



Appeal Decision

Site visit made on 14 November 2023

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/V2255/W/23/3315636

Land adjacent 32 Linden Drive and 67 Queens Way, Sheerness

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr M Barber against Swale Borough Council.
 - The application Ref 22/503617/OUT is dated 23 July 2022.
 - The development proposed is three number one bedroom new dwellings with dormers to the front elevation, with all living accommodation to first floors and above.
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Decision

1. The appeal is dismissed and planning permission for three number one bedroom new dwellings with dormers to the front elevation, with all living accommodation to first floors and above is refused.

Preliminary Matters

2. The appeal is against the non-determination of a planning application. The Council's appeal statement indicates that it would have refused planning permission for reasons relating to the location of the development in an area at high risk of flooding and its effect on the integrity of Special Protection Areas (SPAs). I note that the SPAs are also Ramsar sites. The appellant has subsequently completed a SAMMS¹ Mitigation Contribution Agreement (MCA) and paid a SAMMS fee to the Council. As such, the Council considers that the issue relating to the effect of the development on the integrity of SPAs has been addressed. The main issue below reflects the Council's position and I return to the SPA and Ramsar site issue later.
3. Outline planning permission is sought, with all matters reserved. Plans have been submitted with the application, showing a site layout, elevations, and floor plans. I have determined the appeal on the basis that the plans are for illustrative purposes only.

Main Issue

4. The main issue is whether the proposed development would be in a suitable location having regard to the risk of flooding.

Reasons

5. The appeal site is within Flood Zone 3 where there is a high risk from tidal and fluvial flooding. The National Planning Policy Framework (the Framework) seeks to avoid inappropriate development in areas at risk of flooding by directing it

¹ Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy 2014

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away from areas at highest risk. Policy DM21 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (SBLP) reiterates national policy.

6. The Framework requires the application of a sequential approach to the location of development to avoid, where possible, flood risk to people and property. It states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
7. The Planning Practice Guidance (PPG) sets out further information on the application of the sequential approach. For planning applications, it states that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. It also outlines that reasonably available sites are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.
8. There is no dispute on the need to apply the sequential approach and, for residential development, the Council applies this across the whole Borough. The appellant's sequential test considers the sites in the Council's Strategic Housing Land Availability Assessment (SHLAA). It concludes that there are no sequentially preferable sites within the SHLAA as all available sites are considered too large for the proposed development and not reasonably comparable. However, the PPG states that reasonably available sites could include part of a larger site if it would be capable of accommodating the proposed development, but the sequential test fails to consider these.
9. The appellant's evidence from the Brownfield Land Register (BLR) and on local land for sale refers to sites in Sheerness but it does not consider sites in other parts of the Borough. Even given the relatively limited area of search, this evidence indicates that there may be other reasonably available sites, but these are not included in the sequential test. Furthermore, little consideration is given to sites with extant permission for similar development and allocated sites which may be reasonably available for residential use in a lower flood risk area.
10. Therefore, the evidence does not show that all reasonably available sites have been considered in the appellant's sequential test to determine whether the proposed development could be located in an area with a lower risk of flooding.
11. There are references to the Environment Agency's response on both this and a previous application for the site. However, as the proposal does not meet the sequential test, it is not necessary to consider the Flood Risk Assessment results and its implications for the proposed accommodation.
12. Consequently, I conclude that the proposed development would not be in a suitable location having regard to the risk of flooding. It would be contrary to Policies DM14 and DM21 of the SBLP where they seek to avoid inappropriate development in areas at risk of flooding and require proposals to respond to climate change and natural process constraints, amongst other things. It would also conflict with the approach to flood risk set out in the Framework.

Other Matters

13. The Council accepts that its current housing land supply stands at 4.83 years, which represents a shortfall against the required five years. This triggers the

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circumstances in paragraph 11(d) of the Framework. The proposal would be within an area at risk of flooding which provides a clear reason for refusing the development proposed in accordance with paragraph 11(d)(i). As such, the presumption in favour of sustainable development does not apply.

14. There would be several matters that may amount to benefits of the proposed development, including access to services and public transport, bicycle storage, a home office, energy efficient construction, water efficiency measures, and modest social and economic benefits associated with the provision of housing. Although some of these factors may be development plan requirements rather than benefits, even if all such matters were benefits, they do not outweigh the unsuitable location of the development having regard to the risk of flooding.
15. The proposal would have potential impacts on the integrity of the Swale, Medway Estuary and Marshes and Outer Thames Estuary SPAs and Ramsar sites due to its location within 6km of them. However, notwithstanding the SAMMS MCA and fee payment, there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.
16. There are references to a previous proposal for dwellings on this site which was dismissed at appeal². I have had regard to this appeal decision. Nevertheless, I must determine the proposal on its merits based on the information before me.
17. The appellant has expressed general dissatisfaction with the Council's handling of the application. However, this is a matter between those parties, and it cannot have any bearing on my determination of this appeal.

Conclusion

18. For the reasons given above, I conclude that the proposal would conflict with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed and planning permission is refused.

A Wright

INSPECTOR

² Appeal Ref: APP/V2255/W/21/3277228