

Appeal Decision

Site visit made on 11 September 2024

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th September 2024

Appeal Ref: APP/X1545/W/24/3339362

**Land adjacent to Peacehaven, Moorhen Avenue, St Lawrence, Essex
CM0 7LT**

- 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 D Trunley against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/23/00065.
 - The development proposed is described on the application form as the 'retention of caravan on the property.'
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has been implemented and therefore I am considering this appeal retrospectively.
3. I have used the Council's site address as this more accurately describes the location of the development. I note the appellant has used the same address in their appeal form.

Main Issue

4. The main issue is whether the development would comply with local and national planning policy, which seek to steer new development away from the areas at the highest risk of flooding.

Reasons

5. The appeal site is identified as falling within Flood Zone 3a, an area with a high probability of flooding. Policy D5 of the Maldon District Approved Local Development Plan 2014-2029 (LDP, 2017) and the National Planning Policy Framework (the Framework) seek to direct development away from areas at risk of flooding. Residential uses, as proposed here, are identified as 'more vulnerable' development within the flood risk vulnerability classification, rather than 'highly vulnerable'. This is due to the proposed short-term use of the caravan rather than its use for permanent accommodation. There is no dispute between the parties from that perspective.

6. The consultation response from the Environment Agency (EA) accepts this approach. However, the EA makes clear that the scheme must still be supported by a site-specific flood risk assessment and must pass the Sequential and Exception Tests.
7. The appeal scheme is supported by a flood risk assessment. However, there is no substantive evidence before me that demonstrates that the required Sequential Test has been carried out. A Sequential Test is necessary to determine whether any other sites would be available to meet the need for development of this nature, outside of areas most at risk of flooding, and must be carried out before the Exception Test. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
8. Under such circumstances, I cannot conclude that all other potentially available, and less harmful alternative options in flood risk terms have been reasonably explored before this site was selected, and therefore the requirements of the Sequential Test have not been met.
9. I accept that the site has been used for similar purposes in the past. However, the appellant provides evidence to demonstrate that a previous caravan was removed from the site. I note that a separate residential chalet had also been approved at the site historically. However, this was never implemented. Additionally, I acknowledge that the caravan is moveable and would be anchored to minimise harm in the event of flooding. Nevertheless, these matters do not mean that the scheme is immune from the requirements set out above.
10. Overall, I conclude that I cannot be satisfied that the proposed development has met the requirements of the Sequential Test, demonstrating there are no other available sites with a lower risk of flooding. Accordingly, the proposed development would be contrary to the relevant provisions of paragraphs 165 and 168 of the Framework and LDP Policy D5, which in summary seek that a Sequential Test is undertaken to direct new development to areas with the lowest risk of flooding.

Other Matters

11. I note the difficulty in communication between the appellant and Council, and in processing delays. However, these matters have had no bearing on my consideration of the appeal scheme and have not led me to an alternative conclusion on the main issue. Such matters would be best dealt with via a costs application.
12. I also note that the scheme meets several other planning policy requirements, that there are no objections from a highways perspective and that the appellant is already signed up to EA flood warnings. Nevertheless, these are neutral matters in my consideration of the appeal.
13. I note the appellant's comment in respect of 514 Moorhen Avenue and the suggested provision of a similar structure to provide refuge in the event of flooding. However, I am assessing only the scheme before me.

Conclusion

14. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

A Price

INSPECTOR