Appeal Decision

Site visit made on 11 June 2024

by R Norman BA(Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Appeal Ref: APP/V0510/W/24/3336630
Garden of 36 Ten Mile Bank, Littleport, Ely, Cambs CB6 1EE

- 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 Mrs H Constable against the decision of East Cambridgeshire District Council.
- The application Ref is 23/00631/FUL.
- The development proposed is a hair and nail salon.

Decision

1. The appeal is allowed and planning permission is granted for a hair and nail salon at Garden of 36 Ten Mile Bank, Littleport, Ely, Cambs CB6 1EE in accordance with the terms of the application, Ref 23/00631/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The hair and nail salon is already present and in use on the appeal site. I have considered the appeal on this basis.

3. Since the Council determined the application, the East Cambridgeshire Local Plan has been updated (19 October 2023). The Council advise that the updates related to Policy GROWTH1 and therefore do not alter the conclusions in respect of this appeal[1]. In addition, a new National Planning Policy Framework was published in December 2023, and I have had regard to this in my considerations of the appeal scheme.

Main Issues

4. The main issues are:

    - Whether the development is in a suitable location; and

    - Whether its has been sufficiently demonstrated that the development would be acceptable in relation to flood risk.

Reasons

Suitable Location

5. The appeal site is located off Ten Mile Bank and comprises a detached dwelling, associated garden, farm/haulage yard and buildings. It is accessed via an ample vehicular access with good visibility. Opposite the site is a high riverbank and beyond is the River Ely Ouse.

[1] Paragraph 2.2 and 2.3 Council's Statement of Case

6. The salon comprises a former lorry container which has been converted to provide a hair salon area, nail salon area and associated WC and storeroom. It is sited to the rear of the main dwelling and is accessed via the driveway with a parking area able to accommodate around six vehicles in proximity to the unit itself as well as additional parking within the wider yard.

7. Policy GROWTH2 of the East Cambridgeshire Local Plan (Local Plan) seeks to focus development on the market towns of Ely, Soham and Littleport. Outside defined development envelopes, the Policy strictly controls development and provides a list of categories of development that may be permitted in these areas. The appeal site falls outside of any defined development envelopes and the nearest town is Littleport. However, the use of the building as a hair and nail salon does not fall within any of the criteria listed within Policy GROWTH2 and as such is in conflict with this.

8. Ten Mile Bank is a rural road with limited lighting and an absence of footpaths. As such, I consider it likely that visitors to the salon would arrive by private vehicles. However, the Appellant has advised that the business would result in around a further three or four vehicles visiting the site on days when the business is running, including deliveries. Taking note of the condition of the road in this location, the access and levels of vehicles generated this would not be unduly harmful.

9. The Appellant has highlighted their reasons for not being able to take up a premises within one of the main towns and also highlights that Local Plan Policy EMP2 relates to the extension of businesses in the countryside and Policy EMP3 refers to new employment within the countryside. Reference is also made to Policy EMP 4. Whilst there is a haulage business related to the appeal site, the appeal development does not constitute an extension to this existing use. Furthermore, Policy EMP3 refers to B1, B2 and B3 class uses, and Policy EMP 4 considers the re-use and replacement of existing buildings in the countryside. Accordingly, I find that these policies are not relevant in relation to the appeal.

10. Consequently, whilst I have identified conflict with Policy GROWTH2 of the Local Plan, and the overarching principles of sustainability in the National Planning Policy Framework (the Framework), in this instance I have had regard to the scale of the business and resultant vehicle movements and the justification for the business in this location. I find that, in this instance, the location of the business would not result in undue harm despite the policy conflict.

Flood Risk

11. The appeal site is located in Flood Zone 3 which is an area at high risk of flooding. It is in proximity to the main river which is across the road. A Flood Risk Assessment (FRA) has been submitted which considers the Sequential Test, assesses the likely risk from flooding and considers the level of flood defences present, taking into account climate change and other factors. The FRA finds a low actual risk of flooding overall and it also proposes mitigation measures. The appeal development is classed as 'Less Vulnerable'[2] and is located in an area that benefits from flood defences.

[2] Annex 3: Flood Risk Vulnerability Classification – National Planning Policy Framework 2023

12. In relation to the Sequential Test, the FRA identifies that there are limited opportunities to undertake the development at an alternative site with a lower flood risk. Policy ENV8 of the Local Plan requires the application of the Sequential Test however I have not been provided with the scope of the area that should be considered as part of any such test and as such, cannot conclude that there are other sites available which would be sequentially preferable based on the information before me.

13. Whilst the appeal site does fall within a high-risk flood zone, I have taken into consideration the nature and scale of the business and its categorisation as 'less vulnerable', as well as the content of the FRA. Based on the evidence before me, I am satisfied that it has been demonstrated that the development would not be unacceptably at risk from flooding and could be suitably mitigated against any potential flooding risk that may arise in the future.

14. I have had regard to the consultation response from the Environment Agency who have no objections to the development but strongly recommend that the mitigation measures in the FRA are adhered to. A condition can be imposed to secure this. In addition, they advise that the user of the building should register to receive flood warnings.

15. Accordingly, I find that the overarching requirements of Policy ENV8 of the Local Plan have been met in this instance. This policy seeks to restrict development where it would intensify and increase the risk of flooding, have a detrimental effect on existing flood defences, cause an unacceptable risk to safety and not achieve safe access, amongst other things. The use would also accord sufficiently with the provisions of Section 14 of the Framework.

Planning Balance

16. I have found conflict with Policy GROWTH2 in respect of the location of the salon and therefore the development plan as a whole. However, I have considered the number of appointments and visitors, the parking provision and the Appellant's reasons for requiring the business in this location as opposed to being able to take up a property within Littleport. I have found that it has been adequately demonstrated that the development would not result in increased risk and would be made safe in flood risk terms.

17. Consequently, for the above reasons and based on the evidence before me, I conclude that there are material considerations which outweigh the policy conflict in this instance and that harm would not arise from the continued use of the building as a hair and nail salon.

Conditions

18. It is not necessary for me to include the standard time limit condition as the building and use have already been provided and commenced. I have however imposed a condition listing the approved plans as this provides certainty and ensures that the development is retained as shown. I have not included reference to the FRA in the plans condition as this is covered by condition 3. The Council have provided a list of suggested conditions, which I have considered against the tests in the Planning Practice Guidance.

19. A condition restricting the opening hours of the business is necessary to protect the living conditions of nearby residents. I have imposed a condition to ensure that the development is carried out and retained in accordance with the

submitted Flood Risk Assessment in the interests of reducing impacts and risks of flooding to future occupiers and visitors to the salon. A condition linking the business to the host property is required given the Appellant's personal justification for locating the business here.

Conclusion

20. For the reasons given above, and having had regard to all matters raised, the appeal should be allowed.

R Norman

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance with drawing nos.: 01/3046R/22; 02/3046R/22; 03/3046R/22 and 04/3046R/22.

2) The business hereby permitted shall not be open to customers outside the hours of: 9am – 7pm Mondays to Fridays, 9am – 2pm Saturdays and shall not be open at any time on Sundays, Public and Bank Holidays.

3) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA – All electrical services are elevated to a minimum of 1.0m above ground level.

4) The Hair and Nail Salon hereby permitted shall not be sold or separated from the main dwelling known as 36 Ten Mile Bank, Littleport, Ely CB6 1EE.