
Appeal Decision

Site visit made on 16 July 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th September 2019

Appeal Ref: APP/U2235/W/19/3227850

Monk Lakes Fisheries, Staplehurst Road, Marden TN12 9BS

- 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 Taytime Ltd against the decision of Maidstone Borough Council.
 - The application Ref 18/504728/FULL, dated 7 September 2018, was refused by notice dated 5 April 2019.
 - The development proposed is described as 'Retention of a log cabin for use by the Fishing Manager as Management Quarters (retrospective)'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal relates to an existing timber cabin located in a wooded area. It forms part of a wider complex of lakes accommodating a rural enterprise used as a recreational fishery. The cabin has been in place for some time. An appeal¹ was dismissed on the site for the use of the cabin as a dwelling by the fisheries manager, in which the Inspector referred to an earlier appeal² which quashed an enforcement notice, with the result that the building, as operational development, was considered to be immune from enforcement action.
3. In view of this, and since retention is not an act of development, I have treated the proposal as seeking permission for the use of the building by the Fishing Manager as Management Quarters.

Main Issues

4. The main issues are as follows:
 - Whether the proposal would result in the use of the building as an independent dwelling and if so, whether there is an essential need for a dwelling to accommodate a Fishing Manager on the site;
 - The effect of the proposal on Ancient Woodland;
 - Whether the proposal would be free from the risk of flooding or lead to an increase in the risk of flooding elsewhere.

¹ APP/U2235/W/18/3197134

² APP/U2235/C/15/3132935

Reasons

Use of the building

5. I saw on my site visit that the building is furnished. It contains three rooms, which are set out as a main living room providing a kitchen and sitting area, a double bedroom, and a bathroom. There is an area for parking to the front of the cabin, and the building sits within a small clearing in the woodland. The cabin is capable of functioning as an independent dwelling.
6. The application seeks permission for the Fishing Manager to use the building for the day to day management activities of running the fishery. This would involve using the building for welfare facilities, washing and for 'essential ancillary sleeping' during overnight shifts. While I accept that the Manager has a main dwelling elsewhere, it is a matter of fact and degree, based on the specific circumstances of the case, as to whether the use of the building would be ancillary to the use of the site as a fishery, or whether it would be an independent dwelling.
7. The Fishing Manager is stated to work a predominant shift pattern to cover Monday, Tuesday, Thursday and Sunday from 7am until 7pm. However, it is also stated that on some days each week night fishing would take place, and there is a security requirement for management to be available in case of emergency. The number of days per week has not been specified. At these times the Fishing Manager would need to be on call and would sleep in the building. At times when the Fishing Manager is not working but a presence is required, this would be provided by a bailiff, who would also make use of the building. The building would therefore be used for sleeping accommodation for an unspecified number of nights during the week. It is stated that the popularity of fishing is seasonal, and that fishing demand increases in the summer. However, the likely extent of night fishing has not been defined in the evidence, and I have seen nothing to indicate that night fishing would only take place on an occasional or infrequent basis.
8. The extent of the use of the building as overnight sleeping accommodation is poorly defined, in terms of the number of days per week and the proportion of the year. The evidence indicates that it would be more than an occasional or infrequent use, as it would take place for several nights each week. Such a use would be akin to the use of the building as an independent dwelling, occupied for a number of days per week for an undefined proportion of the year. Due to the likely intensity of the use, it would not be ancillary to the use of the site as a fishery. While the use of the dwelling would be associated with the wider use of the site as a fishery, it would be an independent use in its own right. I therefore conclude that the proposal would result in the use of the building as an independent dwelling.
9. While a condition could be imposed limiting its occupation to the Fishery Manager, it would be unreasonable to impose a condition requiring the use of the building to be ancillary to the use of the land as a fishery. Furthermore, it would be difficult to enforce, given that the building is readily capable of being used as an independent dwelling, and therefore I am not persuaded that a condition could be imposed to make the proposal acceptable.
10. Policy DM34 of the Maidstone Borough Local Plan 2017 (MBLP) indicates that proposals for new permanent agricultural or forestry dwellings in support of

existing activities on well-established units will be permitted subject to specified criteria. The National Planning Policy Framework (the Framework) in paragraph 79 requires that decisions should avoid isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near the place of work in the countryside, amongst other matters.

11. In dismissing the previous appeal in 2018, the Inspector found that there was a lack of evidence regarding the financial viability of the enterprise, or to demonstrate that proper consideration has been given as to whether other accommodation could meet the functional need. No additional information has been provided to demonstrate the financial viability of the enterprise, nor that there is no other suitable accommodation. Therefore, two of the criteria of the policy would not be met by the proposal.
12. For the reasons set out above, I therefore find that the proposal is likely to result in the use of the building as an independent dwelling, and that it has not been demonstrated that there is an essential need for a dwelling to accommodate a Fishing Manager on the site. The proposal is therefore contrary to Policy DM34 of the MBLP, which seeks to restrict new dwellings in the countryside unless there is an essential need. It would also be contrary to paragraph 79 of the Framework.

Ancient Woodland

13. The parties agree that the site is within Ancient Woodland. Paragraph 175 c) of the Framework states that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy. Ancient Woodland is listed as such a habitat. Policy DM3 of the MBLP requires development to incorporate measures to protect areas of ancient woodland, amongst other matters.
14. Given that I have found the building would be used as a dwelling, it follows that the concerns expressed by the Inspector in dismissing the previous appeal still apply.
15. While the building is existing, the Flood Risk Assessment³ identifies that mitigation measures are required to raise the floor level of the building from 16.17 AOD to 17.25 AOD, and a raised timber walkway would be provided to create a dry access route from the building, although no drawings have been provided to show the resulting appearance of the building or the walkway. These elements would likely result in further incursion into the Ancient Woodland.
16. The occupation of the building as a dwelling would lead to additional pressure for other domestic paraphernalia which it would be difficult to resist. I appreciate that the appellant considers that the building would not be used as a dwelling and therefore there is less likely to be an incursion into the woodland or the introduction of domestic paraphernalia. However, the works proposed in relation to flood risk would still have an impact on the woodland, and it would be difficult to enforce a condition seeking to prevent the use of the land surrounding the building for associated paraphernalia.

³ Flood Risk Assessment reference 2246/FRA Version F1 by Hafren Water.

17. I therefore conclude that the proposal would be harmful to Ancient Woodland. The proposal provides no measures to protect Ancient Woodland and there are no wholly exceptional reasons or compensation measures put forward by the appellant. As a result, the proposal would conflict with Policy DM3 of the MBLP, insofar as it seeks to protect areas of Ancient Woodland and avoid significant adverse impacts as a result of inappropriate development. It would also conflict with paragraph 175 c) of the Framework.

Flood risk

18. The site is within Flood Zone 3, which is defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' (PPG)⁴ as having a high probability of flooding. Policy DM1 of the MBLP includes a requirement to avoid inappropriate new development within areas at risk from flooding, or to mitigate any potential impacts of new development within such areas whereby mitigation measures are integral to the design of the buildings.
19. Paragraph 155 of the Framework advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph 158 outlines the need for development to pass a Sequential Test, the aim of which is to steer new development to areas with the lowest risk of flooding. If there are reasonably available sites at a lower risk of flooding then the development should not be permitted.
20. The proposal includes the raising of the floor level of the building and the provision of a raised walkway. No details have been provided to illustrate how these works would be achieved and therefore it is not clear whether flood storage capacity would be affected by the proposal. I note however that the Environment Agency does not consider that these measures are sufficient to ensure that future occupiers would remain operational and safe for users in times of flood, as they do not include an allowance for 35 per cent climate change above the 1 in 100 year flood event, but have been based on a 20 per cent allowance.
21. In any event, the occupation of the building for sleeping purposes would introduce a more vulnerable use to an area in the flood plain. This could put future occupiers at risk. I appreciate that the proposal is not for the dwelling to be the main or sole residence of the occupier, but there is no substantive evidence to demonstrate that an occupier of the building overnight would not be at risk in the event of a flood.
22. While the use of the land as a fishery may constitute water-compatible development, as defined in the PPG⁵, the definition specifically excludes sleeping accommodation. It has not been shown that such accommodation is essential for staff associated with the fishery use, and therefore it would not fall into the exception set out in the category. Moreover, it has not been demonstrated that there is no alternative means of providing the accommodation in an area at lower risk of flooding. It therefore follows that the proposal is inappropriate development in an area at high risk of flooding, and the Sequential Test set out in the Framework has not been passed. Consequently, more vulnerable residential development should be directed

⁴ Paragraph: 018 Reference ID: 7-018-20140306

⁵ Paragraph: 066 Reference ID: 7-066-20140306

away from the appeal site to reduce the risk of harm from flooding, in accordance with the advice set out in the Framework.

23. While the proposed flood mitigation measures would reduce the risk, it has not been demonstrated that there is a need to locate the development in an area at high risk of flooding, with the ensuring risk to life. Furthermore, the raised walkway would result in an incursion into the Ancient Woodland that could be harmful. There is therefore a legitimate concern that the use of the building for a vulnerable use is not appropriate in this location. The potential risk from flooding and the measures that would be required to address them are not justified given the other resultant harms.
24. For the reasons set out above, I conclude that the proposal would not be free from the risk of flooding and would lead to an increase in the risk of flooding elsewhere. It would therefore be in conflict with Policy DM1 of the MBLP, insofar as it seeks to avoid inappropriate new development within areas at risk from flooding, and it would be contrary to the guidance in the Framework.

Other Matters

25. The Marden Neighbourhood Plan (MNP) is subject to public consultation, which was due to close on 26 July 2019. I have not been provided with any relevant policies, but as it is at an early stage of its preparation, I can afford its policies little weight. I have therefore not pursued this matter further.
26. There is local concern that some of the activities taking place on the wider site are not authorised, and that there is no permission for night fishing to take place. As I have dismissed the appeal, I have not sought further evidence on these matters.

Conclusion

27. For the reasons set out above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR