
Appeal Decision

Site visit made on 31 August 2022

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal Ref: APP/V2635/W/21/3282624

113 South Beach Road, Hunstanton, Kings Lynn, Norfolk PE36 5BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Michael John Burton against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 21/01287/F, dated 14 June 2021, was refused by notice dated 16 August 2021.
 - The application sought planning permission for development described as 'terrace of 6 houses, 101, South Beach Road, Hunstanton' without complying with a condition attached to planning permission Ref HU.1260 TP.1362, dated 11 September 1967.
 - The condition in dispute is No 1, which states that: *The occupation of the dwellings shall be limited to the period between the 1st April and the 31st October in each year unless otherwise agreed, in writing, with the local planning authority.*
 - The reason given for the condition is: *The accommodation provided in the buildings and the space about the buildings are suitable only as holiday accommodation for which they are designed, and in the opinion of the local planning authority they are not suitable for permanent living accommodation.*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The purpose of the appeal scheme is to vary the abovementioned condition and thus allow a continuous occupation of the dwelling stretching to eleven months as opposed to the seven currently permitted. The appellant suggests a condition specifying occupation should be limited to between 16 February and 15 January the following year. I have considered the merits thereof accordingly.

Background and Main Issue

3. The original planning permission cites the suitability of the accommodation contained within the units as reason for the seasonal occupancy condition. In the course of the 55 years since the planning permission was granted, there have become a number of other reasons such restrictions exist and national and local planning policy, around matters such as development and flood risk, have evolved significantly over that time. The cases of the main parties have focussed on the matter of coastal flood risk and the role of the disputed

condition in that context. With this in mind, the main issue is whether the condition is reasonable and necessary in the interests of reducing the risk of coastal flooding for existing and future occupants.

Reasons

4. The existing building is a two storey residential unit, within a terrace of six. They are set back from and facing the sea front, which is very short distance to the west. It lies within the Coastal Flood Risk Hazard Zone (CFRHZ) as it is defined by the SADMP¹. Specifically, Policy DM 18. The SADMP recognises that the Norfolk coast has seen numerous inundations over time and although it is defended, financial and practical challenges associated with its maintenance represent an ongoing and future problem. The associated effects of climate change therefore mean, in this context, that managing coastal flood risk is one of the borough's key challenges. This is reflected, broadly, by the aims of section 14 of the Framework².
5. In regard to seasonal occupancy, DM 18 states that such will be limited to between 1 April and 30 September. Informed by the Strategic Flood Risk Assessment (SFRA) as being the only safe period of occupancy within the CFRHZ. Applications to remove, relax or vary any existing seasonal occupancy condition will be resisted. This appears, in the absence of any exceptions, to be a definitive development plan position. The Council's evidence explains that such restrictions exist because of the risks associated the highest astronomical tides and thus the associated higher probability of storm surges and more severe wave action over the winter months.
6. As a definite threat to life, the implications of any action to increase the time period of occupancy should not be taken lightly. Considering it is not just the effects of storm surge or coastal flooding in isolation, but the fact that areas, such as those so close to the coast as the appeal building is, can become cut off and thus put additional strain on and cause danger to rescuers. In addition, and putting aside any of the dwellings in the terrace that have had their occupancy relaxed in the past, a decision in this case could have implications for more than one unit given the disputed condition relates to the original planning permission for six.
7. There is some discussion in the evidence as to whether the appeal building is within flood zone 2 or 3. I note the appellant's appendices in this regard but am mindful that some of that evidence relates to maps for insurance purposes and not those to inform flood risk zones for the purposes of planning policy, specifically the Framework. The CFRHZ is an indicative zone but exists for the purposes of the development plan which indicates a very high level of coastal flood risk, and it also appears beyond doubt that, for the Environment Agency's (EA) purposes, the appeal building is within flood zone 3. The highest risk zone. I would therefore find it difficult to reconcile why the building would therefore be, for planning purposes, in flood zone 2 given its proximity to the shoreline. Regardless, and with all of these matters in mind, I would not feel comfortable relaxing the need to protect occupants of the dwelling were it to be beyond doubt that the appeal building was in flood zone 2 for planning purposes.

¹ Kings Lynn and West Norfolk Site Allocations and Development Management Policies Plan 2016

² The National Planning Policy Framework 2021

8. The evidence cites a number of other dwellings, both close to the appeal building and within the same terrace, that have longer occupancy restrictions. However, it seems some, if not all, were approved some considerable time ago and the merits of any development, be that for the erection of buildings or conditions concerning the occupation thereof, should be considered in light of the policy landscape at the time. I am also mindful that other much more recent schemes for the relaxation of occupancy restrictions in the area have been resisted both on application to the Council and at appeal.
9. I appreciate, and indeed observed as part of my site visit, that the length of coastline surrounding the appeal site is defended. Be this as it may, both the SFRA and a draft Shoreline Management Plan compiled by the Council identified that the level of protection offered was not commensurate with longer term continuous occupancy. This research has, to some degree, influenced what appears to be a stern approach in the shape of Policy DM 18 in terms of allowing occupancy restrictions to be relaxed.
10. A number of other examples of unrestricted development have been cited but, on my understanding of them from the evidence, they do not have sufficiently similar circumstances to the scheme before me. These include new build schemes that had flood betterment, replacement dwellings where the original was not restricted and extensions to existing dwellings. I am also aware of the appellant's willingness to explicitly set out a discharge of the Council and the EA's responsibility should they suffer any loss, damage or injury as a result of flooding. I however agree with the Council that such an approach, likely as a planning condition, would not be reasonable given not only the wider safety implications thereof but also that it would bind the actions of an individual and not run with the land. It would also not, as a personal choice on the appellant's part, be enforceable against any future occupiers of the appeal building, who would be at equal if not greater risk allowing for climate change.
11. There would be some economic benefits in allowing a longer occupancy of the dwelling. According to the appellant's evidence this would include additional funds in Council tax which could, in their words, be to the benefit of the whole community. Positive though this consideration may be, it would be associated with a single dwelling which, in the grand scheme, would make a very limited overall difference to the community as a whole. There appears, by all accounts, to be an effective and recently adopted local warning system and I am mindful of the quality of modern weather and thus storm forecasting systems. However, this would apply to all times of the year as well as those months when risk is higher and would do so to all local buildings that have longer or year round occupancy. A more effective reduction in risk is however for persons to simply not be present and a seasonal occupancy restriction achieves that aim more effectively.
12. The appellant raises Article 8 of the Human Rights Act and their right thereunder to make their own choices. Those are qualified rights; interference with them in this instance would be in accordance with the law and in pursuance of a well-established and legitimate aim to protect occupants of the dwelling, the appellant included, from the risks of flooding. It is proportionate and necessary to refuse to grant planning permission. Doing so would in any case maintain the status quo for which there is no indication of infringement of rights. The protection of the public interest, in dismissing the appeal, cannot

be achieved by means that are less interfering with any of the appellant's rights in this regard.

Conclusion

13. For the reasons I have set out above, there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan, Policy DM 18 specifically. It seeks, amongst other things, to reduce the risk of flooding for occupiers of dwellings within the CFRHZ. It aligns with the aims of section 14 of the Framework in this regard. The appeal should therefore be dismissed, and the disputed condition should remain given that it is both reasonable and necessary to achieve the required objectives.

John Morrison

INSPECTOR