
Appeal Decision

Site visit made on 27 January 2015

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 February 2015

Appeal Ref: APP/E1210/A/14/2228799

The Pines, 39 Mudeford, Christchurch, Dorset, BH23 3NQ

- 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 Nicholas James Investments Ltd against the decision of Christchurch Borough Council.
 - The application ref. 8/13/0525, dated 4 November 2013, was refused by notice dated 27 August 2014.
 - The development proposed is: demolition of existing building and erection of 8 apartments with associated car parking.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are (1) whether the proposal would accord with national and local policy on development and flood risk and (2) the scheme's effect on protected trees.

Reasons

3. The appeal site, which is occupied by a hotel, lies within the built-up area and is adjoined by residential development. The main parties disagree about the site's flood risk potential. With reference to Environment Agency (EA) flood risk maps, the appellant states that the site lies within an area with a low probability of flooding – Flood Zone 1 as defined in the Technical Guidance to the National Planning Policy Framework (the Framework). As such, the appellant considers that site occupies a suitable location, in flood risk terms, for the type of development that is proposed.
4. In contrast, the Council's position is that, with reference to the Christchurch Borough Council Level 2 Strategic Flood Risk Assessment (SFRA), the appeal site includes land with a high probability of flooding (Flood Zone 3a in the Technical Guidance¹). In such cases, paragraph 101 of the Framework requires that a Sequential Test is applied to steer development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Framework adds that the SFRA will provide the basis for applying this test.

¹ Table 1 of the Technical Guidance clarifies that the Flood Zones refer to the probability of river and sea flooding, ignoring the presence of defences.

5. Clearly, there is disagreement about the site's current flood risk zoning. While the EA's flood risk maps show that the site lies within Zone 1, the EA's advice to the Council is that the SFRA represents more locally specific evidence upon which flood risk assessment should be based. As noted above, the Framework endorses the role of the SFRA in that regard. Given that the SFRA includes more up-to-date data and more detailed information on all aspects of flood risk than has previously been available, I agree with the Council that this represents a more accurate assessment of current flood risk potential. As noted by the Council, the SFRA shows that part of the appeal site has a high probability of tidal flooding.
6. Notwithstanding the above, the appellant argues that there are no possible alternatives to the present scheme, as the proposals would involve the removal of an existing unsightly building and its replacement by new development. Reference is made to supplementary planning guidance adopted by Bristol City Council: this states (in summary) that in cases where regeneration benefits would result from a site's re-use or redevelopment then the search area for the Sequential Test can be the application site alone. Clearly, supplementary guidance adopted for Bristol cannot bear directly on a development in Christchurch, and I do not have up-to-date information on the status of the document concerned. However, and in any event, more recent advice on this matter is set out in the national Planning Practice Guidance (PPG)².
7. In the case of individual planning applications, rather than the preparation of a Local Plan, the PPG states that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. In applying the test, the PPG recommends that a pragmatic approach on the availability of alternatives should be adopted. It states that, for example, in considering planning applications for extensions to existing business premises it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere.
8. Dwelling houses and hotels fall within the same classification of vulnerability ('more vulnerable') in table 2 of the Technical Guidance. The flood risk assessment (FRA) submitted by the appellant indicates that mitigation measures would be undertaken, including setting finished floor levels at a minimum of 3.6m AOD, raising levels in the car park and linking residents to the EA's flood warning service. This represents a materially different position to those schemes, including examples mentioned by the Council, where a lower vulnerability use would be replaced by one with a higher vulnerability.
9. Nevertheless, the Sequential Test applies to the type of development that is proposed – which in this case would be a residential use. As noted above, the PPG advises that the test's application should relate *to the catchment area for the type of development proposed* (my italics). Bearing in mind that housing need has been assessed on a Borough-wide basis, and noting that the scheme is not explicitly aimed at meeting needs in a more local catchment area, it is therefore appropriate to apply the Sequential Test across the entire Council area. I have seen no substantive evidence to dispute the Council's view that its Strategic Housing Land Availability Assessment shows that new residential units could be accommodated on other sites within the Borough. On that basis, I agree with the Council that the Sequential Test has not been passed.

² Notably at PPG reference ID 7-033-20140306.

10. As noted above, it is the appellant's case that the appeal scheme would provide regeneration benefits and would improve the area's character and appearance. However, while I have no reason to disagree with the appellant's assessment that the hotel use is unviable, no evidence has been produced to demonstrate that the stated benefits necessarily require the erection of the development that is now proposed and could not be achieved by other means. For example, it is noted that the Bristol guidance, to which the appellant refers, requires the Council to be satisfied that the benefits that would arise from a re-use or redevelopment scheme cannot be provided by development on an alternative site. Such an assessment has not been provided in the present case. Furthermore, it is also noted that the Bristol approach applies to defined areas of the city that have been specifically identified as being in need of regeneration. I have seen no evidence that the present appeal site or its immediate surroundings have been identified in such terms in relevant local planning documents.
11. Taking these matters together, it cannot be demonstrated that there are no reasonably available sites in areas with a lower probability of flooding that are appropriate for the residential development now proposed. From the evidence before me, the appellant has failed to justify why an exception should be made to the above-noted national policy in the present case. This approach conflicts with relevant requirements of the Framework, as set out above, and with policy ME6 of the Christchurch and East Dorset Local Plan Part 1: Core Strategy (CS). I therefore conclude that the scheme would conflict with national and local policy on development and flood risk.
12. The Council's concerns on the second main issue relate to protected trees near the site's eastern boundary, notably nos. T7 (a Holm Oak) and G8 (a group of self-sown Sycamores)³. However, I agree with the view of the appellant's arboriculturalist that trees T7 and G8 are of low quality (category C) and can be appropriately cut back to the site boundary. Protection measures are set out in respect of other trees; these could be imposed by condition if the scheme was acceptable in other respects. Subject to this, I conclude that protected trees would not be harmed, in line with CS policy HE2 and policy H12 of the Borough of Christchurch Local Plan. However, this matter does not outweigh my conclusion in respect of flood risk which, given the Framework's requirements, I consider to be a compelling objection.
13. I have considered all the other matters raised, including the submitted planning obligation in respect of contributions towards avoiding or mitigating adverse effects on the nature conservation significance of the Dorset Heathlands, but none change my overall conclusion that the appeal should not succeed.

M J Hetherington

INSPECTOR

³ Reference numbers relate to the tree survey submitted by the appellant.