
Appeal Decision

Site visit made on 12 September 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 24 October 2016

Appeal Ref: APP/D2510/W/16/3152662

**Longlands Cottage Barn, Stain Lane, Withern, Alford, Lincolnshire
LN13 0PF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under a development order.
 - The appeal is made by Mr Timothy Denby against the decision of East Lindsey District Council.
 - The application Ref N/212/00208/16, dated 21 January 2016, was granted approval by notice dated 8 April 2016 subject to conditions.
 - The development granted approval is conversion of brick and tile former agricultural store building into two dwellings and upgrading existing parking area to form formal car parking spaces.
 - The condition in dispute is No 3 which states that: *"The development permitted by this prior approval shall be carried out in accordance with the approved Flood Risk Assessment and shall also incorporate:*
 - *Finished floor levels of the proposed dwellings will be set no lower than 200mm above the existing ground level;*
 - *Flood resilient and resistant construction measures shall be incorporated into the dwellings;*
 - *Each dwelling shall be provided with a boarded out loft space and escape roof window;*
 - *Demountable defences will be installed to all ground floor door openings.**The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing by the Local Planning Authority."*
 - The reason given for the condition is: *"To reduce the risk of flooding to the proposed development and future occupants. This condition is imposed in accordance with paragraphs 102-103 of the National Planning Policy Framework."*
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Decision

1. The appeal is allowed and the grant of approval Ref N/212/00208/16 for the conversion of brick and tile former agricultural store building into two dwellings and upgrading existing parking area to form formal car parking spaces at Longlands Cottage Barn, Stain Lane, Withern, Alford, Lincolnshire LN13 0PF granted on 8 April 2016 by East Lindsey District Council, is varied by deleting condition 3 and substituting for it the following condition:

The development permitted by this prior approval shall be carried out in accordance with the approved Flood Risk Assessment. The finished floor levels of the proposed dwellings will be set no lower than 200mm above the existing ground level. These mitigation measures shall be fully implemented prior to the first occupation of each dwelling to which they relate.

Main Issue

2. The main issue raised by this appeal is whether the condition is necessary, enforceable, precise and reasonable in order to protect the development and the future occupiers of the dwellings from the risk of flooding.

Reasons

3. As well as requiring the scheme to be carried out in accordance with the Flood Risk Assessment (FRA) the condition comprised four specific flood risk mitigation requirements. The National Planning Policy Framework (the Framework) sets out tests with which conditions must comply, including that they are necessary, enforceable, precise and reasonable in all other respects.
4. The Environment Agency, who were consulted by the Council, recommended certain mitigation measures which the Council incorporated into the condition's requirements. However, following the appeal being made, the Environment Agency subsequently advised that their original advice had been incorrect in requiring more flood mitigation than should reasonably be required and suggested that the third and fourth bullet point requirements of the condition could be removed. The Council concur with this view and these are the condition's requirements with which the appellant particularly disagrees. Therefore there is no evidence to support the requirement for the demountable defences or the boarded out loft spaces with escape windows within the condition.
5. Turning to the other requirements of the condition, the appeal site is located within Flood Zone 3, an area with a high probability of flooding where a dwelling use is considered to be one which is 'More Vulnerable' to flooding¹. However the Environment Agency mapping supplied by the appellant shows that the appeal site is at the edge of an area at risk of flooding if there were no flood defences and it falls just outside the nearest of the areas indicated in the various 'flood hazard to people' maps which consider the effects of scenarios should flood defences be breached.
6. This Council Officer's Report considered that, notwithstanding the Environment Agency's original objection, the combination of the site's location at the very edge of Flood Zone 3, the site falling outside the hazard rating areas and the mitigation required by the disputed condition, the proposal would be acceptable in respect of flooding risks on the site. Although there is a low risk of flooding and a less than low hazard to people if flood defences were to be breached, the site is nevertheless in Flood Zone 3 and there would remain a degree of risk from flooding, albeit very low.
7. I consider that the condition in its current form is neither necessary nor reasonable as it would require mitigation in excess of what the evidence indicates would be reasonably necessary in light of the level of flood risk which exists for the site. However, given its Flood Zone 3 location and as a low risk remains, it would be necessary to take the prudent approach of requiring a finished floor level (FFL) at a height which could ensure that the dwellings would be resistant to flooding. This would accord with the approach of the Framework² and the Planning Practice Guidance's advice³ that new

¹ Planning Practice Guidance, paragraph: 066, reference ID: 7-066-20140306.

² Paragraph 103.

³ Paragraph: 054, reference ID: 7-054-20150415.

- development can be made safe by design and flood resilient and resistant construction including raising floor levels.
8. Other than a reference to high level electrical services no specific details have been provided of what resilient or resistant construction measures the Council or Environment Agency would expect to be incorporated into the building and consequently what role such measures would be expected to perform in protecting future occupiers from the risk of flooding. That particular limb of the condition does not refer to any particular measures, specification or schedule and as such is neither precise in its requirements nor would it be enforceable as a result.
 9. However, given the circumstances and the limited evidence provided it is not certain that additional mitigation measures in the building's conversion specification would be necessary. Therefore, other than requiring that the development accords with the, albeit very limited, provisions in the appellant's FRA and a minimum FFL no additional mitigation would be necessary.
 10. I have been presented with no reason, including any particular timing or phasing arrangements embodied within the scheme, why the compliance period for these more limited requirements should relate to anything other than the occupation of the dwellings nor that alternatives might need to be agreed with the Council. I have therefore varied the grant of approval accordingly by removing the condition in contention and replacing it with one with more proportionate requirements.

Conclusion

11. For the above reasons I conclude that the condition does not pass the Framework tests. However it is necessary to attach a condition to ensure compliance with the FRA and provide a minimum FFL in order to protect the development and future occupiers from the risk of flooding. As such the appeal succeeds and the grant of prior approval is consequently varied as set out in the formal decision.

Geoff Underwood

INSPECTOR