



Appeal Decision

Site visit made on 25 April 2019

by G Jenkinson BSc(Hons) MSc MRTPI

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

Decision date: 12th August 2019

Appeal Ref: APP/V2825/W/18/3217452

56 St Leonards Road, Northampton NN4 8DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Footman against the decision of Northampton Borough Council.
 - The application Ref N/2018/0500, dated 6 April 2018, was refused by notice dated 31 May 2018.
 - The application sought planning permission for change of use from dwelling house (Use Class C3) to House in Multiple Occupation (Use Class C4) for 3 occupants without complying with a condition attached to planning permission Ref N/2017/0998, dated 27 September 2017.
 - The condition in dispute is No.3 which states that: the development hereby permitted shall be occupied by a maximum of 3 residents at any one time.
 - The reason given for the condition is: In the interests of the amenity of the proposed occupiers and the surrounding area in accordance with Policies H1 and H5 of the West Northamptonshire Joint Core Strategy.
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Decision

1. I dismiss the appeal.

Main Issue

2. This is whether condition 3 meets the tests for conditions set out in the National Planning Policy Framework¹ having specific regard to flood risk.

Reasons

3. Paragraph 55 of the Framework sets out that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
4. No 56 St Leonards Road is a two-storey mid terraced property that lies within a well-established residential area of similar terraced housing, referred to as Far Cotton. There is on-street car parking along both sides of the street and a local centre is located approximately 100m from the appeal property. A bus stop is also located within the immediate vicinity of the site.
5. The proposal seeks planning permission for a HMO allowing occupation by up to 4 people. The property is already in use as a 3-bedroom HMO, however, the

¹ Referred to hereafter as the framework

appeal proposal seeks permission for an additional bedroom at ground floor level, at the front of the property.

6. The site falls within Flood Zone 3. The potential source of flood comes from the River Nene, which is located in close proximity of the dwelling. The factors that could lead to flooding are identified as heavy rainfall, sluice gates being left open by mistake and river flooding.
7. The Environment Agency (EA) have raised objection to the proposals. This objection is based on the fact that the projected level of flooding would exceed levels that can be sufficiently mitigated against. As such the creation of sleeping accommodation within the envelope of the ground floor of the dwelling would expose residents to a significant flood risk. These comments carry significant weight owing to the differences in operation of an HMO and a family dwelling.
8. I note the appellants arguments that as the house is let under a joint tenancy agreement it is highly likely that the tenants will be well acquainted and are therefore likely to assist a ground floor tenant in need of emergency refuge. I accept that even if they were not well acquainted natural instinct would be to assist someone in need. I also accept that a ground floor tenant could reach the first floor landing area very quickly, assuming they are able bodied and that the landlord has provided helpful and important safety information in the event of flood including details of the numerous alerts that can be put in place to notify tenants of flood arising. I also acknowledge the sirens that have been put in place by the local action group.
9. However, given the nature of HMO operations, it could be likely that a ground floor tenant could be in the dwelling alone, whilst others have gone home for the holiday periods, thus upstairs rooms could be locked and they would be unable to seek solace in first floor habitable rooms and would remain trapped on the landing with no escape route. Furthermore, a student alone in a house at night may well not hear a siren or digital alert, in this instance I do not therefore consider thirty to forty five minutes sufficient time to vacate the property.
10. I accept that the property is located within the 0.1% hazard mapping area translating to a return event of one in 1000 years and therefore the risk of flooding is slim. I note that the appellant's claims that with detailed modelling the figures could be even less. However, such modelling has not been undertaken and therefore I do not give this argument significant weight.
11. I note that the appellant disputes the EAs comments that flood depth of between 1 and 2 metres could be expected; however, even if I were to accept the lower figures of between 0.5 and 1.6 metres, in the event of a flood, this could still result in a loss of life. This is a matter which must attract significant weight.
12. There might well have been substantial works completed, designed to improve the River Nene flood defences, as highlighted by the appellant. However, the Environment Agency are sure to be aware of those works and notwithstanding them, they objected to the proposal on the basis outlined. The presence of

such defences does not mean that a site is 'safe', only that while the defence is maintained the risk is reduced. A breach of flood defences is I accept less likely, but a risk of breaching remains. That objection is a matter to which I attach significant weight.

13. My powers under Section 73 do allow me to attach further conditions to any new permission. However, I am of the view that whilst floodgates and alarms could be installed in the property, in the event that they could malfunction there could be a serious risk to the loss of life and therefore I do not regard that conditions securing such measures would overcome my concerns. Furthermore, whilst each planning application is addressed on its own merits, the grant of permission for a ground floor bedroom at this property could set a dangerous precedent for future decision-making.
14. On that overall basis, I am satisfied that condition 3 attached to the original grant of planning permission meets the tests of Paragraph 55 of the Framework, having specific regard to flood risk.
15. In conclusion I find that the future residents of the House in Multiple Occupation would not be adequately protected from flood risk. As a consequence, it is considered that an inappropriate development would be created, that would be contrary to the requirements of the Policies BN7 and S10 of the West Northamptonshire Joint Core Strategy which amongst other things seek to ensure that development is protected from flood risk.

Conclusions

16. For the above reasons and having considered all the matters raised in evidence and from what I saw during my site visit, I conclude that the appeal should be dismissed.

Gemma Jenkinson

INSPECTOR