



Appeal Decision

Hearing held on 4 March 2024

Site visit made on 21 November 2023

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th May 2024

Appeal Ref: APP/E9505/W/22/3303030

The Old Bridge Hotel site, Bridge Road, Potter Heigham, Norfolk NR29 5JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Mr Nicholas Mackmin against the decision of Broads Authority.
- The application Ref BA/2021/0490/FUL, dated 24 November 2021, was refused by notice dated 7 March 2022.
- The development proposed is the development of 8 1-bedroom and 4 2-bedroom flats at high level for holiday use (above flood level) with a restaurant and covered carpark at ground level.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are
 - a) whether the proposal would result in an increased flood risk to people and property either here or elsewhere;
 - b) its effect on the character and appearance of the area and
 - c) whether it would harm the significance of Potter Heigham Bridge (the bridge) as a designated heritage asset.

Reasons

Flooding

3. Government guidance in the *National Planning Policy Framework* (the Framework), states that

'inappropriate development in areas of risk of flooding should be avoided by directing development away from areas of highest risk (whether existing or future).'

It advises there should be a sequential risk-based approach to the location of development so as to avoid, where possible, flood risk to people and property. It says this approach

should be used in areas known to be at risk now or in the future from any form of flooding'

adding that where the development is '*necessary*' in such areas it should be made safe for its lifetime without increasing flooding elsewhere. I share the appellant's point that what is deemed '*inappropriate*' or '*necessary*' is down to the decision-

maker's judgement. The *Planning Practice Guidance* (PPG) goes on to say that the Sequential Test

'means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding.'

4. The appeal site is on the banks of the River Thurne, and was for many years occupied by The Bridge Hotel, until it burned down at the beginning of the 1990s. The site was then substantially cleared and, since that date, has been subject of a number of temporary permissions for car parking.
5. In the Authority's opinion the site falls within Flood Zone 3b as it is functional floodplain. In contrast, although the appellant accepted that by the riverside the site is so defined, he contended that the rest, including where the buildings were to go, is now in Flood Zone 3a. However, when climate change is taken into account he acknowledged that the entire site would be in Flood Zone 3b.
6. Being mindful of future flood risk that is highlighted in the PPG and the Framework, and the requirement to safeguard the development for its lifetime, I give significant weight to all the site being in Flood Zone 3b once climate change is taken into account. On balance, I therefore find that, even if now not functional floodplain, the site will be so during the lifetime of the development and I will determine the appeal accordingly.
7. Under the flood risk vulnerability classification in Annex 3 of the Framework, the ground floor restaurant uses now proposed are Less Vulnerable, while the holiday accommodation above is More Vulnerable. As a result, and having regard to Table 2 in the PPG, the accommodation proposed should not be permitted within this designation, as it would put future occupiers and users of the properties at risk. I have no substantive evidence to show there has been any meaningful consideration of other sites for this development or that it cannot go elsewhere. I am therefore not in a position to find that there are no reasonably available sites appropriate for the development at a lower risk of flooding. As such, it has not been shown the scheme has satisfied the sequential test.
8. In response the appellant has submitted a number of reasons as to why the sequential test would be passed and the proposal would not result in an increased flooding hazard.
9. Firstly, he said regard should be given to what he considered to be an extant planning permission for a replacement hotel on the site. Following the fire referred to above, planning permission was granted in 1993 (the 1993 permission) for the *'re-instatement of fire-damaged building, provision of additional dining and toilet facilities, site and demolition works'*. Although refuted by the Authority, it is the appellant's opinion that the 1993 permission was in fact implemented by the demolition of the above-ground elements of the former hotel that survived the fire, and so still remains extant. This affects this appeal in 3 ways. One is that the presence of a building on the site would mean it should properly be considered as being in Flood Zone 3a, as it would no longer be functional flood plain. Another is it would provide comparable accommodation, and so similar risk, to that now proposed while a third is that, unlike this scheme, the 1993 permission involved no compensatory flood storage works.
10. Some fencing on the site is the only appreciable above-ground work, though part of the flooring of The Bridge Hotel remains apparent. Therefore, even if I were to consider the 1993 permission to be still extant, construction of the hotel it authorised (as opposed to the demolition of remaining elements of the former property) has not started over the intervening 30 years. I have no basis to assume

works on this element would begin if this appeal were to be dismissed, beyond a little supported comment from the appellant saying he would, and there is no timeframe given. I therefore question whether there is anything other than a theoretical possibility that the hotel approved under that permission would be built. In any event, as that building is not currently standing, its potential future presence is not sufficient to render that part of the site as now being in Flood Zone 3a rather than Flood Zone 3b.

11. However, if the 1993 permission was extant and the building it permitted was, in fact, constructed, it would in my opinion also result in a risk to people and property from flooding during its lifetime. I was told though that it would provide only 3 overnight rooms. In contrast, this current scheme is for 8 1-bedroom and 4 2-bedroom units, so meaning appreciably more people in the More Vulnerable category of Annex 3 in the Framework could be here. A key component of flood risk is that of personal safety, and so the scheme before me would place more people at risk when compared to the 1993 permission. Consequently, even if that previous permission is a fall back, it does not justify allowing overnight holiday accommodation of the scale now proposed.
12. I accept though that the 1993 permission did not involve any compensatory flood storage works, so if that larger scheme were to be built it would displace flood waters elsewhere. A commitment to compensatory flood storage works is included in the development before me. However, their precise extent, capacity and practicality are not clarified. For example, the level-for-level nature of the works is unclear, dredging of the adjacent cut/dyke has been mentioned but there is little concerning its detail or effectiveness, a condition has been suggested relating to the opening of the roller doors in times of flood, but no wording has been offered and the effectiveness of the permeable surfaces is debated given issues of silting, water tables, and the routes of flood water. As a result, in my opinion the benefits these works would bring are uncertain. However, they would no doubt offer some storage capacity, and so in that sense are an improvement over the 1993 permission if that could be built. In my judgement though any such benefits in that scenario do not outweigh the harm caused by the increased number of residents.
13. Therefore, even if the 1993 permission is still extant and is built out, the fall back position it would create does not outweigh the increased risk to people and property.
14. Secondly, the appellant referred me to a permission at Ludham Bridge Stores, some 5km away, which were also next to a river. However, that involved the redevelopment of an existing building, and, according to the Environment Agency, it was protected by flood defences. For these reasons it did not fall in Flood Zone 3b, and so the weight I attach to it is therefore limited.
15. Finally, Policy POT1 in the *Local Plan for the Broads* (the Local Plan) concerns the entire area around the bridge. The appeal site falls within a subarea of that policy, termed Policy POT1x3. This subarea is called the Former Bridge Hotel site, but also includes the boat yard to the north-east, the hot food unit to the east, and the small office on the other side of the road. Amongst other things, Policy POT1x3 states that, in the subarea containing the appeal site

New holiday accommodation will only be permitted as part of a comprehensive scheme for the site which includes other appropriate recreation and tourism related provisions.

16. The *Sequential test of allocations* (2017) was before the Examining Inspector at the local plan examination. This addressed the Policy POT1 area as a whole rather than the Policy POT1x3 subarea in isolation, and said the undeveloped areas under Policy POT1 were in Flood Zone 3b. It noted that water compatible uses required an exceptions test in that Flood Zone, while in the entirety of the area development could be located out of that flood zone. It then concluded that the site (namely all of the area covered by Policy POT1) passes the sequential test. There were no representations to the Examining Inspector concerning flooding on the Policy POT1x3 subarea, and the Examining Inspector made no comments about it when considering the plan's soundness.
17. Despite the name given to the sequential test document prepared to support the Local Plan, and the title of the table it contained, the Authority's position was that Policy POT1x3 is not in fact an allocation. It also contended Policy POT1x3 made clear that holiday accommodation would not be permissible in any areas within Flood Zone 3b, but only as changes of use for the buildings within the policy area.
18. In contrast the appellant contended that there is no reason to consider the businesses occupying the existing buildings in the Policy POT1x3 area would cease and their premises be converted. As a result, he said the wording of Policy POT1x3 promoting new holiday accommodation can only relate to the undeveloped parts of the subarea, and, even if not an allocation, the wording must mean this stated use has some form of support from the Authority.
19. I agree that Policy POT1x3 does not expressly allocate land for specific purposes. Rather, because of its general nature, it appears to be a broader approach, albeit covering uses it could be assumed the Authority would support, but which would then have to be subject to later evidence such as a Site Specific Flood Risk Assessment. The Authority's emphasis on holiday accommodation being accepted in existing buildings though was not something I saw explicitly in either the upper-case of the policy or its supporting text, and, to my mind, is at odds with Policy POT1(ii) which said new residential development would not be permitted in the area subject to the policy. I share the appellant's point about those businesses being unlikely to close, and furthermore I note the buildings within the Policy POT1x3 subarea seem to be of quite an industrial, functional construction and form that mean their conversion would be unlikely.
20. Having said that, the *Sequential test of allocations* does state the undeveloped areas of what is covered by Policy POT1 are in Flood Zone 3b while the supporting text to the policy itself says Framework policies will apply to the parts at risk of flooding. Indeed, an interpretation of the policy that would favour a More Vulnerable use on Flood Zone 3b land would be inconsistent with the Framework and so the weight any conflict is afforded should be reduced. I therefore interpret the Local Plan as not expressly allocating any undeveloped part of the Policy POT1 area for new holiday accommodation.
21. Consequently, these 3 contentions put forward by the appellant do not lead me to the view that the land is allocated for holiday accommodation or the scheme would not cause an increased flood risk to people and property.
22. However, if the site is in fact deemed to be in Flood Zone 3a, or if it is contended the development cannot be located in areas of lower flood risk, the Framework says that an exceptions test would only be passed if it is demonstrated the development complies with 2 points.
23. The first is that it would provide wider sustainability benefits to the community that outweigh flood risk. In this regard I acknowledge this would be tidying a site on

the riverside next to a historic bridge in what the Authority describes as a honeypot for visitors. However, I am not satisfied that the improvements to this area can only be addressed by this scheme, and to my mind such sustainability objectives would not be sufficient to show the development to be necessary or justify the risks associated with this More Vulnerable use. Whilst it will be introducing further commercial activity into this visitor hub, and providing employment during the construction phase and when in operation, there is nothing to show this is needed or the scale of the benefit. As such, these sustainability benefits do not outweigh the concerns about the inappropriateness of the development arising from its increased flood risk.

24. To pass an exceptions test it should also be shown that the scheme should be safe for its lifetime, taking account of the vulnerability of its users. However even if this can be demonstrated it does not over-ride the need for a sequential test. Rather, the PPG adds that

'even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.'

25. I do not doubt the appellant's intention to ensure the well-being of any staying on the site, and I note the various measures and warnings that are to be employed and incorporated into the design. However, I had no specific strategy before me to demonstrate how the ability to access and exit safely would be achieved. Those on the first floor, even though above flood level, would be isolated in times of flood, possibly with few services if any. While it was said boats from a neighbouring boatyard could be used to take them away, details of how this would work were not before me. Inevitably this arrangement would place an increased strain on what, in such a situation, would be the already stretched reserves of the emergency services. Although it was suggested these details could be secured through condition, to my mind their importance and the uncertainty that now exists means their feasibility and deliverability need to be established before the grant of permission.
26. Consequently, I also find that, had one been necessary, the development would not have passed the exceptions test.
27. Accordingly, I conclude that the scheme is contrary to Policy DM5 in the Local Plan, which requires development to comply with national guidance in the Framework and the PPG.

Character and appearance of the area

28. Block A would be a long building positioned at right angles to the river and would have a staggered dual pitched roof. Elevationally, its ground floor would comprise extensive glazing to serve the restaurant, and an area of covered parking, while its upper floor would be a regular rhythm of windows, balconies and external stairs to the holiday accommodation set against timber boarding and render. Block B would be set back, parallel to the river. It would be shorter, but again with a staggered dual pitched roof, and its front and rear elevations would comprise garaging beneath upper floor windows and balconies in render, with external stairs.
29. Under Local Plan Policy DM16 the key landscape characteristics of the Broads, in which the site is located, should be conserved and enhanced. As far as this case is concerned, these characteristics include it being a predominantly flat, rural landscape, interspersed with villages, hamlets and tree clusters, but dominated by its water environment. Moreover, Local Plan Policy DM43 seeks high quality design that reflects local distinctiveness.

30. The flatness of the surrounding countryside, the existing buildings around and the raised embankment carrying the by-pass mean that, because of its height and scale, the proposal would not be readily apparent from more distant points. From where it could be seen though it would be perceived as part of the cluster of buildings around the bridge and so would not have any effect on how that settlement was appreciated. It would be noticeable when in the cluster. However, in those views its scale would continue to reflect that of the various other buildings around. I also consider there is sufficient reference in its design, materials and form to the boat-oriented nature of nearby buildings to mean it would not be incongruous or out-of-place here.
31. Specific concern was raised about the use of roller shutters to the garage doors, but if suitably treated and incorporated into the built fabric, those are not features that I see to be alien in this environment, with its relatively utilitarian boatyard buildings. I similarly consider the rooflights are not of an unacceptable number or size, while conditions could control the effect of lighting on the dark skies.
32. The proposal includes removing groups of willows on the north-west and north-east boundaries (grades C and B respectively), and a single grade C willow to the south. I consider the loss of the grade C specimens, if suitably replaced, would not be harmful. However, I find the grade B group plays an important role in the landscape when looking from the river and also when on the footpath to the east, as it softens the built form and infuses it with trees so characteristic of the area. Although replacement planting is intended, that will inevitably take time to become established and the space available is not comparable. I am therefore not in a position to find any new planting would allay my concern around the loss of this group. In coming to this view I accept that these trees are not subject to a Tree Preservation Order, but it is not certain their removal would occur if this development did not proceed.
33. Beyond this concern about the effectiveness of the replacement planting, I am satisfied that any inadequacies in the suitability of the intended new landscaping can be addressed by condition.
34. Accordingly, I consider that by removing a grade B group of trees the scheme would fail to conserve a key characteristic of the Broads, and so would conflict with Local Plan Policies DM16 and DM43.

Heritage impact

35. Potter Heigham Bridge is Grade II* listed, and dates back to possibly the 14th Century. The appeal site is on the north-east side of the road immediately next to the southern end of the bridge and so it would be clearly visible in the setting of the bridge when looking from the various paths and quays around.
36. With its detail displaying construction methods through the ages, with its long-standing role as an important bridge over the river, and with its pleasing appearance clearly demonstrating it is a structure of some age, its significance is architectural, artistic, archaeological and historic. In terms of its setting, its position in relation to the river is of greatest importance. However, a cluster of boat yards and quays with their associated buildings and structures, have now grown up around it on each bank. Although this subsequent development might not be particularly old, it nonetheless forms the context in which the bridge is now experienced.
37. There is no evidence to show the proposal would cause harm to the physical fabric of the listed structure. Concerning the effect on setting, one of the proposed buildings would be against the site's north-eastern boundary while the other would

be against its south-eastern one, meaning both would be positioned on the site as far as possible from the bridge. They would also both be of a design that sufficiently reflected the general nature of buildings around. Taking these factors together, I consider they would not adversely affect how the listed bridge is experienced, and so the development's impact on the setting of this Grade II* listed structure would not harm its significance as a designated heritage asset.

38. The bridge is also a Scheduled Monument but I am unaware of the reasons for such a designation. I also have no knowledge as to how the extent of the designation was defined, but as this takes the form of a simple rectangle it is unlikely to be based on any particular historic significance. Notwithstanding that point, no development is proposed within the part of the Scheduled Monument that encroaches into the western corner of the appeal site, and this could be confirmed by condition.
39. Again, the proposal would be within the setting of this Scheduled Monument, but I share the parties' views that this raises no issues beyond those taken into account in relation to the effect on the setting of the bridge as a listed building. Therefore, for the reasons given above, I consider the proposal's effect on the setting of the Scheduled Monument would not harm its significance.
40. Accordingly, I conclude the development would not harm the significance of the bridge as a designated heritage asset, and so would not conflict with Local Plan Policy DM11 or guidance in the Framework, both of which seek to protect, preserve or enhance the significance of designated heritage assets.

Planning balance and other matters

41. Above I have already found that the scheme's economic benefits from increased employment and drawing customers to this honeypot, and its environmental benefits from tidying what is currently an unattractive site in the centre of the cluster next to an important heritage asset (even taking into account any improvements in design when compared to the 1993 permission, assuming that could still be built), do not outweigh the increased flood risk. Therefore, even if taken together, they do not outweigh the wider harms identified and do not justify a decision other than in accordance with the development plan.
42. At the Hearing I was told the development needed to have regard to the Norfolk Recreation Impacts Avoidance Mitigation Strategy. Given my findings though this is not a matter I have had to explore further.

Conclusion

43. Accordingly, I conclude that the appeal should be dismissed.

JP Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

M Galey	Planning consultant
N Mackmin	Appellant

FOR THE AUTHORITY:

N Beal	Planning Policy Officer with the Authority
K Knight	Historic Environment Manager with the Authority
K Smith	Head of Planning with the Authority

FOR THE ENVIRONMENT AGENCY:

A Hain-Cole	Planning Officer
N Lupton	Partnerships and Strategic Overview Officer

DOCUMENTS SUBMITTED AFTER THE HEARING

ON BEHALF OF THE APPELLANT:

APP1: Appellant's comments on the Authority's suggested draft conditions, received by the Planning Inspectorate on 15 March 2024

APP2: Comments from Canham Consulting (dated 18 March 2024)

APP3: Drawing 213726-CCL-XX-00-DR-C-3000-P01

APP4: Comments from the appellant along with comments from Canham Consulting (dated 22 April 2024)

ON BEHALF OF THE AUTHORITY:

LPA1: Note containing suggested occupancy condition and Information on the Norfolk Recreation Impacts Avoidance Mitigation Strategy received by the Planning Inspectorate on 6 March 2024

LPA2: Email to the Planning Inspectorate from the Authority (dated 14 March 2024) along with comments from the Environment Agency (dated 14 March 2024)

LPA3: Comments from the Environment Agency (dated 2 April 2024)