
Appeal Decisions

Site visit made on 15 October 2019

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Appeal Ref: APP/Q3115/W/19/3233696

Boat House, Adjacent Syringa, Rod Eyot Island, Henley on Thames, Oxfordshire RG9 3JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Mike Crisp against the decision of South Oxfordshire District Council.
 - The application Ref P18/S4191/PIP, dated 19 December 2018, was refused by notice dated 28 January 2019.
 - The development proposed is for the demolition of existing boat house and construction of a single storey dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was made for permission in principle in accordance with the Town and Country Planning (Permission in Principle) (Amendment) Order 2017. Accordingly, my assessment of the proposal is limited to location, land use and the amount of development as set out by paragraph 012 of the 'Permission in Principle' section of the Planning Practice Guidance (PPG). Other detailed aspects of development would be considered as part of a subsequent application for 'technical details consent', should permission be granted.
3. Additional details of the proposed parking arrangements, including amended plans showing their correct location and ownership details, have been submitted as part of the appeal in response to the Council's second reason for refusal. The Council have reviewed this information and are satisfied that it would comply with saved policies T2 and D2 of the South Oxfordshire Local Plan 2011. I am satisfied that the additional detail does not substantially differ from the proposal originally considered by the Council and I have no reason to arrive at a different view to that of the Council on this matter. I have therefore considered the appeal on this basis and solely in relation to the first reason for refusal set out on the Council's decision notice.

Main Issue

4. The main issue is whether the proposed development would be acceptable in respect of the risk of flooding, having regard for the National Planning Policy Framework (the Framework) and the PPG.

Reasons

5. The appeal property is an uninhabitable building located on Rod Eyot Island in the middle of the Thames River, accessible only by boat. The existing building was historically linked to the residential property known as "Syringa" on the mainland fronting Wargrave Road as an ancillary structure used for leisure purposes. The building is now used as a leisure building independent of any residential use or host dwelling. The appeal property is located within Flood Zone 3b (functional flood plain) under both the Environmental Agency's (EA) flood modelling and the Council's Strategic Flood Risk Assessment (SFRA) and is subject to a high probability of flooding.
6. Both the Framework and the PPG outline a clear process for determining whether development can appropriately occur within flood affected areas. Paragraph 155 of the Framework specifically states that "inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at high risk (whether existing or future)". This would ordinarily be proceeded by the application of the sequential test then exception test as set out in the PPG. However, the appellant contests that the proposed development would represent both minor development and a change of use, as defined under the PPG, and therefore is exempt from these tests.
7. The appellant considers the proposal to qualify as an "alteration" under the PPG. Although proposed to achieve a consistent building size, the appeal proposal comprises the demolition of the existing building and the construction of a dwelling with a raised floor level and greater setback from the riverbank. In my view the erection of a new dwelling cannot reasonably be considered an "alteration", nor would the proposal align with any of the other minor development criteria under the PPG. I am therefore satisfied that the proposal would not represent minor development as defined under the PPG.
8. The proposal would however change the use on the property from leisure to a residential dwelling. In accordance with paragraph 164 and footnote 51 of the Framework, the proposed change of use would not be subject to the sequential and exception tests. Despite this, the proposal must still meet the requirements for site-specific flood risk assessments (SSFRA) as specified under paragraph 163 of the Framework as it would introduce a more vulnerable use within Flood Zone 3b.
9. A SSFRA was not submitted with the original application but has now been provided as part of this appeal for consideration. The Council and EA have had the opportunity to review the SSFRA and provided comments accordingly. The PPG states that a change of use may increase the flood risk if more vulnerable classifications of development are introduced, subsequently requiring a SSFRA to demonstrate that development and its users will not be placed in danger from flood hazards throughout its lifetime.
10. The appellant's SSFRA suggests that the designation of the appeal property within Flood Zone 3b does not adequately account for the existing development on Rod Eyot Island which is suggested to impede flows. On this basis, the appellant argues that the appropriate Flood Zone designation should be 3a as the flooding characteristics would not represent a functional floodplain. No further modelling has been submitted by the appellant to substantiate this claim. The EA confirm that the latest data available supports the designation as Flood Zone 3b. It is therefore my view that the Flood Zone 3b designation

remains applicable and appropriate to assess whether the proposed residential use would be acceptable on the appeal property.

11. Table 2 of the PPG categorises different types of uses and development according to their vulnerability to flood risk. The Council's Flood Risk and Drainage Officer classified the existing use of the appeal property as being "water-compatible development". I share this view, on the basis that the existing use of the appeal property is as a boathouse which would represent "water-based recreation (excluding sleeping accommodation)". A residential dwelling would be a "more vulnerable" use which in accordance with Table 3 of the PPG is not an acceptable form of development within Flood Zone 3b.
12. The appellant says that there are no restrictions on the times of day which the appeal property may be occupied by people, and therefore would be comparably vulnerable to flooding as a residential dwelling. However, this interpretation fails to acknowledge that the use as a residential dwelling would generally be more intensive and would introduce sleeping accommodation which would put people at greater risk of not responding in a timely manner during flooding events. It is therefore my view that the proposed residential dwelling on the appeal property would appropriately be classified as "more vulnerable" and would increase the flood risk to occupiers using the property compared to the existing use.
13. Setting aside the above, if the Flood Zone were to be classified as 3a as suggested by the appellant, the proposal would need to satisfy the exception test under paragraph 160 of the Framework. To pass the exception test it must be demonstrated that (i) "the development would provide wider sustainability benefits to the community that outweigh the flood risk", and (ii) "the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and where possible, will reduce flood risk overall". Paragraph 164 of the Framework specifies that development must satisfy both elements of the exception test to be permitted.
14. With respect to element (i) the appellant refers to the appeal property's close proximity to Henley on Thames and use as previously developed land as grounds for being a sustainable location for a new residential dwelling. Although the proposed development could be considered sustainable based on proximity alone, this would not outweigh the flood risk identified to future users of the residential dwelling. Further, the Council have confirmed that the district currently achieves the requisite five-year housing land supply, and as such there is no need to provide such vulnerable development in the functional flood plain. Accordingly, I am not satisfied that the proposal would represent a sustainable form of development.
15. For element (ii), the SSFRA details potential mitigation measures, including raising the proposed dwelling above the defined flood level, utilising flood resilient construction techniques, and developing a flood emergency evacuation plan for occupants, as a means of safeguarding the development and its users for its lifetime. However, in my judgement these measures would not outweigh the increased flood risk posed to the future occupiers, particularly acknowledging that there is no flood free access to and from the appeal property. I therefore would conclude that the proposal would fail the exception test, and would still be considered an unacceptable location of a residential dwelling if the Flood Zone were classified as 3a.

16. The appellant refers to a specific application on Rod Eyot Island which allowed for an uninhabitable building to be demolished and replaced with a residential dwelling. The appellant also suggests that there are other similar examples on the island but does not provide any other specific application references. I note no specific details of this case, or any other examples, have been submitted for consideration, nor do I know the full circumstances which may have led the Council to reach their decisions. As such, these cases carry little weight. That aside, the appellant has confirmed that this application was made under a different regime of local and national planning policies and therefore cannot reasonably be considered comparable to the appeal proposal before me. Irrespective, each development is assessed on its own merits, as I have done with this appeal.
17. The appellant says that the appeal proposal would mitigate the existing flood risk on the site by increasing flood plain storage, whilst the retention of the existing building would maintain the existing level of flood risk. Whilst the improvements to flood plain storage are acknowledged as a benefit, I do not agree that the appeal proposal would reduce the overall flood risk on the site as it would introduce a more vulnerable use within an area at high probability of flooding. Further, if the site were to be maintained in its current state this would represent a neutral outcome with respect to flood risk, and therefore would not weigh in favour of the appeal proposal. Other potential benefits suggested include the opportunity to reinstate a buffer between the development and the riverbank, and the construction of a new dwelling for the appellant utilising a more flood resilient design than the existing building. In my judgement these potential benefits would not warrant introducing a more vulnerable use within an area at high probability of flooding, directly putting more people at risk during flood events.
18. Accordingly, I conclude that the principle of a single storey residential dwelling on the appeal property within Flood Zone 3b would not be acceptable in respect of the risk of flooding, having regard for the Framework and the PPG. The proposal would conflict with paragraph 155 of the Framework and policy CS1 of the South Oxfordshire Core Strategy (adopted December 2012). These collectively seek, amongst other things, to ensure that proposals achieve a sustainable form of development by avoiding areas at risk of flooding unless necessary.

Conclusion

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

J Gibson

INSPECTOR