
Appeal Decision

Site visit made on 18 August 2020

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal Ref: APP/C3430/W/20/3251508

Former Royal British Legion off Sterrymere Gardens, Kinver DY7 6ET

- 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 Mr Ian Malyan against the decision of South Staffordshire Council.
 - The application Ref 18/00921/FUL, dated 9 November 2018, was refused by notice dated 19 March 2020.
 - The development proposed is the demolition of a derelict former social club and the construction of a new residential apartment block.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on flood risk, with regard to the safety of occupiers of the development.

Reasons

3. The appeal site formerly contained a Royal British Legion building, access to which is taken from a road that is shared with the adjoining Sports and Community Centre, via Sterrymere Gardens. The River Stour and its embankments bound the site to the south and south west.
4. The centre of the appeal site is located within flood risk zone 1 and has a low probability of flooding defined as such in National Planning Policy Guidance (NPPG). However, this central area is surrounded by areas identified as flood risk zones 2 and 3, which are in a high probability of river flooding. These higher risk areas include part of the shared access road that serves the appeal site and the adjacent sports and community centre.
5. Paragraph 155 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
6. Paragraph 163 of the Framework, amongst other things, requires that d) any residual risk can be safely managed and that e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

7. I have been provided a copy of the appellant's Flood Risk Assessment (Flo October 2018) (FRA) and a Flood Warning and Evacuation Plan (Flo December 2019) (FWEP). I have also considered the comments from the Environment Agency (EA). The EA state that whilst they have not got any reasons to refuse this application, they are concerned with the means of safe access and egress and the associated risk to life, but that is out of their remit and a matter for the Council's Emergency Planning Team.
8. These concerns relate to the findings of the flood risk assessment in relation to the likely duration, depths, velocities and flood hazard rating against the design flood for the proposal. This indicates that the access road will be a danger to some people, such as the elderly and infirm due to the level of flood waters and the velocity of flow rates.
9. Section 9.3 of the FRA and 5.3 of the FWEP relate to the safe access and egress of the site during a flooding event. These documents identify that the lowest level for the access road to the west of the site is below the critical flood level, and therefore the access road likely to be flooded to a depth of up to 416mm. The report also recognises that the velocity of the water would be between 0.5 m/s and 3.0 m/s, and if unaltered would be a danger for all, and not acceptable for the emergency services ingress or egress.
10. Therefore, the proposal is to ensure that the internal access road and footpath levels are to be a minimum of 299mm below the estimated flood level (47.280m AOD), which would be 46.981m AOD. These physical mitigation measures would only be applied to areas within the development site boundary.
11. Based on the information before me, flooding affecting the access road offsite to the west would not be resolved. Therefore, to avoid these areas, the proposed evacuation plan is to direct vehicles and pedestrians out of the site along routes that are at a higher ground level, and onto the adjacent sports and community centre car park, which is not within the ownership or control of the appellant.
12. The appellant states that the Flood Warning Evacuation Management Plan (FWEP), would be based on advice given by the Emergency Management Unit at the Council. However, the Civil Contingencies Officer within the Council's Emergency Planning Team, who deals with such matters, has stated that they would not recommend using the Community Centre. Furthermore, I understand that the Kinver Sport and Community Association own and manage the site, and they have stated that they would not agree to its use.
13. Planning Practice Guidance states that when used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. I have considered the imposition of a planning condition for the submission of a revised FWEP. However, for the reasons given above, I cannot be certain that safe access and escape routes could be agreed so as to mitigate the adverse effects and enable development to proceed.
14. I have taken into account that the appellant's proposal to incorporate the FWEP into legal covenants, so as to ensure its implementation, dissemination and review by future owners and managers of the development. However, it has not been demonstrated that the that safe access and escape routes can be

achieved, and the current FWEP is reliant on the use of land in third party ownership of which there is no evidence of an agreement in place with the landowner. Therefore, this does not alter my findings.

15. I note that the emergency plan was not brought up as an issue on earlier planning applications for the site. However, the EA state that this is because there have been changes to the guidance on climate change allowances since those applications were determined.
16. Therefore, I conclude, that it has not been demonstrated that the residual flood risk associated with the development could be overcome so as to ensure the safety of the occupiers of the proposed apartments. It would therefore be inconsistent with Paragraph 163 of The Framework which seeks to ensure that any residual risk can be safely managed, and that safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
17. The Council's decision notice also refers to paragraphs 038, 039, and 040 of the Framework. These relate to the front loading of the planning process and pre-application engagement. This is a matter between the parties and does not directly relate to the main issue.

Other Matters

18. I have taken into account the concerns raised by Kinver Parish Council regarding the overdevelopment of the site, parking provision and potential damage to the road. However, these matters do not affect my findings on the main issue.

Conclusion

19. For the reasons given above, the appeal is dismissed.

R Cooper

INSPECTOR