
Appeal Decision

Site visit made on 5 February 2018

by Michael Moffoot DipTP MRTPI DipMgt MCMi

an Inspector appointed by the Secretary of State

Decision date: 21st February 2018

Appeal Ref: APP/N2535/W/17/3188804
154A Trinity Street, Gainsborough DN21 1JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Wallace against the decision of West Lindsey District Council.
 - The application Ref: 135943, dated 9 March 2017, was refused by notice dated 23 May 2017.
 - The development proposed is demolition of previously converted outbuildings and erect two semi-detached duplex apartments.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - (i) the implications of the proposal for flood risk having regard to the location of the site within Flood Zone 3 and national guidance for the prevention of flooding; and
 - (ii) the effect of the proposed development on the living conditions of the occupiers of Nos 150 and 152 Trinity Street, with particular reference to daylight and sunlight, outlook and privacy.

Reasons

Flood risk

3. The appeal site includes part of a small, open rear yard and a range of single-storey outbuildings used for storage and preparation purposes in connection with the adjacent fish and chip shop. The buildings would be replaced by a pair of two-storey duplex apartments, each comprising a lounge, kitchen and WC on the ground floor and bedroom and bathroom facilities at first floor level. There would be small communal amenity area to the rear of the building accessed via an alley off Portland Terrace.
4. The *National Planning Policy Framework* (the Framework) sets out strict tests to protect people and property from flooding, and advises that where these tests are not met new development should not be allowed. Paragraph 101 requires that a sequential approach should be applied in areas known to be at risk from any form of flooding. It states that the aim of a Sequential Test (ST) is to steer new development to areas with the lowest probability of flooding,

and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The steps to be followed are set out in detail in the *Planning Practice Guidance* (the PPG).

5. The appeal site is within Flood Zone 3 which benefits from flood defences, with a 1% chance of a river flood each year. The appellant's Flood Risk Assessment (FRA) states that as the development aims to convert existing buildings a ST is not appropriate. However, the proposal involves demolition of the existing buildings and new build on the site and a ST is therefore necessary, as noted in the Environment Agency's (EA) consultation response to the planning application. Although the appellant has acknowledged this omission an appropriate ST has not been provided. The Council advises that there are significant areas in Gainsborough to the east of the appeal site which are in Flood Zone 1 ('low probability of flooding') and could accommodate the proposed development. The appellant does not challenge this assertion.
6. As the proposal does not include a ST it does not therefore accord with guidance in the Framework relating to the proper approach to be employed in considering such development. It also conflicts with Policy LP14 of the *Central Lincolnshire Local Plan* (2017) which states that in order to manage flood risk all development proposals will be considered against the Framework, including application of the ST and, if necessary, the Exception Test.
7. The EA advises that the FRA does not comply with the requirements for a site-specific flood risk assessment in PPG¹ and in particular fails to propose appropriate measures, including finished floor levels, or adequately consider how people will be kept safe from identified flood hazards. It also notes that the proposal includes living accommodation below the level of the modelled breach flood at this location, and in such a breach scenario the ground floor would be flooded to a substantial depth ('danger for all'). In addition, an evacuation plan is required to provide a safe route of exit in the event of a flood.
8. A revised FRA to address these matters has not been provided. However, the appellant submits that to overcome such a breach scenario the ground floor level of the proposed development would be 1.3m above the adjacent ground level. It is argued this would be harmful to the street scene as would using the ground floor for garaging as the EA suggests. This may be the case, but it suggests to me that living accommodation at ground floor level should not form part of the appeal proposal, notwithstanding the flood resilience measures suggested by the appellant. The first floor of the development would provide satisfactory refuge for occupiers of the apartments in the event of a breach of the flood defences and inundation of the building. However, provision of living accommodation at ground floor level would place the occupiers at undue risk in such circumstances. Furthermore, the proposal is not supported by an evacuation plan.
9. I also recognise that, as a major settlement within the District, Gainsborough fulfils the majority of the sustainability credentials for new housing development in the Local Plan. However, in the absence of compelling evidence to overcome legitimate concerns regarding flood risk the proposal fails to fulfil the environmental dimension of sustainable development set out in the Framework.

¹ ID: 7-030-20140306

10. For these reasons, I conclude that the proposal would be unacceptable in flood risk terms, contrary to the guidance in paragraph 103 of the Framework. It would conflict with Policy LP14 of the *Central Lincolnshire Local Plan (2017)* which, amongst other things, requires that development proposals do not give rise to unacceptable increased risk of flooding to the site and will be safe during the lifetime of the development.

Living conditions

11. In relation to amenity, Policy LP26 of the Local Plan includes a requirement for development proposals to demonstrate how they have considered matters of overshadowing, loss of light and overlooking. Outlook is not included in the policy, and I shall assess this aspect of the proposal on its planning merits.
12. The rear elevation of No 152 Trinity Street includes windows to a bathroom and bedroom at first floor level. The adjoining property at No 150 has two ground floor windows which appear to serve a kitchen and living room and a window on the first floor which looks to serve a bedroom.
13. There is a single-storey lean-to roofed extension and a two-storey mono-pitch roofed wing to the rear of Nos 152 and 154A respectively. The appeal proposal would add to the bulk of built development in close proximity to the bedroom window in No 152. As a result, the daylight and sunlight reaching the room would be further curtailed and the sense of enclosure for those using the room would be increased. The outlook from the first floor window in the rear of No 150 would also be compromised and the daylight and sunlight to the ground and first floor rooms would be diminished.
14. Whilst not an issue for the Council, the occupier of No 150 has additional concerns regarding the impact of the proposal on her privacy. However, the first floor bathroom windows in the rear of the proposed building would be obscure glazed. Suitable screen fencing or walling on the northern boundary of the appeal site would prevent overlooking of No 150 and could be required by condition were the appeal to succeed. As such, the neighbour's privacy would not be harmed by the proposal.
15. I therefore conclude that the proposed development would unacceptably harm the living conditions of the occupiers of Nos 150 and 152 Trinity Street in respect of daylight, sunlight and outlook, contrary to Policy LP26 of the Local Plan.

Other Matters

16. In coming to my findings in relation to flood risk, I acknowledge the residential conversion schemes permitted within Flood Zone 3 within the town. In the case of the Bacon Street development, the modest 0.2m breach level for the ground floor living accommodation was considered an acceptable risk by the Council and EA in conjunction with the flood resilience measures proposed. The Trinity Street scheme involved self-contained first floor flats, and the communal rooms on the ground floor were deemed acceptable as it was unlikely they would be used for sleeping accommodation. I see no reason to disagree with the approach taken by the Council and EA to these schemes, and they are therefore of limited relevance to the appeal proposal.

17. The appellant submits that the proposed development would help to sustain his adjacent fish and chip shop and fund improvements to the building. However, no details of measures to achieve these objectives are provided.
18. Reference is made to the three dimensions of sustainable development set out in the Framework. The proposal would provide short-term employment opportunities during the construction phase, make a modest contribution to housing choice in the District and the occupiers would support local services and facilities. It involves the use of previously developed land, would improve the street scene and the site enjoys good access to public transport services. However, these factors do not outweigh the flood risk and harm to neighbours' living conditions upon which my decision turns.

Conclusion

19. For the reasons set out above, I conclude that the proposal is unacceptable and the appeal should fail.

Michael Moffoot

Inspector