



Appeal Decision

Site visit made on 30 January 2024

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/L3815/W/23/3325079

Upper Creek End, Westlands Lane, Birdham, West Sussex PO20 7HH

- 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 and Mrs Charles Mason against the decision of Chichester District Council.
 - The application Ref BI/22/01164/FUL, dated 29 April 2022, was refused by notice dated 11 April 2023.
 - The development proposed is described as alterations to existing 2 no. flats to create 1 no. detached house and construction of 1 no. dwelling, detached garage, and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023. The main parties have been given an opportunity to comment and so the revised version has been referred to in this decision.

Main Issues

3. It is noted that the Council's reasons for refusal do not relate to the combining of the 2 existing flats into a singular dwelling. They relate only to the new dwelling which is proposed to replace the loss of one of the flats.
4. The main issues are therefore whether the proposed location of the new dwelling within the appeal site is appropriate with regard to flood risk, and the effect of the proposal on the character and appearance of the area.

Reasons

Flood risk

5. The proposed new dwelling would be located within Flood Zones 2 and 3 where there is a medium to high probability of flooding¹. It does not fall within the exemptions set out in paragraph 174 of the Framework. Therefore, Policy 42 of the Chichester Local Plan (LP) requires, amongst other things, that the sequential test (ST) and exception test (ET) when necessary, are undertaken in accordance with the Framework.

¹ As defined in table 1 of the PPG: Flood risk and coastal change - Paragraph 078 Reference ID: 7-078-20220825
Revision date: 25 08 2022

6. The appellant's site-specific flood risk assessment (FRA) states that the ST should be limited to the appeals site only and a full application of the ST is not deemed necessary with reference to a table described as 'Table 2 The Sequential Test: Flood Risk Vulnerability and Flood Zone 'Compatibility' Table as specified by NPPF'.
7. The table appears to show that the ET is required for development like that proposed within Flood Zone 3a, therefore the FRA has concluded that as the ET is required then a full ST is not required. However, it is unclear where this table has been sourced from as it does not form part of the current Framework, the Planning Practice Guidance (PPG) or the LP².
8. Nevertheless, if I were to take the appellant's position, that due to the potential replacement nature of the proposal the appeal site is the extent of the area to be considered within the ST, it would be necessary to conclude that other locations within the site were at lower risk of flooding than that proposed. When taking account of paragraph 168 of the Framework, it has not been satisfactorily shown that the other locations with lower risk of flooding are not reasonably available because, as part of the appeal site, they would be considered appropriate for the development proposed.
9. The appellant's considerations in relation to the visual impact of the proposed dwelling when located elsewhere on site is noted, however this does not negate the potential availability of that location when undertaking the ST. It is also noted that the appellant has drawn my attention to the Council's conclusion in the pre-application advice that the principle of a replacement dwelling is acceptable, and that the Environment Agency (EA) have not objected.
10. However, that the site could incorporate a replacement dwelling does not necessarily mean that the proposed location is acceptable in terms of flood risk. Equally that the EA find the mitigation measures acceptable does not endorse the submitted ST. As set out in the PPG³, it is the relevant decision makers duty to consider whether the ST is passed and not the EAs.
11. Therefore, taking a precautionary approach considering the significant and irreversible harm development within areas of flood risk can cause, the ST submitted is not adequate to conclude that the proposed location of the new dwelling within the appeal site is the most appropriate regarding flood risk. Consequently, the proposal would fail to comply with LP Policy 42 and the Framework.

Character and appearance

12. The appeal site is a large residential plot enclosed by hedges and trees, with a singular 2 storey building surrounded by landscaped gardens on it. It is located at the end of Westlands Lane just before it turns into a private access road and public footpath which runs between large open fields that wrap one side and the rear of the site. Opposite the site is another large residential property with fields beyond. The final boundary is with a wooded drainage stream which widens out as it passes the site and flows into Chichester Harbour. Immediately

² It is noted the table is similar to Table 3 within previously withdrawn Framework guidance (Table 3: Flood risk vulnerability and flood zone 'compatibility', page 6 of the Technical Guidance to the National Planning Policy Framework March 2012 – withdrawn 7 March 2014) but the notes related to that table specifically say the table does not show the application of the ST, and only if the ET would be required once the ST have been undertaken.

³ PPG: Flood risk and coastal change - Paragraph 029 Reference ID: 7-029-20220825 Revision date: 25 08 2022

on the opposite side of this is the Greenacres residential estate. It constitutes mainly large, detached dwellings of a mix of designs and style, on comparatively modest plots, some of which have waterside frontage.

13. The appeal site and property opposite provide a transitional step between the more densely developed Greenacres and the countryside beyond. Nevertheless, the proposed new dwelling would be between the existing building on site and drainage stream. Due to the density of development within Greenacres, its proximity to the site, and the relatively limited screening created by the trees along the drainage stream to the side of the appeal site, there is a clear relationship between the estate and the proposed location of the new dwelling. Therefore, the proposal would visually relate well to the surrounding development.
14. The Council note that the proposal would close the gap between the existing property and Greenacres, however I do not consider this to be detrimental to its countryside surroundings as it does not encroach beyond the surrounding existing development, including the existing property on the appeal site and the one on the opposite side of Westlands Lane.
15. The division of the appeal site would provide plots similar in size to those on Greenacres, and the proposed new building, due to topography and design, would be lower in height than the existing building on the site. In combination with the proposal's utilisation of the existing driveway, this would ensure the impact on Westlands Lane would be limited. It would, therefore, not intrude into views along the public footpaths that lead from Westlands Lane nor those along the lane itself to such an extent as to cause harm.
16. The appeal site is set back from the waterfront and the proposed new dwelling would be set behind where the drainage stream widens out. Here the trees and undergrowth surrounding the stream increase in density and maturity. Therefore, the proposal would not be visually intrusive when looking back from the water and would be seen as part of the existing residential development rather than as something out of character.
17. As the Council has identified the existing screening along the boundaries of the appeal site is effective. This could be secured via a landscape scheme condition. It is also noted the main parties agree the modern design would be in keeping with the mix of styles and forms along Greenacres and there is nothing before me to conclude otherwise.
18. For the reasons given above, it is found the proposal would not harm the character and appearance of the surrounding area. It would therefore comply with LP Policies 45 and 48 as far as they seek new development to respect the character of the surrounding area and landscape.

Other Matters

19. Although not part of the reasons for refusal the Council and interested parties have referred to other development plan policies, specifically LP Policies 2 and 33, and Policy 4 of the Birdham Neighbourhood Plan. I have reviewed these policies, but they do not alter my findings on the main issues.

20. The appeal site is within the Chichester Harbour National Landscape (NL)⁴. NLs are designated for the purposes of conserving and enhancing natural beauty and Section 85(1) of the Countryside and Rights of Way Act 2000 places a duty upon me to have regard to these purposes in this decision. Taking account of the scale, design, and siting of the proposed development, I find the special qualities of the Chichester Harbour NL would not be adversely affected by the proposal.
21. It is also noted the appeal site is 5.6km from the Chichester and Langston Special Protection Area. However, clause 63(1) of regulation 63 of the Conservation of Habitats and Species Regulations 2017 states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. This is not, therefore, necessary where there is no intention to grant permission. As I am dismissing the appeal for other reasons, I am not required to pursue this matter further.

Balance and Conclusion

22. Whilst I have found for the appellant in relation to the second main issue, this would be a lack of harm and thus, by definition, is capable of weighing against the harm that I have found regarding the first main issue. Consequently, the appeal scheme would conflict with the development plan as a whole. There are no material considerations worthy of sufficient weight, including the Framework, which would indicate a decision otherwise. The appeal should, therefore, be dismissed.

RJ Redford

INSPECTOR

⁴ previously called an Area of Outstanding Natural Beauty (AONB)