
Appeal Decision

Site visit made on 3 July 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 28 July 2017

Appeal Ref: APP/T0355/W/17/3168858

The Lodge Boathouse, Court Road, Maidenhead, Berkshire SL6 8LQ.

- 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 Mr Anthony Tanner against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/01769, dated 26 May 2016, was refused by notice dated 22 September 2016.
 - The development proposed is the change of use of the boathouse to a separate dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the boathouse to a separate dwelling at The Lodge Boathouse, Court Road, Maidenhead, Berkshire SL6 8LQ in accordance with the terms of the application, Ref 16/01769, dated 26 May 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The use shall not commence until the access has been surfaced with a bonded material across its full width for a distance of at least 5 metres measured from the back of the highway boundary.

Main Issue

2. The main issue is whether the change of use would increase the number of people or properties at risk from flooding.

Policy

3. The Council's reason for refusal makes reference to the Exception Test. However, paragraph 104 of the "*National Planning Policy Framework*" (the Framework) unequivocally states that '*applications for minor development and changes of use should not be subject to the Sequential or Exception Tests but should still meet the requirements for site-specific flood risk assessments*'. With this in mind, I consider that an Exception Test is not necessary in this instance.
4. Paragraph 102 of the Framework states that a site-specific flood risk assessment (FRA) must demonstrate 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, reducing flood risk overall. At the local

level, Policy F1 of the "*The Royal Borough of Windsor and Maidenhead Local Plan 2003*" (the LP) states that within areas liable to flood, new residential development will not be permitted unless it can be demonstrated that the proposal would not increase the number of people or properties at risk from flooding. As part of any assessment of the risk posed to property and people, I consider it is entirely reasonable to consider whether safe access to/from the site during a flooding event could be provided.

Background

5. The appeal property comprises a 2.5 storey outbuilding located a short distance west of the River Thames. It is within Flood Zone 3a (high probability) as identified on the Environment Agency flood zone map. It was granted planning permission in 2010 on the basis that it was used as ancillary accommodation in connection with The Lodge and not occupied as a separate residential unit. However, no restrictions were placed on the period of occupation or the number of persons that can occupy the building.
6. The site has been physically separated from The Lodge and has its own vehicular access. The boathouse comprises an open void space at ground floor level for boat storage although this was used for car parking at the time of my visit. The amount of living accommodation is considerable and comprises, inter alia, 4 bedrooms, two bathrooms and a large open-plan kitchen/living area all arranged over two upper floors. It is for all intents and purposes a spacious family dwelling rather than a boathouse particularly bearing in mind there is no way to launch boats onto the river from the site. It is patently capable of being occupied independently of The Lodge and the appellant has confirmed that it has been his primary residence for over 4 years.
7. Therefore and irrespective of the fact that The Lodge has remained in the same ownership during that time, there is strong evidence to suggest a change of use has already taken place. Whilst, the lawful use of the building is not a matter that is before me for consideration, it remains open to the appellant to apply for a certificate of lawfulness in this regard.

Reasons

8. In the circumstances set out above and notwithstanding paragraph 2.5 of the submitted FRA, the question arises as to whether the development would involve a more vulnerable use in the terms set out in the "*Planning Practice Guidance*"¹ (the PPG). In coming to a decision on that matter the PPG poses a number of questions to be considered including: '*will the development proposals increase the overall number of occupants and/or people using the building or land, compared with the current use?*' and '*will the proposals change the nature or times of occupation or use, such that it may affect the degree of flood risk to these people?*'.
9. In view of the existing and historical use of the building the answer to both those questions must surely be 'no'. I therefore have some difficulty in understanding the Council's view that the development would involve a more vulnerable use. The Council's position is in effect that the occupation of the building by the appellant is acceptable provided The Lodge remains

¹ Section 7 "Occupants and users of the development". Paragraph: 068 Reference ID: 7-068-20140306

unoccupied. Whilst I understand to some extent how the Council came to that view, it is nonetheless problematic.

10. Under the existing approval, the appellant's family members could move into The Lodge and he could remain in the boathouse or vice versa. Alternatively the appellant could sell The Lodge and boathouse to a large extended family who presumably could then occupy both buildings. In both scenarios the effect would be two occupied dwellings in the flood zone which would be the position if I were to allow the appeal. It is unclear how tying the residential use to The Lodge reduces the risk posed by its occupants to flooding. Put another way, occupants of the boathouse would be at the same risk of flooding irrespective of whether their occupation is ancillary or separate to The Lodge.
11. Given the retention of the living accommodation above the 1% Annual Exceedance Probability (AEP) (1 in 100) plus climate change flood level and the ground floor void space, there would be no reduction in flood plain storage. Moreover, as there would be no material increase in the footprint of the building or areas of hard surfacing there would be no increase in surface water flooding. Based on the foregoing, the Council raise no concerns regarding the development increasing flood risk elsewhere and based on the evidence before me I find no reason to conclude otherwise.
12. Although the FRA submitted with the application accepts that there is no safe escape route in the event of a 1% AEP event, it concludes that the development would be safe in the event of a flooding event provided an Emergency Flood Plan (EFP) is adopted. Appendix B of the FRA includes an EFP which would monitor Environment Agency flood warnings for the Maidenhead area and set clear triggers for action when flooding is anticipated. The FRA also indicates that there would be a slow onset of flood waters due to long catchment response times and therefore there would be ample forewarning of a flooding event.
13. It is pertinent that the Environment Agency has not objected to the change of use and the Council recently accepted a similar EFP in relation to a development for 5 houses at the former Velmead Works site also within Flood Zone 3a. I accept that the circumstances of that development are different to the appeal scheme. However, having read the FRA submitted with that application, it is apparent that there are a number of striking similarities not least in relation to the issue of a safe escape route.
14. I have noted the Council's view that despite flood warnings, residents often do not leave their properties and later require the assistance of the emergency services. Whilst that may be true, there is no substantial evidence before me in this regard and therefore I do not know what proportion of local residents required assistance or for that matter whether those residents were even aware of the warnings that had been issued. The Environment Agency operates a comprehensive flood warning service in the local area. Therefore, if a severe flood was likely to occur, it is reasonable to conclude that the occupants would have sufficient advanced warning particularly bearing in mind lag times. Also given the high profile nature of the last flooding event, I can well imagine that future flood warnings would be heeded in a more timely fashion than perhaps was the case in the past.
15. Even if I am wrong about that, for the reasons I have explained in paragraphs 8-10 above, I am not persuaded that the development would materially

increase the number of people or properties at risk from flooding. Thus with regards to the very specific circumstances of this case, I conclude that there would be no conflict with Policy F1 of the LP or advice in the Framework with regards to flood risk.

Other Matters

16. The Council has referred me to two other appeal decisions in the district involving the consideration of similar issues. I have carefully considered these and their relevance to the current appeal scheme. However, in both cases the decisions involved operational development in the flood plain and in the case of the more recent appeal decision it appears that an EFP was not included as part of the FRA. I have therefore determined the appeal before me purely on its own merits and in light of the particular circumstances that apply in this case.

Conditions

17. The Council has suggested a number of planning conditions which I have considered against the advice in the PPG. In some instances I have amended the conditions provided by the Council in the interests of brevity and to ensure compliance with the PPG.
18. As well as the standard time limit condition, I have imposed a condition relating to access improvements. This is necessary to prevent gravel being deposited in the highway. The access, turning and bin storage areas are already in place and nothing I have seen or read leads me to conclude that these are deficient. The suggested conditions covering these matters are therefore unnecessary.

Conclusion

19. Based on the foregoing and having regard to all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector