



Appeal Decision

Site visit made on 26 March 2019

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8th May 2019

Appeal Ref: APP/V2255/W/18/3211059

Coronation Drive, Leysdown ME12 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Brian Nash against the decision of Swale Borough Council.
 - The application Ref 18/500751, dated 7 February 2018, was refused by notice dated 9 May 2018.
 - The development proposed is construction of 2 x 3 bedroom dwellings and associated vehicle parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was refused for three reasons. The third reason relates to land contamination and the main parties are in agreement that this was included on the decision notice in error and is not being pursued by the Council. I have therefore dealt with the appeal on the basis of the first two reasons for refusal.
3. Since the Council determined the application, the Government has published the results of the 2018 Housing Delivery Test (HDT) measurement and the main parties have been given the opportunity to comment on the implications for this case.

Main Issues

4. The main issues are:
 - Whether the site is a suitable location for the proposed development having regard to the Council's settlement strategy, its implications for the countryside, and its accessibility to local services and facilities.
 - Whether the site represents an appropriate location for housing having regard to flood risk.

Reasons

Suitable location

5. The site is adjacent to the small settlement of Bay View, a predominantly residential area close to the larger settlement of Leysdown-on-Sea. The site is open land which is part of a builder's yard, and with open farmland/paddocks to the rear and east side, adjacent to some stables and a riding arena, beyond

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which are some holiday homes. Coronation Drive is lined with detached bungalows and chalet bungalows. The submitted evidence indicates that the appeal site is close to but outside of the defined built-up area boundary for Bay View, which includes dwellings on the opposite side of Coronation Drive to the appeal site, and the dwellings beyond the holiday homes. The site is therefore separated from the defined built up area by the road and by other uses. It has a different character to the adjacent residential area, is relatively free from built form and is seen within the context of the wider open countryside. I therefore conclude that the site is within the open countryside.

6. Policy ST1 of the Swale Borough Local Plan 2017 (the Local Plan) seeks to deliver sustainable development that accords with the settlement strategy for the Borough. Policy ST3 sets out the settlement strategy and directs development to existing defined settlements and allocated sites. The appeal site is close to but outside of the built up area boundary, where Policy ST3 seeks to restrict development unless it is supported by national planning policy and able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. Although it is close to the built-up area boundary, the site is not within a defined settlement and therefore the proposal is contrary to the settlement strategy for the area.
7. Policy ST3 makes it clear that the open countryside is outside the built-up area boundaries, and it does not include an exception for development on previously developed land. The proposed development has not been put forward as one of the exceptions that would be supported by paragraph 79 of the National Planning Policy Framework (the Framework). The site is currently open and contrasts with the built-up residential character of Coronation Drive. The proposed dwellings, hard-standings and associated gardens would introduce a significant degree of urbanisation into the site. I accept that the proposal includes wider improvements to the ecological value and visual appearance of the site, but the extension of the built-up area onto the appeal site would result in an incursion of built form into the open countryside. The urbanisation of the appearance of the site would be readily apparent from the surrounding area, and its intrinsic value as part of the open countryside would thereby be undermined.
8. Policy CP2 seeks to ensure that development minimises the need to travel for employment and services. Bay View offers very limited facilities, while there are some day to day facilities in Leysdown-on-Sea, and Eastchurch Primary School is within walking distance. The main B2231 has a footway and is lit, although there is no street lighting within Coronation Drive. I understand that there is an hourly bus service between Leysdown and Rushenden. It would therefore be possible to walk or use public transport to access some local facilities and services. However, in view of the limited bus service and the likely need to access a wider range of facilities and services in Eastchurch and further afield, it is unlikely that future occupiers would have a realistic alternative to the private motor car. As a result, the site would have relatively poor accessibility to local services and facilities.
9. For the reasons set out above, I conclude that the site is not a suitable location for new housing, in terms of the settlement strategy, the implications for the countryside, and its accessibility to services and facilities. The proposal would therefore be in conflict with Policy ST3 of the Local Plan which sets out the

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settlement strategy and seeks to restrict development in the open countryside, and Policies ST1, ST6, CP2 and DM14, which seek, amongst other matters to deliver sustainable development that accords with the settlement strategy; focus development at allocated sites or within built up area boundaries; promote sustainable transport through the location of development; and permit development that accords with the adopted development plan. Policy DM9 relates to rural exception housing and is not relevant to this proposal as it has not been put forward as affordable housing to meet local needs. It would also be contrary the Framework.

Flood risk

10. According to the evidence, the entire appeal site lies within Flood Zone 3, which is defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' (PPG) as having a high probability of flooding. The submitted Flood Risk Assessment (FRA)¹ identifies that the site benefits from existing flood defences. Policy DM21 of the Local Plan advises that development proposals should accord with national planning policy and planning practice guidance, avoid inappropriate development in areas at risk of flooding.
11. Paragraph 155 of the Framework advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It further outlines the need for development to pass a Sequential Test, the aim of which is to steer new development to areas with the lowest risk of flooding. If there are reasonably available sites at a lower risk of flooding then the development should not be permitted.
12. The Council is of the view that there are other areas within the Borough that are at less risk of flooding and I have no reason to disagree. Furthermore, I have seen no evidence to suggest that there is no land within Flood Zone 1 that would be available for development in the locality. I recognise that the appellant wishes to carry out the development on this land to provide dwellings to be occupied by his own family in a convenient location adjacent to their equestrian facilities. However, no convincing evidence has been provided to demonstrate why this is necessary, nor that the future occupation of the dwellings would be restricted in this manner. Accordingly, these factors attract limited weight, and do not demonstrate that the catchment for reasonably available sites should be so restricted. I acknowledge that the proposed dwellings would be sited on the higher part of the site, and that the site benefits from flood defences. However, the Sequential Test requires consideration of the potential for other sites to meet the need for the development. It therefore follows that on the evidence before me, it has not been demonstrated that the Sequential Test has been passed. Consequently, more vulnerable residential development should be directed away from the appeal site to reduce the risk of harm from flooding in accordance with the advice set out in the Framework.
13. Given that I do not consider that the Sequential Test has been passed, it is not necessary to go on to consider the Exception Test. I note that the FRA indicates that the development would not increase the risk of flooding at the site or elsewhere, through the incorporation of a mitigation measures and sustainable urban drainage features, and that subject to mitigation measures regarding the

¹ Flood Risk Assessment for the Proposed Development at Land at Coronation Drive, Leysdown-on-Sea, Kent January 2018 by Herrington Consulting Limited.

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finished floor levels that the risk of flooding would be low. On this basis, the Environment Agency had no objection to the proposal. I also recognise that the proposal would bring modest benefits to the local economy and community through supporting facilities and services, and would be built to high environmental standards. However, these factors do not address the Framework's general objective of avoiding such development in higher risk locations in the first instance.

14. As the development would fail the Sequential Test, I therefore find that the site does not represent an appropriate location for housing having regard to flood risk. It would therefore be contrary to Policy DM21 of the Local Plan, insofar as it seeks to ensure that inappropriate development in areas at risk of flooding is avoided, and the flooding implications of development should be considered in line with national planning policy and planning practice guidance. It would also be contrary to the Framework.

Other Matters

15. I have had regard to the site's location in relation to a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended. Although not identified as a formal reason for refusal, the Council has stated that mitigation is required in the form of a financial contribution. A Unilateral Undertaking has been provided to make provision for the required mitigation. However, as any consideration of that matter would not affect my findings on the main issues, and the appeal would in any case be dismissed, it is not necessary for me to address that objection any further as part of this decision.

Planning Balance and Conclusion

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the National Planning Policy Framework, indicate otherwise. I recognise that there are policies in the development plan that are supportive of the provision of additional housing. However, I have identified that the proposed development would be in conflict with policies ST1, ST3, ST6, CP2, DM14 and DM21 of the Local Plan. It would therefore be contrary to the relevant development plan policies.
17. The National Planning Policy Framework (the Framework) is a material consideration in planning decisions and at paragraph 11 it states that where policies which are most important for determining the application are out of date, permission should be granted unless specific policies within the Framework provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. The Borough has a recently adopted Local Plan and I have seen no evidence to suggest that it should be considered out of date. In any event, the first step is to consider whether there are specific policies in the Framework that indicate that development should be restricted. Footnote 6 of the Framework gives examples of such policies, and includes "areas at risk of flooding". For the reasons already set out, the proposal would conflict with the Framework policy in relation to planning and flood risk advice, and specifically fails to pass the requisite Sequential Test in relation to an area at risk of

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flooding. This provides a clear reason for refusing the appeal proposal. As such, the 'tilted balance' in paragraph 11d)ii would not apply in these circumstances.

18. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR