



Appeal Decision

Site visit made on 14 October 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal Ref: APP/N2535/W/22/3299118

**Store Rear of Morton Stores, 1 Crooked Billet Street, Morton,
Gainsborough, Lincolnshire DN21 3AG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S Kajeegan against the decision of West Lindsey District Council.
 - The application Ref 144549, dated 8 March 2022, was refused by notice dated 29 April 2022.
 - The development proposed is 'change of use from store room (Use Class B8) to 1 bedroom studio flat (Class C3).'
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be acceptable in respect of the risk of flooding.

Reasons

3. The appeal site is a storage area to the rear of a convenience store in a residential area. The site is located some 75 metres from the River Trent and lies within Flood Zone 3a according to the Environment Agency's (EA) Flood Map for Planning. This is categorised as having a 'high probability' of flooding. Residential development is also categorised as a 'more vulnerable' use under the flood risk vulnerability classification of the Planning Practice Guidance (PPG).¹ However, the site is also within an area benefitting from flood defences.
4. The National Planning Policy Framework (the Framework) indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG adds that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within Flood Zones 2 and 3. However, per Paragraph 168 of the Framework, applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments (FRAs).
5. Policy LP14 of the Central Lincolnshire Local Plan (April 2017) (the CLLP) sets out that all development proposals will be considered against the Framework and should, among other things, demonstrate that they are informed by and take account of the best available information from all sources of flood risk and

¹ Paragraph: 079 Reference ID: 7-079-20220825

- by site specific flood risk assessments where appropriate; that they will be safe during their lifetimes; that they do not affect the integrity of existing flood defences and that any necessary flood mitigation measures have been agreed with the relevant bodies.
6. Policy MNP2 of the Morton Neighbourhood Plan 2019-2036 (June 2021) (the MNP) adds that development proposals should take account of the relationship between the neighbourhood area and the River Trent and not increase the risk of flooding and/or exacerbate existing drainage problems. Where it is both necessary and appropriate, individual buildings and spaces should be designed and arranged to facilitate flood resilience and protection.
 7. The application is accompanied by an FRA, to which the EA has objected on the basis that it fails to take into account the impacts of climate change; fails to consider how people will be kept safe from the identified flood hazards; and fails to assess the risk of flooding in case of a flood defence breach. The lack of clarity as to the finished floor levels of the development is also raised.
 8. The appellant's FRA, contrary to the EA, indicates that the site lies outside of Flood Zone 3 and has a 0.1% annual exceedance probability of fluvial flooding, or in other words a medium probability from a 1 in 1000 year event. The FRA points to protection afforded by existing flood defences along the bank of the river as reducing the flood risk in this area.
 9. However, the EA indicates that the FRA has not considered the consequences of the breach in defences occurring, as required by Paragraph 167(d) of the Framework which states that development should only be allowed in areas at risk of flooding where, in light of a site-specific flood risk assessment, it can be demonstrated that any residual risk can be safely managed. The EA points out that where such defences fail, there is a significant risk of a rapid onset of fast flowing and deep water, with little or no warning.
 10. The EA further points out that the most recent modelling² indicates the site is at risk of a 1 in 100 year fluvial flooding event (with a 20% allowance for climate change). This is significantly greater than the level of risk assessed by the appellant in their FRA. I also note the EA points to a standard 100-year protection afforded by the flood defences.
 11. The EA indicates that a site-specific breach analysis is required, applying appropriate climate change and sea level allowances, to derive a 'design event' based on the worst case scenario, which would then be used to ascertain the level and type of mitigation required. The appellant's categorisation of the site lying outside of Flood Zone 3 conflicts with the evidence of the EA, who produce the flood risk mapping. This has led to a reduced level of risk being assessed within the FRA, and a conclusion that the proposal would not be at risk of fluvial or coastal flows. Consequently, the appellant's FRA fails to consider the worst case scenario and design appropriate mitigation measures to address it.
 12. In light of the evidence proffered by the EA, and the importance placed upon addressing flood risk by the Framework and relevant development plan policies, I find that the appellant's FRA fails to adequately assess the level of flood risk for the appeal site, and thus fails to set out suitable forms of

² Tidal Trent Mott MacDonald 2013 model

mitigation to address this risk, beyond a suggestion that flood resistant materials are used and modest increases in the permeable areas of the site. Therefore, the proposal does not demonstrate that the development would be made safe during its lifetime or that, overall, occupants would be safe from flooding.

13. In reaching a view, I have noted the separate conclusions of the FRA with respect to surface water and groundwater flooding, which have not specifically been challenged by the EA or the Council. However, an absence of risk in these respects does not address the concerns set out above in respect of fluvial and tidal flooding.
14. For these reasons, I conclude that the proposal would conflict with the aforementioned aims of Policy LP14 of the CLLP and Policy MNP2 of the MNP, and the relevant guidance of the Framework and the PPG.

Other Matters

15. The Council did not refuse the application in respect of other matters, including the effects on character and appearance, neighbours' living conditions or highway safety. I have no evidence which would lead to different conclusions to the Council in these matters. The absence of harm in these respects means they are neutral considerations in the planning balance.
16. The proposal would add a single residential unit to the borough's housing stock, and would generate some economic activity through its construction and subsequent engagement by residents in the local economy. However, given the small scale of the proposal, these benefits would attract no more than limited weight in favour of the proposal.

Conclusion

17. In providing new housing, the development would simultaneously introduce demonstrable flood risk to that housing. In my judgement, the benefits of the scheme would not amount to material considerations which would outweigh the identified conflict with the development plan and the Framework in terms of flood risk. Consequently, they would not justify a decision being made other than in accordance with the development plan, taken as a whole.
18. Therefore, for the reasons set out, I conclude that the appeal should be dismissed.

K. Savage

INSPECTOR