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# Appeal Decision

Site visit made on 10 May 2022

**by Matthew Jones BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

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## Appeal Ref: APP/X1118/W/21/3285601

### 3 Taw Vale, Barnstaple EX32 8NJ

- 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 Dominigo Tjornelund of FDT & Sons Ltd against the decision of North Devon District Council.
  - The application Ref 72245, dated 2 October 2020, was refused by notice dated 21 April 2021.
  - The development proposed is partial Change of Use of an existing 3 storey Listed building, current Use Class B1 (Offices), to C3 (Residential) to the First and Second Floors (retaining Use Class B1 to the Ground Floor), including necessary internal alterations to create a dwelling.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs made by Mr Dominigo Tjornelund of FDT & Sons Ltd against North Devon District Council is the subject of a separate decision.

### Main Issue

3. The main issue is whether or not the site would be suitable for the proposal, with reference to flood risk.

### Reasons

4. 3 Taw Vale is a former house converted to offices fronting a tidal section of the River Taw in Barnstaple, within Flood Zones 2 and 3a. The scheme seeks to return the upper floors to residential use, a use that the government classifies as more vulnerable to flood risk<sup>1</sup>. In such cases, the planning practice guidance states that it must be shown that future users of the development will not be placed in danger from flood hazards throughout its lifetime.
5. On the data available, one can be confident that the site will be safe from tidal flooding until 2075 by virtue of adjacent flood defences. However, after that date and owing to climate change, there is the prospect of the highest tides of the Taw overtopping these defences and creating a flood event along Taw Vale. My assessment of the scheme is set against the benchmark of these existing defences, as a project to upgrade them has not been given the green light.
6. The residential element of the scheme would be too high to be flooded, but occupants may be trapped inside the property for a certain period of time until

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<sup>1</sup> As per Annex 3: Flood risk vulnerability classification of the National Planning Policy Framework

the flood waters recede. The appellant considers that it would be safe to stay put in these circumstances and wait it out. However, there are certain aspects of the evidence which lead me to call this approach into question.

7. My concern is that, even if the overtopping is itself relatively brief, there is the potential for water to pond on the landward side of the defences and its dispersal to be hindered by overwhelmed drains blocked by debris. This may be considered a speculative or even fanciful scenario, but Taw Vale is modelled as liable to surface water flooding and, critically, water did pond here in 2020. It has also been put to me that by 2115 overtopping may repeat at consecutive high tides, which could augment ponded water and prolong the flood event.
8. These matters cast significant doubt in my mind as to the timeframe during which occupants would be trapped in the dwelling. I would question the safety of occupants having to stay put for a period potentially clearly in excess of six hours, a scenario the evidence does not allow me to rule out.
9. Such a protracted period also raises the prospect of occupants leaving during times of risk. I recognise, owing to the height difference between the flood defence wall and Litchdon Lane (the preferred route of escape), that there could only be a maximum of around 0.9m of water in the lane at any time. Nonetheless, such water depth, even with little current, would not be safe for all potential occupants, such as younger children or those with mobility issues.
10. The point is made that there would be a clear reduction of people at the site as a result of the scheme. That may be so, but it seems to me that office workers are much less vulnerable to flooding in practice as they would not be younger children, would be awake to flood warnings and likely onsite during typical daytime hours. A sleeping family would be much more vulnerable to the risk.
11. I have been referred to sites in Devon where authorities have accepted onsite refuge for around six hours. I do not know the circumstances at these sites, and I have considered the appeal based on the specific nature of the flood risk predicted at Taw Vale. By the same token, I accept that Taw Vale has long been largely residential, including basement flats. In 2013 the Council granted permission for a similar scheme at 5 Taw Vale (Ref 56134) and clearly 3 Taw Vale was originally a dwellinghouse. Even so, I must consider this scheme on its merits against the evidence before me and relevant planning policy.
12. Accordingly, I conclude that the site would not be suitable for the proposal, with reference to flood risk. The proposal would conflict with the relevant aims of Policy ST03 of the North Devon and Torridge Local Plan 2011-2031 (adopted 2018) and the National Planning Policy Framework.

### **Other Matters**

13. The site is within influence of the Braunton Burrows Special Area Conservation (the SAC) and I cannot rule out in the first instance that the scheme would have likely significant effects on the integrity of the SAC through increased recreational use. I understand that payment has been submitted in order to fund mitigation for the effects on the SAC. Had I been minded to allow the appeal, I would have considered this matter further within an Appropriate Assessment. As I am dismissing it for other reasons, I have not done so.
14. 3 Taw Vale is part of the Grade II listed building 3-11, Taw Vale Parade and is within the Barnstaple Town Centre Conservation Area (the CA). The listed

building draws its significance from its architectural value, which in turn allows it to contribute positively to the significance of the CA. The partial conversion of No 3 back to its former residential use, with minimal alterations to its fabric, would not cause harm to the special interest of the listed building. Likewise, the character and appearance of the CA would be preserved.

### **Planning Balance and Conclusion**

15. The issues of flood risk at the site bring the proposal into conflict with the development plan when read as a whole. The other considerations put forward in favour of the scheme do not overcome this conflict.
16. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

*Matthew Jones*

INSPECTOR



## Costs Decision

Site visit made on 10 May 2022

**by Matthew Jones BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

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### **Costs application in relation to Appeal Ref: APP/X1118/W/21/3285601 3 Tav Vale, Barnstaple EX32 8NJ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Domingo Tjornelund of FDT & Sons Ltd for a full award of costs against North Devon District Council.
  - The appeal was against the refusal of planning permission for partial Change of Use of an existing 3 storey Listed building, current Use Class B1 (Offices), to C3 (Residential) to the First and Second Floors (retaining Use Class B1 to the Ground Floor), including necessary internal alterations to create a dwelling.
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#### **Decision**

1. The application is refused.

#### **Reasons**

1. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
2. The applicant considers that the Council acted unreasonably in regard to the planning merits of its position about safe refuge at the site and has shown undue bias in its conduct. The Council submitted a detailed flood risk report during the appeal which led to further costs to provide a rebuttal.
3. Many of the applicant's issues relate to the planning application, not behaviour during the appeal. Clearly, the Environment Agency's position did harden over time, which would have been a rational source of frustration for the applicant. However, concerns about the conduct and motivations of the Council, and the potential maladministration of the application, are best addressed not to me but the Council's complaints procedure and potentially the ombudsman.
4. The merits of the Council's case are foremost addressed by my appeal decision. What is clear from the evidence before me, is that the Council has been consistently concerned about safe refuge as an option. The officer report is sufficiently detailed in its assessment of this issue, with clear reasoning for the Council's decision. I have ultimately agreed with the Council's concerns.
5. The Council submitted a detailed report during the appeal, which logically led to costs for the applicant at the final comments stage. However, the majority of the content of the report seeks to expand or augment the Council's position as already established. As such, I do not find its submission to be unreasonable. The PPG states that parties in planning appeals normally meet their own expense, and I consider the applicant's costs to fall within that context here.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. An award of costs is not justified.

*Matthew Jones*

INSPECTOR