



Appeal Decision

Site visit made on 31 January 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024.

Appeal Ref: APP/C3810/W/23/3324032

51 Warren Way, Barnham, West Sussex PO22 0JX

- 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 Damon Hill against the decision of Arun District Council.
 - The application Ref BN/132/22/PL, dated 6 October 2022, was refused by notice dated 15 December 2022.
 - The development proposed is the erection of an additional dwelling.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by the appellant against the Council. This forms the subject of a separate Decision.

Procedural Matter

3. A revised version of the National Planning Policy Framework ('the Framework') was published in December 2023. I have not considered it necessary to invite observations from the main parties because the changes to the Framework were not relevant to the main issues for the appeal.

Main Issues

4. The main issues are whether the proposed development:
 - is acceptable in respect of fluvial flood risk, having regard to national and local policies and guidance;
 - would have an acceptable effect on surface water drainage; and,
 - would increase flood risk elsewhere, with particular regard to the effect on the adjacent watercourse.

Reasons

Fluvial flooding

5. The appeal property is an end of terrace house with an open area to the side where the proposed development would be located. The site is in Flood Zone 3, partly Zone 3a and partly Zone 3b. Much of the part of the site where the new dwelling is proposed is within Zone 3b, i.e. functional floodplain. There is no possibility of considering the proposal in component parts, because only one

house is proposed. Therefore, in accordance with PPG¹, I have considered the proposal against the highest vulnerability, i.e. Zone 3b.

6. Paragraph 165 of the Framework states that new development should be directed away from areas at highest risk of flooding. Paragraph 168 of the Framework sets out that the aim of sequential test is to steer new development to areas with the lowest risk of flooding from any source and 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. I have reviewed the appellant's sequential test and note that it does not identify any sites that could provide only a single dwelling as proposed here. However, it does also identify numerous other larger sites that appear as reasonably available in areas of lower risk of flooding within the district that have the capacity to provide one or more dwellings.
7. PPG² states that reasonably available sites for consideration in a sequential test could include a series of smaller sites and / or part of a larger site if these would be capable of accommodating the proposed development. The sequential test before me does not consider the opportunity for locating the development on a larger site in an area with a lower risk of flooding, which is not consistent with the advice set out in PPG. Therefore, and based on the information before me, the sequential test is not passed. Paragraph 168 of the Framework is clear that where the sequential test is not passed, permission should be refused.
8. Paragraph 169 of the Framework states that if it is not possible for development to be located in areas with a lower risk of flooding, the 'exception test' may have to be applied depending on the potential vulnerability of the site and the development proposed. The proposal is for a new dwelling. Annex 3 of the Framework identifies residential development as being 'more vulnerable' in flood risk terms. 'More vulnerable' development in Flood Zone 3b should not be permitted, as set out in PPG³. I do not, therefore, need to carry out an 'exception test'.
9. However, I have reviewed the appellant's Flood Risk Assessment (FRA) for the proposal and other information provided to consider, in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 (as amended), whether there are any material considerations that apply in this case.
10. The FRA acknowledges that finished floor levels would normally be set a nominal 300mm above the 1 in 100-year annual probability of fluvial flood level. This level is not included in the appeal scheme due to planning constraints, such as the effect this would have on the building's height. However, in view of the location in Flood Zone 3, it is essential that suitable flood risk mitigation is provided. I am, therefore, not persuaded that the planning constraints are such that they justify deviating from what is recommended practice on finished floor levels. Moreover, the proposed alternative of using floodboards to stop flood water from entering the property has not been demonstrated as being effective mitigation; for example, there is no information on what would happen in the event of the floodboards failing over the lifetime of the development.

¹ Paragraph: 079 Reference ID: 7-079-20220825

² Planning Practice Guidance Paragraph 028 Reference ID: 7-028-20220825, Revision Date 25 August 2022

³ Paragraph: 079 Reference ID: 7-079-20220825

11. I am also concerned with the proposed use of voids beneath the ground floor to allow free movement of flood water into the site. No details have been provided within the FRA on the how the voids would be designed and whether the ground conditions would allow for these to be installed to the capacity level required. I do, however, note that the appellant's statement of case refers to the use of a subterranean tank that would collect flood water that would drain back into the watercourse when floodwaters recede. Again, there is no detail that confirms this is a technically achievable solution with the required capacity in times of flood. The same point applies to the proposed adaptation of the perimeter wall to include openings to allow flood water into the site.
12. Therefore, the proposed development is unacceptable in respect of fluvial flood risk. Moreover, the other flood resilient measures proposed in the FRA, such as relying on the EA's flood warning systems, are not sufficient either alone or with the proposed mitigation to justify the proposed development within Flood Zone 3.
13. In view of the foregoing reasons, the proposal fails to comply with the Framework, as set out above. It also fails to comply with Policy W DM2 of the Arun District Council Local Plan 2011-2031, 2018 (the Local Plan), which states that development will only be permitted where six criteria are met including satisfying the sequential test in accordance with national planning policy guidance, a site specific Flood Risk Assessment demonstrates that the development will be safe and reduce flood risk overall, and that the scheme identifies adaptation and mitigation measures. The proposal would also conflict with Policy ES1 of the Barnham and Eastergate Neighbourhood Plan 2021 (BENP), which states that no development should take place in areas at risk of flooding unless it can be shown that there are no sites where it could be possible to locate the development.

Surface water drainage

14. From the information before me the site does not appear to be in an area with a high risk of surface water flooding. Notwithstanding this, the site specific FRA submitted does not provide sufficient detail to confirm there is a workable surface water drainage solution for the development. Given the site's location and constraints raised by the Environment Agency (EA) with regard to the proximity to the adjacent watercourse, a more detailed explanation of the proposed drainage strategy informed by an assessment of ground conditions is required.
15. It is evident that part of the proposed drainage approach is to allow floodwater into the site and be stored within voids before it can drain back into the watercourse. No ground investigations have taken place that demonstrates that any of the related proposed measures are technically feasible. Consequently, I am not satisfied that the proposed mitigation is appropriate on a technical level and cannot conclude that it is suitable.
16. With such uncertainty over the efficacy of any of the proposed drainage measures, it would not be appropriate to require further details to be secured by conditions as there is significant doubt as to whether they could ever be discharged. Conditions in this context would not meet the tests set out in PPG of being enforceable, precise and reasonable in all other respects.

17. I have also considered the appellant's suggestion of removing permitted development rights, which if implemented could reduce the water storage capacity of the site by up to 50%. The implementation of the permitted development rights is, at present, only a theoretical possibility. Moreover, even if they were used and the water storage capacity of the site reduced, there is no analysis to confirm whether this would result in greater or lesser harm in drainage terms than the proposed erection of a new dwelling in this location. Accordingly, I give the opportunity to remove permitted development rights very limited weight in this decision.
18. To conclude, the proposed development would not be acceptable with regard to surface water drainage, and it would fail to accord with Policy W DM2 of the Local Plan, which requires a site specific Flood Risk Assessment to demonstrate the development would reduce flood risk overall and that new site drainage systems to be designed to take account of events which exceed the normal design standards. The proposal would also be contrary to Policy ES1 of the BENP, which requires all development proposals on previously developed land to demonstrate that surface water run-off will be as close as reasonably practical to equivalent greenfield run off rates. The proposal would also fail to comply with Paragraph 173 of the Framework which requires site specific Flood Risk Assessments to incorporate sustainable urban drainage systems, unless there is clear evidence that this would be inappropriate.

Flood risk elsewhere

19. I am not clear from the information before me how geomorphical processes within the adjacent watercourse would be affected by the proposed development. No evidence has been submitted to confirm this, or conversely to demonstrate that such processes would not be interfered with by the proposed development. I am therefore, unable to definitively conclude whether this particular aspect of harm would arise from this development.
20. What is evident, however, is that the site specific FRA has not adequately demonstrated that the proposal would be safe from flooding or that it would not increase the risk of flooding elsewhere. Accordingly, there remains the possibility that the proposal could adversely affect the adjacent watercourse in some form, which could result in damage to the property and elsewhere downstream. This is not an acceptable position from which to consider granting planning permission and I give this potential for harm to flood risk elsewhere considerable weight in this decision.
21. Moreover, the EA has advised that it requires five metres from the adjacent watercourse to be left clear of obstructions to allow it to exercise its permissive powers, which would include maintenance of the watercourse as part of their flood risk mitigation responsibilities. The proposal would be located around 1m from the adjacent watercourse and the EA has therefore objected.
22. That said, access to maintenance is already compromised by the perimeter wall, which I understand to now be lawful having breached the requirements of the original estate conditions for a period of more than 10 years. There are also other unimpeded locations nearby where the watercourse can be accessed that could provide the opportunity for maintenance even if this development were built. Finding no harm in respect of access to maintenance is, however, only a neutral factor that does not add weight in favour of the proposal.

23. To summarise on this issue, the proposal is contrary to Policy W DM2 of the Local Plan as the site specific Flood Risk Assessment fails to demonstrate that the development would not increase flood risk elsewhere. The proposal also does not accord with the Planning and Flood Risk section of the Framework and supporting advice in the PPG in this regard.

Other Matters

24. I note the appellant's concern with the consistency of decision making with planning permission being granted for a new dwelling at 49 Warren Way only a few metres away from the appeal site on the opposite side of the road. The Council has acknowledged that the permission at 49 Warren Way was likely an error with both the sequential test and exception tests not as robust as they should have been in that case. I note also the subsequent issues regarding drainage at that site that the Council infer may have resulted in a different decision if that information were known at the point of its determination.
25. Notwithstanding this, I must make a decision on the merits of the appeal before me based on the information provided. That information demonstrates that there would be significant harm arising with regard to flood risk and surface water drainage contrary to the development plan and national policy and guidance.

Planning Balance and Conclusion

26. The appeal scheme would conflict with the development plan taken as a whole. As I understand from the information before me, the Council can currently demonstrate only 2.3 years of deliverable housing supply. Accordingly, the development plan policies most important for determining the application are deemed 'out of date'. In these circumstances Paragraph 11 of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
27. However, Footnote 7 to Paragraph 11 includes specific reference to policies within the Framework including those relevant to areas at risk of flooding. As has been discussed, the proposal is not acceptable with regard to flood risk which provides a clear reason for refusing the proposed development.
28. Therefore, the Framework's presumption in favour of sustainable development does not apply, and there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.
29. For the reasons given above I conclude that the appeal should be dismissed.

N Perrins

INSPECTOR