



Appeal Decision

Site visit made on 25 March 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Friday, 14 May 2021

Appeal Ref: APP/V2635/W/20/3263537

4 Walpole Road, King's Lynn PE30 2DZ

- 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 Freebridge Community Housing against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref: 20/00876/F, dated 19 June 2020, was refused by notice dated 9 September 2020.
 - The development proposed is described as 'change of use from a drop-in care/assessment for pre-school children, back to former residential dwelling/flat'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The results of the 2020 Housing Delivery Test (HDT) were published on the 19 January 2021. The results show that King's Lynn and West Norfolk Council delivered 94% of its housing requirement over the preceding 3 years. The main parties have been afforded the opportunity to comment on the implications of these results for this appeal. I have had regard to their comments in my decision.

Main Issue

3. The main issue is whether the proposal would comply with the development plan and national planning policy which seek to steer new development away from areas at the highest risk of flooding.

Reasons

4. The appeal building is a vacant ground floor unit situated within an existing block of residential flats and maisonettes within a predominantly residential area. It is located within Flood Zones 2 and 3 and the Great Ouse's Flood Hazard Zone of the Kings Lynn & West Norfolk Borough Council Strategic Flood Risk Assessment (2018)(SFRA).
5. Policy CS08 of the King's Lynn & West Norfolk Borough Council Local Development Framework Core Strategy (2011)(CS) sets out that the Council's SFRA outlines potential flood risk throughout the borough. It outlines that in order to ensure future growth within the borough is sustainable, the findings of the SFRA will be used to guide planned growth and future developments away from areas of high flood risk and that the Council will work in conjunction with the Environment Agency and ensure that decisions take into account coastal flooding and climate change adaptation issues.

6. The policy goes on to acknowledge that some development may be required in flood risk areas. Where a development proposal would be in a high-risk flood area, it will need to demonstrate that the type of development is appropriate to the level of flood risk identified in the SFRA. In the event that the development vulnerability type is not compatible with the flood zone, a proposal will need to demonstrate that the development contributes to the regeneration objectives of King's Lynn or the wider sustainability needs of rural communities. A proposal should demonstrate that flood risk is fully mitigated through appropriate design and engineering solutions.
7. In accordance with the National Planning Policy Framework (the Framework), some changes of use applications should not be subject to the sequential test¹, however, for all development in Flood Zones 2 and 3² they must include a site-specific flood risk assessment. The assessment should demonstrate how flood risk will be managed now and over the development's lifetime, taking climate change into account and with regard to the vulnerability of its users. The Planning Practice Guidance identifies that a building used for a dwelling house is classed as a 'more vulnerable' use (Table 2).
8. The objectives of a site-specific flood risk assessment are to establish that flood risk would not be increased elsewhere. Among other things, it also needs to show that the development is appropriately flood resistant and resilient, any residual risk can be safely managed, and that safe access and escape routes are included where appropriate.
9. The submitted Flood Risk Assessment (the FRA) identifies that the appeal site would be unlikely to flood, except in extreme conditions. The primary risk to flood is from the tidal River Ouse. The River Ouse is defended and the flood risk from the river would be if the defences were breached or overtopped.
10. The FRA suggests there is a small likelihood of flooding in a 1 in 200 year tidal flood event due to overtopping or failure of a flood defence. Nevertheless, in the event that this were to happen, the site could flood to depths of greater than 1.8 metres. Whilst a previous use of the property as a dwelling is noted, the proposed dwelling would contain sleeping accommodation on the ground floor and the FRA notes that floor levels cannot be significantly raised given that the proposal concerns an existing building.
11. As a consequence, the FRA suggests that resistance and resilience should be implemented. These would take the form of damboards which would be erected to all ground floor openings to safeguard the building against any risk of flooding. However, the Environment Agency (EA) comments that resistance measures such as flood doors and dam boards cannot be set more than 600mm above the floor level in a standard house design. Furthermore, where the difference between flood depths between the inside and outside of the property is greater than 600mm, this is likely to cause structural damage. Overall, the EA states it is likely that internal flooding would occur in the event of a breach. Therefore, on the basis of the evidence before me, I am not satisfied that the appeal scheme would be appropriately flood resistant and resilient as is required by the Framework, nor that flood risk is fully mitigated in order to satisfy the requirements of CS Policy CS08.

¹ Paragraph 164 and footnote 51 of the National Planning Policy Framework.

² Framework Footnote 50

12. Furthermore, should a flood occur, as a ground floor flat there would be no safe refuge for future residents of the dwelling. The submitted information fails to identify a safe route to higher ground and as such, future occupants would be reliant upon advance notification of a flooding event. Whilst I acknowledge the King's Lynn Emergency Flood Plan and the availability of evacuation centres, there is no reasonable safeguard that could be put in place that would ensure that future occupants would register to receive flood warnings, that these would be received by the intended recipient in a timely manner and that action would be taken along the lines proposed within the notification. There is little evidence before me to substantiate the appellant's view that flooding at this location would be predictable with a minimum advance notice of 24 hours of such an occurrence. To the contrary, the EA suggests that a breach can occur quickly and with no warning. Accordingly, I cannot be satisfied that there would be prior notification for all types of future flooding events and therefore the appeal scheme fails to demonstrate the safe management of residual risks.
13. On the basis of the available evidence, I am not satisfied that the type of development proposed is appropriate to the level of flood risk in zones 2 and 3. There is no evidence to suggest that the proposal contributes to the regeneration objectives of King's Lynn. The contribution of an additional dwelling to be provided on a socially rented basis would have a negligible impact on the wider sustainability benefits of the community. The proposal fails to demonstrate that flood risk is fully mitigated through appropriate design and engineering solutions as required by CS Policy CS08. The proposal would conflict with this policy and the Flood Risk Protocol for the borough, the requirements of which are set out above. There would also be conflict with the Framework insofar as it seeks to avoid inappropriate development in areas at risk of flooding and ensure development proposals are safe for its lifetime.

Other Matters

14. The 2020 Housing Delivery Test for King's Lynn and West Norfolk Council indicates that it achieved 94% of housing delivery measured against its housing target over the last 3 years. This is considerably more than the 75% benchmark used to define substantial under delivery in the Framework.
15. As the Council's five-year supply of deliverable housing sites is not in dispute and as the latest Housing Delivery Test result is greater than 75%, neither of these considerations results in policies which are the most important for determining the application being considered out-of-date in the context of paragraph 11 of the Framework.
16. Reference has been made to the likelihood of instances of anti-social behaviour (ASB) due to the appeal building being vacant. However, there is little evidence before me concerning actual incidents of ASB and crime and therefore the weight I attach to this matter is limited. Furthermore, whilst I note that the building has been vacant in the region of three years, there is little substantive evidence to demonstrate that the appeal property is unlikely to attract any other use. It is not clear to me whether the appeal property has been marketed for alternative uses nor whether any alternative options have been explored. I therefore attach only negligible weight to this matter in support of the proposal.
17. Although I note the existence of other residential properties nearby, there is little information before me relating to the particular circumstances of these

dwellings and whether they are comparable to the appeal proposal. Moreover, their existence does not provide justification for the proposed development. I have determined the appeal proposal on its individual planning merits.

18. Reference is made to the appellant's housing association flood plan. However, this has not been provided for my consideration.

Conclusion

19. The proposal would conflict with policies of the CS and there are no material considerations that justify a decision otherwise than in accordance with the development plan. Therefore, for the reasons given, the appeal is dismissed.

E Brownless

INSPECTOR