



Appeal Decision

Site visit made on 21 November 2023

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2024

Appeal Ref: APP/V2635/W/23/3317934

18 Tuesday Market Place, King's Lynn PE30 1JW

- 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 Gain SPVKL Ltd against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/00031/F, dated 17 December 2021, was refused by notice dated 21 November 2022.
 - The development proposed is the change of use of part of the ground floor office to form 2 one-bedroom flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A second appeal has been lodged relating to the creation of a studio apartment on the first floor of these premises (Ref: APP/V2635/W/23/3317933), and that is being considered under another decision.
3. An application for costs was made by the appellant against the local planning authority, and that too is the subject of another decision.

Main Issue

4. The main issue is whether the development would give rise to an unacceptable risk to its occupiers as a result of flooding.

Reasons

5. 18 Tuesday Market Place is Grade II* listed, and comprises an older element at the front, with a relatively modern extension behind. The extension was originally intended for offices, but I understand that its upper floors have now been almost entirely converted to living accommodation. The extension's ground floor though has remained in office use, and it is now proposed to convert part of this area into 2 flats.
6. While the Flood risk vulnerability classification in Annex 3 of the *National Planning Policy Framework* (the Framework) (dated December 2023) identifies the existing offices as Less Vulnerable, the proposed use is of a higher level, being defined as More Vulnerable. To my mind the purpose of this classification system is to place uses in a hierarchy of risk, so as to establish whether or not risk is being increased by a proposal, and to ensure an appropriate approach is being taken to tackle any risk that may occur. Even if the list of uses it gives is not exhaustive, to my mind it is clear in relation to the proposal before me.

7. Although the majority of this property lies in Flood Zone 1, part of the extension is shown as within Flood Zone 2. However, there is nonetheless a residual flood risk, as a breach or overtopping of the River Ouse tidal defences could result in the appeal property and the entirety of Tuesday Market Place being flooded to a depth of about 1.5m. However unlikely it would be that such an event would occur, I consider it is nonetheless a possibility that must be taken into account. Moreover, while the appellant contended there would be an advanced awareness of such an occurrence, it cannot be assumed that there would necessarily be forewarning of a collapse or breach. Rather, the *Planning Practice Guidance* (the PPG) says

Areas behind flood defences are at particular risk from rapid onset of fast-flowing and deep-water flooding, with little or no warning, if defences are breached.

Therefore, whilst the likelihood of such an event may be low, the consequences if it did occur would be severe. Accordingly, I consider that changing these offices to 2 residential units would result in an increased risk from flooding as a result of introducing a use of greater vulnerability.

8. Footnote 60 of the Framework says that the sequential and exceptions tests should not be applied to changes of use (apart from a few specified instances that are not applicable to this appeal). However the PPG acknowledges that a change of use may have flood risk implications if, as in this case, it involves a change to a more vulnerable category. Depending on the risk, mitigation measures may be needed. I consider that it is for the appellant to show that the change of use meets the objectives of the Framework's policy on flood risk. The PPG offers an approach to minimise such a residual risk, and says it would not be appropriate to rely solely on emergency plans for mitigation.
9. I recognise that benefits may accrue from converting this existing office space in this highly sustainable location, and I acknowledge that this building is presently situated in an area of residual flood risk. However, I have no specific evidence to demonstrate that the office use is unviable or otherwise inappropriate, or to show the change of use of this relatively small area of the property is necessary to ensure the future of the listed building is not threatened. Moreover, *King's Lynn & West Norfolk Borough Council Core Strategy* Policy CS01 confirms that if development in flood risk areas is to be accepted it needs to be required to deliver the regeneration objectives of the town, but this has not been indicated in connection with this scheme. I also consider that the level of need for such accommodation in King's Lynn has not been shown; I am aware that other areas of the town centre are subject to a lesser flood risk; and the scheme is not required in connection with any of the uses defined as Water-Compatible Development in Annex 3 of the Framework. Accordingly, I see no reason for finding this More Vulnerable use is required or justified in this location. As such, the scheme does not accord in this regard with Core Strategy Policy CS01, or advice in the PPG or the *National Model Design Code* (the Code), all of which seek to steer development away from flood risk areas.
10. As part of the scheme flood-proof doors are proposed to protect the property from inundation. These, by definition, have to be capable of opening, and so the appellant quite fairly accepts they would be in place for 'most' (but not all) of the time. Therefore, their effectiveness in this regard cannot be guaranteed.

11. It is also proposed to raise the internal floor by 0.9m, to level with the top of the existing steps that lead from this area of the extension through into the older part of the building. This though would not be above predicted flood levels, as advised by the PPG and the Code, but rather could still allow for flooding to a depth of around 0.6m in the property. Whilst more mobile residents may well be able to wade through this depth of water, those who were less able could find such depths difficult to negotiate. A condition has been suggested prohibiting occupation of the flats by residents with mobility challenges, but given issues of definition and the possible temporary nature of these challenges, I consider such a condition would be unenforceable and so could not be imposed.
12. Dam boards are proposed but the speed of the inundation could be rapid, and they may not be in place in time. For this reason too flood warnings may not give sufficient opportunity for escape. While floats are also to be available, I have no certainty that these will be readily accessible within the required timeframes by those who needed them.
13. In the event of a tidal flood, the nearest dry ground would be some distance away on the opposite side of Tuesday Market Place. However, there appeared to be 4 possible escape routes to the upper floors of the building. The lift though would not be appropriate to use given potential issues around electricity supply, and access to 2 of the staircases would involve first descending down into deeper flood water. Indeed the route across the rear courtyard would also involve negotiating a dam board. The fourth route (through the older part of the building) would be at the same level as the proposed raised floor but again would involve wading through up to 0.6m of water.
14. There are no objections from the emergency services, while the Council's Emergency Planning Officer said the flood defence measures were welcomed to protect the scheme's residents. These points though do not lead me to different findings on this case. It could be contended that up to 4 residents in need of rescuing would not be an appreciable burden to the emergency services. However, this situation would arise in the event of a major catastrophe with, potentially, the rapid onset of fast-flowing and deep-water flooding across much of the town centre. Therefore, even the addition of so few residents in need of rescue would add unacceptably to the pressures that the emergency services would then be under.
15. Although I acknowledge that the PPG, the Framework and the Code do not have the primacy of the development plan, these documents of national policy and guidance are nonetheless material considerations to which I attach significant weight.
16. Accordingly, taking into account the various mitigation measures before me, I conclude that it has not been shown the proposal would not create an unacceptable flood risk for its future residents, harming their living conditions, and I have found no justification to outweigh this harm. As such it would conflict with Policy DM15 of the *Site Allocations and Development Management Policies Plan*, Core Strategy Policy CS01, and also with the Framework, the PPG and the Code.

Other Matters

17. The significance of this listed building and its special architectural and historic interest lie, in part, in the detailing and form of the older element at the front. It is also within the St Nicholas Area Conservation Area. This covers a diverse range of buildings and intervening roads and spaces in part of central King's Lynn that together reflect the evolution of this long-established town. Its character and appearance as well as its significance therefore arise from this diversity and the way the buildings reflect this history. The modern rear extension where these 2 flats are proposed makes little positive contribution to either the conservation area or the listed building.
18. The works before me would not be in the older section of the building and there would be no loss of historic fabric or plan form. Accordingly they would not detract from the special architectural and historic interest of No 18, they would not fail to preserve the character or appearance of the conservation area, and they would not harm the significance of either of these designated heritage assets. Other listed buildings are also nearby, but for these same reasons the proposal would not affect their settings and would not harm their significance.

Conclusion

19. Having regard to the development plan taken as a whole, I conclude the appeal should be dismissed.

JP Sargent

INSPECTOR