offers an acceptable standard of accommodation.

Reasons

Risk of flooding

4. The appeal site lies within Flood Zone 3a, defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' as having a high probability of flooding. Furthermore, the proposal is for the proposed conversion from domestic garage/store to C3 dwelling house, which is classified as a 'more vulnerable' development, under Table 2: Flood Risk Vulnerability Classification of the Planning Practice Guidance ('PPG').
5. Therefore, to comply with national policy the Environment Agency ('EA') advise that the application is required to pass the Sequential and Exception Tests. However, paragraph 174 of the Framework states that applications for some minor development and changes of use should not be subject to the sequential or exception tests, but should still meet the requirements for site-specific flood risk assessments, as set out within its footnote 55. It appears that because the

- proposal is for a change of use, the Council has not applied the sequential or exception tests, I have no reason to disagree with this approach.
6. Nonetheless, the Framework in paragraph 165 states that: Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
 7. As part of the application, the appellant submitted a site specific Flood Risk Assessment ('FRA').
 8. The EA's holding objection highlights the risk with relying on current flood risk management structures and the increasing risk of structures being overtopped in the design flood event, due to climate change within the lifetime of the development. The EA go on to highlight that there are no guarantees that there will be sufficient funding in the future to raise or reconstruct the nation's existing flood management structures to maintain the current standard of protection. They confirm that the proposed building would be at risk of flooding internally during its [100yr] lifetime by 3.21m depth in the 0.5% (1 in 200) annual probability with climate change flood event through overtopping of the existing defences, and they state this would mean that this would result in conditions which would be unsafe for the occupants.
 9. To overcome the EAs holding objection, the appellant would need to raise finished floor levels above the 0.5% (1 in 200) annual probability with climate change on-site actual risk of an overtopping flood level, including a 300 millimetre freeboard. This level is stated to be 5.75m above ordnance datum ('AOD') and this requirement is in line with the provisions of the PPG, which advises that there should be no internal flooding in 'more vulnerable' developments from a design flood (0.5% (1 in 200) annual probability inclusive of climate change).
 10. Therefore, with the EA stating that the minimum finished floor level would need to be 5.75m AOD the ground floor void would be fully submerged. Also, based on the first floor height, even if residents were to take refuge on the first floor in such a flood event, a considerable part of this would also be submerged in flood water.
 11. Whilst the appellant is willing to accept conditions relating to the provision of a risk assessment and the undertaking of remedial works, I am not persuaded that these would sufficiently address the above matters.
 12. For the above reasons, the proposed dwelling in its location would be at an unacceptable risk of flooding. As such, the proposal is contrary to Policy PPL1 of the Tendring District Local Plan 2013-2033 and Beyond, Section 2, Adopted 25 January 2022 ('LP2'). This Policy requires that: Where development is classified as 'more vulnerable' the FRA should demonstrate that there will be no internal flooding in the event of a 'design event flood.' The FRA should demonstrate that in the event of a breach or failure of flood defence infrastructure, refuge will be available above flood levels and that a means of escape is possible from first floor level.

Quality of accommodation

13. On the information before me, Policy LP3(b) of LP2 requires that new residential development (including conversions and changes of use) must comply with the government's latest 'Technical housing standards - nationally described space standard' ('NDSS').
14. The NDSS requires that a 1 bedroom property over two floors must provide a minimum Gross Internal Area ('GIA') of 58sqm, based on the evidence, the GIA for the proposed dwellings is about 45sqm. This would be significantly below the required minimum.
15. Whilst the submitted drawings show that the layout can accommodate some essential items of furniture without compromising layout, this does not include items such as a washing machine, fridge freezer and dining table, which are also likely to be important to meet day to day needs of residents. With the provision of such items the dwelling would feel cramped. Irrespective the NDSS are minimum standards which the proposed dwelling must meet in accordance with Policy LP3(b) of LP2.
16. The appellant asserts that the accommodation at the appeal site, in terms of layout, floorspace and overall configuration is commensurate with the residential accommodation of the local built environment. Most of this existing accommodation was originally built as holiday homes and prior to the requirement for the NDSS. Therefore, I attach limited weight to the existing local environment.
17. Moreover, amongst other things, Paragraph 135 of the Framework requires that planning policies and decisions should ensure that developments: create places with a high standard of amenity for existing and future users. To this end, footnote 52 of the Framework, says that policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.
18. In this case there is a specific policy, in a recently adopted local plan, which identifies the NDSS. As such, it is evident that the Council is justified in improving the quality of the area by seeking to create places with a high standard of amenity.
19. For the above reasons, the proposal fails to provide an acceptable standard of accommodation, with regard to the NDSS. Accordingly, I find conflict with Policy LP3(b) of LP2.

Other Matters

20. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the European designated site falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake an Appropriate Assessment ('AA') of the implications of the appeal scheme for the European designated site.
21. However, as the main issues regarding flood risk and the quality of the proposed accommodation provide clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this

appeal. There is therefore no need for me to consider this matter any further as part of my decision since any findings on this issue would not change the appeal outcome.

22. The appeal proposal would deliver an additional dwelling, which would result in some economic and social benefits. Nevertheless, because this dwelling is at high risk of flooding and does not meet the NDSS, such benefits attract limited weight, and do not outweigh the harm and conflict with the development plan, which I have identified.

Conclusion

23. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR