



Appeal Decision

Site visit made on 7 February 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Appeal Ref: APP/C3430/W/23/3326619

Former Royal British Legion, off Sterrymere Gardens, Kinver DY7 6ER

- 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 Ian Malyan of FOB D UK Ltd against the decision of South Staffordshire Council.
 - The application Ref 21/01290/FUL, dated 30 November 2021, was refused by notice dated 26 January 2023.
 - The development proposed was originally described as completion of demolition of derelict, former social club. Construction of new residential apartment block.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice does not refer to any policies of the development plan, only the National Planning Policy Framework (the Framework).
3. In December 2023, a revised version of the Framework was published. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. As such neither party is prejudiced by a lack of consultation on the revised Framework.
4. The Environment Agency (EA) initially objected to the application. From the evidence before me, including a representation from the EA, it is clear that this objection was withdrawn prior to the Council's determination of the application.

Main Issue

5. The main issue is the effect of the proposal on flood risk, with particular regard to the safety of future occupiers of the development.

Reasons

6. The appeal site is located close to the River Stour. The proposed apartment block would be within flood risk zone 1, which indicates a low probability of flooding.
7. According to the initial objection by the EA, part of the appeal site is within flood risk zones 2 and 3, which respectively indicate a medium or high probability of river flooding. A Flood Risk Assessment (Revision E, October 2022) (FRA) accompanied the application and sets out that part of the site is within flood risk zone 2.

8. In any event, part of the appeal site is subject to flood risk, and in accordance with the Framework, the proposal would be classified as 'more vulnerable' development.
9. The appeal site was the subject of a previously dismissed scheme (Ref APP/C3430/W/20/3251508). The proposal before me includes an elevated access road and other mitigations to overcome the reasons for dismissal.
10. The EA is satisfied that a finished floor level (FFL) of 48.185m AOD¹ for the ground floor of the proposed apartment block represents a precautionary approach that would ensure no internal flooding in a 1% AEP² plus climate change event.
11. Although this FFL is specified in paragraph 9.2 of the FRA, it is inconsistent with that in the concluding section, which is considered to be an error. The EA seek a suitable condition to control this matter, together with a condition requiring cross sections of the elevated access road. The main parties make no objection in this regard, and I find no reason to consider otherwise.
12. The elevated access road would be 47.030m AOD and formed of granular material to allow the flow of flood water through and over the road. Consequently, the appeal scheme is designed to flood, and the proposal would result in residual flood risk.
13. In such circumstances, the provisions of paragraph 173 of the Framework are highly relevant, which sets out that development should only be allowed in areas at risk of flooding where (among other things) it can be demonstrated that any residual risk can be safely managed, and that safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
14. Planning Practice Guidance (PPG) sets out that the ability of residents and users to safely access and exit a building during a design flood and to evacuate before an extreme flood (0.1% annual probability of flooding with allowance for climate change) needs to be considered when assessing whether a development is safe³.
15. A Flood Warning and Evacuation Plan (Revision D, dated October 2022) (FWEP) was submitted with the application. However, the FWEP refers to an earlier version of the FRA (Revision B, October 2018), rather than Revision E.
16. The FWEP and updated FRA demonstrate that a 1% AEP +20% climate change flood level would be 47.185m AOD, resulting in a maximum flood level of 0.155m above the elevated access road. When taking account of water velocity, there would be 'Danger for None' if or when flood waters reach 47.185m AOD.
17. However, the updated FRA also addresses a +35% climate change event, which would result in a maximum flood level of 0.25m above the elevated access road, with 'Danger for None' and potential 'Danger for Some', if or when flood waters reach 47.280m AOD. Therefore, safe access and escape routes are required as part of an agreed emergency plan.

¹ Above Ordnance Datum

² Annual Exceedance Probability

³ Paragraph: 005 Reference ID: 7-005-20220825 - Revision date: 25 08 2022

18. The FWEF refers to the nearby Kinver Sports and Community Centre (the centre) as a place of refuge and states that the centre can accommodate all vulnerabilities. The proposal includes a pedestrian route towards the centre. However, the evidence before me indicates that the centre is now The Edward Marsh Centre (EMC), which is a registered charity. The centre is clearly not within the ownership or control of the appellant.
19. There is no formal agreement or other mechanism before me to demonstrate that the centre could be secured as a safe place of refuge in circumstances of flooding, including extreme flood. Furthermore, a representation from the EMC indicates that no approach has been made by the appellant in this regard, and this position is not contested by the appellant. Therefore, it is by no means certain that an emergency plan to include the centre as a safe refuge can be delivered.
20. There is no substantive information before me to demonstrate the capacity of the centre, or its suitability to accommodate and provide for persons of all vulnerabilities, including those who might be less mobile or have a physical impairment. It is not clear how any such persons would be safely assisted or evacuated during any flooding event, including flooding of the elevated access road or an extreme flood.
21. The FWEF states that future owners of the development and residential units would be responsible for implementation and annual review. Yet, there is a lack of information in the FWEF on other matters including any inspection regime, training or how the emergency plan would be secured over the lifetime of the development.
22. I have considered the appellant's position that an agreed emergency plan could be secured by condition. PPG⁴ states that when used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.
23. I note that during the determination phase, the EA suggested a pre-occupation condition to address an emergency plan. However, this was in conjunction with their recommendation to consult with the Council's emergency planners and emergency services to determine whether the proposals are safe. From the evidence before me, this consultation has not been completed.
24. In any event, for the reasons above, I cannot be certain that safe access and escape routes could be agreed so as to mitigate the adverse effects and enable development to proceed.
25. Having regard to all of the above, I am not satisfied that the proposal could meet the provisions of the Framework and the PPG that I have set out above. In this regard, the proposal before me does not fully overcome the reasons for the dismissal of the previous scheme.
26. I therefore conclude that the proposal fails to demonstrate that the residual flood risk could be overcome so as to ensure the safety of future occupiers of the development. It conflicts with paragraph 173 of the Framework, whose objectives I have referenced above.

⁴ Paragraph: 001 Reference ID: 21a-001-20140306 - Revision date: 06 03 2014

Other Matters

27. A range of other matters have been raised by interested parties. However, as I am dismissing the appeal on the main issue, and consideration of these matters will not alter my decision, it is not necessary for me to address them directly.

Conclusion

28. For the reasons given above, the appeal is dismissed.

J Moore

INSPECTOR