
Appeal Decision

Site visit made on 14 July 2020

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 07 August 2020

Appeal Ref: APP/A2635/W/20/3248132

Bank Farm, Hundred Foot Bank, Welney, Wisbech, Cambs PE14 9TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr T Barker against the decision of the Borough Council of King's Lynn & West Norfolk.
 - The application Ref 19/01711/PACU3, dated 30 September 2019, was refused by notice dated 20 November 2019.
 - The development proposed is change of use of agricultural building to a dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the development on the application form simply states "see plans and elevations". I have therefore taken the description from the Council's decision notice as this accurately describes the proposal.
3. An amended plan¹ has been submitted with the appeal. The main difference between the amended plan and the plan² considered by the Council is that the amended plan shows a larger first floor living area and a raised ground floor together with associated alterations in line with the recommendations of the Flood Risk Assessment (FRA). As the amendments therefore relate mainly to internal alterations and directly to the Council's reason for refusal. I have therefore accepted and considered the amended plan. I am satisfied that no party has been prejudiced by my approach.

Background and Main Issues

4. Schedule 2, Part 3, Class Q (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a dwelling.
5. Paragraph Q.2. of the GPDO says such development is conditional that before beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to

¹ Drawing No BARKERCQA201 DATED 28/02/20

² Drawing No BARKERCQA1 dated 20/08/19

among other things (d) flooding risks on the site. This matter forms the basis of the Council's reason for refusal.

6. However, although not referenced in the decision notice or Officer Report, in their statement the Council have raised concerns with regard to whether the works required to convert the building would be permitted development under paragraph Q.2. (b) of the GPDO quoting an appeal decision³. The full details of that appeal are not before me. However, I note it relates to a different building in a different location with different associated evidence. As I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter any further, to do so would require further information from both parties. I am satisfied that neither party has been prejudiced by my approach.
7. The main issue is therefore whether the impacts of the development are such as to require refusal of prior approval under paragraphs Q.2. and W.(3) of the GPDO with particular regard to (d) flooding risks on the site.

Reasons

8. The proposed dwelling would be located in Flood Zone 3 as identified on the Environment Agency's Flood Zone Maps. A site-specific FRA is therefore required. Paragraph 163 of the National Planning Policy Framework states development should only be allowed in areas at risk of flooding where, in the light of this assessment it can be demonstrated that among other things, within the site, the most vulnerable development is located in areas of lowest flood risk and safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
9. Furthermore, national guidance⁴ says the FRA should establish among other things whether the development will be safe. Moreover, it makes clear that the FRA should be appropriate to the scale, nature and location and for a new development comprising a greater number of houses in a similar location, or one where the flood risk is greater, the local planning authority would need a more detailed assessment.
10. I accept the appeal scheme is a not an application for planning permission. However, the proposal would introduce a more vulnerable use in a location at risk of flooding. The evidence indicates that there would be a potential peak flood level of up to 2.47 metres. Even with the proposed finished floor levels, this would mean an internal flood of some 1.87 metres deep.
11. I accept the risk of any such event is low and there may be forewarning. However, there is a risk and should such an event occur, future occupants would be confined to the living accommodation at first floor level and likely to require rescuing. Confined to a space of this size for any length of time would risk human health. Furthermore, the FRA is vague in terms of what would be done in such an emergency to ensure people can be kept safe. Consequently, it would not be appropriate for me to impose a condition which requires a detailed emergency plan as I am not satisfied the scheme could be made safe.
12. Moreover, the Environment Agency have also objected to the appeal scheme raising concerns associated with the FRA. Among other things, they have

³ Appeal Decision APP/V2635/W/19/3239194

⁴ Planning Policy Guidance on Flood risk and costal Change, Paragraphs 030-031 Reference ID: 7-031-20140306 dated 06 03 2014

recommended that the building is made flood resilient. I accept the risk of a potential peak flood level of up to 2.47 metres is low. However, there is no substantive evidence which shows the building would be resilient to the physical impacts of such a flood and the evidence on the structural integrity of the building is also limited.

13. Thus, on the basis of the evidence before me, I find it reasonable to be concerned that the safety and integrity of the appeal building could be compromised should a potential peak flood level of up to 2.47 metres occur. Consequently, this would risk the safety of any future occupiers.
14. Overall, I cannot be satisfied that the flood risk of a dwelling in this location has been adequately assessed. I cannot therefore be satisfied the proposal would be safe in flood risk terms. I must therefore take a precautionary approach and find the proposal is not acceptable in respect of matter (d) flooding risks on the site of paragraph Q.2. (1) of the GPDO and contrary to the aims of Policy CS08 of the King's Lynn & West Norfolk Brough Council Local Development Framework - Core Strategy (2011) which seeks, among other things, to ensure flood risk is fully mitigated.

Conclusion

15. I have found the proposal would not meet the conditions of paragraphs Q.2. and W.(3) of the GPDO in respect of the flooding risks on the site. Prior approval is required on this matter and I have found based on the evidence before me that it should not be granted. The proposal is not therefore permitted development and the appeal should be dismissed.

L Fleming

INSPECTOR