

Appeal Decision

Site visit made on 9 July 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Appeal Ref: APP/N1160/W/23/3335764

1 Peacock Close, Plymouth PL7 4QL

- 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 S. Lucas against the decision of Plymouth City Council.
 - The application Ref is 23/00093/FUL.
 - The development proposed is custom self-build. Construction of single dwelling on garden ground at 1 Peacock Close.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development set out in the appellant's submitted Planning, Design & Access Statement is noted. However, I have taken the description of development from the application form as that is what has been applied for.

Main Issue

3. The main issue is the effect of the proposed development on flood risk.

Reasons

4. The main parties dispute whether the appeal site is within flood zone 2 or 3a. Either way, it is within an area that is susceptible to flooding. In such circumstances, development should be steered away from areas at highest risk using a sequential approach. The Planning Practice Guidance (PPG) says that this approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding. Avoiding flood risk through the sequential test (ST) is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features.
5. Additionally, paragraph 168 of the National Planning Policy Framework (the Framework) says 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. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

6. For individual planning applications subject to the ST, the PPG advises that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases, it may be identified from other Plan policies.
7. The appellant claims that the search area should be refined to the Plympton area rather than the Plymouth Plan Area (PPA) as a whole, as advocated by the Council. This, they say, amongst other things, is because Plympton has a physical separation from Plymouth with a self-contained and sustainable population centre. Additionally, it is said that the most up to date Plympton St. Mary Neighbourhood Plan (NP) and Plympton's own strategic flood risk assessment (SFRA) represent local circumstances that point towards this area being a more appropriate search area.
8. Policy DEV35 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (JLP) is concerned with the management of flood risk within the Plan Area. It says, in part, that development will be resisted if there are reasonably available sites appropriate for the development proposed in areas with a lower probability of flooding. Whilst the SFRA informs policies within the JLP, there is little evidence such assessments or JLP policies seek to separate land areas for the purposes of applying the ST to individual planning applications. The Council refers to their climate action plan and planning statement seeking to reduce flood risk in the city as a whole. Whilst not having the force of policy, these are nevertheless material considerations.
9. The Council notes that the site area of the NP is confined to one electoral ward in Plympton. It has not been shown that there would be any practical reason to apply the ST to this administrative boundary. Moreover, given the built-up nature of the adjoining suburbs of Plymouth, sites outside this electoral ward or a Plympton search area would not be unreasonably distant. For the above reasons, even though the development would provide a single property, and in the absence of any compelling evidence to the contrary, the area of search extending to the PPA is appropriate.
10. There is no dispute that insufficient permissions have been given to meet demand in accordance with the statutory duty set out in the Self-build and Custom housebuilding Act 2015 (as amended), or how the Levelling-Up and Regeneration Act changes the way in which permissions are counted. However, although described in the application as custom self-build, there is no mechanism to ensure the property would remain as such in perpetuity. Even if it could, the lack of such a supply would not mean that the ST search area should be limited to these types of schemes. To do so would undermine the purpose of the ST.
11. Additionally, having paid regard to the definitions of *deliverable* and *developable* in the glossary of the Framework, there is little reason why sites with pre-commencement conditions should have been discounted from the appellant's ST search options. Accordingly, the scope of search in the ST is too narrow. There is no clear evidence that housing completions for the permitted 490 home scheme will begin on site within 5 years. Even so, there are still a number of reasonably available and deliverable sites in areas with a lower risk of flooding. The proposal does not pass the sequential test.

12. It is noted that in response to the Environment Agency comments, the appellant has sought to justify how the development could be made flood resilient. However, without passing the sequential test, it is not necessary for such matters, including the exception test to be applied.
13. Therefore, I conclude on this main issue that the development is not acceptable in flood risk terms. There would be conflict with Policy DEV35 of the JLP.

Other Matters and Planning Balance

14. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.
15. In considering this appeal, I have had due regard to the Public Sector Equality Duty set out under Section 149 of the Equality Act 2010. In particular, the need to eliminate discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. Following careful consideration of the family circumstances, I am satisfied that the impact of dismissing the appeal is proportionate and necessary.
16. I am mindful of the rights of disabled persons to a family life and home under Article 8 of the Human Rights Act and Article 19 of the UN Convention on the Rights of Persons with Disabilities which recognises the equal rights of all persons with disabilities to live in the community, in particular to ensure that:-
 - a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.*
 - (b) Persons with disabilities have access to community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.*
 - (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*
17. Based on the evidence before me, the proposal would benefit the appellant and their family by providing accommodation in a familiar location. These are personal circumstances that weigh in favour of the proposal, though are tempered by the fact they already reside in the area. However, as set out in the main issue above, I have found flood risk harm which the Framework seeks to avoid. For the above reasons, there is little evidence to demonstrate the proposal would be the only or optimal way to secure the equal rights of all persons with disabilities to live in the community. This matter does therefore not outweigh the harm I have identified above.
18. Both main parties have drawn my attention to a number of appeal decisions where the ST search was at issue. However, even though there are similarities in terms of the scale of the development in the 46 Main Street appeal, these decisions were not in the same location as this appeal, and I am not familiar with their site-specific circumstances. They are materially different and not comparable. The appeal at 19 Meadow Park was concerned with character and

appearance and living conditions, which are not matters in dispute with this scheme.

19. The proposal would deliver a sustainably constructed, adaptable property of an appropriate design and use of materials. Electric vehicle charging would be included to help reduce carbon emissions and there would be some biodiversity net gains. The scheme would also bring some limited economic benefits to the construction industry and thereafter through additional consumer spending in the local economy. However, any such benefits would not outweigh the identified harm.

Conclusion

20. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR

