
Appeal Decision

Site visit made on 11 June 2019

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/V2635/W/18/3218937

41 Wildfields Road, Clenchwarton, PE34 4DE

- 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 Andrew Willie against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 18/01216/CU, dated 2 July 2018, was refused by notice dated 15 October 2018.
 - The development proposed is change of use of Annex for use as a dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Andrew Willie against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this case is the location of the proposed development in Flood Zone 3 in relation to the safety of future inhabitants.

Reasons

4. Since the appeal building is already in use for human habitation, albeit as an annex to the main house, I do not consider that it is necessary to analyse the various development plan policies that are mentioned. The main issue relates to flood risk, as do the refusal reasons, and therefore the main policy guidance can be found in the National Planning Policy Framework (the Framework) and in Planning Practice Guidance (PPG); principally Framework paragraphs 163 and 164, and PPG paragraphs 29-32, 41, 46 and 48.
5. The appeal building has ground floor accommodation only which the documentation describes as having 1 bedroom. However, I note that the submitted plans show the existing building as having 2 bedrooms and there is nothing to suggest that this is to change. In addition the accommodation provides a kitchen, living room utility and bathroom. In my view, whether the building has 1 or 2 bedrooms has no material effect on the decision that must be taken in this case, save that there could be a greater number of occupants. The building is currently an annex to the 2 storey dwelling at 41 Wildfields

Road, so that its occupants can, and have a right, to take refuge in the upper floor of the main dwelling should circumstances require it.

6. The appeal site is shown to be within the defended Flood Zone 3 on the Environment Agency's (EA) Flood Maps. There was no Flood Risk Assessment (FRA) submitted with the application to the Council, and when consulted the EA raised no objection, but commented that the application should not be determined until an FRA was produced. This was to ensure that the change of use meets the objectives of the Framework's policy on flood risk as set out in the PPG. The FRA should clearly show how flood risk to the site would be mitigated, ensuring the development and its occupants would be safe. The EA also stated that consideration will need to be given to the proposed ground floor sleeping and if a safe refuge will be required or if the occupants of the dwelling will be provided with a means of access and egress.
7. A FRA was then submitted, which showed (among other things) that the site is located within the Kings Lynn Internal Drainage Board District, which is protected by the Great Ouse Tidal and Sea Defences against a minimum flood return period of up to 1 in 200 years. More recent Tidal Hazard Mapping produced by the Environment Agency identifies the site to be liable to a depth of flooding of between 0.50-1.00m as a result of a breach occurring to the River Great Ouse tidal defence in 2115. The FRA suggested that flood mitigation measures could be incorporated with demountable flood defences erected to all ground floor openings up to 600mm above finished floor level and safe refuge created in the roof space of the dwelling. Flood resistant construction can also be implemented up to 1.00m above finished floor level.
8. Bearing in mind that the number of people at possible risk as a result of the appeal proposal is not greater than the potential of the present situation, taking account of the FRA and the policy and guidance that I have mentioned, it is the question of the safety of the inhabitants of the appeal building that is the deciding factor. At present, with the building acting as an annex to the main house, the occupants can find safe refuge in a time of flood in the upper floor accommodation of No.41. It would not be possible to rely on this safe refuge if the annex became separated from the house. Whilst it has been put forward that the same arrangements with the owners of No. 41 might continue, secured by a legal agreement, this does not appear to me to be a satisfactory long-term solution, even if it may be practical in the immediate future.
9. In my view, it is only by making the annex self-contained in terms of dealing with flood risk that the appeal proposal could become acceptable for the grant of planning permission. The FRA sets out various improvements to the building, as referred to in paragraph 7 above. These could be secured by a condition of permission.
10. These measures, of themselves, would not address the critical need for a safe refuge in time of flood. The FRA further suggests that safe refuge could be made available in the roof area of the appeal building. However, whilst the elevational drawings suggest that the roof is large enough to accommodate such a refuge, there have been no details put forward to demonstrate how this could be achieved. Clearly there would have to be a staircase or other more temporary means to safely and conveniently access the space, including for anybody having either a temporarily or permanent disability making ladder climbing impossible. There would also need to be means of lighting and

providing some comfort for the duration of the need for the refuge, and none of these details are available. In addition, I have been given no indication of the construction of the roof, and the extent to which the supporting timbers make this possible, or the alterations to them that might be needed.

11. Since I have not been given specific details, such as the amount of room that could be made available in the roof space, the practicality of providing it, the means of access, and since the ground floor rooms where people would sleep would pose a significant risk to the safety of occupiers in the event of flood, I am unable to conclude that the appeal proposal is acceptable when judged against national policy and guidance.

Other matters

12. The planning officer's report makes reference to the appeal site being well outside the development boundary for Clenchwarton, and that paragraph 79 of the Framework is of relevance. However, paragraph 79 refers to development that is 'isolated', the meaning of which has been determined by the High Court¹ as having its ordinary meaning of 'far away from other places, buildings or people; remote'. The appeal site is situated within a cluster of other dwellings and buildings and so cannot be regarded as isolated and paragraph 79 is not applicable to the appeal proposal.

Conclusion

13. I have taken account of all other matters raised, but none affect the conclusions that I have reached. In the absence of clear evidence that practical arrangements for safe refuge in a time of flood could be made in the appeal building, as a dwelling in its own right, I conclude that the appeal must be dismissed.

Terrence Kemmann-Lane

INSPECTOR

¹ Braintree District Council vs. the Secretary of State for Communities and Local Government & Others ([2018] EWCA Civ 610)