



Appeal Decision

Site visit made on 13 February 2024

by H Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 February 2024

Appeal Ref: APP/T3725/W/23/3327476

26 Wathen Road, Warwick, Warwickshire CV34 5BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sandeep Nijjar against Warwick District Council.
 - The application Ref W/22/1739, is dated 1 November 2022.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal follows the Council's failure to determine the application (W/22/1739) within the prescribed period. However, the Council has indicated in its statement, that had it been in a position to determine the application, it would have refused planning permission. The substance of the Council's statement has informed the main issues of the appeal.
3. Since the application was determined, a revised National Planning Policy Framework (Framework) was published on 19 December 2023. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework and new paragraph numbers in reaching my decision.

Main Issue

4. The main issue is whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

5. The appeal site is located to the side of 26 Wathen Road (No 26). No 26 is an end of terraced dwelling. The appeal site contains a single storey detached garage unit and forms part of the side garden to No 26. It is next to a resident car parking area and there is a watercourse that runs close to its rear boundary.
6. Permission is sought for the erection of a one bed, two-storey dwelling. The dwelling would attach to the side of No 26, extending the existing terrace of residential properties.

7. The appellant has submitted a Flood Risk Assessment (FRA) dated October 2022 (Ref: 412 FRA- 001) which confirms a design flood level on site of 51.16m AOD. However, whilst the FRA provides a single external spot height (51.2m AOD) it is not supported by a detailed topographical survey to confirm ground levels across the whole site.
8. The appeal site, including the proposed new parking space for the existing dwelling and the access to the proposed dwelling, would be on ground below the design flood level and as such is considered to fall within Flood Zone 3. Parts of the site would also be located in Flood Zone 2, including parts of the area where the proposed dwelling is to be sited. Therefore, the appeal site is located within flood risk zones 2 and 3.
9. The Framework advises at paragraph 165 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). Paragraph 168 of the Framework and the Planning Policy Guidance¹ (PPG) aim to steer development to areas with the lowest probability of flooding through a sequential test.
10. Policy FW1 of the Warwick District Local Plan 2011 – 2019 (2017) (Local Plan) advocates the same approach as the Framework in terms of steering new development to areas with the lowest probability of flooding.
11. Paragraph 029 of the PPG² states that relevant decision makers need to consider whether the sequential test is passed, with reference to the information it holds on land availability. It also states that local planning authorities need to be satisfied that the proposed development would be safe throughout its lifetime and not lead to increased flood risk elsewhere.
12. To ensure safe development, the Environment Agency recommend Finished Floor Levels (FFLs) of the proposed dwelling should be set no lower than 600mm above the design flood level with flood proofing techniques where appropriate. Policy FW1(e) of the Local Plan also states "where new development lies in an area of flood risk it must be designed to be flood resilient with safe dry access for vehicles and pedestrians. Finished floor levels should be 600mm above the predicted floor level." However, the submitted FRA proposes FFLs 300mm below the recommended level.
13. In addition, based on the information submitted, it is not possible to confirm what depths or velocity of flooding is likely to be during a design flood event along Wathen Road. The proposed development would be sited around 95m from land within flood zone 1. It is therefore unclear whether the proposed development would have safe, dry pedestrian access above the design flood event. As such, it has not been demonstrated that future occupants of the proposed dwelling would have safe access and an emergency escape route to dry land.
14. Consequently, the submitted FRA fails to provide sufficient information to confirm that the proposed development would be safe for its lifetime taking account of the vulnerability of its future occupiers.
15. Paragraph 023 of the PPG states that *"avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it*

¹ Planning Practice Guidance (PPG), Paragraph: 023 Reference ID: 7-023-20220825

² Planning Practice Guidance (PPG), Paragraph: 029 Reference ID: 7-029-20220825

places the least reliance on measures like flood defences, flood warning and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout the lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.” Thus, evidence of flood risk within the appeal site necessitates the need for the sequential test to be applied.

16. The appeal site has not been allocated in the development plan and the proposed development would not be classified as a minor development³ in relation to flood risk. The submitted FRA does not assess any other suitable sites in lower flood risk areas outside the appellant’s ownership locally or within the wider area. Furthermore, there is also no substantial evidence before me that the proposed new dwelling is needed in this location.
17. Consequently, there is insufficient evidence to demonstrate that the sequential test has been satisfied. As the sequential test has not been passed, the exceptions test is therefore not applicable in this case. As a result, I am not satisfied that the proposed development would not be at a high risk from flooding.
18. The proposal would be a purpose-built development and would incorporate building materials and measures to mitigate the impact of flood risks. However, these matters do not remove the potential for flooding in the future and the need to firstly comply with the sequential test.
19. The proposal has failed to demonstrate that there are no other sequentially preferable alternative sites for the proposed development. On the basis of the information before me, the proposal does not pass the sequential test and there is no need to consider flood risk in this regard any further.
20. Therefore, the proposal would not comply with local or national planning policy which seeks to steer new development away from areas at the highest risk of flooding. As such, the proposal would fail to accord with Policy FW1 of the Local Plan. It would also fail to accord with the Framework where it states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Other Matters

21. Warwickshire County Council, the Lead Local Flood Authority, did not raise an objection to the proposal. Nevertheless, as highlighted by the PPG, it is the responsibility of the local planning authority in the first instance to be satisfied that the Sequential Test is appropriately applied. In this case the local planning authority consider that the proposal does not meet the Sequential Test. As set out above, from the evidence before me I concur with this view. Consequently, I afford this matter limited weight.
22. No adverse harm has been identified with regards to the character and appearance of the area, highway safety, ecology, or living conditions of neighbouring occupiers of dwellings. Nevertheless, these are neutral factors and therefore do not weigh in favour of the proposal.

³ Planning Practice Guidance (PPG), Paragraph: 051 Reference ID: 7-051-20220825

23. My attention has been drawn to a previous planning approval at 24 Wathen Road (ref: W/19/1343). However, I do not have the full details of this other case before me. In any event, it is incumbent on me to form my own judgement and I have assessed the proposal on its own merits based on the evidence before me.

Conclusion

24. The appeal scheme would provide a net gain of one additional dwelling to the local housing supply in an accessible location. There would also be job creation through the construction phase. However, the socio-economic benefits to be attributed to one additional dwelling would be small.
25. The proposal would conflict with the development plan as a whole, and there are no other considerations worthy of sufficient weight, including the provisions of the Framework, which would outweigh this finding. Therefore, I conclude that the appeal is dismissed and planning permission refused.

H Smith

INSPECTOR