



Appeal Decision

Site visit made on 1 July 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/Z4310/W/24/3338121

47 Durley Road, Liverpool L9 9AN

- 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 Peter McArdle against the decision of Liverpool City Council.
 - The application Ref is 22F/3406.
 - The development proposed is erection of one detached dwellinghouse.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Peter McArdle against Liverpool City Council. This application is the subject of a separate decision.

Preliminary Matters

3. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions, had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

4. The main issues are:
 - the effect of the proposed development on flood risk; and
 - whether the proposed development creates an accessible housing scheme with regard to the relevant policies of the development plan

Reasons

Flood Risk

5. The submitted information confirms that in relation to fluvial flood risk different parts of the appeal site sit within the three Flood Zones¹ as shown on the Environment Agency (EA) Flood Risk Map, with the proposed dwelling itself to be sited within the area of Flood Zone 1. In addition, the EA 'Flood Risk from Surface Water Map' shows that different areas of the appeal site are also at low, medium and high risk of surface water flooding. As such, the appeal site as defined by the submitted site edged red, is at risk from more than one source of flooding.

¹ Flood Zones 1, 2 and 3

6. The Framework sets tests to protect people and property from all sources of flooding. In this regard paragraph 165 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This is known as using the sequential approach.
7. 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 medium and high flood risk areas from all sources of flooding, including areas at risk of surface water flooding. Avoiding flood risk through the sequential test 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.
8. Additionally, paragraph 168 of the Framework sets out the aim of the sequential test to steer new 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 proposal in areas with a lower risk of flooding.
9. Similarly, Policy R3 of the Liverpool Local Plan 2013 – 2033 (2022) (Local Plan) states that all proposals for development must follow the sequential approach to determining the suitability of land for development, directing new development to areas at the lowest risk of flooding.
10. Whilst I acknowledge that the dwelling itself would be within Flood Zone 1, parts of the appeal site are within Flood Zones 2 and 3. The sequential approach and test is required when any part of the site is at risk of flooding as these parts of the site may include areas where property or people could be put at risk. Furthermore, and as detailed above, areas of the appeal site are also at medium and high risk from surface water flooding and both the Framework and PPG are clear that all sources of flooding should be taken into account.
11. I have not been provided with evidence to demonstrate that the sequential test has taken place and that there are no suitable alternative sites with a lower risk of flooding for this proposed development. The appeal proposal therefore cannot pass the sequential test.
12. I acknowledge the appellant's frustration relating to their assertion that the Council has not provided its flood modelling information. However, based on the information before me, parts of the appeal site are at risk of flooding from both fluvial and surface water, and I have therefore determined the appeal on this basis.
13. I am aware that the submission includes mitigation measures to reduce the impact of flooding on the appeal scheme. On this matter however the PPG states 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. As I have not been provided with any evidence that the appellant has undertaken and passed the sequential test, these mitigation measures are not determinative in my consideration of this proposal.
14. The appellant has stated that they would be willing to give up land within Flood Zones 2 and 3 for the implementation of a sustainable urban drainage system; that measures can be taken to reduce surface water flooding; and that they would be willing to make a financial contribution to help resolve flooding issues in this area. I

have been provided with limited information as to what these measures and contributions would entail, or how they would be secured. Nevertheless, these do not override the requirement for a sequential test to be undertaken and passed for this proposed development.

15. The appellant has made reference to other previous permissions granted on the appeal site, as well as the original approval for the wider residential development within which the appeal site is located. I am not aware of any extant planning permission(s) for a dwelling on the appeal site itself. I also have limited information before me as to the flood risk issues when these previous applications were permitted, or precise details of what information was submitted and considered as part of these applications. Nonetheless, each application must be determined on its own merits in accordance with the relevant national and local policies.
16. It is the appellant's view that the proposed dwelling, and future occupiers, would be no more at risk of flooding than other nearby residential properties. However, as mentioned above, I am not aware of the exact flood related circumstances when these nearby dwellings were granted. Additionally, the existence of properties in an area at risk of flooding is not in itself a justification for additional dwellings to be sited in an area at risk of flooding and does not mitigate against the requirement for the sequential approach to be applied to new development within areas at risk of flooding from any source.
17. In view of all the above, I conclude that parts of the appeal site are at risk of flooding from more than one source and there is insufficient information before me, by way of a sequential test, to conclude that there are no reasonably available sites for the development in areas with a lower risk of flooding. The proposal therefore fails to demonstrate that the site is appropriate for housing having regard to flood risk.
18. Consequently, the appeal scheme conflicts with Local Plan Policy R3 where it requires that all proposals for development must follow the sequential approach to determining the suitability of land for development, directing new development to areas at the lowest risk of flooding. Furthermore, the proposal does not meet the requirements of the Framework to avoid, where possible, flood risk to people and property by directing new development to areas at the lowest risk of flooding.

Accessible Housing

19. Local Plan Policy UD4 states that all development proposals should meet the highest standards of accessibility and inclusion so that all potential users, regardless of mental or physical ability, age or gender can use the development safely and easily. Policy H12 of the Local Plan requires all new housing development to comply with Building Regulations Part M4(2) 'accessible and adaptable dwelling' (Part M4(2)).
20. The Council's submissions assert that the proposed dwelling would fail to meet a number of the requirements of Part M4(2) and the appellant does not appear to dispute the Council's position in respect of the proposal's failure to comply with Part M4(2). The appellant has however stated that government advice is clear that Council's should not seek to impose further regulation where controls exist under other legislation, such as Building Regulations.
21. Policies UD4 and H12 are however adopted policies that form part of the Local Plan, which has been through a public examination and found to be sound. As such, due

weight should be given to these policies according to their degree of consistency with the Framework.

22. The appellant has not drawn my attention to any part of the Framework to which these policies conflict and paragraph 135 (f) of the Framework seeks to ensure that developments create places that are inclusive and accessible, with a high standard of amenity for future users.
23. As such, and on the evidence before me, I find no conflict between these policies and the Framework and consequently they can be afforded very significant weight in the determination of this appeal.
24. Given the number of requirements of Part M4(2) that the Council state the submitted scheme would fail, I am not convinced that all these matters raised could be addressed without fundamentally altering the appeal proposal. As such, and in this case, the failure of the proposal to adhere to Part M4(2) could not be overcome by way of a planning condition should I be minded to allow the appeal.
25. The appellant has commented that this issue could have been addressed had these matters been raised by the Council during the planning application process. Whilst engagement between the parties is encouraged during the application process, pre-application engagement is similarly encouraged and beneficial. I have not been made aware that the appellant engaged in any pre-application discussions with the Council prior to submitting this application, where these matters could have been raised and addressed prior to submission. Notwithstanding this, I am required to determine the appeal on the scheme that is before me.
26. In view of all the above, I conclude that the appeal scheme has not demonstrated the proposal would create an accessible housing scheme and is therefore contrary to Policies UD4 and H12 of the Local Plan. These policies together seek to ensure, among other things, that all new housing developments provide the highest standards of accessibility and inclusion for potential users both now and in the future, and comply with Part M4(2).

Other Matters

27. I note the appellant has included case law² and three appeal decisions³ as appendices to their Appeal Statement. However, there is no submission on their relevance to this case or indeed their relevance to any matter to the case as made by the appellant. This limits any parallels to be drawn and the weight I can give these references.

Planning Balance and Conclusion

28. The appellant has stated that the appeal proposal would redevelop a vacant site which currently experiences issues of fly tipping and antisocial behaviour. Whilst I have limited evidence before me in respect of the site being used for fly tipping and antisocial behaviour, the development of a vacant site to provide an additional dwelling would make a positive contribution to the Council's housing land supply. Albeit the benefits arising from the provision of one additional dwelling would be limited.

² *Substation Action Save East Suffolk Ltd v Secretary of State for Energy Security and Net Zero: (2024) EWCA Civ 12*

³ APP/Z4718/W/21/3279040; APP/U1430/D/22/3299008 and APP/L3815/W/16/3143208

29. I also acknowledge that the proposed development would result in some limited economic benefits, including employment during the construction works and additional expenditure in the area through occupation of the proposed dwelling.
30. However, the benefits would not outweigh the conflict I have found in respect of the proposal's failure to avoid, where possible, flood risk to people and property by directing new development to areas at the lowest risk of flooding, and the failure to provide an accessible housing scheme.
31. In view of the above, the proposal conflicts with the development plan when taken as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Major

INSPECTOR