



Appeal Decision

Site visit made on 17 April 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2024

Appeal Ref: APP/N5090/W/23/3326494

**Land Between 44 and 48 Formerly Known as 46 Brentmead Place,
Golders Green, London NW11 9LJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr A Wahid against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 21/6166/FUL.
 - The development proposed is described as "the erection of a pair of two-storey semi-detached dwelling houses with rooms in the roof space, associated amenity space and cycle parking."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party's interests would be prejudiced by my taking this approach.
3. Barnet's Draft Local Plan has been through examination under Regulation 24 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and the Inspector has issued their Interim Findings and Next Steps letter. However, I am not aware of the extent of any unresolved objections, whether its policies are considered as consistent with the Framework or when the Plan is likely to be adopted. Consequently, in accordance with paragraph 48 of the Framework, I give it limited weight.
4. Due to the passing of time since the previous Sequential Test¹, the appellant has submitted a revised Sequential Test², to support this appeal. While the revised Sequential Test has not been subject to wider publicity, it is a technical document which does not alter the location or nature of the scheme which was subject to wider publicity. In any event, the Planning Practice Guidance³ (PPG) indicates that the Sequential Test should be considered in light of the information held by the planning authority in particular. In this case, the

¹ Previous Sequential Test: Ambient Environmental Assessment Sequential Test 6542 dated October 2021

² Revised Sequential Test: Royal Haskoning DHV, Reference: 6937-RHD-ZZ-XX-RP-Z-2100 dated 26 June 2023

³ Paragraph: 029 Reference ID: 7-029-20220825

Council were given the opportunity to comment on the revised Sequential Test. As such, interested parties have not been unduly prejudiced by my acceptance of this late technical evidence.

5. The site has been subject to a previous appeal decision⁴ which is a material consideration in the determination of this appeal.

Main Issue

6. The main issue is whether the development would be suitably located in relation to flood risk, with particular regard to the sequential test.

Reasons

7. The appeal site is located adjacent to the River Brent and falls within Flood Zones 1, 2 and 3. The Framework and Planning Policy Guidance (PPG) aim to steer development to areas with the lowest probability of flooding through the application of the sequential approach.
8. Policy SI 12 of the London Plan 2021 (LP) states that current and expected flood risk from all sources should be managed in a sustainable and cost-effective way, that development proposals should ensure that flood risk is minimised and mitigated, and that residual risk is addressed.
9. Policy DM04 of Barnet's Local Plan Development Management Policies Development Plan Document September 2012 (DMP) requires that all new development in areas at risk from fluvial flooding must demonstrate application of the sequential approach as set out in the Framework. While DMP Policy DM04 references an earlier version of the Framework, the wording of the relevant paragraphs has not substantially changed.
10. The PPG⁵ requires the applicant to identify whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing availability assessments, such as sites currently available on the open market. The PPG⁶ also advises that a 'reasonably available' site could include part of a larger site if these would be capable of accommodating the proposed development.
11. In respect of this appeal, both the previous and revised Sequential Tests restrict the area of search to the Local Authority Area and sought to identify 'reasonably available' sites from those within the London Housing Land Availability Assessment 2017 and Barnet's Draft Local Plan.
12. However, while the previous Sequential Test includes a search of available land for sale, the revised Sequential Test does not. As such, in respect of the revised Sequential Test, it does not appear that the appellant has made any substantive effort to identify any other 'reasonably available' sites within the area of search, including those currently available on the open market.
13. Both the previous and revised Sequential Tests restrict the size of sites within the site assessment criteria, to that which is similar in size to the appeal

⁴ Previous appeal decision reference: APP/N5090/W/21/3287588

⁵ Paragraph: 029 Reference ID: 7-029-20220825

⁶ Paragraph: 028 Reference ID: 7-028-20220825

- proposal. However, having regard to the PPG, this approach discounts larger sites which may be capable of accommodating the development proposed.
14. Following on from this, the revised Sequential Test considers only sites that do not have planning consent for any use. As such, a number of sites with planning permission for, among other things, residential development, have been discounted. Having regard to the advice within the PPG, given the modest amount of development proposed, there is limited substantive evidence to demonstrate that these discounted sites would not be capable of accommodating the appeal proposal.
 15. In addition, of the sites that were shortlisted within the previous Sequential Test, a number were discounted due to the price of the site. No substantive evidence has been submitted to justify this reasoning.
 16. Consequently, limited substantive evidence and reasoning has been submitted to justify the approach for assessing and discounting any 'reasonably available' sites. As such, it has not been demonstrated that the appellant has identified and considered all 'reasonably available' sites. Therefore, it has not been demonstrated that there are no sequentially preferable sites available for development. As the development fails the sequential test, there is no need to apply the Exception Test.
 17. A Sequential Test should be applied when any part of the site is at risk of flooding, as the PPG advises that areas at little or no risk of flooding from any source should be developed in preference to areas at higher risk. There is no dispute that the appeal site falls within Flood Zones 1, 2 and 3.
 18. The appellant highlights that the proposed built development would be located within the part of the site that falls within Flood Zone 1. In view of this and a recent appeal decision⁷, the appellant argues a Sequential Test is not necessary. Although I do not have the full planning background of the recent appeal decision before me, it appears that the land within Flood Zones 2 and 3 was already in use as a residential garden and would remain as such. Furthermore, only a very small section the garden of one of the plots would lie within Flood Zones 2 and 3, with a larger portion of the other plot within Flood Zone 2.
 19. In contrast, while formerly in residential use, the appeal site is now vacant and most of the garden areas serving both the proposed properties would lie within Flood Zones 2 and 3. As such and while noting future occupiers would access the appeal scheme from the North Circular Road, which is within Flood Zone 1, the recent case does not appear directly comparable. As such, I am not persuaded that it would be inappropriate to apply the Sequential Test in this case.
 20. While the Flood Risk Assessment 4508 prepared by Ambiental outlines that, subject to mitigation measures, the proposal will not result in an increase in flood risk, this does not overcome the need to apply the Sequential Test.
 21. For these reasons, the appeal scheme is not suitably located in relation to flood risk, with particular regard to the sequential test, contrary to LP Policy SI 12, DMP Policy DM04 and the Framework, in so far as they relate to flood risk.

⁷ Recent appeal decision reference: APP/N5090/W/21/3269567

Other Matters

22. The appeal scheme comprises in-fill development, that would make efficient use of a previously developed, vacant site. The proposed development would make a modest contribution towards increasing the housing supply within the Borough, in a location close to services, facilities and public transport. As such, it would support the Government's objective of significantly boosting the supply of homes. The development would also give rise to economic benefits during the construction phase and provide support to local services through additional consumer spending.
23. The appellant highlights that the proposal represents a high-quality development that reflects the character of the surrounding area in terms of scale, mass and siting, would not have an adverse impact upon highway safety and would provide high quality residential accommodation in line with LP Policy D6. The appellant also asserts the appeal scheme would develop a site which currently has an adverse impact on the character of the surrounding area. In addition, as a small site and a form of development that would make the best use of land, the proposed development would comply with LP Policies H2 and GG2.
24. While these benefits weigh in favour of the proposal, given the scale of the appeal scheme, even cumulatively, these benefits attract limited weight. Therefore, even with the significant weight that the Framework places on the value of using brownfield land, these benefits do not outweigh the harm found in relation to the main issue. The absence of objections from consultees is a neutral matter.

Conclusion

25. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR