
Appeal Decision

Site visit made on 6 January 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 19 January 2017

Appeal Ref: APP/T0355/W/16/3156044

Summerleaze Barn, Blackamoor Lane, Maidenhead SL6 8RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, paragraph O.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Forever Fuels against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/00831, dated 15 March 2016, was refused by notice dated 4 May 2016.
 - The development proposed is change of use of offices to dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the fourth bullet point of the above header is taken from the appellant's Statement of Case as instructed on the original planning application form. The submitted Flood Risk Assessment clarifies it further to relate to change of use from offices to provide one residential dwelling. I have determined the appeal on that basis.

Main Issue

3. The main issue is whether or not the proposed development would make adequate provision for prospective residents in respect of the risks from flooding.

Reasons

4. Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 sets out that development is classed as permitted development if it consists of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule. This is subject to a number of situations where such development is not permitted, listed under paragraph O.1, and to the condition in Q.2 setting out the matters for which an application to the local planning authority for determination as to whether the prior approval of the authority will be required.
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5. In this case, the evidence submitted, including the Council's representations, highlights that the proposal would satisfy the criteria under O.1 and I have no reason to consider otherwise. Furthermore, in respect of O.2, no issues relating to transport and highways impacts of the development or contamination risks on the site have been raised by the Council and again I have no reason to consider otherwise. It therefore remains to consider the matter of flooding risks on the site taking account of the proposed change from the less vulnerable existing use to more vulnerable residential accommodation.
6. The site is located within Flood Zones 2 and 3 where there is a medium to high risk of fluvial flooding, notwithstanding the provision of flood defences. The appellant has submitted a Flood Risk Assessment that concludes that risks to future occupants would be avoided. It is claimed that this would be through the proposed provision of sleeping accommodation on the first floor and that, although a dry safe escape route could not be provided, a detailed flood warning and evacuation strategy would be implemented, also including subscription to the Environment Agency Flood Warning Service.
7. The appellant also highlights that the building itself would be unlikely to flood and that internal flood mitigation measures would be provided such as raised electricity sockets, non-return valves on sewers, closed cell design on plumbing installations and solid floors where possible with a waterproof membrane on the ground floor. However, I have received insufficient evidence to indicate that such measures would enable prospective occupiers to remain in the dwelling for an extended period of time until any surrounding flood water was to recede. This is especially if, despite the above measures, the local sewerage system and supply of fresh water were to fail for example. Food supplies could also not be guaranteed to be sufficient to last for the period of flooding. Such a situation would have the potential to pose an unacceptable risk to the health and safety of those occupants and to put additional pressure on the emergency services in enabling evacuation.
8. Paragraph 103 of the National Planning Policy Framework (the Framework) states, amongst other things, that when determining planning applications, local planning authorities should amongst other things only consider development appropriate in areas at risk of flooding where it can be demonstrated that it is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning.
9. In this case there would be no dry and safe escape route once flooding had occurred. There would be reliance on evacuation prior to flooding, having received early flood warning. In that respect there is no guarantee that occupants would act upon the warnings despite the indication from the appellant's Flood Risk Assessment that the onset of any fluvial flooding would be slow, especially as the proposal is for the building itself to be a safe refuge. The degree of vulnerability of future residents could also be a factor in any decision not to evacuate, particularly where there are children, infirm or elderly people living there.
10. It is claimed that as the site is within an established residential area, it would be expected that the majority of buildings within that area would be occupied as dwellings and that a robust flood relief strategy is already in place. I have not received any substantive evidence relating to such a strategy.

Furthermore, I have received no substantive evidence of the planning and flood risk circumstances at the time any of those more established dwellings were built. In any case, even if there is a strategy in place the proposed development would be likely to increase the number of people at risk from flooding in the area.

11. I have had regard to the new residential dwelling on land to the rear of 2-4 Summerleaze Road, which is immediately opposite the appeal site, and which was granted planning permission, Ref 14/01695, in August 2014. I note that there were other material considerations relating to providing a home suitable for the specific needs of that applicant where it had not been possible to find alternative accommodation elsewhere. No conditions were imposed to restrict first occupancy or for specific design features to accommodate that applicant's needs. However, it remains the case that the Council came to a balanced decision, acknowledging conflict with local and national planning policy in respect of a lack of provision for safe access and escape routes in the event of flooding, taking account of the personal circumstances. There are no such circumstances in respect of this current appeal case. As such I do not consider that other development to have set a precedent for this appeal scheme which I have in any case determined on its own merits.
12. I have had regard to another appeal scheme referred to in the submissions, Ref APP/T0355/A/14/2222324 for conversions of ground and first floor offices at 4 Pocketts Lane in Cookham, that was dismissed. I do not have the full details relating to that scheme. However, my colleague refers to flooding having occurred more recently in that case such that the circumstances are different in that respect to the current appeal. Nevertheless, that does not deflect from my concerns in respect of the risks in this case which I have determined on its own merits.
13. Furthermore, in that Cookham decision, and notwithstanding the different circumstances, my colleague highlighted that it could not be assumed that flood defences would be maintained or relied upon for the lifetime of the development, or that ad hoc measures would be put in place. I have received no substantive evidence to convince me otherwise in respect of any defences relating to the area concerning the current appeal.
14. For the above reasons, the proposed development would fail to make adequate provision for prospective residents in respect of the risks from flooding. As such, it would be contrary to paragraph 103 of the Framework.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew Dawe

INSPECTOR