



Appeal Decision

Site visit made on 20 August 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2024

Appeal Ref: APP/P1560/W/23/3334545

20 Coke Street, Harwich, Essex CO12 3HP

- 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 Gary Stapleton against the decision of Tendring District Council.
 - The application Ref is 23/00988/FUL.
 - The development proposed is proposed detached dwelling on land adjacent to 20 Coke Street, Harwich, Essex CO12 3HP.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be at an unacceptable risk of flooding.

Reasons

3. Tendring District Local Plan 2013-2033 and Beyond Section 2 (January 2022) (LPS2) Policy PPL1 confirms that development proposals will be considered against the Sequential Test (ST) set out in the National Planning Policy Framework (the Framework). The Framework is clear that the aim of the ST is to steer new development to areas with the lowest risk of flooding from any source.
4. The site lies within Flood Zone 3, irrespective of the history of flooding at the site, and the proposal is for a more vulnerable use. Consequently, it would be necessary for the proposed development to be subject to the ST. The appellant has confirmed a ST has not been carried out. The Flood Risk Assessment at Figure 3 shows that there is land within Harwich that lies within Flood Zones 1 and 2 and as such would be at a lower risk of flooding.
5. Further detail on the application of the ST is set out in the Planning Policy Guidance (PPG). Land ownership, viability and the location of the site within the development boundary for Harwich do not exempt the proposed development from the need to be subject to the ST. The cost of carrying out the ST without any guarantee of it being found acceptable is not a reason to not comply with local and national requirements with respect to the evidence necessary to support an application for planning permission.
6. The absence of the ST leads me to find that the proposal would be contrary to LPS2 Policy PPL1 and the advice in the Framework and PPG on flood risk which

seek to steer development to areas with the lowest risk of flooding. As there is no ST, there is no requirement for me to consider the exceptions test.

Other Matters

7. The appeal site is within 200m of the Stour and Orwell Estuaries Special Protection Area and Ramsar site which is subject to pressures from recreational disturbance. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would likely have significant environmental effects on the integrity of the habitats sites and if any mitigation had been appropriately secured. However, it has not been necessary for me to pursue this issue as a finding that the proposal would not have an adverse effect on the integrity of the habitats sites, with or without any mitigation, would be at best a neutral matter.
8. The Framework has been updated several times since its initial publication in 2012. The current version (published in December 2023) retains the presumption in favour of sustainable development in the circumstances set out in paragraph 11d)ii. There is no substantive challenge to the Council's position that it can demonstrate a five year housing land supply. Where that supply is located or whether the permissions were granted on appeal do not need to be taken into account in the application of paragraph 11 of the Framework. It is not disputed that the Housing Delivery Test has been met. Paragraph 11d)ii of the Framework is therefore not engaged.
9. The proposal would make effective use of a vacant plot of land within Harwich with ready access to the services, facilities and public transport within it. There would be a social benefit from the delivery of an additional dwelling. There would be economic benefits during the construction and occupation stages of development. As the proposal is for a single dwelling, these benefits would be limited.
10. LPS2 Policies PPL 5 and PPL 10 require water conservation and energy efficiency measures. The design of the proposed dwelling would be appropriate in this location in scale and appearance. Suitable landscaping could be required by condition. Appropriate living conditions would be provided for future occupiers, and there would not be unacceptable harm to the living conditions of neighbouring occupiers. Measures to make the dwelling resistant to flooding and crime are proposed and could be secured by condition. Access to broadband could be provided. There would be an acceptable effect on the operation of the surrounding highway network. However these would be expected of any well designed development and are neutral. Compliance with the building regulations is separate to the planning system.
11. Tendring District Local Plan 2013-2033 and Beyond Section 1 was adopted in January 2021. The content of policies at previous stages of the development of this plan would not be attached any weight as a result. Tendring District Local Plan 2007 no longer forms part of the development plan. As the site is within an urban area, the policies of the Framework which seek to support a prosperous rural economy would not add any weight in favour of the proposal.

Conclusion

12. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to indicate the decision should be made otherwise. For the reasons given, I conclude that the appeal should be dismissed.

Jennifer Wallace

INSPECTOR