



Appeal Decision

Site visit made on 11 March 2025

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2025

Appeal Ref: APP/E2001/W/24/3355896

Florida, Ellifoot Lane, Burstwick, East Riding Of Yorkshire HU12 9EF

- 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 Maria Joyce against the decision of East Riding of Yorkshire Council.
 - The application Ref is 23/02495/PLF.
 - The development proposed is a modular building.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The East Riding Local Plan Update 2025 – 2039 (the Local Plan Update) was adopted at the meeting of the Full Council on 2 April 2025. This has superseded the East Riding Local Plan 2012-2029 Strategy Document Adopted April 2016, which formed part of the development plan at the time of the Council's decision. A copy of relevant policies has been provided and both main parties have been given an opportunity to comment on the relevance of the Local Plan Update to the appeal. The appeal has thus been determined based on the Local Plan Update.
3. At the time of my site visit I saw that the building, metal shed and car parking depicted on the submitted plans have already been installed. The appeal is therefore considered retrospectively.
4. As part of the appeal submission, the appellant has provided a Sequential Test (ST), the absence of which formed part of the Council's reason for refusal. I am satisfied that this does not fundamentally change the development. The Council and interested parties have also had an opportunity to comment on the ST through the appeal process and so would not be prejudiced by my consideration of it. I have therefore determined the appeal having regard to the submitted ST.

Main Issue

5. The main issue is whether the appeal site is an appropriate location for the development with regard to the risk of flooding.

Reasons

6. The northern part of the appeal site, including the modular office building, is located within flood zone 1. However, part of the access to the site, as depicted on the site location plan, is located within flood zone 3a, with a high probability of flooding from rivers or the sea.

7. Policy ENV6 of the Local Plan Update states that the risk of flooding to development both now and in the future will be managed by applying a ST to ensure that development is steered towards areas of lowest risk. Both Section 14 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) are clear that development should be directed away from areas at highest risk, taking account of all sources of flooding.
8. Paragraph 175 of the Framework states that a ST should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific Flood Risk Assessment (FRA) demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future.
9. This is reflected in the Council's Flood Risk Sequential and Exception Test Supplementary Planning Document Adopted November 2021 (the SPD), which states that, for sites partially within flood zones 2 or 3, a ST will not be required provided the area of flood zone 2 and/or 3 will be used only for soft landscaping/open space; AND safe access and egress during flooding can be achieved without having to use the area of flood zone 2 and/or 3.
10. Nevertheless, the appellant contends that all policy regarding sequential testing relates to the development itself, and the only development occurring in this case is within flood zone 1. While the access to the site is existing and already serves other commercial operations, it is now proposed to be used for the purposes of accessing the office building and parking areas at the appeal site. It is critical to the operation of the development as the only means of access and escape. The submitted FRA does not demonstrate that no access or escape routes would be in an area at risk of flooding. In accordance with Paragraph 175 of the Framework and the guidance within the SPD, an ST is thus required in this instance.
11. My attention has been drawn to the *Substation Action* caselaw¹ which the appellant considers demonstrates that a ST is not required if relocation or mitigations within the site can address flood risk. This judgment concerned the requirements of an ST in relation to surface water flooding on an application for a Development Consent Order, in view of relevant national policy and guidance at that time. The PPG has been updated since the judgement was made, this appeal relates to an application for planning permission and the risk of flooding from rivers or the sea. The relevance of the judgement to this appeal is limited, and it does not lead me to a different conclusion on the requirement for an ST in this instance.
12. While an ST has been submitted as part of the appeal, the methodology used is somewhat restrictive. It excludes some larger sites, which may be able to accommodate smaller units within them; sites that are outside of a town centre location or an economic/employment area, despite the appeal site itself being within neither; and sites in Flood Zone 2, when those only partially within the flood zone may be sequentially preferable to the appeal site.
13. Even if I were to accept that the submitted ST is adequate, a satisfactory FRA must be provided in accordance with Footnote 63 of the Framework, and this should demonstrate how flood risk will be managed now and over the

¹ R. (on the application of Substation Action Save East Suffolk Ltd) v Secretary of State for Energy Security and Net Zero [2024] EWCA Civ 12

development's lifetime². Paragraph 181 of the Framework states that development should only be allowed in areas at risk of flooding where it can be demonstrated that safe access and escape routes are included where appropriate.

14. The Council's Strategic Flood Risk Assessment: Level 1 (SFRA) indicates that flood access and egress routes should allow occupants to safely access and exit their property in design flood conditions over the lifetime of the development. Vehicular access for emergency services to safely reach the development will also normally be required. Safe access routes should be provided that are located above design flood levels and avoid flow paths. Where this is not possible, limited depths of flooding may be acceptable. The SFRA also states that evacuation routes should not direct evacuees to dry areas surrounded by flood water.
15. The submitted site-specific FRA highlights that buildings used for offices are Less Vulnerable and therefore appropriate in flood zone 1. It concludes that the modular office building itself is at low or no risk of flooding from all sources. However, limited information regarding safe access and egress from the site has been provided. The appellant maintains that the access to the site is unlikely to be flooded, and cars would still be able to enter and exit the site if it were, as the water level in the worst-case scenario will not exceed the depth that would prevent a vehicle from transferring across the road.
16. Even low levels of flooding can pose a risk, including due to the presence of unseen hazards and contaminants in floodwater, or the risk that people remaining may require medical attention. No substantiated evidence to clarify at what flood depth safe access can be achieved, having regard to flood velocities or the risk of debris within the flood water, has been provided. Furthermore, it is not clear that the access has been designed to make it safe during a flooding event. Without adequate escape routes, users of the site would be trapped on a "dry island", contrary to the recommendations of the SFRA. The effects of climate change will further exacerbate this issue.
17. It has therefore not been adequately demonstrated that the appeal scheme would provide voluntary and free movement of people during a 'design flood', as well as the potential for evacuation before a more extreme flood, considering the effects of climate change for the lifetime of the development.
18. On the evidence before me, I cannot be certain that the appeal site is an appropriate location for the development with regard to the risk of flooding. Accordingly, it would be contrary to Policies ENV6 and A5 of the Local Plan Update. These policies, among other provisions, seek to proactively manage the risk of flooding to ensure that development does not result in unacceptable consequences to its users, the wider community, and the environment.

Other Matters

19. The development provides additional commercial space in a location beyond, albeit adjacent to, an existing industrial estate/business park. The Council found that this could constitute an appropriate form of economic development that would not prejudice the aim of planning policy to support sustainable patterns of development. Given the limited scale and context of the development, this would

² Planning Practice Guidance Paragraph: 020 Reference ID: 7-020-20220825

be a modest economic benefit that would not outweigh the identified harm and development plan conflict.

20. Other than where set out above, I have not identified conflict with any other relevant parts of the development plan or national policy and guidance. However, the absence of harm or development plan conflict with respect to other relevant matters weighs neither for nor against the proposal.

Conclusion

21. The development conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR