



Appeal Decision

Site visit made on 24 April 2024

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2024

Appeal Ref: APP/N1920/W/23/3325142

Land rear of 29 Haydon Road, WATFORD, WD19 4DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Ms F Evans against the decision of Hertsmere Borough Council.
 - The application Ref is 23/0492/PIP.
 - The development proposed is erection of a detached residential dwelling on land to the rear of 29 Haydon Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I have not sought further submissions. I will refer to the updated paragraph numbers where necessary in this appeal.
3. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
4. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent Technical Details Consent application if permission in principle is granted. I have determined the appeal accordingly.

Main Issue

5. The main issue in this appeal is whether the site is suitable for residential development, having regard to its location, the proposed land use, and the amount of development.

¹ PPG Paragraph: 012 reference ID: 58-012-20180615

Reasons

Flood risk

6. The appeal site is within the defined settlement area of Bushey, where residential development is acceptable in principle, and I note that this view was supported by the Council in relation to a previous application for the site refused in 2013² (2013 application) and within its pre-application advice. Notwithstanding this, the appeal site is located within Flood Zone 2 and is also at high risk of surface water flooding.
7. Policy SADM14 of the Hertsmere Local Plan Site Allocations and Development Management Policies (2016) (Local Plan) sets out that the risk of flooding will be avoided and reduced by, among other things, locating development within areas of lower flood risk through the application of the sequential test and then applying an exception test in line with the Framework. Paragraph 168 of the Framework explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
8. There is no dispute between the parties that the appeal proposal should be subject to the sequential test. However, the Flood Risk Assessment (FRA) supporting the proposal³ does not consider the sequential test in any detail, nor does it sufficiently demonstrate that the appeal proposal would pass it. The PPG advises that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.
9. With regards to the sequential test, the PPG explains that the absence of a 5-year land supply is not a relevant consideration for individual applications⁴. The applicant will need to identify whether there are any other 'reasonably available' sites⁵ within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments, such as sites currently available on the open market. The applicant may also need to check on the current status of relevant sites to determine if they can be considered 'reasonably available'. There is no substantive evidence before me to demonstrate that a search for 'reasonably available sites' that meets this advice has been undertaken.
10. The appellant's evidence includes a sequential test⁶ prepared to support an application for residential development close to the appeal site, at land adjacent to 1-7 Brick Kiln Close⁷. The appellant considers that this can be relied

² Application reference: 21/0727/FUL

³ Flood Risk Assessment, prepared by Felicity Evans of GeoSmart Information, dated 2023-03-01, Report Reference: 78505R1.

⁴ PPG Paragraph: 028 reference ID: 7-028-20220825

⁵ Reasonably available sites are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development.

⁶ Housing Need & Flood Sequential Test Statement Rev B, Full Planning Application for the erection of six residential dwellings with car parking and associated landscaping, former Bushey medical centre car park, Brick Kiln Lane Close, Bushey, prepared by Douglas Bond and Woolf Bond Planning LLP, WBP REF: 7867, dated August 2021

⁷ Application reference: 21/0727/FUL

upon to support the proposed development of the appeal site. Nevertheless, this assessment related to the erection of 6 dwellings and therefore when assessing 'reasonably available sites' it would not have identified smaller sites able to accommodate five dwellings and below, including sites able to accommodate single dwellings such as the appeal proposal. Moreover, while the appellant contends that there has been no material change in circumstances since this assessment was carried out, there is no substantive evidence before me to support this assertion.

11. I note that the FRA that supported the 2013 application included a sequential test that was accepted by the Council. However, given the passage of time since this application was assessed, it is highly likely that circumstances would have changed, particularly the supply of reasonably available sites.
12. In conclusion, based on the evidence before me, it has not been demonstrated that there are no reasonably available, lower-risk sites, suitable for the proposed development, to which it could be steered. I am therefore not satisfied that it would be necessary to locate the appeal proposal in an area of high flood risk. Given this, in line with the PPG⁸, there is no need for me to consider the Exceptions Test. While I note the concerns of the Environment Agency with regards to an existing culvert close to the appeal site, given I am dismissing the appeal I have not considered this further.
13. Accordingly, for the reasons above, in the absence of an adequate sequential test, I conclude the proposed development would not be in a suitable location having regard to development plan policies, the Framework and the PPG. It would conflict with Policy CS16 of the Hertsmeire Local Plan Development Plan Document Core Strategy (2013) (Core Strategy) and Policy SADM13 of the Local Plan. These seek to ensure that development proposals do not create an unacceptable level of risk to occupiers of a site, the local community and the wider environment, by among other things, directing new built development to Flood Zone 1. It would also conflict with the requirements of Policy SADM14 of the Local Plan and would be contrary to the associated provisions of the Framework.

Character and appearance

14. The appeal site comprises part of the rear garden currently serving No. 29 Haydon Road. It is bounded by close board fencing, except for its boundary with the host dwelling, which is currently open. It can be accessed from Brick Kiln Lane, which runs to the rear of the houses on Haydon Road and provides access to garages and parking spaces positioned at the end of their rear gardens, as well as garages serving properties on Cross Road.
15. Haydon Road is made up predominantly of 2-storey terraced houses, some with rooms in the roof. The houses are set back a short distance from the highway. While the features and materials of the houses differ, the strong similarities in their scale and form create a formal urban grain, which provides some enclosure to the street.
16. The exception to this is the appeal property and its neighbour, 31 Haydon Road, which are detached and have appreciably more space around them. This end of Haydon Road, furthest from the A411 London Road, is open to a large

⁸ PPG Paragraph: 032 reference ID: 7-030-20220825

green space, which provides a pleasant vista in the street scene. Short distance views of the open green space and glimpsed views between the appeal property and its neighbours of trees within the rear gardens, adds greenery and a sense of spaciousness to this section of the road.

17. Brick Kiln Close has a more varied character. At the beginning of the close is a short row of terraced dwellings. These dwellings front the highway and are set back behind parking spaces and some frontage planting. They reflect the formal urban grain of Haydon Road and other residential streets nearby. I understand that a block of 6 more terraced dwellings is due to be constructed on the adjacent site.
18. The appeal site is located at the farthest end of the close. While it would not be overly far from the site where 6 more terrace dwellings are due to be constructed, it would be positioned on the opposite side of the close, the same side as the parking and garages to the rear of the houses on Haydon Road. A dwelling on this side of Brick Kiln Close would not be in keeping with the current pattern of development and by virtue of this alone the appeal proposal would appear incongruous in its surroundings.
19. The appeal site is modest, smaller than most other residential plots in this area, and has a limited amount of frontage onto Brick Kiln Close. As a result, the scale and form of the dwelling would likely be appreciably different from the surrounding houses or else would appear cramped on the appeal site. Either scenario would further exacerbate the incongruous appearance of the proposed dwelling within its surroundings and would result in further harm to the character and appearance of the area. This harm would arise from the location of the site and the amount of development proposed, and not the detailed design of the scheme. Therefore, in this case, it would not be possible to address these issues as part of the Technical Details Consent.
20. In addition to this, there are two mature trees on the edge of the appeal site that contribute to the visual amenity of the immediate area and the green and spacious character and appearance of this end of Haydon Road. The Council consider that, given the highly restricted nature of the site, the trees would likely sustain negative impacts from the location and amount of development proposed. From my observations on site and in the absence of any arboricultural information to the contrary, I am of the same view. The loss of these trees would be contrary to Part D of the Council's Draft Planning and Design Guide (2016) and would have a detrimental impact on the character and appearance of the area, albeit this harm would be localised.
21. I recognise that it would be possible to consider details regarding mitigation as part of the Technical Details Consent. Nonetheless, BS 5837:2012 Trees in relation to design, demolition, and construction – Recommendations (BS 5837) states the default position should be that structures are located outside the RPAs of trees to be retained. Although it recognises that technical solutions might be available that prevent damage to the tree(s), there should be an overriding justification for construction within the RPA. There is no such justification before me. In any event, the Council question whether specialist arboricultural methods of construction could be accommodated on the appeal site without significant tree loss or conflict with any proposed building leading to future pressure for the trees' removal. From my observations on site and in

the absence of any arboricultural information to the contrary, I can find no reason to disagree.

22. Accordingly, for the reasons above, I conclude that the proposed development, in terms of its land-use and amount, would not be in a suitable location having regard to development plan policies and the Framework. It would conflict with Policies SP1 and CS22 of the Core Strategy and Policy SADM3 and SADM30 of the Local Plan in this regard. These seek to ensure all development is of a high-quality design and appropriate in scale, appearance, and function to the local context, including the local pattern of development. It would also conflict with Policy CS12 of the Core Strategy and Policy SADM12 of the Local Plan, which seek to ensure all development conserves and enhances the natural environment, including any healthy, high-quality trees that make a valuable contribution to the amenity of the area in which they are located. Furthermore, it would be contrary to the associated provisions of the Framework.

Living conditions of occupants of neighboring houses

23. Given the appeal site's modest size and restricted shape, it is likely that any dwelling constructed on the site would be positioned very close to some of the site boundaries. This has the potential to result in some overlooking of the neighbouring houses on Haydon Road and Cross Road and their rear gardens, which would compromise the privacy of these occupants.
24. Notwithstanding this, I am mindful that the proposal subject to the 2013 application at the appeal site was designed so that its main habitable windows would not result in any overlooking or loss of privacy. Also, that it maintained all minimum distances to facing windows to comply with Part D of the Council's Draft Planning and Design Guide (2016).
25. The prominence of the proposal and its effect on the outlook from the surrounding properties would depend on its scale and form. However, given the modest size of the appeal site, the proposed dwelling would likely be modest, and from most of the nearby houses, it would be viewed alongside the garages and houses on Brick Kiln Close.
26. For these reasons, I am satisfied that the location would be suitable for the land-use and amount of development with regards to any effect on the living conditions of occupants of neighbouring houses. It would accord with SADM30 of the Local Plan in this regard, which seeks to ensure development, among other things, has a limited impact on the amenity of occupiers of the site, its neighbours, and its surroundings in terms of outlook, privacy, light, nuisance, and pollution.

Arrangements for refuse collection

27. The appellant has provided photos of the bins belonging to the houses on Haydon Road being stored on Brick Kiln Close and infers that these bins are currently collected from this location rather than Haydon Road. My observations on site support this view and the Council have not suggested otherwise. Therefore, from the evidence before me, this is likely to be the current situation.
28. I saw on site that the bins being stored on Brick Kiln Close include those belonging to the property adjacent to the appeal site, No. 27 Haydon Road. This would suggest that, whether or not a refuse vehicle would be able to

navigate the full length of Brick Kiln Close, adequate refuse arrangements exist that allow the bins serving No. 27 Haydon Road to be collected from Brick Kiln Close. There is no substantive evidence before me to suggest that similar arrangements, which would accord with the Council's Waste Storage Provision Requirements for New Residential Developments, could not be achieved for the appeal site.

29. Given this, I am satisfied that the location would be suitable for the land-use and amount of development to provide an appropriate arrangement for refuse collection. It would accord with SADM19 of the Local Plan in this regard, which seeks to ensure that new development provides waste storage areas that are readily accessible by occupiers and by local waste collection agencies allowing easy removal and replacement of bins. Further details regarding the specific location of a collection point and/or suitable bin storage could be addressed as part of the Technical Details Consent.
30. Policy SP1 of the Core Strategy and Policy SADM3 of the Local Plan do not relate directly to arrangements for refuse collection, thus are not applicable.

Other Matters

31. In terms of benefits, the proposal would provide a new dwelling in an accessible location. The Council does not currently have a five-year supply of deliverable housing sites. The five-year land supply position for 2021/2022 was just 2.25 years. This is a chronic shortfall. The provision of any additional housing should therefore be afforded significant weight. Nonetheless, the contribution of a single dwelling would only be modest.
32. There would also be some modest economic and social benefits associated with the construction of the dwelling and its subsequent occupation.

Conclusion

33. Given the shortfall in housing supply, paragraph 11d) of the Framework falls to be considered. I have found that the proposed development, in terms of its land-use and amount, would not be in a suitable location due to the appeal site being in an area of high flood risk and located where the proposed land-use and amount of development would conflict with the existing development pattern resulting in harm to the character and appearance of the area. The absence of harm with regards to the living conditions of occupants of neighbouring properties and the arrangement for refuse collection neither addresses nor outweighs this harm. The proposal would therefore conflict with the development plan read as a whole.
34. The application of policies in the Framework that steer development away from the highest areas of flood risk provide a clear reason for refusing the development proposed. The proposal therefore would not benefit from the presumption in favour of sustainable development outlined at paragraph 11 of the Framework.
35. Accordingly, for the reasons above, having had regard to the development plan as a whole and all relevant material considerations, I conclude the appeal should be dismissed.

Hannah Guest INSPECTOR