



Appeal Decision

Site visit made on 4 December 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/A4710/W/23/3320799

Land at Bridge Royd Mill, Halifax Road, Todmorden OL14 6DF

- 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 CN Trading Ltd. against the decision of Calderdale Metropolitan Borough Council.
- The application Ref 20/01174/FUL, dated 29 September 2020, was refused by notice dated 17 March 2023.
- The development proposed was originally described as “construction of new storage unit on existing permeable surfaced secure yard area”.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the heading above I have used the postcode provided on the appeal form, rather than that provided on the application form, as this is a more accurate reflection of the site location.
3. Since making its decision, the Council has adopted the Calderdale Local Plan (2023) (LP). Policies EP17 and EP20 of the Replacement Calderdale Unitary Development Plan (adopted 2006, amended 2009), referred to in the reason for refusal, therefore no longer forms part of the adopted development plan. I have considered the appeal accordingly. The adoption of the LP is confirmed in the Council’s statement, and the appellant has had the opportunity to respond at final comments stage.

Main Issue

4. The main issue is the effect of the proposed development on flood risk.

Reasons

5. The appeal site is used as a storage yard and lies within flood zone 3. The site is located on the northern side of the River Calder, and to the south of the River Calder is the Rochdale Canal.
6. A Flood Risk Assessment was submitted with the application, and a Flood Risk Addendum (FRA) was provided to address comments raised by the Environment Agency. I understand that the appellant has implemented a change of use at the site¹, and the storage building would provide a more efficient and manageable storage solution than the current containers.

¹ 17/00823/FUL

7. The building has been designed so that it can flood in the event flood waters inundate the site. The FRA therefore sets out that the proposed building does not reduce the floodplain volume during the 1 in 100 year plus climate change flood event and therefore floodplain compensation is not required.
8. Allowing a building to flood is not floodplain compensation as it is risk mitigation by building design. Flood vents do not guarantee floodplain retention in the same way as a compensation scheme as they can become blocked during a flood event and require maintenance. The thickness of walls, raised finished floor levels, and the storage of items inside the storage unit would contribute to reducing volume. Based on the evidence presented, allowing the building to flood does not fully compensate for the reduced volume capacity of the floodplain. It has not been adequately demonstrated that the FRA is consistent in its assessment of flood risk from the design flood event.
9. The appellant states that they have unrestricted storage use on the site and a potential reduction in the quantity of containers stored on the site would also contribute to alleviating problems in the event of high flooding. They set out that they could permissibly fill the site with materials, stone and containers, which would displace more flood water than the proposed development. I understand that under Environmental Permitting Regulations 2016, the landowner would require a flood risk activity permit from the Environment Agency before proceeding with such activity. Performing an activity that displaces flood water in the floodplain and which is likely to divert the direction of the flow of water into or out of a main river is a flood risk activity. The Environment Agency state that they would refuse such a permit application without adequate mitigation, such as compensatory storage.
10. It has been highlighted that the Council's Flood Risk Assessment (2016) identifies that the development would be in flood zone 3ai. Flood zone 3ai includes areas of developed land with the same level of risk as flood zone 3b. Planning Practice Guidance (PPG) does not define flood zone 3ai. The Environment Agency state that in flood risk terms and according to the PPG, the site should be classified as flood zone 3b and therefore the proposal would not be permitted. The appellant has not addressed this matter.
11. For the reasons given above, the FRA should detail a floodplain compensation scheme in which the volume of water that is lost in the floodplain is compensated directly (level-for-level). This is because the building would be in flood zone 3ai; the development would introduce a new footprint; the design flood event would inundate the development; and to ensure that there would be no increase in flood risk elsewhere.
12. Consequently, the appellant has failed to adequately address the Environment Agency's objection and has not provided an acceptable flood risk assessment. The proposed development would therefore, based on the information presented, have an unacceptable effect on flood risk and would conflict with Policy CC2 of the LP. This states that proposals within Flood Zone 3ai will be assessed in accordance with national policies relating to Flood Zone 3a but with additional restrictions. This includes c) redevelopment of a site should only provide buildings that occupy an equivalent or smaller footprint than the buildings they replace; and d) proposals should include flood mitigation measures (such as compensatory storage) as identified and considered through a site specific flood risk assessment. The proposed development would also

conflict with chapter 14 of the National Planning Policy Framework which seeks to ensure that inappropriate development in areas at risk of flooding now, or in the future, should be avoided.

Conclusion

13. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR