

**Folkestone & Hythe District Council
Town and Country Planning Act 1990**

**Appeal by Mr D Henwood
Site: 10 Range Road, Hythe, Kent CT21 6HQ**

**Council Ref: Y18/1343/FH
Appeal Ref: APP/L2250/W/19/3227462**

Council's Statement

1.0 Introduction

- 1.1 This appeal relates to the refusal of an application made to Folkestone & Hythe District Council for the erection of detached, two storey dwelling with accommodation in the roof space.
- 1.2 The Council would like to refer The Planning Inspector to the delegated officer report for Y18/1343/FH (submitted with the appeal questionnaire) which the Council considers sufficiently and comprehensively details the reasoning behind the refusal to grant planning permission. This statement will outline the background to the decision and discuss any other material points raised by the appellant, alongside the additional information submitted by the appellant as part of the appeal.
- 1.3 Since the decision was made, the Submission draft of the Core Strategy Review was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation between January and March 2019. Accordingly, it is a material consideration in the assessment of planning applications in accordance with the NPPF, which confirms that weight may be given to policies in emerging plans following publication (paragraph 48). Based on the current stage of preparation, the policies within the Core Strategy Review Submission Draft may be afforded weight where there has not been significant objection.
- 1.4 The NPPF has been updated since the refusal of the planning application (NPPF 2019 introduced on 19 February 2019 and decision issued on 24 January 2019). The original decision referred to paragraphs 157 and 158 of the NPPF 2018, which are still relevant.

2.0 Background to Decision

- 2.1 It is agreed that the main issue for consideration relates to the failure of the original application, as submitted, to pass the Sequential Test in relation to flood risk. No other issues were raised by the LPA. The Council does not dispute that the application site is within Flood Zone 1 (land with a low probability of flooding from rivers or the sea) but is identified within the Councils Strategic Flood Risk Assessment as being in an area at Moderate risk, should flooding occur. Paragraph 158 of the NPPF states: "The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. *The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.*" Additionally, Planning Practice Guidance Paragraph: 033 Reference ID: 7-033-20140306 states: "Nor should it normally be necessary to apply the Sequential Test to development proposals in Flood Zone 1 (land with a low probability of flooding from rivers or the sea), *unless the Strategic Flood Risk Assessment for the area, or other more recent information, indicates there may be flooding issues now or in the future (for example, through the impact of climate change).*"
- 2.2 Consequently, in assessing the application, the LPA reasonably applied the Sequential Test, which had not been adequately addressed within the Flood Risk Assessment (RMB Consultants (Civil Engineering) Ltd November 2018) that was submitted with the application, which incorrectly states on page 44: "The site lies within flood zone 1 and therefore residential development is appropriate. As the site lies within flood zone 1 it passes the Sequential Test and the Exception Test is not applicable."
- 2.3 In applying the Sequential Test, the Council looked at the most recent HIA to determine if there were any alternative sites within the same character area (Folkestone & Hythe Urban Area) where the proposed development could be located that were at a lower risk of flooding. This showed that there were a number of alternative sites within the Folkestone & Hythe character area with extant planning permissions that could still be implemented that were not within Flood Zones 2&3 or shown to be at risk of flooding in 2115 by Shepway's SFRA.
- 2.4 The Planning Practice Guidance states that; "The applicant needs to provide the evidence you need to check if the sequential test is required and if it has been satisfied. You should refuse permission if the tests have not been done when required or have not been satisfied."
- 2.6 As such, given that test had not been done when required and there were alternative sites available when the test was applied in the same character area as the application site, which were at a lower risk of

flooding, the Council was justified, at that time, in determining that the proposal failed to pass the sequential test and should be refused.

3.0 Comments on Appellants Statement of Case

- 3.1 As part of the appellant's appeal statement, an updated FRA from RMB Consultants (Civil Engineering) Ltd May 2019 has been supplied, alongside a Technical Note (09 April 2019) and letter (18 April 2019) from Herrington Consulting Limited, that seeks to address the ground for refusal at the appeal site.
- 3.2 The Technical Note was submitted to the LPA before the appeal was made and a response sent to the applicant on the 24th April 2019 (Appendix A) acknowledging the findings within the technical note and identifying that it would be an important document to accompany a re-submitted scheme.
- 3.3 In accordance with Paragraph: 034 Reference ID: 7-034-20140306 of the Planning Practice Guidance, it is "for local planning authorities, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application. Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere."
- 3.4 It is considered that the additional information, using a finer resolution (2m as opposed to 25m) than the Council's SFRA, shows that the application site is unlikely to be affected by a 1 in 200 year predicted flood event, taking into account 100 years of climate change to 2115. The site is therefore, sequentially, comparable in safety to other sites in the Folkestone and Hythe character area and this would allow the LPA to determine that the Sequential Test would be passed and the Exception Test would need to be applied. In respect of the first part of the Exception Test, which requires that the development would provide wider sustainability benefits to the community that outweigh the flood risk, the additional house would provide a small boost to the local economy through the construction period, as well as introduce additional populace to support local services.
- 3.5 In respect of the second aspect of the Exception Test, which requires that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall, it is accepted that, with appropriate conditions relating to securing finished floor levels and the flood resilient measures identified within the FRA, the Exception Test would be passed.

4.0 Conclusion

4.1 Notwithstanding the legitimate reasons for the Council's decision in relation to planning application Y18/1343/FH, in light of the additional information that has supported the appellant's statement, the Council would be minded to accept the proposal that was applied for, if it were applied for now. In the event the Inspector decides to allow the appeal, then without prejudice to the Council's position, the Council would suggest that, alongside standard time and approved plans conditions the Inspector secures:

- 1) Details of materials to be used in external surfaces
- 2) That In accordance with the requirements of policies CSD5 and SS3 of the Shepway Core Strategy Local Plan 2013 which identify Shepway as a water scarcity area and require all new dwellings to incorporate water efficiency measures, the development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.
- 3)
 1. Prior to commencement of the development a desk top study shall be undertaken and submitted to and approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.
 2. If a desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include
 - A survey of the extent, scale and nature of contamination
 - An assessment of the potential risks to
 - Human health
 - Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Ground waters and surface waters,

- Ecological systems,
- Archaeological sites and ancient monuments and
- An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this Condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11).

3. If investigation and risk assessment shows that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

4. Prior to commencement of development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

5. In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.

- 4) Incorporation of flood resilient construction methods in accordance with a 'Water Exclusion Strategy' as detailed in the Flood Risk Assessment of RMB Consultants (Civil Engineering) Ltd May 2019.
- 5) Details of boundary treatments to be approved.
- 6) Securing bicycle storage as shown on the submitted plans.