



Appeal Decision

Site visit made on 15 May 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th June 2024

Appeal Ref: APP/A4710/W/23/3329992

105A Oak Avenue, Todmorden OL14 5PE

- 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 Mrs Andrea Spencer against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 23/00177/FUL.
 - The development proposed is 4 HMO 1 bedroom flat extension to existing retail unit and residential property.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Appellant has provided a revised Ground Floor Plan and Proposed Elevations plan with the appeal documents. Such plans are materially different to those considered by the local planning authority as they include a cycle storage area and a consequent reduction in on-site parking spaces.
3. The 'Procedural Guide to Planning Appeals – England' is clear that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Having regard to the Wheatcroft¹ principles, and in the interests of fairness, this appeal must be determined based on the plans on which the Council made its decision, and which have been subject to consultation. To do otherwise could unacceptably prejudice the interests of other parties. Consequently, in reaching my decision, I have not had regard to the revised Ground Floor Plan and Proposed Elevations plan and have determined the appeal based only on the plans that were before the Council when it made its decision.
4. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. For the avoidance of doubt, where reference is made in this decision to paragraph numbers, they are taken from the latest version of the Framework.

Main Issues

5. The main issues are:
 - The effect of the proposal on flood risk, in particular with regard to the application of the sequential test; and

¹ *Bernard Wheatcroft Ltd v SSE*

- whether the proposal makes adequate provision for cycle storage.

Reasons

Flood Risk

6. The Council has stated that the appeal site is partially within Flood Zone 2. However, the site-specific flood risk assessment (FRA), that was submitted with the appeal documents, includes the 2023 Environment Agency Flood Map which demonstrates that the appeal site is wholly within Flood Zone 1. Nonetheless, it is agreed that the site is in an area identified by the Environment Agency as having critical drainage problems and therefore where surface water runoff can contribute to flooding downstream.
7. The Framework sets out a sequential approach to the location of development. At Paragraph 168 it states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. It further states that 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. The appeal scheme is not householder development as suggested in the appellant's submission and does not meet the definition for minor development in the Planning Practice Guidance (PPG)². Thus, as set out at paragraph 174 of the Framework, the proposed development should be subject to the sequential test.
9. The FRA concludes that the risk of flooding is very low and that, with mitigation measures, flood risk to the site would be reduced to an acceptable level. Such measures could be secured through planning conditions and would ensure compliance with the requirement of Calderdale Local Plan (LP) Policy CC3 that new development has sufficient foul and surface drainage, and sewage treatment capacity. Nonetheless, the PPG³ states that even where an FRA shows the development can be made safe through its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The FRA does not include a sequential test. Consequently, it has not been demonstrated that all other potentially available and less harmful alternative options in flood risk terms have been reasonably explored.
10. Accordingly, in the absence of a sequential test that demonstrates otherwise, the proposed development would have an unacceptable effect on flood risk. It would conflict with LP Policy CC2 which seeks to manage flood risk in new development. The proposed development would also be contrary to advice in chapter 14 of the Framework and the PPG that collectively seek to steer development to areas with the lowest risk of flooding from any source.
11. The Council has also referred to LP Policy HS1 in the reason for refusal relating to flood risk. However, there is no breach of that policy given that the appeal site lies in Flood Zone 1.

Cycle storage

12. The appeal plans, on which the Council made its decision, do not include a cycle storage area. Furthermore, I do not consider that it would be reasonable

² Paragraph: 051 Reference ID: 7-051-20220825

³ Paragraph: 023 Reference ID: 7-023-20220825

and appropriate to secure cycle storage through a planning condition, given the constrained nature of the site and the likely implications such provision would have for on-site parking provision.

13. Accordingly, the proposal would not make adequate provision for cycle storage as required by LP Policy IM5 and thereby opportunities to promote cycling have not been pursued, contrary to paragraph 108c) of the Framework.

Other Matters

14. My attention has been drawn to the history of the site which includes a planning permission for development of a similar description to that which is the subject of this appeal. I note, however, that a different Development Plan was in place when that permission was granted. In addition, in the absence of evidence to the contrary, I cannot be certain that the site was, at that time, in an area identified as having critical drainage problems. Accordingly, while I have every sympathy for the appellant given the circumstances that led to that permission lapsing, it is not possible to draw comparisons to the case before me. It does not, therefore, alter my findings.

Conclusion

15. The development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
16. I therefore conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR