



Appeal Decision

Site visit made on 6 February 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/P1133/W/23/3317544

Flat 1, 27 Fore Street, Shaldon, Teignmouth, Devon TQ14 0DE

- 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 Mrs Margaret de Suys against the decision of Teignbridge District Council.
- The application Ref 19/00213/FUL, dated 31 January 2019, was refused by notice dated 1 September 2022.
- The development proposed is Change of use from shop/flat to one residential flat.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published in December 2023. However, as its provisions that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Main Issue

3. The main issue is whether future occupiers would be safe from flooding over the lifetime of the proposed development.

Reasons

4. Situated within the built-up area of Shaldon, the area surrounding the appeal site contains various residential and commercial uses, with some of the latter reverting to residential in recent years. The flood risk details originally submitted with the planning application (and received by the Council on 29 March 2019) identified the site as being at very low risk of river or sea flooding. However, during the course of the planning application, the defined flood risk for the area was revised. The submitted evidence, including the Flood Risk Assessment (FRA, by Clive Onions, dated 23 March 2022), indicates that the site is now defined as being within Flood Zone 3. Despite being on the edge of the zone (due to the steeply rising land to the south) and the presence of flood defences covering much of Shaldon, the site is therefore now categorised as having a high probability of flooding. The principal source of risk relates to tidal flooding. However, whilst the FRA sets out that all other forms of flooding at the site are low, partly due to it being over 0.5 metres above road level, the details provided by the Environment Agency (EA) indicate that the risk of surface water flooding is greater than this.
5. Opened in 2011 and managed by the EA, the robust and extensive Shaldon flood defences have a crest level of between 3.85 and 4.25 metres above ordnance datum (AOD). The FRA sets out that the defences therefore protect against a current day 1 in 200 year flood event and reduce the risk of flooding in Shaldon for

75 years. However, whilst the current (2018) tidal storm (still water) level is 3.23 metres AOD at Shaldon Bridge, the design flood level in 2122 – taking account of sea level rise due to climate change – is predicted to exceed this, being 4.38 metres AOD using the Higher Central scenario or 4.675 metres AOD under the Upper End sea level rise value.

6. The parties disagree as to whether Higher Central or Upper End is appropriate and I note that Higher Central has been accepted for residential development elsewhere, such as at tidally affected sites in Bristol. However, I have little substantive evidence which identifies that using the predicted flood level under the Upper End scenario would be inappropriate in this instance. I note that the EA, who are the government's statutory advisor on flood risk and have not removed their original objection to the proposal, indicate that they use Upper End values when assessing more vulnerable uses¹ such as the appeal proposal. The Council's Drainage and Coastal Manager's consultation response indicates that they consider this value is also appropriate in this case.
7. On this basis, during a 2122 design flood, the defences would be overwhelmed and the entire flood cell would be likely to fill up, with the flood level in the proposed flat (taking account of its floor level) being up to 2.3 metres deep. Although this would represent the peak, it is likely that the flood waters would remain in the region of 1.25 metres for several hours. Whilst the likelihood is very low, such an event would pose an extreme risk-to-life hazard for future occupiers of the proposed flat, as well as a danger to emergency services. The risk, along with the depth and likely duration of flooding in the cell and at the site, would be less under the appellant's preferred future sea level scenario. Nevertheless, I note that the existing defences in the Higher Central scenario would still be overtopped during a design flood towards the end of the development's 100-year lifetime.
8. It has been put to me that such flooding would occur at the peak of the tide, be associated with storm events that can be predicted in advance and that warnings are given of such events. Having signed up for flood warnings and prepared a Flood Plan, future occupiers could theoretically therefore safely leave the area and make for higher ground by exiting the flat's rear door into the courtyard and heading west along rising Fore Street to the steeply rising A379. However, as identified in the FRA, if flooding has already commenced, Fore Street will begin to flood. In this instance, even though the water may not be fast moving, the levels may rise slowly and the exit route described above rises away from the source of flooding, the available evidence indicates that occupiers would be unable to leave the site without having to go through tidal flood waters.
9. In this scenario, the FRA suggests that the occupiers could take refuge either within the flat above or on the steps that lead to it. However, the available evidence does not confirm that future occupiers of the proposed development would have access to that flat or a right to take refuge on its external steps. In any event, whilst the steps are easily accessible via the rear door of the proposed flat, I observed on my site visit that the limited size of the landing and its uncovered form means it would not provide suitable refuge. The duration of tidal flooding, with water levels likely to begin slowly subsiding shortly after high tide, does not lead me to a different conclusion.
10. I recognise that the site was previously in residential use and that the proposed development, in the heart of Shaldon village, is within the same area as numerous residential properties (including some recently converted units) and on the edge of the defended flood zone. Protection from the existing flood defences is also

¹ As per the flood risk vulnerability classification in Annex 3 of the Framework.

designed to last for another 65 years and thereafter any overtopping would be limited to the peak of the tide with the water spreading across the flood cell. However, the submitted evidence indicates that the depth and extent of predicted tidal flooding could be significant and safe refuge is not an option. Whilst such flooding can generally be predicted in advance, future occupiers may not necessarily receive the warnings sufficiently in advance or may simply not be able to act on them in time to leave the area before their exit route along Fore Street begins to flood. In addition, as identified in the flood risk details originally submitted with the planning application, defences reduce but do not completely stop the chance of tidal flooding as they can be overtopped or (without adequate warning) fail, and the FRA refers to a residual risk of tidal flooding at the site.

11. The available evidence therefore indicates that future occupiers would be at risk of flooding during the lifetime of the development, the escape route would not be safe during a future design tidal flood and the proposed refuge options are either uncertain and/or unsuitable. In coming to this view, I have taken into account the opinion of the local Councillor on tidal levels and flood risk in the locality and that the defences could in theory be improved in future to avoid the whole community being flooded. Furthermore, whilst the finished floor levels indicate that predicted surface water flooding within the proposed flat would not reach the 0.5 metre depth identified by the EA as unsafe, the available evidence indicates that safe access and refuge would not necessarily be possible during extreme surface water flooding events.
12. For the above reasons, I cannot conclude that future occupiers would be safe from flooding over the lifetime of the proposed development. I therefore find that it conflicts with Policy EN4 of the Teignbridge Local Plan 2012-2033. Amongst other aspects, this sets out that development will be permitted only where it demonstrates occupants' safety in a flooding event. The proposal would also be inconsistent with the provisions in the Framework in relation to meeting the challenge of climate change, flooding and coastal change.

Other matters

13. It was very unfortunate for the appellant that the defined flood risk for the area in which the site is situated was revised before their planning application was determined. However, I have to determine the proposal based on the latest available evidence.
14. During the course of the planning application, there were multiple case officer changes, the appellant struggled to fully discuss the case and potential solutions (such as possible holiday use of the proposed flat) with the Council, and was not invited to a site visit. However, these issues are not determinative as to the acceptability of the appeal proposal, which I have considered on its merits, based on the evidence before me for the proposed residential use of the flat. In addition, whilst I note the appellant's hope that the FRA author is consulted as part of the appeal, it is for the appellant to seek, as necessary, further comments from their advisors within the opportunities provided as part of the appeal timetable.
15. The appeal site is within 10km of the Exe Estuary Special Protection Area and Dawlish Warren Special Area of Conservation. In combination with other plans and projects, the addition of residential units within this area would be likely to have a significant effect on the designated sites' interest features due to increased recreational disturbance. Mitigation measures are therefore required to make the development acceptable and avoid an adverse effect on the integrity of the designated sites, and I note that the appellant has made a mitigation contribution payment to the Council to this effect. However, as I am dismissing the appeal for

other reasons, I am not pursuing this matter further because it could not lead me to a different decision.

16. The site is within the Shaldon Conservation Area (CA) and there are several Grade II listed buildings in the vicinity. However, the Council does not allege that the development would have an adverse effect on the CA or the listed buildings and their settings. On the basis of the available evidence and that no external alterations are proposed, I have no reason to disagree. Accordingly, I am satisfied that the appeal scheme would preserve the significance of the designated heritage assets, including in relation to the character and appearance of the CA and the listed buildings' settings and any features of special architectural or historic interest which they possess.

Planning Balance

17. The Council identifies the proposed change of use within a defined settlement as an acceptable form of development in principle. It also raises no objections in relation to various other matters, such as ecology, highways and the living conditions of neighbours, whilst the Parish Council supports the proposal. Nevertheless, my findings above lead me to conclude that the appeal proposal conflicts with the development plan as a whole.
18. The appellant, describing themselves as elderly, is currently left with an empty property with accruing costs after the closure of the coffee shop and lack of interest from prospective shop tenants. With only limited internal alterations required, the proposed development would provide an airy, bright new home, which is needed and in local demand, in a residential area which is well served by various local services and facilities. The site was previously in residential use, and the Land Registry describes it as a premises and flat. It has also been put to me that the property next door is a ground floor flat whilst permission for conversion of the large house on the other side was, despite its lack of rear exit, granted just prior to the submission of the planning application now the subject of the appeal. Furthermore, Shaldon's flood defences, installed at considerable public expense, are relatively new and no one that the appellant has spoken to in the village feels that their home is at risk of flooding, whilst the property market seemingly continues to function without any such concerns being raised. Nevertheless, I find that the above matters neither justify the harm I have identified nor outweigh the conflict with the development plan.

Conclusion

19. The proposal conflicts with the development plan as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

T Gethin

INSPECTOR