



Appeal Decision

Site visit made on 23 August 2021

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 September 2021

Appeal Ref: APP/V2255/W/20/3250876

Riverbank House, Irwin Park, Irwin Road, Sheerness, ME12 2DB

- 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 M Irwin against the decision of Swale Borough Council.
 - The application Ref 19/505650/FULL, dated 30 October 2019, was refused by notice dated 19 February 2020.
 - The development proposed is change of use from three bedroom house with attached one bedroom flat and sales office to 2 two bedroom flats, 1 one bedroom flat and 2 studio apartments with associated amenities.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are:-
 - Whether the proposed residential accommodation would be in a suitable location having regard to local settlement strategy policies;
 - Whether future occupiers would be at risk of flooding; and
 - Whether they would have satisfactory living conditions.

Reasons

Location

3. The appeal site is outside of any built-up area boundaries and is treated as open countryside by the Swale Borough Local Plan. This is where development will generally not be permitted according to Policy ST3. The supporting text explains that the primary objective is to protect the open countryside from isolated and/or large scale development. Policy CP3 indicates that homes will be steered towards the locations identified in Policy ST3 and so concentrated on the main urban centres. On the Isle of Sheppey settlements within the West Sheppey Triangle are the focus of development as set out in Policy ST6.
4. Adjacent to static caravan sites and other permanent development on the edge of Minster, it is difficult to regard Riverbank House as lying within "open countryside". In any case, the proposed development involves minimal external alteration so there would be little noticeable change to the locality including the open land to the east and south. The proposal would increase the number of residential units from two to five but that, in itself, would not have a

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negative effect on the aims of the settlement strategy as the actual implications for the open countryside would be negligible.

5. Whilst the National Planning Policy Framework recognises the intrinsic character and beauty of the countryside, it also generally supports the re-use of brownfield land such as this. Furthermore, paragraph 80 indicates that the sub-division of an existing residential building could be an exception to the policy of generally avoiding the development of isolated homes in the countryside. Whilst the proposal would be close to other development and therefore not isolated, the implication is that in certain circumstances converting existing buildings to residential use can be accepted in the countryside. Due to the lack of specific adverse impacts that is the case here.
6. To sum up, the proposal would not strictly comply with the provisions of relevant policies. However, given its immediate surroundings and the lack of any tangible impacts on the countryside, the new residential units within an existing building would be in a suitable location.

Flood risk

7. In general terms the Framework establishes that development should be directed away from areas at highest risk of flooding. Where development is necessary in such areas then it should be made safe for its lifetime. Local Plan Policy DM21 reiterates the general principles of national policy. According to the Environment Agency the appeal site is within Flood Zone 3 where there is a high probability of flooding. National policy and guidance are based on this mapping which is therefore the starting point for any assessment.
8. The appellant refers to a Government website which shows the site as at low risk from tidal flooding and at medium risk from surface water flooding. The Framework specifies that all sources of flood risk should be taken into account. Therefore, even if the Environment Agency's information is outdated, relevant national policy and guidance applies because of the risk of surface water flooding. Furthermore, though the site has not flooded since 1953 that does not mean that it would not do so in future – especially in the light of the changing climate and its proximity to the sea. There is no detail about any flood defences that have been installed and no hydrological or hazard modelling has been presented. The site is also adjacent to drainage ditches which could overflow. Therefore, based on the information available, the risk of flooding affecting future residents cannot be discounted.
9. The existing flat has a bedroom on the ground floor and, in theory, the bedrooms at the existing house could be moved downstairs. Even in that event, there would be more ground floor sleeping accommodation if the proposal were implemented. It would therefore increase the number of properties and people potentially at risk in a flood event. Much is made of others nearby in a similar situation – whether living in bungalows or those occupying caravans for either 10 or 12 months of the year. But national policy is precautionary in this respect and does not base future decisions about flood risk on what has occurred in the past.
10. The application was accompanied by a flood risk assessment for Meadow View Park from 2018. However, the Framework is clear that these should be site specific. The Planning Practice Guidance (PPG) on *Flood Risk and Coastal Change* advises that the assessment should demonstrate how flood risks will be

managed now and over the development's lifetime taking climate change and the vulnerability of users into account. The PPG also sets out the objectives of a site specific flood risk assessment (Ref ID: 7-030-20140306) and includes a check list at paragraph 068.

11. The appellant has provided a flood risk assessment with the appeal. This proposes various measures including drainage improvement to the ditches, an impermeable membrane, non-return valves and the removal of the conservatory to increase flood water capacity. However, the effectiveness of these measures is not quantified against potential flood events. Furthermore, no account is taken of the possible implications of climate change as advocated by the PPG. This includes whether the surrounding ditches and drainage system would be able to cope with heavier rainfall than in the past. In addition, no details are given of the author of the flood risk assessment so it is not possible to assess their credentials.
12. When development is allowed in areas at risk of flooding the Framework sets specific requirements. However, these would not be met by the proposal. In particular, it has not been demonstrated that the development would be appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment. Furthermore, that any residual risk would be managed safely and that safe access and escape routes could be achieved.
13. A flood warning and emergency plan could be required by condition but this would not address the other matters of concern raised. The completed unilateral undertaking includes an obligation to make a payment to the Environment Agency on the commencement of the development. However, there are no planned flood risk management works in the area and no indication as to what this sum might realistically achieve. Therefore the money offered would not overcome the risks identified.
14. In conclusion future occupiers would be at risk of flooding, whether from the sea or from surface water, especially because of the sleeping accommodation on the ground floor. The supporting flood risk assessment does not provide sufficient assurance that mitigation would be effective or meet the criteria in paragraph 167 of the Framework. As a result the proposal would not accord with Local Plan Policy DM21.

Living conditions

15. The studio flats would have floor areas of 25.4 sq m and 21.2 sq m. Rather than rely on the preferences of individuals, the Framework seeks to ensure that places are created with a high standard of amenity for future users. The nationally described space standards set out a minimum gross internal floor area for a one person one bedroom flat of 37 sq m. However, these do not include a specific standard for units where the bedroom and living areas are combined. Furthermore, footnote 49 of the Framework indicates that local plan policies may make use of these standards where the need can be justified. None of the policies cited in the Swale Borough Local Plan refer to them.
16. The Council does have standards for converting buildings into flats in its Supplementary Planning Guidance. These seek a minimum floor area of 21.5 sq m for a 1 person flatlet with separate kitchen. Whilst not having the same status as adopted policy, this nevertheless provides a useful indication of what

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is acceptable. One of the flats would be fractionally below this figure. However, the room layout would be useable and the outlook adequate. Parking provision and outdoor space would also be available to future residents. Consequently, overall living conditions would be satisfactory and there would be no conflict with the aims of Policy CP3 or with the design and general criteria of Policies CP4 and DM14.

Other Considerations

17. The Council cannot demonstrate a five year housing land supply against their housing requirement. However, the proposal would be within an area at risk of flooding and this provides a clear reason to refuse the development proposed. Therefore the presumption in favour of sustainable development set out at paragraph 11 d) of the Framework does not apply.
18. Nevertheless, the proposal would add three small units to the housing stock. These would be suited to those seeking a starter home of modest size and would be well located for amenities and near to the sea. There would be a boost to the local economy although this is unlikely to be significant. An existing building on brownfield land would be utilised. All these considerations favour the proposal. However, in meeting the challenge of flooding, national policy is clear that risks should preferably be avoided but that if this cannot be the case then adequate safeguards should be secured. The information provided does not give sufficient assurance in that respect and the other considerations therefore do not override the objections identified.
19. The unilateral undertaking includes a financial contribution towards mitigation measures to avoid adverse impacts on the Medway Estuary and Marshes Special Protection Area. However, as the appeal is to be dismissed, there is no need for further consideration to be given to this or to the provisions of the Conservation of Habitats and Species Regulations.

Conclusion

20. Notwithstanding the conflict with the settlement strategy, the appeal site would be in a suitable location to convert an existing building already in residential use. Living conditions for future occupiers would be satisfactory. However, they would be at risk from flooding and this concern is not dealt with by the flood risk assessment and associated information. Therefore, the proposal would be contrary to the broad aims of Policy ST1 to deliver sustainable development in Swale and to the development plan as a whole. There are no other material considerations to outweigh this finding. So for the reasons given the appeal should not succeed.

David Smith

INSPECTOR