



Appeal Decision

Site visit made on 30 November 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/E2001/W/22/3302356

32-34 Boothferry Road, Goole DN14 5DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Tom Earley against the decision of East Riding of Yorkshire Council.
 - The application Ref 22/00519/RRNOT, dated 9 February 2022, was refused by notice dated 22 April 2022.
 - The development proposed is Change of use of Class E (Shop - storage) to Class C3 (6 flats).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the appeal form in the interests of brevity.

Procedural Matters

3. Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) grants planning permission for a change of use from Class E to Class C3. It is common ground between the parties that the appeal scheme meets the requirements of paragraph MA.1 of Part 3, Schedule 2 of the GPDO. Development under Class MA is permitted subject to the prior approval of certain matters, including flooding risks in relation to the building.

Main Issue

4. The main issue is whether the proposed development would accord with the Council's Strategic Flood Risk Assessment and national guidance with regard to flood risk.

Reasons

5. The appeal site is a four-storey commercial building fronting a pedestrianised section of Boothferry Road in the town centre of Goole. It is proposed to convert the upper three floors to six flats with the ground floor remaining in retail use. The flats would be accessed from ground floor level via a new internal staircase.

6. National Planning Policy Framework (the Framework) paragraph 159 states that inappropriate development should be avoided by directing development away from areas at higher risk of flooding. Framework paragraph 167 seeks to ensure new development does not increase flood risk elsewhere, and states that development should only be allowed in areas at risk of flooding where it can be demonstrated that: the most vulnerable development is located in the part of the site with the lowest risk; the development is flood resistant and resilient; it incorporates sustainable drainage unless there is clear evidence that this would be inappropriate; and any residual risk can be safely managed with safe access and escape routes included where appropriate, as part of an agreed emergency plan.
7. The Environment Agency Flood Maps identify the appeal site as being within Flood Zone 3a. As set out in the Planning Practice Guidance (PPG) that zone is defined as having a 'high probability' of flooding, second only in terms of potential vulnerability to the functional floodplain. In the Strategic Flood Risk Assessment: Level 2: Goole (SFRA), the site lies within the Rapid Inundation Zone. This is defined as: areas that flood to depths greater than 900mm, within 0.5 hours of a breach of flood defences in a 0.5% annual exceedance probability plus climate change event.
8. The SFRA states that the Rapid Inundation Zone will experience potentially high depths, velocities and debris, which may pose a risk even to water compatible developments. Moreover, the modelling forming part of the SFRA has shown the consequences of failure of flood defences will be extreme with a high risk to life. As such, due to the significant risk involved, it advises that development within most vulnerability classifications will not be appropriate here.
9. Table 6-2 of the SFRA offers recommendations for specific forms of development, including changes of use. It sets out that a '*change of use with increase in vulnerability and/or additional residential units*' is '*not permitted*' in the Rapid Inundation Zone.
10. This proposal would result in a change of use from a 'less vulnerable' to a 'more vulnerable' use. It would also include the provision of six additional residential units within the Rapid Inundation Zone. As such the proposal would conflict with the recommendations of the SFRA.
11. The appellant's FRA does not adequately address the above conflict and instead considers that the proposal would be mitigated against flooding due to it being located at first floor level and above. However, increasing the number of residential units within the Rapid Inundation Zone would undoubtedly increase the risk to life and property as is set out in the SFRA, which specifically considers changes of use and additional residential units. Moreover, the provision of six additional residential units in this area would increase the burden on emergency services and add to the risk to trained personnel, were a flood to occur. This would not be overcome through future occupants being encouraged to sign up to the EA flood warning service or the imposition of a flood emergency plan condition on any grant of approval.
12. The appellant has directed me to a grant of prior approval nearby at a site that also lies within the Rapid Inundation Zone. However, this appears to be a smaller scheme for three units rather than six. It also relates to Class O rather than Class MA which has now superseded it. The appeal proposal does not therefore represent a direct parallel with the extant prior approval. I have been

provided with a copy of the delegated report for that decision. Here, the Council states that it can only consider whether mitigation proposed is acceptable. The mitigation in this instance was primarily limited to the floor levels of habitable rooms being 3.3 metres above ground level. As such, given the site's location within the Rapid Inundation Zone, it is not clear why the Council considered that the mitigation proposed was acceptable, particularly as it notes the conflict with the SFRA in its report. I agree with the appellant that the Council has been somewhat inconsistent in its approach to the two applications.

13. Whilst that previous decision is a material consideration, the proposal would amount to a substantial uplift in the number of dwellings within the Rapid Inundation Zone, contrary to the aims of the SFRA. The cumulative effect of this, if allowed, would be to significantly add to the risk outlined above as well as increasing the pressure on the emergency services. In this regard, the presence of existing harm and conflict with the SFRA does not justify increasing that harm.
14. As such, for the above reasons, I conclude that the proposed development would conflict with the SFRA and paragraphs 159 and 167 of the Framework which together, seek to ensure new development avoids areas of current or future flood risk and does not increase the risk of flooding elsewhere.

Other Matters

15. In its statement, the Council has drawn my attention to a proposed new entrance door to the ground floor which would allow for separate access to the accommodation at ground floor level. The proposed drawing notes that this element will be secured separately via a separate planning application. Class MA permits a change of use only and does not grant permission for other alterations that would in themselves require planning permission. Nevertheless, the Council states in its delegated report that the proposal has been amended to remove '*additional windows and entrance that require the benefit of planning consent and therefore the proposal would be consistent with this requirement of the legislation*'. The Council did not refuse prior approval on these grounds.
16. Whilst the inclusion of this element on the elevation drawings is confusing, there is an existing doorway at ground floor level and therefore a change of use is not, in principle, dependent upon the proposed entrance door. I note that it would be in the appellant's interests to secure planning permission for the proposed works in order to be able to carry out the change of use in the manner that they are seeking. Nevertheless, having regard to my above conclusion with regard to flood risk, I need not consider this matter any further.

Conclusion

17. For the above reasons, I dismiss the appeal.

Paul Martinson

INSPECTOR