

Appeal Decision

Hearing held on 16 October 2024

Site visit made on 16 October 2024

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/R1010/W/24/3347712

Scrap Yard, Alexander Terrace, Pinxton, Derbyshire NG16 6PN

- 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 Mr Max Northage against the decision of Bolsover District Council.
 - The application Ref is 24/00052/FUL.
 - The development proposed is change of use of site from Scrap Car/Metal to Self-Storage Containers.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue is whether the site is a suitable location for the development having regard to flood risk.

Reasons

3. The appeal site is a roughly triangular parcel of land bordered by a railway to the north. The site is currently vacant and supporting information sets out that it was last used as a vehicle dismantler's yard¹. The site is located within Flood Zones 3a and 3b, which would be at a risk of fluvial flooding from the river Erewash to the south of the site. The proposal relates to the change of use of the site to self-storage for a period of 5 years. 22 storage containers are proposed on the northern part of the site.
4. Paragraph 174 of the National Planning Policy Framework (The Framework) sets out that applications for changes of use should not be subject to the sequential or exception tests which seek to direct development towards zones with a lower risk of flooding. Whilst the application involves the replacement of existing hardcore and site access modifications, the extent of these works is limited and thus as an application for a change of use, the requirement to satisfy the sequential and exception tests does not apply.

¹ Certificate of Lawfulness application reference BOLLE/1994/002

5. Planning permission is sought for a period of 5 years and the appellant suggests that given the temporary nature of the use the overall flood risk is reduced. In support of this approach reference is made to the wording in the Planning Practice Guidance (PPG)², which defines a design flood as “*generally* being river flooding likely to occur with a 1% annual probability (a 1 in 100 chance each year)” (my emphasis). It is stated that the inclusion of the word ‘generally’ suggests a more fluid approach and that reference is not explicitly made to temporary uses and developments in the PPG. Based on the 5-year period for which planning permission is sought, the appellant suggests that it is more appropriate to calculate flood risk based on a 1 in 20 year event and, as the containers would be sited outside of the limits of a 1 in 20 year event, the proposal would be safe for its lifetime. However, I have not been directed to any policy or guidance which would compel me to consider that a design flood as defined in the PPG is calculated any differently in cases for temporary uses and buildings.
6. Whilst the containers would be sited within part of the site at lowest risk of flooding, that would nonetheless comprise land within Flood Zone 3a and the access would be located within the functional flood plain. The Chesterfield, Bolsover and North East Derbyshire Strategic Flood Risk Assessment (2009) sets out that development within the flood envelope behind flood defences should have finished floor levels above the 1 in 100 year fluvial flood or breach level including sufficient freeboard to take into account climate change and modelling uncertainties. The finished floor levels of the containers would be below that level and thus would be affected by a design flood event as defined in the PPG. Given this there would be a risk of the containers and the site access being affected by flooding during the lifetime of the development.
7. The effect of the containers on flood storage capacity has not been modelled and no floodplain compensation is proposed. Whilst the containers would be sited on an area of permeable hardstanding, it is nonetheless reasonable to conclude that the storage of large objects within Flood Zone 3 is likely to alter flood water flows. Thus, based on the information before me, I cannot be certain that the proposal would not displace flood water elsewhere.
8. During the hearing I heard that the containers would be unlikely to become buoyant and would be watertight, which would protect the contents in a flood event. The appellant’s submission includes a draft flood warning and evacuation plan. The appellant proposes that customers would be provided with a copy of this plan and that in a flood scenario an emergency plan would be implemented to ensure the evacuation of the site which would be communicated to customers by text and email. Nonetheless, even with the benefit of flood warnings alerting customers to the risk of the site flooding, the risk of customers seeking to retrieve belongings at risk of flooding on receipt of these warnings cannot be discounted. This could increase the numbers of visitors to the site during a flood event.
9. The escape route from the site during a flood event would involve land within the functional flood plain which could involve unknown flood waters. During the hearing I heard that the site access could be submerged before an alert is issued. Thus, it has not been evidenced that the flood warning and evacuation

² Paragraph: 002 Reference ID: 7-002-20220825

plan is capable of overcoming the risk caused by flood waters, or that any residual risk can be safely managed. This is especially the case as the site would be remotely secured during a flood event and thus a scenario whereby visitors were locked in the site during a flood event cannot be discounted.

10. In summary of the above, the site would not be in a suitable location for the proposed development having regard to flood risk. It would thus be in conflict with Policies SS1, SS9 and SC7 of the Bolsover District Local Plan (2020) which state that that development proposals will be required to consider the effect on flood risk and should ensure that new development is not affected by, and does not increase flood risk elsewhere and that development in the functional floodplain will not be permitted unless it is water compatible or essential infrastructure.
11. The proposal would also conflict with Section 14 of the Framework which sets out that development should only be allowed in areas at risk of flooding where it can be demonstrated that, amongst other matters the development is appropriately flood resistant and resilient such that, in the event of a flood, any residual risk can be safely managed and safe access and escape routes are included where appropriate as part of an agreed emergency plan.

Other Matters

12. It is suggested that, in the event that this appeal is dismissed, the previous use of the site as a vehicle dismantler's yard would be reinstated. Given that until December 2022 the site was operational within this use, I consider there to be a reasonable chance that this alternative would be implemented.
13. The appellant suggests that this use, which involved the associated storage of up to 100 vehicles, would have a greater impact on flood storage capacity than the proposed 22 shipping containers, in particular as this use covered the whole of the site including parts of the site at greatest risk of flooding. Nonetheless, the effect of the previous and proposed uses on flood storage capacity, and the potential for vehicles to float and become a hazard during a flood event, has not been modelled and thus it has not been evidenced that the proposal would result in a betterment in terms of flood storage capacity.
14. The consented use is not the subject of a flood warning and evacuation plan. Nonetheless, even with the benefit of a flood warning and evacuation plan, given my observations on the ability of this plan to overcome the risk caused by flood waters, and noting the potential for the increased number of visits to the site by members of the public, I afford limited weight to this as a benefit of the proposal.
15. I acknowledge that, if reinstated, the use of the site as a vehicle dismantler's yard could result in greater levels of noise disturbance when compared to the proposed use, in particular given the lack of controls over the hours of operation. This use would result in the potential for environmental impacts including ground water pollution through oil spills and would also appear more discernible within the landscape than the containers which would be confined to the northern part of the site. The proposal would result in benefits for the appellant and may help meet a local unmet need for self-storage. These matters attract positive weight in favour of the proposal; however, these benefits would be relatively modest and at the expense of flood risk. These

benefits differ substantially from those identified in an appeal decision³ to which my attention has been drawn in which the Inspector found that the grant of temporary planning permission in Flood Zone 3 was justified taking into account the positive factors and the significant harm that could result from an unauthorised gypsy encampment.

16. In summary of the above there is no particular evidence that the appeal proposal would result in a betterment in terms of flood risk when compared to the consented use. Given this I afford the fallback position limited weight.

Conclusion

17. For the reasons set out above, there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. The appeal should therefore be dismissed.

N Robinson

INSPECTOR

³ Appeal reference APP/U1105/C/16/3146167-73

APPEARANCES

FOR THE APPELLANT:

Nick Grace, Director, Grace Machin

Max Northage, Appellant

Tony Goddard, Director, BSP consulting

FOR THE LOCAL PLANNING AUTHORITY:

Mitchell Smith – Planning Officer

Chris Whitmore – Development Management and Land Charges Manager

Lydia Bond – Planning Specialist (Environment Agency)

Sarah Street – Senior Flood Risk Officer (Environment Agency)

Hannah Smith – Flood Risk Officer (Environment Agency)

OTHER PARTIES:

Mr Nicholas Jones, local resident