



Appeal Decision

Site visit made on 18 September 2023

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/Z0116/W/23/3320227

133 Hotwell Road, Hotwells, Bristol BS8 4RU

- 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 Otwell Developments Ltd against the decision of Bristol City Council.
 - The application Ref 22/02667/F, dated 28 March 2022, was refused by notice dated 30 January 2023.
 - The development proposed is described as "change of use from Use Class E(b) (Restaurant) to Use Class C3 (Residential: 1 No self-contained maisonette)."
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be acceptable in respect of the risk of flooding.

Reasons

3. The appeal site is the ground floor and basement area of a building that had a historic use as a restaurant. During my site visit I saw that this use had ceased. The site is located in close proximity to the Bristol Feeder Canal.
4. Policy BCS16 of the Bristol Development Framework Core Strategy (2011) (CS) sets out that all development proposals will follow a sequential approach to flood risk management, giving priority to the development of sites with the lowest risk of flooding.
5. The National Planning Policy Framework (the Framework) indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. Planning Practice Guidance (PPG) adds that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within Flood Zones 2 and 3. However, per Paragraph 168 of the Framework, applications for some minor development and changes of use should not be subject to the sequential or exception tests.
6. Notwithstanding that a sequential and exception test is not required, the PPG advises that changes of use can increase the vulnerability of the development or result in occupation by people who are more vulnerable than the previous occupants to risks from flooding. Paragraph 168 of the Framework says that site-specific flood risk assessments should still be provided for applications for changes of use in Flood Zones 2 and 3.

7. The appeal is accompanied by three FRAs, dated August 2021, August 2022 and January 2023. The Environment Agency has objected on the basis that the FRAs fail to reference the best available flood risk information or modelling and fail to consider the impacts of climate change. The lack of clarity as to the finished floor levels of the development is also raised.
8. The appellant asserts that the appeal site lies within Flood Zone 2, and indeed their 2021 FRA provides a map from the Environment Agency detailing this was the case in December 2020. However, since this FRA the Environment Agency has updated their flood map for planning. This is detailed within the appellants updated 2023 FRA which now shows the site being located partially within Flood Zones 1, 2 and 3. The rear section of the building, is located within Flood Zone 3. The most up to date FRA also details that the site is at a low probability of surface water and tidal and fluvial flooding. This FRA concludes that the proposal is highly vulnerable development that is not suitable in flood zone 3 and recommends a bespoke evacuation plan be considered.
9. In light of the evidence provided within the 2023 FRA, the response from the Environment Agency, and the importance placed upon addressing flood risk by the Framework and relevant development plan policies, I find that the appellant's FRA fails to adequately assess the level of flood risk for the appeal site, and thus fails to set out suitable forms of mitigation to address this risk. Therefore, the proposal does not demonstrate that the development would be made safe during its lifetime or that, overall, occupants would be safe from flooding.
10. In reaching a view, I have noted the separate conclusions of the FRA with respect to surface water and tidal and fluvial flooding. However, an absence of risk in these respects does not address the concerns set out above in respect of fluvial and tidal flooding.
11. The appellant has drawn my attention to a nearby development that involved the conversion of a ground floor and basement to residential. Whilst I do not have full details of this development before me it appears to have gained planning permission some eleven years ago. National planning policy and flood mapping has been updated since this decision. As such, the specific circumstances surrounding this example and the appeal before me are not comparable.
12. For these reasons, I conclude that the proposal would conflict with the CS Policy BCS16, Policy BCAP5 of the Bristol Local Plan Central Area Plan (2015) and the Framework in terms of their approach to managing flood risk.

Conclusion

13. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Tamsin Law

INSPECTOR