



Appeal Decision

Site visit made on 25 June 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Appeal Ref: APP/P1560/W/23/3332791

121 Garland Road, Parkeston, Essex CO12 4PA

- 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 Miss Lauren Heley against the decision of Tendring District Council.
 - The application Ref is 23/00694/FUL.
 - The development proposed is the construction of 4no. two bedroom houses on site of former bungalow.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has amended the description of development from that contained on the planning application form. The appellant has used this updated description on their appeal form and I have used it on the banner heading above as it is more concise than the original.

Main Issue

3. The main issue relevant to the appeal is the effect of the proposal upon flood risk, including the application of the sequential test and, if necessary, the exception test.

Reasons

4. Garland Road is residential in character. The appeal site is a vacant plot of land at the eastern end of the road where it meets a park. There was once a single storey building on site which has been demolished. The site is vacant, surrounded by a hoarding. The site located in flood zone 3a.
5. Policy PPL1 of the Tendring District Local Plan 2022 (Local Plan) aims to direct development towards sites at the lowest risk of flooding, requiring a sequential test, unless proposals involve land specifically allocated for development.
6. Planning Practice Guidance¹ and the National Planning Policy Framework (the Framework) classifies housing as a 'more vulnerable' use. Paragraph 165 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Paragraph 167 requires a sequential approach to the location of development, taking into account the potential and future risk of all sources of flooding to avoid, where possible, flood risk to people and property. The aim of the sequential test is to

¹ Table 2 – paragraph 079 ref 7-079-20220825

steer development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

7. Whilst a definition of 'reasonably available' under the terms of the ST is not set out in the development plan or Framework, the PPG² advises that 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 can include a series of smaller sites or part of a larger site if they would be capable of accommodating the proposal. They do not need to be owned by the appellant.
8. The appellant undertook a ST with the search area extending over Tendring District. Whilst I acknowledge that on a previous occasion several years ago it was determined that the ST search area for this site should just cover Harwich, no compelling evidence has been presented which indicates that such a small search area would be appropriate in this case. No evidence has been put forward suggesting that the appeal proposal would be subject to restrictions including employment, education or other factors such as a demonstrated need for affordable housing or specialist form of residential accommodation in the proposed location.
9. Sites considered in the ST included those that are allocated in the Local Plan, those listed on the Council's brownfield register, and those within the search parameters that were listed for sale on the open market. I consider this approach to be reasonable. Whilst many sites have been identified, there is little detail in many of the cases as to why the site was not considered reasonably available.
10. There are several sites identified on the Council's brownfield sites register³ where there is no assessment of why they have been discounted. Many of the sites identified, including those that were available on the open market, do not have permission for the exact number or type of dwellings proposed in the appeal, but there is nothing to indicate that these sites could not be subdivided, or alternative planning applications submitted for the type of development proposed. Some smaller sites with extant permissions for a single residential unit have also been discounted. I note that in the assessment of sites available on the open market there are some permissions for single dwellings on very large plots. The PPG explicitly advises that reasonably available sites can form part of a larger site or comprise a series of smaller sites.
11. The Council have provided a list of six examples of sites they consider could be reasonably available, on which the appellant has had the opportunity to comment. Although neither approved scheme on the site at High Street, Great Oakley⁴ or 135 Fronks Road, Dovercourt⁵ is directly comparable to the appeal scheme, there is no indication as to whether there is a reasonable prospect the sites could be split or if either is available for sale. I accept that the remainder of the locations suggested by the Council would be unlikely to constitute reasonably available sites.
12. I consider the parameters for the search, with sites between 0.01ha and 0.5ha, were reasonable. I also accept that in circumstances where the site identified is

² Paragraph 028, ref 7-028-20220825

³ Listed as nos 20 to 26 in Table 2 of the Flood Risk Sequential Test Assessment dated July 2023.

⁴ Reference 23/00255/DETAIL – 5 houses

⁵ Reference 23/01511/FUL – 5 bungalows

in a town centre location with permission for flat conversions or a mixed-use building including flats, then it would be reasonable to discount this type of development given it is substantially different to that proposed.

13. In view of the above, it has not been demonstrated that there are no sequentially preferable sites across the district that could accommodate the appeal proposal. The ST has not been passed and therefore it is not necessary to consider the exception test.
14. The Environment Agency's consultation response, along with the flood warning, evacuation and emergency planning information is noted, but is not a reason to set aside the ST. The aim of Policy PPL1 and the relevant sections of the Framework and PPG is to locate development in areas at lowest risk of flooding. As such, the ST and exception test need to be passed before other mitigation measures are considered.
15. The appeal proposal would therefore conflict with the aims of Local Plan Policy PPL1 which, amongst other things, aims to direct development toward sites at the lowest risk of flooding. The proposal would also conflict with the provisions of the Framework in this regard.

Other Matters

16. The appeal site has had planning permission for residential development in the past⁶. There are no extant schemes and I attach little weight to the previous permissions. This is because circumstances have materially changed since the previous permissions, largely due to the Council now having demonstrated a five-year supply of deliverable housing sites.
17. The Council is satisfied with the effect of the proposal on the living conditions of both future occupiers and neighbouring residents. It has also raised no concerns in relation to detailed design, parking and highways matters subject to appropriate conditions. I see no reason to disagree with these conclusions.
18. The appeal site falls within the Zone of Influence of several European designated sites scoped into the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS). Any new residential development has the potential to cause disturbance to European designated sites and must therefore provide appropriate mitigation. As I am dismissing the appeal for other reasons, I shall not pursue this matter further because it would not lead me to a different conclusion.

Conclusion

19. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal should therefore be dismissed.

L Francis

INSPECTOR

⁶ Reference 16/00132/OUT permission for demolition of bungalow and replacement with 1x 3bed house and 1 x 4 bed house; 17/00127/OUT for demolition of bungalow and replacement with 4 x 2 bed houses.