



Appeal Decision

Site visit made on 31 January 2024

by S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal Ref: APP/U1430/W/23/3320969

Dear Octopus, Farm Lane, Camber, East Sussex TN31 7QY

- 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 Spicer against the decision of Rother District Council.
 - The application Ref RR/2022/2056/P, dated 9 August 2022, was refused by notice dated 15 December 2022.
 - The development proposed is erection of a single dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Government published a revised National Planning Policy Framework (the Framework 2023) on 19 December 2023. I am satisfied that none of the revisions are material to this appeal which I have determined in accordance with the development plan; namely the Rother Local Plan 2014 (RLP) and the Development and Site Allocations Local Plan 2019 (DaSA). I have also had regard to relevant sections of the Framework 2023.

Main Issues

3. The main issues are:
 - a) whether the site is suitable for a dwelling having regard to flood risk;
 - b) the effect of the proposal on the nature conservation interests of the Dungeness, Romney Marsh and Rye Bay Special Protection Area (SPA), Site of Special Scientific Interest (SSSI) and Ramsar Site;
 - c) whether the site is a suitable location for a residential development having regard to local and national planning policies for the delivery of housing.

Reasons

Flood risk

4. Policy EN7 of the RLP states that flood risk will be taken into account at all stages in the planning process to avoid inappropriate development in areas at current or future risk from flooding, and to direct development away from areas of highest risk. This is consistent with paragraphs 167 and 168 of the Framework 2023, which states that the location of development should seek to avoid flood risk to people and property by applying the Sequential Test. The aim of the Sequential Test is to steer new development to areas with the

lowest risk of flooding from any source. It is therefore the first stage of considering whether any site is appropriate for development.

5. The appeal site lies in the lower Rother catchment where the Romney and Walland Marshes are prone to river and coastal flooding. It is therefore within Flood Zone 3 for the purposes of assessing flood risk, even though the area benefits from the presence of coastal defences. As a consequence of these defences the Environment Agency's (EA) mapping suggests that the risk of flooding is very low. The EA therefore did not formally object to the proposal but recommended the imposition of certain conditions. Nevertheless, within its consultation response to the proposal, it stated that it was for the local planning authority to determine an appropriate area of search for development sites. It was for the Council to decide whether the Sequential Test has been passed, having regard to the other information in relation to land availability.
6. For a site to be considered suitable for residential development, which is classified as 'more vulnerable' to fluvial and coastal flooding, it must first pass the Sequential Test. The appellant contends that the availability of other sites with a lower flood risk is not relevant to the assessment of the appeal proposal and that it is only necessary to apply the Exception Test. However, that is not the case. The Planning Practice Guidance (PPG) states that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, which would be the case here, the Sequential Test still needs to be satisfied. That would require consideration of potential alternative sites well beyond the appeal site to demonstrate that there are no suitable alternatives for providing additional housing. No such search has been undertaken. The Sequential Test has not been met and it is therefore not appropriate to consider or apply the Exception Test.
7. I therefore conclude that the appeal site is not a suitable location for a dwelling due to flood risk. The proposal fails to comply with Policies EN6 and EN7 of the RLP which seek to protect communities from flood risk and direct development away from areas of highest risk. It would also conflict with the Framework 2023, which advocates locating development in areas of low flood risk.

The Dungeness, Romsey Marsh and Rye Bay SPA, SSSI and Ramsar Site

8. The Dungeness, Romsey Marsh and Rye Bay SPA, SSSI and Ramsar Sites have been designated for their diversity of biological and geological features. They have been created by coastal processes and human activities over centuries, and include saltmarsh, sand dunes, vegetated shingle, saline lagoons, lowland ditch systems and basin fens. These support valuable and diverse plant species over a large area. The habitats are important for a wide variety of breeding and wintering waterbirds, birds of prey, passage warblers and breeding seabirds. They also provide habitats suitable for water voles, great crested newts, and other endangered invertebrates. The Conservation of Species and Habitats Regulations 2017 (as Amended) (the Habitats Regulations) requires the decision maker to consider whether the proposal could adversely affect the integrity of these protected sites.
9. Camber is surrounded on all sides by these Habitats Sites. The appeal site lies on the edge of the village but is within these designated and highly protected areas. Their boundaries surround the site whereas Dear Octopus lies beyond them and outside the protected areas. A preliminary ecological assessment of the site was presented with the appeal. This demonstrated that the site

principally consists of dry grassland grazed by a flock of chickens; other vegetation includes trees which have been pollarded, an evergreen hedge and some nettles. At the time of the survey the lined pond was devoid of wetland plants and eutrophic from bird faeces. There was no evidence of nesting birds.

10. The habitats on the site can be considered to be unremarkable and widespread. They do not contain any uncommon plant species or ones likely to be associated with uncommon invertebrates. It was contended that the site is incompatible with its nature conservation designations. Whilst that may be the case, it is part of the area which has been formally designated, and the Habitats Regulations require me to adopt a precautionary approach when assessing any potential harm to the wider conservation interests of the protected areas.
11. The proposal would introduce a new building on the site, along with an associated access, driveway and hardstanding for vehicles. There would be occupants coming and going and inevitably some domestic paraphernalia in the rear garden. Even if biodiversity was improved on the remainder of the site by the implementation of the measures set out in the PEA, I cannot be certain that there would not be a likely adverse effect on the protected sites from the proposal, either on the site or beyond. Paragraph 186 of the Framework 2023 advises that development within an SSSI which is likely to have an adverse effect on it should only be permitted in exceptional circumstances. There was no substantive evidence to demonstrate that the appeal proposal could be considered as exceptional, as its primary purpose is to provide an additional dwelling, not to conserve or enhance biodiversity.
12. This leads me to conclude that the proposal would adversely affect the integrity of the Dungeness, Romsey Marsh and Rye Bay SPA, SSSI and Ramsar Sites. It would be contrary to Policies EN5 and DEN4 of the Local Plan, which seek to protect biodiversity and sites designated for the importance of their flora and fauna. It would also conflict with the Habitats Regulations and Framework's aims of conserving and enhancing the natural environment.

Suitability of location

13. Although close to other development along Farm Lane, the appeal site lies outside the defined settlement boundary of Camber. The village boundary has been tightly drawn around the garden of Dear Octopus as immediately beyond it lie the protected areas of the Dungeness, Romsey Marsh and Rye Bay SPA, SSSI and Ramsar Sites. The appeal site is therefore in the countryside for the purposes of planning policy.
14. Policies OSS2 of the RLP and DIM2 of the DaSA set out the Council's overall spatial strategy which is to use development boundaries to differentiate between areas where most forms of new development would be acceptable and where they would not. There is no evidence to suggest that the proposal would meet any of the criteria for any of the exceptions set out in Policies RA2 and RA3 of the RLP which strictly limit development in the countryside.
15. The Framework does not specifically refer to the use of settlement boundaries to restrict development. However, neither does it indicate that defining them is not an appropriate policy for directing development where it can be most suitably accommodated. In the case of Camber, the settlement boundary has been largely determined by environmental constraints, and to prevent encroachment into areas of flood risk and the adjoining designated sites.

16. In addition, there are limited facilities available for residents within walking distance. To access education facilities, health services and employment would require a journey into Rye as the nearest town. Although there are bus services, journeys would be easier and more convenient by car.
17. However, considerations relating to flood risk and the proximity of protected habitats are more compelling reasons for restricting development beyond the defined settlement boundary of the village.
18. I therefore conclude that the site is not suitable for a dwelling and would conflict with both local and national policies for the location of housing referred to above.

Planning Balance and Conclusion

19. The Council is unable to demonstrate a five-year supply of deliverable housing sites (5YHLS). The HDT indicates that the shortfall is significant and therefore paragraph 11 d) of the Framework 2023 is engaged. There would be social and economic benefits associated with the provision of a single dwelling; these factors weigh in the scheme's favour.
20. However, the site is in an area at risk of flooding and would adversely affect the integrity of Dungeness, Romsey Marsh and Rye Bay SPA, SSSI and Ramsar Sites. These matters, both individually and collectively, provide a clear reason to dismiss the appeal having regard to footnote 7 to paragraph 11 of the Framework 2023. There is therefore no need to refer to the test in paragraph 11 d) ii). The presumption in favour of sustainable development does not apply.
21. The proposal would also be contrary the Council's policies restricting development in the countryside, to direct development away from areas at risk of flooding and protected Habitats Sites. It would therefore conflict with the development plan as a whole.
22. There are no other considerations, including the significant shortfall of housing, which indicate that the decision should be taken other than in accordance with the development plan.
23. For this reason, the appeal is dismissed.

S M Holden

INSPECTOR