



Appeal Decision

Site Visit made on 14 December 2020

by Mr Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2021

Appeal Ref: APP/Z0116/W/20/3258473

122 Portview Road, Avonmouth, BRISTOL, BS11 9JB

- 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 M O'Donnell, A & M Motors against the decision of Bristol City Council.
 - The application Ref 17/07137/F, dated 8 December 2017, was refused by notice dated 28 February 2020.
 - The development proposed is to demolish the existing buildings on site and erect 6 no. flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues raised are:
 - i) whether the loss of the existing employment use has been justified, having regard to local policy protecting such uses, and
 - ii) the risk of flooding.

Reasons

Loss of employment use

3. The appeal building comprises a three-bay commercial garage. The building was previously occupied as a car repair garage, up until 2002 when it was vacated. Since that time it has been used for occasional storage purposes, until 2020 when it was re-occupied as a vehicle repair garage, it is stated on a temporary basis. This use was operating at the time of my site visit.
4. Policy BCS8 of the Bristol Development Framework - Core Strategy (2011) (the Core Strategy) sets out that employment land outside of Principal Industrial and Warehousing Areas (PIWAs) will be retained where it makes a valuable contribution to the economy and employment opportunities. This approach is reinforced by policy DM12 of the Bristol Local Plan – Site Allocations and Development Management Policies (2014) (the Local Plan) which establishes that employment sites should be retained for employment use unless it can be demonstrated that, amongst other things, there is no demand for the employment uses, or the continued employment use would have an unacceptable impact on the environmental quality of the surrounding area.
5. I note that the site is located near to a large PIWA at Avonmouth. This area would undoubtedly provide for a range of employment uses however there is

nothing convincing before me to show that there is no longer a demand for the employment use at the appeal site, such as a robust marketing exercise having been undertaken. I note that the site was occupied at the time of my visit indicating that a demand exists for the existing use at this location. The business appeared to be operating at a reasonably low level and I observed no activity that would have an adverse effect on the living conditions of nearby residents or on the environmental quality of the area. I am conscious of the vehicle weight limit that applies to the road on which the site stands, however there is no substantive evidence to show that this would unduly hinder the employment use of the site.

6. I note the contention that given the proximity to the PIWA that the loss of the employment use at the appeal site would not be perceptible. However, small-scale employment uses, such as that which operates at the appeal site can make a valuable contribution to local employment and should not be lost without adequate justification. Accordingly, I find that the loss of the existing employment use has not been justified and thus the proposal conflicts with policy BCS8 and policy DM12.

Risk of flooding

7. The appeal site lies within Flood Zone 3a, as defined within the adopted Bristol City Council Strategic Flood Risk Assessment Level 2 (the SFRA), which the Planning Practice Guidance (the PPG)¹ advises is land with a high probability of flooding, with land having a 1 in 100 or greater annual probability of river flooding; or land having a 1 in 200 or greater annual probability of sea flooding. The proposed development, comprising residential units, is classified as "more vulnerable" according to the PPG².
8. The National Planning Policy Framework (the Framework) sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from the areas at highest risk (Paragraph 155).
9. Policy BCS16 of the Core Strategy sets out that development will follow the sequential approach to flood risk management. Development at this location would be required to undertake a Sequential Test (ST) as well as an Exception Test (ET). The PPG sets out that the aim of the ST is to steer new development to Flood Zone 1. Where there are no reasonably available sites in Flood Zone 1, decision makers should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2, applying the ET if required. Only where there are no reasonably available sites in Flood Zones 1 and 2 should the suitability of sites in Flood Zone 3 be considered³. The PPG also advises that a pragmatic approach should be taken to the consideration of alternative sites. The parties agree that the ST has been passed and based on the information that has been provided, I have no reason to find differently.
10. In respect of the ET, the Framework requires that a) the development would provide wider sustainability benefits to the community that outweigh the flood risk, as well as that b) 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. Both parts of the ET must be

¹ Paragraph: 065 Reference ID: 7-065-20140306

² Paragraph: 066 Reference ID: 7-066-20140306

³ Paragraph: 019 Reference ID: 7-019-20140306

fully met. There is no dispute that there would be sustainability benefits and that the development would not increase flood risk elsewhere, thereby meeting the first limb of the test, as well as part of the second limb. The remaining matter for consideration is therefore whether the development will be safe for its lifetime.

11. The appellant has provided a Flood Risk Assessment (FRA) which is based on information from the Avonmouth Severnside Enterprise Area Ecology Mitigation and Flood Defence Project (ASEA). The Environment Agency (EA) advises however that the data contained within the ASEA is not appropriate for land use planning purposes and is not inundation, or breach, modelling. I acknowledge that the ASEA data is being utilised to bring forward flood defences, but these are to facilitate new "less vulnerable" development, not "more vulnerable" development such as the new residential units within the appeal scheme. I also note that the defences being created further to the ASEA are not yet complete, with the appellant stating that work is expected to be complete by 2026. However, the EA have indicated that at this time, a certainty of the scheme being delivered, which includes funding and consenting of the final design, has not yet been established.
12. Bearing in mind that the ASEA data is intended to better protect existing development and facilitate "less vulnerable" development, there is nothing before me to show that the protection provided would be to the equivalent required for new "more vulnerable" development. In this respect, I note the guidance notes attached to the information provided by the EA, pertaining to the use of EA information; this specifically states that all modelled data for a location is provided and that some of the data may have been produced for purposes other than flood zone generation. This may result in the data having a lower confidence level and that the suitability of the information for use within an FRA should be checked.
13. In my view, this would apply to the ASEA data, given that it has been clearly stated that it is intended to facilitate "less vulnerable" development, as well as seeking to better protect existing development by reducing flood risk. On this basis, I cannot be satisfied that it provides an appropriate footing on which to assess the flood risk for new "more vulnerable" development, such as the residential units comprised in the appeal before me.
14. From the evidence before me, the existing Strategic Flood Risk Assessment (SFRA) would be the most accurate and up-to-date information on which the FRA should be based and this would provide the level of confidence required, particularly given the uncertainty in respect of the delivery of the ASEA scheme. I am conscious that while the appellant contends that the ASEA will be used to update the SFRA, the EA has stated that this will not be the case.
15. I note that the appellant has provided some information in respect of modelling undertaken by the Council, to inform an update to the SFRA. However, I am particularly conscious that any update would be subject to a detailed technical review by the EA prior to the Council adopting an updated SFRA. I have no evidence before me to show that this has taken place and thus this information does not dissuade me from my findings above.
16. Using the ASEA data, the appellant proposes that the accommodation be set at a finished floor level of 10.53 metres (m) AOD. However, the Council set out in the Delegated Report that using the appropriate data from the SFRA

accommodation must be above 11.61m AOD. Clearly, the use of the ASEA would therefore result in the accommodation being set well below the level required to ensure that the development would be safe from flooding for its lifetime.

17. Accordingly, given the level of doubt and adopting a precautionary approach, I find that I cannot determine that the appeal scheme would not be at an unacceptable risk of flooding, contrary to policy BCS16 of the Core Strategy, as well as the guidance of the Framework.

Other Matters

18. Since the submission of the appeal, the 2020 Housing Delivery Test (HDT) results have been published. The parties have had the opportunity to comment on this. The HDT results indicate that the delivery of housing in the District is substantially below the housing requirement. Ordinarily, this would indicate that paragraph 11(d) of the Framework is engaged. However, as I have found that the scheme would be at risk of flooding, the Framework as a material consideration, provides a clear reason for refusing the development. Thus, the presumption in favour of sustainable development, as envisaged by paragraph 11, does not apply in this case.

Conclusion

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

Martin Allen

INSPECTOR