



Appeal Decision

Site visit made on 23 April 2025

by **L Clark BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 May 2025

Appeal Ref: APP/N5090/W/24/3358000

Land Between 44 and 48 Formerly Known as 46 Brentmead Place, Golders Green, London NW11 9LJ

- 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 A Wahid against the decision of the Council of the London Borough of Barnet.
- The application Ref is 23/1533/FUL.
- The development proposed is erection of a single storey dwelling with rooms in the roofspace.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council adopted a new Local Plan after its refusal of planning permission. The new Local Plan, Barnet Local Plan 2021-2036 (the Local Plan), has superseded policies in Barnet's Local Plan (Core Strategy) Development Plan Document 2012 and Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP). The Council states that its Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016 (SPD), remains extant. In these circumstances, I am required to determine the appeal against the current development plan for the area at the time of my Decision.
3. In light of the new Local Plan, the Council provided a full list of replacement policies. This list was dated 2024 and referred to draft policies, specifically policy ECC02A. The appellant has extracted policies referred to in the Decision Notice and whilst the Council have agreed that these policies are correct, there appear to be discrepancies, specifically with regard to Policies replacing DM04 of the DMP. The appellant's list refers to the updated policies being CHD02 and CHD07; however, from the evidence before me, these policies should have been CDH02 and CDH07. I have therefore taken this to be a typographical error.
4. The Council has accepted an enlargement of the site edged red¹ during the assessment of the planning application, which now includes land formerly shown edged blue². From the evidence before me, and regardless of any possible technicalities, the Council determined the planning application on the basis of the revised/enlarged site edged red. Consequently, the site subject to this appeal is identified by the land edged red, which now falls within Flood Zones 1, 2 and 3 and is subsequently determined on this basis.

¹ ref 2756/1 dated Sept 2024

² ref 100 dated Nov 22

Main Issue

5. The main issue is whether the development would be suitably located in relation to flood risk, with particular regard to the sequential test (ST).

Reasons

6. The appeal site (No 46) is located adjacent to the River Brent and falls within Flood Zones 1, 2 and 3. The dwelling, including its access and egress, and refuse/recycling, would be located within Flood Zone 1, which has a low probability of flooding. The garden, which would measure approximately 200 square metres, would be located within Flood Zones 2 and 3, which have a medium to high probability of flooding. This appeal, therefore, appears similar to a previous appeal³.
7. The West London Strategic Flood Risk Assessment (WLSFRA) advises that proposed development sites within multiple flood risk zones should be classed under the highest Flood Zone present on site.
8. The overall aim of the ST is to steer new development to areas with the lowest risk of flooding, and explore if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
9. Paragraph 175 of the Framework states that the ST should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).
10. The Planning Practice Guidance (PPG) states that avoiding flood risk through the ST 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. The PPG goes on to clarify 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. Guidance provided in the PPG is a material consideration in my assessment.
11. A site-specific Flood Risk Assessment (FRA) prepared by Rappor was submitted with the planning application. However, this is dated October 2023 and predates the amended redline boundary. Even if the area where the dwelling would be situated is shown to be at a low risk of river flooding from the River Brent, land within Flood Zones 2 and 3 now forms the garden for future occupants and part of the appeal site. The FRA excludes any modelling of this area and therefore has not assessed the whole site area. I therefore give its findings little weight.
12. Even if the FRA outlines that, subject to mitigation measures, the proposed dwelling would not result in an increased flood risk, the garden would be at risk from flooding and, in my view, would fall outside those exceptions cited in the Framework whereby a ST is not required.
13. In the absence of an ST, I am not satisfied that there are no reasonably available sites for such development where the flood risk would be lower. Without such

³ APP/N5090/W/23/3326494

information, it cannot be shown that the development would not be contrary to the ST or the requirements of the Framework.

14. Whilst I am sympathetic to the fact that the appeal proposal is a resubmission which follows previous appeals,⁴ and that the dwelling house and its main access/egress would be within Flood Zone 1, I can only assess the current proposal on the basis of the information before me. Given my findings above, I find that an ST would be required in this case. This approach is also set out in Table 2.15.2 of the Council's SPD, which is a material consideration.
15. The appellant asserts that the EA raised no concerns with regard to their previous planning application⁵. Whilst the appellant's appeal statement contains an extract of the proposed building footprint in relation to the Flood Zones, I have not been provided with details of the proposed development or EA comments to make a comparison. Notwithstanding, this application was refused and subsequently dismissed at appeal.
16. Whilst the Council's email dated 1 November 2023 confirms that it's drainage team (WSP) "have recommended it for approval," this was based on the revised FRA dated October 2023, which excludes modelling of Flood Zones 2 and 3 and does not model all land edged in red. I therefore give reduced weight to WSP support of no objection.
17. I acknowledge the appellant's note on plan 2756/1 and comments within their evidence, which specify that all built development would be located within Flood Zone 1, however, the enlargement of the redline boundary has resulted in land outlined in red now falling within Flood Zones 1, 2 and 3.
18. The Environment Agency (EA) comments dated 12 May 2023 predate the amended site edged red boundary. I have nothing before me to demonstrate that the EA, from a flood risk perspective, have been reconsulted on the enlarged application boundary. In the absence of any updated EA consultee comments, I give reduced weight in my assessment to the EA's support of no objection.
19. The appellant contends that the proposed development complies with paragraph 181b) of the Framework. I acknowledge that a site-specific FRA supports the appeal, and whilst there would be no increase of flood risk elsewhere, compliance with paragraph 181 is also subject to, amongst other matters, the submission of a ST where applicable. The proposed development, for reasons given above, fails to comply with this requirement of the Framework.
20. In coming to this conclusion, I have afforded significant weight to the lack of updated consultation response from the EA on the amended site boundary. Based on the evidence before me, the proposed development is not suitably located in relation to flood risk. Accordingly, there would be conflict with Policy SI12 of the London Plan 2021 and Policies ECC01, ECC03, CDH02 and CDH07 of the Local Plan insofar as they relate to flood risk.
21. The appellant contends that Policies ECC01, ECC02, CDH02 and CDH07 of the Local Plan are not relevant to their appeal as they relate to climate change, amenity space and noise impacts, which are matters not in dispute. However, whilst Policy ECC01 is a strategic climate change policy, it links to the Council's Sustainable

⁴ APP/N5090/W/19/3223757, APP/N5090/W/21/3287588 and APP/N5090/W/23/3326494

⁵ 21/6166/FUL

Design and Development Guidance SPD which remains adopted guidance, and Policies CDH02 and CDH07 all contain specific water management elements. I therefore consider them relevant to the main issue. Whilst Policy ECC02 relates to environmental considerations, the wording of the policy refers to opportunities to improve air quality and mitigate impacts from pollutants. As the main area of dispute relates to water management, this Policy is not applicable in this instance.

Other Matters

22. The Council has mentioned the potential need for the use of fencing between the development and the wider area (Flood Zones 2 and 3) to prevent its use by future occupiers. Given the proximity of Flood Zones 2 and 3 to the rear elevation of the proposed development, a fence would likely have to be erected very close to the dwelling. In the absence of substantive evidence to the contrary, I am not convinced that such an approach would not result in an adverse impact on the living conditions of future occupiers. In this instance, it is not possible to impose a condition to make otherwise unacceptable development acceptable.
23. My attention has been drawn to an appeal⁶. I have been provided with the appeal decision and an extract of the site plan and Flood Zones in the appellant's statement. Even if the garden of this appeal falls in Flood Zone 2, and an ST was not considered necessary, this is not the case with the appeal before me, in that the garden of No 46 also falls within Flood Zone 3. Furthermore, in this example and in my view, the FRA appeared to have modelled the whole site area, the Inspector stating in paragraph 7 that "the FRA indicates that only a small area of the site is at risk of flooding". In the case before me, the FRA does not model the whole appeal site, and together these factors lead me to consider that this scheme is not similar to the appeal before me
24. My attention has also been drawn to appeal⁷ which I have been provided with the appeal decision. I note that in this decision, the Inspector states that whether a ST is required is determined by the existence and result of a site-specific FRA. However, I have found that in the case before me, the FRA omits any modelling of the lower part of the site (Flood Zones 2 and 3), and as such, I am unable to establish whether the two cases are similar. Furthermore, Policy DM33 relates to Lancaster City Council, which is a different Local Authority to the appeal site and is of little weight.
25. Even if the Framework takes precedence over the PPG, it remains a material consideration. Nevertheless, Local Plan policy ECC03 is clear in what circumstances an ST is required, and this is not disputed by the appellant. Therefore, the development plan is the basis on which I have made my decision.
26. My attention has also been drawn to an appeal⁸ where the appeal site was located in Flood Zones 1, 2 and 3. However, I have only been provided with the appeal decision and not the FRA. Even if the Inspector considered that an ST was not necessary, and they found that no built development within the site boundary would be impacted by a risk of flooding from any source now or in the future, I have nothing before me to demonstrate that the FRA in that case did not model the whole site, as is the case with the appeal before me. I, therefore, cannot be certain that the

⁶ APP/B3030/W/23/3334685

⁷ APP/A2335/W/24/3350855

⁸ APP/W3005/W/24/3345033

circumstances are comparable. I have therefore considered the appeal before me on its individual planning merits.

27. Whilst there is no specific reference to an ST in London Plan Policy SI12, there is in Policy ECC02 of the Local Plan, and this policy supports the requirement of the Framework. Furthermore, even if draft policy ECC02A had no specific reference to an ST, this policy was in draft form and has now been replaced by Policy ECC02.
28. Furthermore, whether the site is in an overgrown state or the hoarding detracts from the character of the area does not outweigh the harm I have identified above.
29. Moreover, the validation of the planning application without an ST falls outside the scope of my assessment, which must focus on the planning merits of the case and evidence that is before me.
30. The appeal scheme comprises in-fill development and would contribute to one family-sized dwelling to the housing supply, which would be an efficient use of a previously developed and vacant site. Economic benefits would result during the construction phase and through future occupants supporting the local economy. There is no dispute that the appeal site is located in an area with good access to services and facilities, that its design would be in keeping with the character and appearance of the surrounding area, and that future occupiers would have access to sufficient garden space and adequate internal living accommodation. It is also agreed that both future occupiers and existing nearby occupants would have satisfactory outlook and privacy. However, policy compliance, or a lack of harm in these respects, would be neutral considerations that would weigh neither for nor against the proposal.
31. Whilst the pre-application response⁹ stated that the principle of residential development was acceptable, I have determined this appeal on its individual planning merits and based on the information before me.

Conclusion

32. The development conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

L Clark

INSPECTOR

⁹ 20/0071/QCF