



Appeal Decision

Hearing (Virtual) held on 26 March 2025

Site visit made on 27 March 2025

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th April 2025

Appeal Ref: APP/Q3630/W/24/3358081

Land adjoining No. 29 Huntingfield Way, Egham TW20 8DU

- 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 Larry Murphy of Haskins Designs Ltd against the decision of Runnymede Borough Council.
 - The application Ref is RU.23/1471.
 - The development proposed is erection of a pair of semi-detached dwellings with associated parking, cycle and bin store.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Runnymede Borough Council against Mr Larry Murphy of Haskins Designs Ltd. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant submitted documents including correspondence with the Environment Agency after the time limits for this appeal. These documents were not before the Council when it made its decision. These documents do not alter the scheme under consideration but provide information relevant to the main issues. The Council had the opportunity to respond to these matters at the hearing. For the reasons above, and in the circumstances of this case, the parties would not be prejudiced if I were to consider these documents, and I have taken them into account in this decision.

Main Issues

4. The main issues are:
 - Flood risk with particular regard to whether the proposal would steer new development to areas with the lowest risk of flooding.
 - The effect of the proposed development on the living conditions of neighbouring occupiers with particular regard to 29 Huntingfield Way.

Reasons

Flood Risk

Flood Zone

5. Flood zone 3b is the functional floodplain, which comprises land where water from rivers or the sea has to flow or be stored in times of flood. It was agreed that 14.37m AOD is an acceptable level to consider within this application for a 1 in 20-year flood scenario and the Environment Agency clarified that land at this height would be in flood zone 3b.
6. The Environment Agency's 2023 mapped flood modelling and the Council's Strategic Flood Risk Assessment identify that this site is located within flood zone 3b. The appellant has submitted details of local circumstances including topographic maps of the site. These show the low level boundary wall which runs along the front boundary, with land at the back edge of the pavement at 14.27m-14.39m AOD and the land behind the wall at 14.37m AOD. The appellant's position is that due to these levels there are no flow paths into the site.
7. The area behind the wall has limited spot heights on the Detail Survey plan (101221/topo dated 14th December 2021). Marked up versions of the detail survey have been provided. The appellant's position at the hearing is shown on the plan annotated with a dashed blue line that the land behind the front boundary is all at 14.37m AOD or higher. However, spot heights are not provided behind this area and as such I do not have persuasive evidence that this part of the land sits above the 1 in 20-year flood scenario level. In addition, my site visit did not reassure me that the site specific topography would mean the site falls outside of flood zone 3b.
8. There is a low wall at the front of the site which provides a barrier, higher than 14.37m AOD between the appeal site and the pavement. This is not a permanent feature of the land and is likely to be removed. Indeed, the proposed development indicates its removal. Therefore, in this case the existence of this wall does not alter that this site is in flood zone 3b.
9. Consequently, taking into account the detail of the topographic maps and my observations on site, based on the evidence submitted in this case I am not satisfied that this site is not within flood zone 3b.
10. Buildings for dwelling houses are classified as more vulnerable development in the National Planning Policy Framework (2024) (Framework). Even if part of the site were in flood zone 3a, the whole site would be in a residential use and the front part of the site forms part of the access to the properties. Therefore, in this case this land is a fundamental part of the development of the site for buildings for dwelling houses. Moreover, this site presents a greater risk than those wholly in flood zone 3a. As such the considerations relating to flood zone 3b are relevant to this application. Table 2 of the Planning Practice Guidance (PPG) indicates that more vulnerable development in flood zone 3b should not be permitted.

Sequential Test

11. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The site is in an area known to be at risk from flooding, therefore a sequential test should be applied. The Framework sets out that the aim of this is to steer new

development to areas with the lowest risk of flooding from any source.

Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. This is broadly echoed by Policy EE13 of the Runnymede 2030 Local Plan (2020) (LP)

12. The appellant's sequential test has assessed any sites which can accommodate 2 units taken from the Council Local Plan Site Allocation (Appendix A), the Brownfield Land Register (2022) and Appendix 5 of the Runnymede Strategic Land Availability Assessment (2021) which includes sites with a net gain of 1-4 additional units. It also includes a market search, and vacant plots of land between 500-1000m² were also assessed. The Runnymede 2030 Strategic Flood Risk Assessment (2018) (SFRA) usually expects the search area to cover the whole of the Local Authority Area. The PPG states that local circumstances could affect the area to apply the test, nevertheless in this case the search area covered the whole of the borough, which follows the local guidance.
13. The PPG states that reasonably available sites could include part of a larger site. I heard that the appellant considers that it would not be possible for this type of development to take place on smaller parts of larger sites as landowners would not sell part of a larger site as it would not be viable for reasons including the timescales of development. However, there is nothing before me, such as detail of contact with landowners, to demonstrate how any parts of larger sites were assessed at any level of detail. Consequently, it has not been suitably demonstrated that the development could not take place on part of a larger site.
14. Furthermore, whilst the size parameters for the market search have been set out, the appellant's sequential test states that sites were also excluded due to their cost. I heard that land at a high price was excluded, however in the absence of any detail of these sites, or information as to what price was considered to be excessive, I do not have evidence as to whether reasonably available sites were excluded from this assessment.
15. Case law in *Mead Realisations Ltd v The Secretary of State for Levelling Up, Housing and Communities & Anor* [2024] EWHC 279 (Admin) (12 February 2024) (*Mead*) was brought to my attention which, of relevance to this issue, highlights a need for realism and flexibility when considering the sequential test. In this appeal specific concerns with the application of the sequential test, which does not disregard the development requirements put forward, have been identified. This is therefore a pragmatic approach taking into account the requirements from all sides.
16. Consequently, the sequential test does not demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. As such, the proposed development would not steer new development to areas with the lowest risk of flooding from any source.

Other Matters

17. The proposed development would remove the low front boundary wall and proposes permeable boundary treatment that would allow water to flow freely across the site. The appellant states that this would result in a reduction in flood risk elsewhere. Based on the evidence before me, due to the scale of the development, any benefit in this regard would be modest. However, and

notwithstanding any consideration of the effect on flood storage, the effect on flood risk elsewhere and the reduction of flood risk overall are considerations of the exception test. As the sequential test has not been passed, there is no need to go on to consider the exception test. Even if this were the case, the risk of constructing this development of dwellinghouses in the floodplain when other sites in areas with a lower risk of flooding could be available would not be outweighed by modest changes to flood risk elsewhere.

18. The PPG sets out that this development should not be permitted. Furthermore, the sequential test has not been passed and therefore the appeal scheme would not steer development to areas with the lowest risk of flooding from any source. The appeal scheme consequently proposes inappropriate development in an area at risk of flooding. This is a strong reason for refusing the development.
19. The proposed development would result in unacceptable flood risk and would not steer new development to areas with the lowest risk of flooding. As such, it would be contrary to Policy EE13 of the LP, the aims of which are set out above.

Living Conditions

20. The proposed development includes a raised terrace to the rear of both properties with a larger area towards the centre of the site and steps and a smaller terrace area towards the sides. This would be 1.3m above ground level, around 3m long and set back a short distance from the boundary. There is a 2m high fence along the boundary with 29 Huntingfield Way. No 29 has main windows to its rear elevation.
21. Given the raised height of the terrace this would provide elevated views over the fence and directly into the rear garden and back towards the rear elevation of no 29. The largest terrace area is towards the centre of the site and from here views back towards the dwelling would be mainly screened by the building. Nevertheless, there is usable space towards the edges of the terrace, as well as views that would be afforded when using the steps. Views from this side of the terrace would be across the whole of the neighbouring garden and towards the property. As such it would have an unacceptably harmful effect on the privacy of the neighbouring occupiers.
22. At the hearing a condition was discussed which would include a 1.8m high boundary screening. Taking into account the raised level of the terrace this would therefore be around 3m above ground level and, in combination with the proposed dwelling, would extend around 5m beyond the rear elevation of no. 29. This would prevent concerns with overlooking but the Council were concerned about its effect on light and any overbearing effect.
23. The screening would project beyond the rear elevation of no. 29 for some length in a position to the south of its rear garden. Whilst it would be set back from the boundary it would nevertheless be located close to the house and the combination of length and height in this location would be overbearing to these neighbours. Furthermore, the submitted daylight and sunlight assessment does not consider a 1.8m high screen, and the main parties agreed that this would have some effect on the light to the neighbours. In order for the screening to provide sufficient privacy, it would need to be at a level of obscurity which would not be transparent, and therefore the use of obscure glazing would not overcome these concerns. As such, based on the evidence submitted a 1.8m high screen would have an overbearing

effect and would have an unacceptable effect on the light to neighbouring occupiers. Consequently, such a condition would be unreasonable and should not be attached.

24. Therefore, the proposed development would have a harmful effect on the living conditions of neighbouring occupiers with particular regard to 29 Huntingfield Way. As such, it would be contrary to Policy EE1 of the LP which requires that development should have no adverse impact on the amenities of neighbouring property. As well as the advice in the Runnymede Design SPD (2010) which seeks to ensure residential amenity including with reference to privacy.

Other Matters

Fallback

25. The appellant states that they would be able to obtain planning permission for a two storey side extension and, subsequently, permission to subdivide the resultant property into two dwellings. It was agreed that these applications would not require a sequential test, but would need a site specific flood risk assessment.
26. However, the fallback position would only provide one new dwelling. Consequently, fewer occupants and households would be at risk of flooding in this scenario compared to the proposed development. As such, even if there were a real prospect of such development occurring, the fallback position would be less harmful than the development proposed. Therefore, I afford limited weight to the fallback position.
27. Consequently, I do not find that it would be possible to create 2 additional dwellings on this site without a sequential test. As such, this does not affect the weight that is afforded to the proposed development's failure of the sequential test.

Other matters

28. The Council cannot demonstrate a 5 year supply of deliverable housing sites and the parties agreed at the hearing that it has a 3.92 year supply. The appeal scheme would provide two new dwellings in an area where there is a shortfall in the delivery of housing. The development would be a small, windfall site within an urban area. The appeal site is undeveloped land and is underutilised in this regard. It would provide the associated social and economic benefits from future occupiers as well as during construction. The number of dwellings on site would increase and this would be an efficient use of land.
29. A sustainable drainage system would be provided and could be secured by condition, albeit there is no detail before me to suggest that this would be multifunctional and deliver benefits to matters such as biodiversity. The development would also be subject to a community infrastructure levy, however this would be required to mitigate the adverse effects of the development and as such the effect in this regard would be neutral.
30. The benefits set out are important. Nevertheless, taking all the above into account and given the scale of the development in this case, overall, these would be moderate benefits.

Planning Balance

31. The Council do not have a 5 year housing land supply, therefore paragraph 11(d) of the Framework is engaged. However, further to the findings above, the application of policies relating to areas at risk of flooding provides a strong reason for refusing the development proposed, as set out in footnote 7. Consequently, the presumption in favour of sustainable development does not apply in this case.
32. I note the conclusions in Mead that there are situations where housing need could reduce the weight to be given to the failure to satisfy the sequential test. I have taken into account the parameters of the sequential test including that it investigated smaller sites only and the findings that it does not demonstrate that there are no other reasonably available sites for the development in areas with a lower risk of flooding. In this case I do not have detailed evidence that satisfies me that the housing need could not be met on sequentially preferable sites. Therefore, in these circumstances, the housing need would not outweigh the failure of the sequential test.
33. Consequently, the moderate benefits identified above, do not outweigh the strong harm identified with regard to flood risk along with the harm to the living conditions of existing occupiers. 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.

Conclusion

34. For the reasons given above the appeal should be dismissed.

H Miles

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sam Peacock

Tom Quigg

FOR THE LOCAL PLANNING AUTHORITY:

Jennifer Cade

INTERESTED PARTIES:

Michelle Kidd

Jo Marchant