



Appeal Decision

Site visit made on 23 January 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st January 2024

Appeal Ref: APP/Q9495/W/23/3327491

Land adjacent to The Courtyard, Rothay Road, Ambleside LA22 0EE

- 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 Barbara Thubron against the decision of Lake District National Park Authority.
 - The application Ref 7/2021/5991, dated 24 November 2021, was refused by notice dated 2 May 2023.
 - The development proposed is erection of two residential flats for local occupancy.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In December 2023 the Government published a revised National Planning Policy Framework (the Framework). The parties' views were sought on the changes, but no comments were made. For clarity, I have determined the appeal in accordance with the revised Framework.

Main Issue

3. The main issue in this appeal is whether the proposal would be in a suitable location, having regard to flood risk.

Reasons

4. The appeal site is located within Flood Risk Zone 2 (medium risk of flooding) and Flood Risk Zone 3a (high risk of flooding). The scheme proposes 2 flats defined as 'more vulnerable' in flood risk vulnerability classification¹.
5. Policy 03 of the Lake District National Park Local Plan 2020-2035 (LP) seeks to support new development where it accords with the approach to managing flood risk in the Framework and the Planning Practice Guidance (PPG). The Framework requires decision makers to steer new development to areas at the lowest probability of flooding, by applying a Sequential Test (ST) to those developments on sites in areas at risk of flooding and not already allocated within the development plan. Development should not be permitted if there are reasonably available sites appropriate for the proposed development, in areas at lower risk of flooding. Reasonably available sites are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.

¹ Annex 3 of the Framework.

6. In accordance with these requirements the appellant produced a Flood Risk Assessment (FRA) and a further sequential test document². However, the parties dispute the extent of the area necessary for the sequential test and therefore, whether there are reasonably available sites elsewhere at a lower risk of flooding to accommodate the proposed development. The PPG is clear that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed³.
7. The appellant suggests that the proposal would provide accommodation for students and low paid retail/hospitality staff in Ambleside for which it is claimed that there is an identified need. Such occupants would be required to comply with the Authority's local occupancy restriction⁴. Reference is made to South Lakeland District Council's Strategic Housing and Economic Needs Assessment (SHENA) and that the University of Cumbria plans to increase its student numbers by 700 over the next 3 years. However, the SHENA is not before me and therefore it is uncertain as to whether the proposed development would provide the size or tenure of dwellings required to meet an identified need in Ambleside. As the proposal also suggests that the dwellings could be occupied by hospitality workers, it is not clear that the proposed development would contribute to meeting any identified need for student accommodation, had this been evidenced.
8. Furthermore, there is no substantive evidence that hospitality workers or students would need to live in Ambleside if they worked or studied there. It cannot be assumed that they would not have their own vehicles or that they would work outside of the availability of public transport.
9. Given that the proposal relates to housing, it would not be unreasonable for the sequential test to apply to the wider Central and South-East Distinctive Area. The appellant seems to accept this in the sequential test document which considers that there are no windfall sites within Ambleside, Windermere or the other villages in the Distinctive Area that are currently available for development. Whilst there is no substantive evidence of this before me, I have no reason to disagree.
10. However, Government guidance is clear that in applying the sequential test, developers should first check the adopted LP for allocated sites as to whether they would be suitable for the development proposed⁵. The Authority points to there being 14 land allocations in the Distinctive Area which are at a lower risk of flooding than the appeal site, 6 of which have been allocated specifically for housing. No evidence has been presented regarding the status of these sites and the extent to which they may be capable of delivering the type of residential development proposed.
11. Although the FRA indicates that just 2 new dwellings have been permitted within Ambleside in the last 3 years (prior to September 2021), the Authority advises that it permitted 31 new dwellings within the Central and South-East Distinctive Area in 2021-2022. It is not known whether any of these sites would be at less risk of flooding, are reasonably available and could provide development such as that proposed.

² PWTPS ref 20/23.

³ Paragraph: 027 Reference ID: 7-027-20220825.

⁴ As set out in the Authority's addendum to its appeal statement.

⁵ Flood risk assessment: the sequential test for applicants (2017).

12. The Authority also refers to a current planning application for 44 houses including a 2-bedroom local needs house and 4 one-bedroom affordable local needs houses on one of the allocated sites within Ambleside. I am not aware of the status of this application including whether it has now been determined. Whilst it does indicate that there is potential for smaller units such as those proposed to be located on alternative sites elsewhere within the town, I am unable to conclude that the site is reasonably available at this point in time.
13. Nonetheless, in light of the above, I cannot be satisfied that the search for alternative sites has been sufficiently thorough and that there are no sequentially preferable sites available in areas of lower flood risk. As a result, I find that the sequential test has not been passed.
14. The Environment Agency (EA) has not objected to the proposal. However, the applicability of the sequential test is a matter for the decision-maker and not the EA. Paragraph 167a) of the Framework and the PPG⁶ are clear that without the sequential test, there is no need to consider the exception test, including whether the development would provide wider sustainability benefits to the community or would be safe for the lifetime of the development.
15. It is suggested that a sequential test would not be required for the conversion of an existing single storey building adjacent the appeal site to a dwelling. Be that as it may, that is not the development that is before me. The presence of existing development does not justify permitting new 'more vulnerable' development in an area identified as being at least of medium flood risk.
16. For the reasons given above, it has not been demonstrated that the appeal site is a suitable location for the proposed development with regards to flood risk. The proposal is therefore contrary to Policy 03 of the LP and paragraph 168 of the Framework, which seeks to avoid inappropriate development in areas at risk of flooding, by directing development away from those at highest risk.

Other Matters

17. Reference is made to the proposal meeting special housing needs. 2 local estate agents have advised that there would be strong demand for local occupant properties. Whilst I do not doubt that local occupancy housing would be of benefit within the National Park, no specific evidence has been presented to persuade me that the proposal would meet a clearly identified need for the type of accommodation proposed specifically within Ambleside. Similar benefits to the local housing stock could also arise from alternative development in locations which are at a lower risk of flooding. Consequently, this matter attracts limited weight.
18. The appeal site lies within the Ambleside Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the CA. Its significance is derived from its varied townscape associated with its development during the 17th, 18th and particularly during its expansion in the 19th century in response to the growing tourist trade. Special architectural interest therefore arises from the variety and grouping of historic buildings and consistent local material palette. Views of the surrounding fells under which the town nestles, provide a pleasant and picturesque setting, along with areas of open space to the west of the built-up

⁶ Paragraph: 031 Reference ID: 7-031-20220825.

area. It is this spatial composition and historical and architectural quality of the built form that shapes the significance of the CA.

19. While the surrounding buildings vary in terms of architectural style and scale, their architectural unity contributes positively to the character and appearance of the CA as a whole, and thereby to its significance as a designated heritage asset. Bearing in mind the extent, nature and location of the proposed development, the character and appearance of the CA as a whole would be preserved. I note that the Authority raised no objection in this regard either.

Planning Balance and Conclusion

20. The appeal scheme would provide 2 local occupancy dwellings which would have a limited benefit to the local housing stock. However, the adverse impacts of siting the dwellings within an area of known flood risk would outweigh this benefit. The character and appearance of the CA would be preserved. Nevertheless, this lack of harm weighs neutrally, neither for nor against the proposal.
21. The proposal conflicts with the development plan when considered as a whole and there are no material considerations presented to indicate that the decision should be made otherwise than in accordance with it. Therefore, the appeal is dismissed.

M Clowes

INSPECTOR