
Appeal Decision

Site visit made on 22 February 2021

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

Appeal Ref: APP/C3105/W/20/3260535

Hebborn's Yard, Bicester Road, Kidlington OX5 2JJ

- 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 W Hebborn against the decision of Cherwell District Council.
 - The application Ref 19/00290/F, dated 15 February 2019, was refused by notice dated 3 April 2020.
 - The development proposed is described as 'the use of land for the storage of (non-residential) portable fairground rides and equipment in connection with, and strictly ancillary to, the authorised use of Hebborn's Yard, Kidlington as Showmen's Permanent Quarters'.
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Decision

1. The appeal is dismissed.

Procedural matter

2. From the evidence before me the use of the site has commenced. However, from my site observations what has occurred does not correlate with the plans before me. As such, I have proceeded to determine the appeal on the basis of the appellant's submitted plans.

Main Issue

3. The main issue is the effect of the proposal on flood risk.

Reasons

4. Policy ESD6 of the Cherwell Local Plan 2011-2031, Part 1, Adopted 20 July 2015 (LP) sets out that development will only be permitted in areas of flood risk when there are no reasonably available sites in areas of lower flood risk and the benefits of the development outweigh the risks from flooding. This conforms with the national approach to flood risk and development. The National Planning Policy Framework (the Framework) sets out at paragraph 155 that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Furthermore, that where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. I have also had regard to the Planning Policy for Traveller Sites (the PPTS) as a material consideration.

5. Based on the evidence provided, the majority of the appeal site is classified as being within Flood Zone 3b (functional floodplain) of the River Cherwell. Within their evidence the appellant has set out that they do not seek to challenge this classification due to the prohibitive costs involved in modelling to prove otherwise. Therefore, based on the evidence before me I conclude that the site is Flood Zone 3b. I have had regard to the Planning Practice Guidance (the PPG). Land within Flood Zone 3b, like the appeal site, has a high probability of flood risk. Furthermore, I note that the appellant acknowledges within their flood assessment¹ that the site has experienced historical flooding. In light of climate change such events are likely to increase in frequency.
6. The proposed development would involve the storage of portable fairground rides and equipment at the site. Whilst not expressly set out within the PPG, the proposal appears to fall broadly within the Less Vulnerable classification. The appellant's assertion that flood flow velocities would likely be very low has not been challenged. Nonetheless, table 3 within the PPG establishes, given the flood risk and vulnerability classification, that the proposal should not be permitted. This guidance weighs against the proposal. The evidence provided by the Environment Agency (the EA) accords with this guidance. As the expert national body on such matters, I place significant weight on their objection to the proposal.
7. The appellant has set out that whilst there are some pockets of land within their control that have a lower flood risk, they do not meet their storage needs. Furthermore, the appellant asserts that the Council have not identified any other reasonably available sites for travelling showpeople in a lower flood risk classification. This has not been challenged by the Council and weighs in favour of the appellant. However, when applying weight to this I have noted that the site is within the Green Belt.
8. Furthermore, this is not a proposal for residential accommodation, but an extension of a site to provide further storage. I acknowledge that storage at an alternative location may present commercial challenges for the appellant who cites insurance and security issues. Furthermore, paragraph 19 of the PPTS sets out that regard should be had to the need that travelling showpeople have for mixed-use yards. However, I have little evidence before me to indicate that disaggregation of some of their storage from their approved yard adjacent to the appeal site can be entirely ruled out. Therefore, based on the evidence before me, even taken cumulatively, these matters do not currently present sufficient justification for exceptionally allowing development in the floodplain.
9. As set out above, the proposal has some commercial benefits for the appellant and represents a convenient arrangement. Furthermore, they state that these matters ensure that they would be able to remain at their settled residential base. However, based on the evidence provided I cannot conclude that dismissing the appeal would necessarily result in the appellant's family having to leave their settled residential base. Additionally, the appellant sets out in their flood assessment that the proposal would increase flood plain storage through lowering some of the site levels. However, they do not quantify this, and it is stated as being a small increase in volume. Even if taken together, based on the information before me, the benefits of the scheme do not outweigh the high probability of flood risk.

¹ Flood Risk and Runoff Assessment, dated February 2019 by NeoFlood Ltd

10. The appellant has suggested that a flood evacuation plan could be utilised to manage and mitigate flood risk for the lifetime of the development. This would ensure that no flood plain storage would be lost in the event of a flood warning, as all rides and equipment would be removed from the site. This could be secured by condition with a requirement for regular review and agreement. The appellant states that a similar provision exists for the approved yard on the adjacent land. However, I note that the approval was granted some time ago² and was for a different form of development including meeting the residential accommodation needs of travelling showpeople. In the interim, concerns over flood risk associated with climate change have increased. Additionally, I note that the levels within the approved yard are higher than at the appeal site.
11. Nonetheless I have had careful regard to the flood evacuation plan and considered the appropriate use of conditions. In their evidence the appellant appears to have only partially addressed the EA's concerns regarding the existing flood risk at the suggested refuge sites. Little detail has been provided to factor in climate change at these sites or on the highway verges adjacent to the site. Furthermore, no details have been provided to assure me that the evacuation sites are genuinely available and capable of accommodating all the rides and equipment. As such, based on the evidence provided, I do not have sufficient information to assure me that a flood evacuation plan can mitigate any residual risk for the lifetime of the development.
12. Therefore, in conclusion on the main issue, taking all the above matters into consideration, the proposal would be harmful to flood risk. As such, the proposal would be contrary to Policy ESD6 of the LP, Section 14 of the Framework and guidance within the PPG.
13. For the reasons given above I conclude that the appeal should be dismissed.

James Taylor

INSPECTOR

² PINS ref: APP/C3105/A/01/1069035