



Appeal Decision

Site visit made on 26 March 2024

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 April 2024

Appeal Ref: APP/E2001/W/23/3333628

Goole Boathouse, Dutch Riverside, Goole, East Riding DN14 5TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by JJ Marine LLP against the decision of East Riding of Yorkshire Council.
 - The application Ref is 23/00362/PLF.
 - The development proposed is to erect a fence adjacent to the road of 165 metres of 2.4m high v-mesh fencing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, I have removed the superfluous reference to the site's address from the description in the header above.
3. Since the submission of the appeal the Government has published a revised version of the National Planning Policy Framework (the Framework). The relevant parts of the Framework to this appeal have not altered significantly. As such, it was not necessary to ask for comments from the main parties.

Main Issue

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

Reasons

5. The appeal site is partially within Flood Zones 2 and 3. Footnote 59 of the Framework states that any development within such areas should be accompanied by a site-specific flood risk assessment (FRA). Paragraph 174 of the Framework is clear that even minor development should still meet the requirements of footnote 59. Notwithstanding the appellant's views on this, a fence does constitute development and thus an FRA would normally be required. No FRA was submitted with the application or with the appeal¹. Without an FRA it is not possible to assess what effect the development would have, if any, on flood risk or what measures would be needed to mitigate any potential impacts. I therefore cannot conclude with any certainty that the development would not lead to unacceptable impacts or that some form of mitigation might be needed.

¹ The appellant's appeal statement suggests an FRA may be prepared but this had not been received at time of writing.

6. The site is ostensibly within 20 metres of flood defences which are managed by the Environment Agency (EA). The EA have objected to the development because of a lack of an FRA and because the Council's Strategic Flood Risk Assessment (SFRA) recommends that no development should be permitted within 20 metres of a flood defence. This is to allow adequate access for management and maintenance of the defences. Policy ENV6 of the East Riding Local Plan (2016) (ERLP) states that development must adhere to relevant SFRA recommendations.
7. I have not been provided with any clear evidence by any party as to the location, nature or extent of the flood defences. Nevertheless, given the importance and potential risks associated with flood defence, it would be appropriate to take a precautionary approach. There is certainly insufficient evidence to be confident that there would be no potential harm associated with the development in terms of ensuring adequate access to the flood defences. Furthermore, no mitigation has been identified that could address any issues raised.
8. The development would therefore conflict with ERLP Policy ENV6. This seeks, amongst other things, to ensure development does not result in unacceptable consequences because of flooding. It would also conflict with paragraph 173 and footnote 59 of the Framework. These include provisions for the submission of FRAs to ensure flood risk associated with development can be safely managed.

Other Matters

9. The development would provide some benefits in terms of added security and health and safety. There is however a pavement on the opposite side of the road to the marina and thus no need to walk along the grass verge. This should reduce any safety risks for passing pedestrians. I note the appellant's reference to a previous incident, but there is nothing to suggest these are regular occurrences. I am not persuaded that the potential benefits of the fence are sufficient to grant permission in lieu of the necessary FRA and a clear understanding of the risks associated with the flood defences. I acknowledge the appellant states they were not aware of the need for an FRA, but this does not alter the conflict with local and national policy.
10. Much of the road frontage to the marina is either already fenced off or fronted by buildings. However, the evidence suggests that these were all implemented prior to the adoption of the ERLP. As such, any approvals would have been given in a different policy context. I must have regard to current local and national policy and thus these features do not add significant weight in favour of the proposal.
11. The appellant has drawn my attention to the possibility of installing a 1-metre tall fence under permitted development rights. There is a significant difference between a 1 metre fence and a 2.4 metre fence. It seems unlikely that the 'fallback' would offer the same benefits, particularly in terms of security, as those of the proposal. As such, I am not convinced there is a realistic prospect that the 1-metre fence would be implemented in practice. In addition, there is insufficient evidence to be sure that the proposal would not be more harmful than the alternative, both in terms of flood risk and providing access to flood defences. I have therefore given only limited weight to the potential fallback position.

12. The appellant has referred to the EA declining the opportunity to meet to discuss the issue. This is a matter between the parties and falls outside the scope of the appeal. This has had no bearing on my decision.

Conclusion

13. The proposed development conflicts with the development plan as a whole and there are no other considerations, as set out above, that outweigh this conflict. The appeal is therefore dismissed.

S J Lee

INSPECTOR