Appeal Decision

Site visit made on 12 August 2025

by L Fern BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2025

Appeal Ref: APP/N1025/W/25/3364607
Public House, 7 Tamworth Road, Long Eaton, Derbyshire NG10 1JE

- 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 Libertas Homes Limited against the decision of Erewash Borough Council.
- The application Ref is ERE/1124/0004.
- The development proposed is change of use from former public house to 1no. 13-bedroom house of multiple occupation (Sui Generis) and 2 commercial units (Use Class E).

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

    - Whether the site is a suitable location for the proposal, having regard to policies concerned with development in areas at risk of flooding; and

    - The effect of the proposal on the living conditions of future occupants of the house of multiple occupation (HMO), regarding the number of occupants and the size of the communal area.

Reasons

3. The appeal property is a large two-storey redundant public house that included first floor residential accommodation. It is situated within Flood Zone 3 (FZ3).

4. The HMO would include: two bedrooms and communal space in the rear section of the ground floor; seven bedrooms on the first floor; and a further four bedrooms situated in the roof space once converted. The two self-contained commercial units would sit within the front section at ground floor level.

Flood risk

5. Proposals for more vulnerable uses within FZ3, such as the proposed HMO, would normally be required to address the provisions of the Sequential and Exception Tests. However, the proposal is for a change of use of an existing property, which the National Planning Policy Framework (the Framework)[1] confirms should not be subjected to such tests.

6. Nevertheless, the proposal still needs to address flood risk policies to ensure it remains safe over its lifetime without increasing flooding elsewhere. The proposed

[1] Paragraph 176 and Footnote 62.

change of use also presents an opportunity to improve the flood resilience of a property that is not likely to have been subjected to a Flood Risk Assessment (FRA) or appropriate mitigation measures previously due to its age.

7. Whilst there is dispute between the parties regarding the severity of flood risk, there is consensus that the property is at risk of flooding from a breach in flood defences. Furthermore, it is agreed that the proposed ground floor finished floor levels are below that of the anticipated level of flood water in the event of a breach.

8. The PPG[2] sets out an avoid, control, mitigate and manage residual risk process where flood risk is a consideration. Avoiding the risk of flooding by, for example raising finished floor levels (FFLs), should be prioritised over mitigation measures. There is no substantive evidence before me to demonstrate that the FFLs could not be raised to a level adequate to avoid flood risk, taking account of necessary freeboards and allowances for climate change. Regardless of whether the proposed change of use represents the most practicable and appropriate alternative use for the building, I am not convinced that every opportunity to avoid flood risk has been sufficiently explored.

9. In lieu of flood risk avoidance, the appellant's FRA proposes several flood resilience measures, such as a demountable flood barrier, provision of a safe refuge at first floor level, new electrical installations and the use of appropriate construction materials. These would be welcome measures in situations where avoidance is not achievable, which has not been satisfactorily demonstrated in this instance.

10. Furthermore, I am not convinced that the demountable flood barrier would be an effective measure to mitigate against flood risk in this instance. Successful deployment of the barrier would likely be reliant on tenants who are unlikely to have ownership or overall responsibility for the building. Furthermore, there would be no guarantee that a responsible tenant would be present to deploy the barrier in a timely fashion and the tenants on the upper floors are unlikely to have vested interest in protecting the ground floor bedroom accommodation.

11. The proposed commercial units are considered a less vulnerable use and are therefore appropriate within FZ3 without the need to install demountable barriers to their entrances. However, it is unclear whether the existing and planned shared walls with the HMO would adequately retain flood water to prevent it from entering the residential accommodation.

12. For the above reasons, I am not convinced that the proposal takes up every opportunity to avoid flood risk and provide adequate mitigation measures. It is therefore not deemed safe over its lifetime and unacceptable on flood risk grounds, contrary to the Framework, which, amongst other things, seeks to ensure that flood risk is minimised and mitigated.

Living conditions

13. Whilst the plans show the provision of double beds in each bedroom, the appellant asserts that the building would only accommodate a maximum of 13 tenants, commensurate with the number of bedrooms proposed. However, there is no substantiated evidence or mechanism before me to satisfactorily demonstrate how

[2] Paragraph: 004 Reference ID: 7-004-20220825.

such a restriction could be enforced. I have therefore based my decision on the maximum number of occupants that the proposal could accommodate, based on the proposed number of bed spaces, as a worst-case scenario.

14. Despite the proposed kitchen providing multiple cooking and washing points and provision of personal tea making and refrigeration facilities in most of the bedrooms, the kitchen space is very small. It would not be of an adequate size to accommodate the significant number of tenants the proposal could house, particularly during busy times such as at breakfast.

15. Furthermore, the communal dining and lounge space would only be large enough to seat a small percentage of the possible number of tenants, which would likely result in the overuse of bedroom space for such activities.

16. The appellant claims that the proposed internal measurements comply with the Council's HMO space standard policy. However, no substantial details have been provided to allow me to determine whether this is the case or not.

17. For the above reasons, I conclude that the proposed change of use would not provide adequate living conditions for future occupants of the HMO, regarding the number of occupants and the size of the communal area. Accordingly, I find conflict with the Framework, which, amongst other things, seeks to ensure developments provide healthy living conditions.

Other Matters

18. It is accepted that the proposed HMO would contribute to housing supply in a town centre location that has good access to shops, services and public transport networks. Furthermore, bringing the building back into active use would likely improve the building's aesthetics, make best use of an existing property and reduce vandalism. However, I have found that the proposal is unacceptable on flood risk grounds, which is an important consideration given that flooding is a major threat to people's lives, health, property and possessions. Furthermore, I have also found the proposed development would fail to provide adequate living conditions for future residents. The benefits of the proposal do not therefore outweigh the harm found.

19. The appellant has provided other examples of HMOs and changes of use to apartments within Long Eaton. However, no substantial details have been provided. It is unclear whether these examples share similar circumstances, such as being within an area at risk of flooding, with the appeal proposal before me and I cannot therefore distinguish whether they are wholly comparable.

Conclusion

20. The proposal conflicts with the Framework taken as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

L Fern

INSPECTOR