



Appeal Decision

Site visit made on 21 February 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/G5750/W/23/3324484

7-8 Albert Road, North Woolwich, Newham, London E16 2DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and 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 Mordechai Steren on behalf of RISHON INVESTMENTS LTD against the decision of the Council of the London Borough of Newham.
 - The application Ref is 23/00348/PRECOU.
 - The development proposed is described as the change of use to C3.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated it on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Background and Main Issue

3. Under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), planning permission is granted for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses), subject to certain limitations and conditions.
4. Paragraph MA.2 of Class MA sets out that development under Class MA is permitted subject to, amongst other aspects, an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2). In this instance, conflict was found with condition MA.2 (2) (c) 'flooding risks in relation to the building'. There is no dispute that the other criteria of Class MA are satisfied. As such, there is no need to give them further consideration in this decision.
5. Therefore, the main issue is whether the proposed development would comply with the limitations and conditions in respect of flooding risks in relation to the building in accordance with the provisions of Class MA Condition MA.2(2)(c) of the GPDO.

Reasons

6. The appeal site comprises two, two-storey buildings located on Albert Road, at the junction with Parker Street. The appeal proposal relates to the ground floors of these buildings and would involve the change of use of existing commercial premises to provide four, self-contained, studio flats.
7. The site is located within Flood Zone 3(a), which indicates a high probability of flooding. The site is protected by the Thames Tidal Flood Defences. However, the site would be at risk of flooding if these defences were breached, which could pose a risk to life, with flood water depths expected to be in the region of 2.52 metres. It is located in an area which has a low risk of flooding from groundwater and a very low risk of surface water and sewer flooding.
8. As an application for prior approval, the proposal is not expected to meet the sequential (and subsequently exception) test. However, the Framework and Planning Practice Guidance¹ (PPG) does require development to be appropriately flood resistant and resilient, and that any residual risk can be safely managed.
9. The proposed development would involve the change of use and conversion of the ground floor only, which would contain the sleeping accommodation for each of the units. It is not disputed by the parties that there is insufficient ceiling height within the ground floor of the appeal site to provide sleeping accommodation above the expected flood level, for example by using a mezzanine level.
10. The Environment Agency (EA) states that sleeping accommodation should not be located below the modelled breach flood level unless the accommodation would be protected by fixed and permanent barriers that would prevent ingress of water above this level. The EA objected to the application on the basis that the appellant has failed to provide sufficient information to demonstrate that a permanent, fixed barrier would be provided to protect sleeping accommodation that would be located below the 'modelled breach level'.
11. The application was supported by a revised Flood Risk Assessment², dated May 2023 (FRA) which assesses the risk posed by flooding, assesses potential mitigation strategies and evacuation and warning procedures. I have also had regard to the supporting information³ which expands upon the Flood Risk Assessment⁴, submitted alongside the appeal. The proposed mitigation strategy relies upon the use of a Water Exclusion Strategy, which would take the form of sealed, external flood doors. However, there are multiple external openings, including large windows within the existing building and the use of a suitable flood door would only prevent water ingress from this point. Therefore, this approach fails to address all the ways in which water may be able to enter the property in the event of flooding, such as windows or vents.
12. Whilst I accept that there is no specific document or guidance, which sets out what would constitute a permanent fixed barrier, the onus is nevertheless on the appellant to demonstrate that the use would be effective in managing flood risk for the lifetime of the development. Even if additional flood resistance

¹ Paragraph Ref: 019 Reference ID: 7-019-20220825

² Document Ref: 3144/RE/02-23/01 REVISION B

³ Evans Rivers & Coastal Supporting Letter (dated 15 June 2023)

⁴ Document Ref: 3144/RE/02-23/01 Rev B

measures could be provided, I have not been presented with any substantive evidence that these would be capable of withstanding a water depth of up to 2.52 metres.

13. The supporting information also makes reference to a staircase, located at the rear of the property, with access to the first floor of the building, which could provide refuge in the event of an emergency. However, it is unclear from the submitted plans and accompanying information where the staircase leads to, and how easily it would be accessed if a flood event occurred whilst occupants were sleeping. In particular, there is no internal access to the staircase for the occupants of Flat One. Furthermore, no details have been provided as to what facilities would be provided to anyone requiring use of the staircase.
14. My attention has been drawn to a scheme⁵ involving the change of ground floor retail accommodation to provide two flats in Hull and a further scheme⁶ in South Norfolk, both of which were supported by the EA. However, whilst I have had regard to these schemes, which relate to the provision of residential accommodation, I have limited details of the site-specific flood risk or proposals for mitigation. Furthermore, the EA has reviewed their responses to these schemes and confirmed that they consider every proposal on a case-by-case basis. They also confirmed that the guidance they have been providing to Councils within North London, emphasises that sleeping accommodation should be located above modelled breach levels. This guidance was issued in 2019 and remains the EA's approach.
15. Consequently, it has not been demonstrated that the users of the proposed development would not be placed in danger from flood risk throughout the lifetime of the development. The proposed development would therefore be in conflict with Condition M.2(1)(c) of Schedule 2, Part 3, Class MA.

Conclusion

16. For the above reasons, I conclude that the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO having regard to its flood risk. The appeal should therefore be dismissed.

K Lancaster

INSPECTOR

⁵ Planning Ref: 19/01032/FULL – Hull City Council

⁶ Planning Ref: 2022/1700 – South Norfolk Council