

Officer Report

Application No.	25/0016/FH
Site Address	7 PALMBEACH AVENUE, HYTHE, CT21 6NH
Officer Name	Ross McCardle
Proposal	Erection of a detached bungalow

Recommendation

Report Number	RD-436647
Recommended Decision	Recommended to be Refused
Recommendation Date	14 February 2025

Report

SITE

The application site comprises part of the rear garden of 7 Palmbeach Avenue and land to the side which is enclosed separately.

The SE part of the site comprises lawn and raised planting beds, and is enclosed as part of the rear garden for the existing dwelling; the NW part of the site is finished with hardcore and appears to be in some form of storage use associated with the applicant's business, with a storage container positioned in the rear corner and materials/equipment in open storage. Land levels rise gently at the rear of the site so that the bottom of the garden is set above the garden level of 5a, adjacent. A low wire fence and intermittent planting run along the full depth of the boundary with no.9.

Access to the site is via the existing driveway to the front of no.7, which extends the full depth of the site; the rear section is closed off with gates to the side of the dwelling.

The wider area is generally residential in character, with semi-detached houses of similar scales and designs fronting Palmbeach Avenue.

The following constraints are relevant:

- Within defined settlement boundary.
- FZ3 and identified as being at extreme risk to 2115 under the adopted SFRA.
- CIL zone C (£135.10/sqm)

RELEVANT HISTORY

Reference	Description	Decision
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Y15/0236/SH	Outline application with all matters reserved for future consideration for the erection of a 3 bedroomed dwelling.	Refused
Y14/0783/SH	Outline application for the erection of a dwelling (Resubmission of Y13/0885/SH).	Refused
Y13/0885/SH	Outline application for the erection of a residential dwelling (with all matters reserved).	Refused

All of the above were refused (partly) on the grounds of the site being at extreme risk of flooding under the SFRA, alternative sites being available, and development in such areas being contrary to policy.

The decision notice for Y14/0793/SH also notes that development of the application site *“by virtue of its back land location and long access driveway between existing dwellings result in a visually incongruous and discordant feature that is uncharacteristic and out of keeping with the prevailing form and layout of Palmbeach Avenue.”*

PROPOSAL

This application seeks full planning permission for the erection of a detached bungalow and associated detached garage and cycle store.

The building would be positioned centrally within the site, with access and parking via the existing hardstanding area to the NW side and a garden surrounding the property. The building would have an approximately T-shaped floorplan and would provide three bedrooms and an open-plan lounge/kitchen/diner. Maximum ridge height would be approximately 4.8m. The proposed garage would be single-storey and positioned at the head of the driveway.

There would be 24m separation from the rear elevation of no.7, and between 4.9m (to rear elevation) and 8.87m (to conservatory) separation from the rear of no.5a.

CONSULTATION RESPONSES

Hythe Town Council: no objection.

KCC Highways: does not meet protocol response threshold.

KCC LLFA: does not meet protocol response threshold.

Southern Water: details of foul drainage to be secured by condition.

Environment Agency: no objection subject to conditions, but advise that sequential test still applies and must be considered by the Council.

FHDC EHO: no objection.

REPRESENTATIONS

One letter of objection received from neighbouring resident, raising the following summarised points:

- Previous refusals on flood risk grounds.
- Character and appearance.
- Flood risk.
- Backland development.
- Loss of outlook.
- Loss of view.

PUBLICITY

The application was publicised in accordance with the regulations.

RELEVANT POLICIES

The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy 2022.

Core Strategy 2022:

SS1 (spatial strategy)

SS3 (place-shaping and sustainable settlements)

CSD7 (Hythe strategy)

SS3 requires applications for development within flood risk areas to provide site-specific flood risk assessments and sets out that no residential development (other than replacement dwellings) will be allowed in areas identified as being at “extreme” risk.”

Places and Policies Local Plan 2020:

HB1 (quality places)

HB8 (alterations and extensions)

T2 (parking standards)

T3 (residential garages)

T5 (cycle parking)

HB1 requires new development to *“make a positive contribution to its location and surroundings, enhancing integration while also respecting existing buildings and land uses, particularly with regard to layout, scale, proportions, massing, form, density, materiality and mix of uses so as to ensure all proposals create places of character.”*

HB10 states that *“development proposals involving the complete or partial redevelopment of residential garden land within settlement boundaries will be permitted provided that:*

- 1. The proposal responds to the character and appearance of the area, as well as the layout and pattern of the existing environment, taking into account views from streets, footpaths and the wider residential and public environment;*
- 2. The plot to be developed is of an appropriate size and shape to accommodate the proposal, taking into account the scale, layout and spacing of nearby buildings, the amenity of adjoining residents and the requirements for living conditions set out in Policy HB3: Internal and External Space Standards;..*

NPPF and NPPG:

The following NPPF chapters are relevant:

2. Achieving sustainable development
5. Delivering a sufficient supply of homes
9. Promoting sustainable transport

11. Making effective use of land
12. Achieving well-designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment

The following paragraphs are particularly relevant:

7, 8: Achieving sustainable development

11: Presumption in favour of sustainable development. (Footnote 7 sets out that the presumption does not apply in identified flood risk areas.)

129: *Planning policies and decisions should support development that makes efficient use of land, taking into account... d) the desirability of maintaining an area's prevailing character and setting (including residential gardens)...*

170: *Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).*

172: *All plans should apply a sequential, risk-based approach to the location of development.*

174: *...the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. 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.*

175: *The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.*

APPRAISAL

Principle and flood risk

The application site lies within the defined settlement boundary of Hythe where new residential development is generally directed in preference to the release of fresh land in less sustainable locations. The principle of development is therefore broadly acceptable in itself.

It is noted that the EA do not object subject to a condition to secure FFL at least 600mm above predicted flood levels. Their advice does, however, refer to the need for the Council to carry out the sequential test, noting that *"in accordance with the National Planning Policy Framework (paragraphs 172 – 175), development in flood risk areas should not be permitted if there are reasonably available alternative sites, appropriate for the proposed development, in areas with a lower risk of flooding."*

It is also noted that the submitted FRA suggests that the application site is safe from flooding due to the presence of the coastal defences, and therefore concludes that a sequential assessment is not required as per the exceptions set out at para. 175 of the NPPF. However, the February 2024 Mead / Redrow High Court Judgement ([2024] EWHC 279 (Admin)) establishes that the NPPG has the same status as the NPPF and establishes that, even if a site-specific FRA concludes that mitigation measures or existing flood defences result in a low risk of flooding, the sequential test would still need to be satisfied. In that regard para. 024 Reference ID: 7-024-20220825 of the NPPG (*How can the Sequential Test be applied to the location of development?*) states (emphasis added in **bold**):

*Initially, **the presence of existing flood risk management infrastructure should be ignored**, as the long-term funding, maintenance and renewal of this infrastructure is uncertain. Climate change will also impact upon the level of protection infrastructure will offer throughout the lifetime of development. The Sequential Test should then consider the spatial variation of risk within medium*

*and then high flood risk areas to identify the lowest risk sites in these areas, **ignoring the presence of flood risk management infrastructure.***

The conclusions of the FRA (that the sequential test does not need to be applied in this instance) are therefore considered inaccurate, and it remains the case that the sequential test must be carried out even though the site benefits from coastal defences.

In that respect: the site lies within flood zone 3 and an area identified as being at extreme risk to 2115 under the SFRA. Paragraph 11 and footnote 7 of the NPPF make it clear that the presumption in favour of sustainable development does not automatically apply to sites in identified flood risk zones. The risk of developing in this area needs to be fully considered against the sequential test, exceptions test and adopted local and national policy.

The sequential test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding, and other potential sites need to be considered before progressing to develop those of lesser preference / greater risk (in flood risk terms). When considering other potential development sites the geographic range is limited to those within the same character area (which in this instance would be the Urban Character Area) and where other sites at no/lesser risk are not available within the character area local planning authorities can consider sites within identified flood risk areas, which cover substantial parts of the district due to land levels.

However, in regards consideration of other available sites, the NPPG is clear in its (emphasis added in **bold**):

'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.

These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.

The absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications.

Paragraph: 028 Reference ID: 7-028-20220825

Revision date: 25 08 2022

In this instance the Council's Housing Impact Assessment register indicates that there are other sites within the Urban character area either with planning permission or allocated under the Local Plan that would be capable of singly or cumulatively accommodating a development of this scale:

21/1585	The Saga Building, Middelburg Square, Folkestone CT20 1AZ	86 units
Flood Zone 1		
19/0016	Land Adjoining 86 To 88 Tontine Street, Folkestone	45 units
Flood Zone 1		
21/1651	72 Cheriton High Street, Folkestone	12 units
Flood Zone 1		
23/0727	46 Sandgate Road, Folkestone	8 units
Flood Zone 1		
21/0520	La Tavernetta, Leaside Court, Clifton Gardens, Folkestone	2 units
Flood Zone 1		

21/1507	Manor Court, 38 Manor Road, Folkestone	9 units
Flood Zone 1		
21/2479	7 Bournemouth Road, Folkestone	4 units
Flood Zone 1		
21/1591	140 - 142 Foord Road, Folkestone	3 units
Flood Zone 1 and 2 but not within SFRA		
20/1237	3-5 Shorncliffe Road, Folkestone	8 units
Flood Zone 1		
22/1065	Queens House, Guildhall Street, Folkestone	6 units
Flood Zone 1		
22/0012	73 Cheriton High Street, Folkestone	6 units
Flood Zone 1		
22/1175	93 Seabrook Road, Hythe	7 units
Flood Zone 1		
21/0810	Land Adjacent 41 Cromwell Park Place, Folkestone	1 unit
Flood Zone 1		
21/0520	La Tavernetta, Leaside Court, Clifton Gardens, Folkestone	1 unit
Flood Zone 1		
19/0762	Land Adjoining 12 Southernwood Rise, Folkestone	1 unit
Flood Zone 1		
20/0027	The Metropole Nursery, Metropole, The Leas, Folkestone	1 unit
Flood Zone 1		
22/0353	89 Sandgate Road, Folkestone CT20 2AF	4 units
Flood Zone 1		
21/1128	50-52 Brambley Crescent, Folkestone CT20 3PU	1 unit
Flood Zone 1		
21/1707	Bayle Court, The Parade, Folkestone CT20 1SN	2 units
Flood Zone 1		
20/0520	29 Hillcrest Road, Hythe CT21 5EU	2 units
Flood Zone 1		
21/2504	88 St Leonards Road, Hythe CT21 6HW	1 unit
Flood Zone 2 & partly within Flood Hazard 'Moderate' in SFRA		
22/1005	38 Sandgate Road, Folkestone CT20 1DW	2 units
Flood Zone 1		
22/0155	36A Seabrook Road, Hythe CT21 5LZ	1 unit
Flood Zone 2 & 3 but outside SFRA		
22/0319	Cliff Lodge, Cliff Road, Hythe CT21 5XW	1 unit
Flood Zone 1		
22/1065	Queens House, Guildhall Street, Folkestone CT20 1DX	6 units
Flood Zone 1		
22/0497	120 High Street, Hythe CT21 5LE	1 unit
Flood Zone 1		
22/0902	34 Guildhall Street, Folkestone	1 unit
Flood Zone 1		
21/1129	16 - 18 Guildhall Street, Folkestone CT20 1DZ	1 unit
Flood Zone 1		
22/1531	1 Plimsoll Avenue, Folkestone CT19 6LJ	1 unit
Flood Zone 1		
22/1448	24 - 28 High Street, Hythe CT21 5AT	1 unit
Flood Zone 1		
22/1659	Land to south of former 20 Encombe, Sandgate CT20 3DE	1 unit

Flood Zone 1	22/0302	124-132 Sandgate High Street, Sandgate CT20 3BZ	1 unit
Flood Zone 1	23/0727	46 Sandgate Road, Folkestone CT20 1DW	8 units
Flood Zone 1	23/0345	Flats A and B, 43 Earl's Avenue, Folkestone CT20 2HB	5 units (3 net)
Flood Zone 1	23/1082	1A St Michaels Street, Folkestone CT20 1LL	2 units
Flood Zone 1	22/2131	Pinnocchio, Cliff Road, Hythe CT21 5XJ	1 unit
Flood Zone 1	23/1352	20 High Street, Hythe CT21 5AT	1 unit
Flood Zone 1	23/1375	118 Cheriton Road, Folkestone CT19 5HQ	1 unit
Flood Zone 1	23/1256	47 & 49 Broadfield Road, Folkestone CT202JS	2 units (1 net)
Flood Zone 1	23/1753	Land Adjoining 5 Spring Terrace, Spring Terrace, Folkestone	2 units
Flood Zone 1	23/1892	Hillboro, Sunnyside Road, Sandgate, CT20 3DR	4 units
Flood Zone 1	23/2036	76-78 St Leonards Road, Hythe CT21 6HW	1 unit
Flood Zone 1	24/0001	Ground Floor Business Premises , 244 Seabrook Road, Hythe	3 units
Flood Zone 2 & 3 but outside SFRA	22/0855	88 Sandgate Road, Folkestone CT20 2AA	3 units
Flood Zone 1			

Planning officers therefore can't reasonably conclude that there are no other sites at lower risk of flooding to which a development of 1 dwelling could be directed or otherwise accommodated, and no short supply of developable land (as referred to at 4.11 of the submitted FRA). The Council can also currently demonstrate a five-year supply of deliverable housing land and is therefore not in a position where it needs to consider less than ideal sites to meet its targets.

The application therefore fails the sequential test and development is unacceptable in principle on flood risk grounds.

Furthermore, and as set out above: policy SS3 sets out that no residential development (other than replacement dwellings) will be allowed in areas identified as being at "extreme" risk." The application site is identified as being at extreme risk to 2115 under the adopted SFRA and development is therefore unacceptable in principle.

Layout, scale, design, and visual impact

The site is (in terms of square meterage) capable of accommodating the proposed dwelling and associated required amenity space and parking/turning. The proposed dwelling is of a relatively simple design and is considered acceptable in terms of visual amenity in regards the elevational treatments.

However, the scheme would introduce a form of backland development in an area otherwise characterised by two-storey houses fronting onto the highway and set within generously deep plots, which contributes to an open and spacious character and appearance to the area. Development in depth would be contrary to this established and prevailing pattern of development and would appear as a cramped form of overdevelopment within the context of the wider streetscene. This would be further accentuated by the need for a long access between existing properties, which would be alien within the streetscene.

The proposed layout is the same as that considered under “option 2” of planning application Y14/0783/SH, which was, as above, refused on the layout being contrary to the character and appearance of the area through the introduction of a unit within this backland area. There is no meaningful difference between that scheme and the current layout, and planning policy has not changed to such a degree that that previous decision could be dismissed as irrelevant or out-of-date.

It is therefore considered that the proposal, by virtue of its siting to the rear of the frontage dwellings, would be harmful to the open and spacious character and appearance of the area in a manner contrary to the requirements of adopted policies HB1 and HB10, and the advice of paragraph 129 of the NPPF.

It is noted that 5a, adjacent, occupies a similar position to the current proposal in terms of being positioned to the rear of frontage dwellings. However, that plot was previously occupied by block garages and hardstanding and was served by an existing access. That site was therefore previously developed, already contained built form, and generated a degree of activity and vehicle movements in contrast to the current application site, which comprises undeveloped garden space which contributes to the open character of the area.

Residential amenity

The proposed dwelling would have internal floor area in excess of the adopted national space standards and all rooms would be appropriately served with natural light. A garden of between 7.3m and 11.5m deep would be provided. The development would therefore provide a good standard of amenity for future occupants.

A garden of at least 10m deep would also be retained for the existing dwelling and a gap of approximately 24m would be retained between existing and proposed. There would therefore be no unacceptable amenity impacts upon the occupants of the existing dwelling (no.7).

However, there would be a gap of between 4.9m and 8.6m between the flank of the existing and the rear elevation of 5a, putting the existing and proposed in close proximity. This would give rise to an overbearing sense of enclosure for the occupants of no.5a, who would be facing on to the flank of the new dwelling at close proximity from the habitable room rear windows and conservatory of their property. This would unacceptably affect their residential amenity and constitutes a reason for refusal.

Had the development been otherwise acceptable officers could have discussed design amendments with the applicant (there appears to be sufficient space within the site to move the footprint away from that common boundary) but given the objection in principle it is not reasonable to put the applicant to such expense.

Highways and parking

Garages do not count towards parking provision, but there is sufficient space within the site to accommodate parking and turning in accordance with adopted standards.

The development would make use of the existing access and the addition of a single dwelling is unlikely to generate vehicle additional vehicle movements sufficient to give rise to highway safety or amenity concerns.

Therefore no objections are raised on these aspects.

BNG

The application form sets out that the development will be a self-build and is therefore exempt from BNG requirements.

HUMAN RIGHTS

I have also considered the human rights issues relevant to this application. In my view, the Appraisal section above and the Recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

PUBLIC SECTOR EQUALITY DUTY

In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

DUTY TO COOPERATE

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service and, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance the proposed development was considered to be fundamentally contrary to the development plan such that amendments would not resolve objections.

RECOMMENDATION

Taking the above into account it is recommend that planning permission should be refused.

REASONS

The site lies within Flood Zone 3 and is identified as being at extreme risk to 2115 under the Council's adopted Strategic Flood Risk Assessment. The application fails to demonstrate that residential development of this scale could not be accommodated on other, sequentially preferable and reasonably available sites at lower risk of flooding. In the absence of justification it is considered that the proposed development would therefore lead to unnecessary residential development of land at extreme risk of flooding, which would give rise to risk to human life in the event of a flood. The application therefore fails the Sequential Test as set out in paragraphs 167 and 168 of the National Planning Policy Framework and is contrary to the requirements of policy SS3 of the adopted Core Strategy.

The proposed development would, by virtue of its back land location and long access driveway between existing dwellings, result in a visually incongruous and discordant feature that is uncharacteristic and out of keeping with the prevailing form and layout of Palmbeach Avenue. As such the proposal would be contrary to policies HB1 and HB10 of the adopted Places and Policies Local Plan, and policies SS1 and SS3 of the adopted Core Strategy Review (March 2022).

The proposed dwelling, by virtue of its scale, design, and proximity to the common boundary, would give rise to an overbearing sense of enclosure for the occupants of 5a Palmbeach Avenue in a manner harmful to their residential amenity and contrary to policy HB1 of the Places and Policies Local Plan.

Recommended Refusal Reasons (3)

1

The site lies within Flood Zone 3 and is identified as being at extreme risk to 2115 under the Council's adopted Strategic Flood Risk Assessment. The application fails to demonstrate that residential development of this scale could not be accommodated on other, sequentially preferable and reasonably available sites at lower risk of flooding. In the absence of justification it is considered that the proposed development would therefore lead to unnecessary residential development of land at extreme risk of flooding, which would give rise to risk to human life in the event of a flood. The application therefore fails the Sequential Test as set out in paragraphs 172 to 175 (inclusive) of the National Planning Policy Framework and is contrary to the requirements of policy SS3 of the adopted Core Strategy.

2

The proposed development would, by virtue of its back land location and long access driveway between existing dwellings, result in a visually incongruous and discordant feature that is uncharacteristic and out of keeping with the prevailing

form and layout of Palmbeach Avenue. As such the proposal would be contrary to policies HB1 and HB10 of the adopted Places and Policies Local Plan, and policies SS1 and SS3 of the adopted Core Strategy Review (March 2022).

3

The proposed dwelling, by virtue of its scale, design, and proximity to the common boundary, would give rise to an overbearing sense of enclosure for the occupants of 5a Palmbeach Avenue in a manner harmful to their residential amenity. The proposal would therefore be contrary to policies HB1 and HB10 of the adopted Places and Policies Local Plan 2020.

Suggested Informatives (1)

4

This application was determined on the basis of the following plans, drawings, and specifications:

EMA-2024-154-01 Rev 01 - Proposed layout plans and elevations, existing block and topographical survey, and site location plan.

EMA-2024-154-02 Rev 01 - Proposed layout plan, cycle shed, and aerial photos.