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## Appeal Decision

Site visit made on 15 March 2022

**by B Davies MSc FGS CGeol**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 MAY 2022**

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**Appeal Ref: APP/Z3635/W/21/3283432**

**The Boatyard, Clarks Wharf, Thames Street, Sunbury-on-Thames,  
TW1 5QP**

- 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 Andrew Sheppard (Wharf Craft) against the decision of Spelthorne Borough Council.
  - The application Ref 21/00054/FUL, dated 24 November 2020, was refused by notice dated 25 March 2021.
  - The development is the part change of use of an existing building to provide a flood protected external work platform and secure internal workshop on the same level. The works would also incorporate an office, store and washroom facilities.
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### Decision

1. The appeal is dismissed.

### Main issues

2. The main issues are whether or not:
  - the effectiveness of Flood Zone 3b to store and transmit water has been maintained,
  - the development is flood resistant and/or resilient.

### Reasons

#### *Effectiveness of Flood Zone 3b*

3. The site comprises a modern, rectangular, wooden clad building on stilts surrounded by a yard, adjacent to the River Thames. It is not in dispute that it is in Flood Zone 3b. The development has been carried out and I am therefore considering it on a retrospective basis.
4. Permission was granted on appeal in 2017 for use of a gable ended pitched roof supported by six timber posts for boat or car storage<sup>1</sup>. An open staircase within the building provided access to a loft storage area. A condition on the permission required that the building's open sides should be maintained for the lifetime of the development to ensure that it did not increase the risk of flooding on or off site.

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<sup>1</sup> APP/Z3635/C/16/3158151 and APP/Z3635/W/16/3157394 (14 June 2017)

5. A 'work platform' has since been constructed under the roof containing a workshop, office and washroom facilities. This space is accessed via an external wooden staircase and large platform on the side of the building closest to the river. The floor level of this platform appears from the drawings before me to be significantly lower than that of the original loft storage area and this has resulted in partial enclosure of the sides of the building with wooden cladding.
6. Revised plans<sup>2</sup> and an updated Flood Risk Assessment (FRA)<sup>3</sup> were submitted by the appellant during the appeal. These show that the void beneath the work platform would now remain open. On this basis the Environment Agency (EA) is satisfied that the minimal loss of floodplain storage associated with the footings is acceptable and that flows would be unimpeded. The Council subsequently accepted that the first reason for refusal relating to flood storage and flows was overcome.
7. However, the EA's advice was on the understanding that the workshop area was floodable. In its letter of 16 March 2021, the EA quotes section 5.4 of an undated FRA, that '*flood water can still enter the building and therefore there will be an insignificant effect on flood water storage and flow routes*'. I have been provided with a copy of the FRA from November 2020, which in section 5.4 states '*Should a flood occur, the fluvial water will still enter the building therefore the effect the proposed development would have on flood water storage capacity is considered not significant*'. In its letters of 9 December 2021 and 22 February 2022 the EA refers to '*the floodable workshop area*'. The final letter from the EA of 23 March 2022 is silent on this matter and there is therefore no evidence that they have come to a different understanding in the interim.
8. I have nothing before me to suggest that the workshop area is floodable. On the contrary, several of the mitigation measures listed in the FRA relate to sealing the building and the development is described in the appellant's submissions as '*flood protected*' and '*to provide a dry work environment*'. Reference is made to a damp proof membrane to minimise the passage of water through the floor and doors being sealable to keep out water. Crucially, there is no suggestion in the FRA or on the plans that provision has been made to ensure that the building is permeable, such as openings in the walls to allow the passage of water.
9. It is not in dispute that all solid structures below the 1% annual probability flood event with an allowance for climate change would lead to a loss of flood plain storage, or that this equates to a level of approximately 10.05 mAOD in this area.
10. Plans PWS/20/05B and 06A indicate that the base of the floor of the workshop is less than 9 mAOD. Everything impermeable to flood water above this to the 10.05 mAOD level would result in a loss of floodplain storage. This would be a much larger volume than that relied upon by the EA, which was about 0.3 m<sup>3</sup> for the footings. There is no suggestion that compensation for this additional loss of storage has been made.
11. The EA was satisfied that the volume of floodplain storage removed by the footings was negligible in the context of the wider floodplain. However, I have

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<sup>2</sup> PWS/20/05B and PWS/20/06B (March 2022)

<sup>3</sup> QFRA 1928 v1.1, UK Flood Risk, 8 November 2021

nothing before me on which to base a similar contextual assessment of the larger loss caused by the 'sealed' workshop area.

12. The appellant states that it is not possible to raise the floor to 10.05 mAOD because of planning constraints. However, no further information is provided regarding these constraints for me to be able to potentially take this into account.
13. I conclude that, on the evidence before me, flood storage has not been maintained and flows could be impeded during times of high flood. This is in conflict with Policy LO1(d) of the Spelthorne Core Strategy and Policies Development Plan Document (February 2009) (DPD), which states that flood storage and flow must be maintained in Flood Zone 3b by not permitting any additional development.

#### *Flood resistance and resilience*

14. The second reason for refusal relates to a lack of dry means of escape in the context of the development being used for residential accommodation. The Council has based this on a history of enquiries regarding use of the site for a dwelling. However, this is not the proposal before me. The site cannot be used as residential accommodation under the description in the banner above.
15. In addition, I am satisfied that the building would not be suitable for use as a dwelling in its current configuration. This is because the main rooms appeared to me to be well established as a workshop and office, and the only windows proposed in the plans are small rooflights and the access doors at the front. In addition, there appeared to me to be very limited scope for installing washing or cooking facilities.
16. Policy LO1(g) requires that any development in Flood Zone 3b must be designed to be flood resistant and resilient. To further define what is required in this respect, a Flooding Supplementary Planning Document (July 2012) ('SPD') for Spelthorne Borough Council has been provided. The measures listed in the SPD are addressed in general terms in the FRA and the appellant has indicated that he would be content to receive a condition to agree the details with the Council.
17. It has been demonstrated that the building could be made flood resistant or resilient and I am satisfied that the details of this could be secured via a condition on any permission. For this reason, the proposal does not conflict with the requirements of Policy LO1(g).

#### *Other considerations*

18. The appellant states that Policy LO1 supports the development of less vulnerable uses in Flood Zone 3b. However, this relates specifically to 'urban areas' and I have no evidence before me that the location of the site meets this definition. Even if it did, Policy LO1(f) requires that in this circumstance an increase in flood storage capacity of 20% should be secured, which does not form part of the proposal. The same policy also states that the development should not impede flow, which for the reasons above I am not persuaded is the case.
19. The appellant refers to Policy EM2 of the DPD as supporting employment on employment land. I have nothing before me to confirm that this location is

allocated as such and have therefore not taken this into account. He also quotes emerging policy EC1(7), which would protect employment floorspace outside designated employment sites. The appellant acknowledges that the weight to be given to the latter is minimal given the early stage of its development. Notwithstanding this, I do not have anything before me regarding the viability of the Wharf Craft business nor the employment that it provides. For all of these reasons, I have not given this factor any weight.

20. The appellant also quotes Policy EN10 of the DPD, which safeguards and promotes uses that support the recreational use of the River Thames. It has also been brought to my attention that emerging policy SP6(5) is potentially supportive of river related business uses and their continued presence in a river-side location. The Council has not responded to these arguments. Taking everything together, I am persuaded that the boatyard is active and is likely to contribute to the recreational use of the River Thames, albeit in a small way. However, the modest benefits of this do not outweigh the requirement in Policy LO1 of the DPD to ensure that flood storage and flows are protected in Flood Zone 3b, a matter to which I attribute substantial weight.

#### *Other matters*

21. The appeal site is in the Lower Sunbury Conservation Area. In structure and finish the building is not out of keeping with the mixed architecture visible in the area, external changes to the building are minimal and the character of the original boatyard is maintained. Having regard to my duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am satisfied that the character and appearance of the Conservation Area would be preserved.

#### **Conclusion**

22. The development could be made flood resilient and resistant, and there is a modest benefit from supporting the recreational use of the River Thames. However, it has not been demonstrated that the effectiveness of Flood Zone 3b to store and transmit water has been maintained and this is a matter of substantial weight, such that it outweighs any benefits from the scheme.
23. I conclude that the proposal conflicts with the local development plan when read as a whole and there are no other considerations that would lead me to determine other than in accordance with development plan for the area.
24. The appeal is dismissed.

*B Davies*

INSPECTOR