

Appeal Decisions

Site visit made on 28 June 2017

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14th July 2017

Appeal Ref: APP/U2235/W/17/3173406 (Appeal A)

The Oast House, Church Farm, Collier Street, Maidstone TN12 9RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Paragraph O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Ralf Alwani against the decision of Maidstone Borough Council.
 - The application Ref 16/508368/PNOCLA, dated 6 December 2016, was refused by notice dated 31 January 2017.
 - The development proposed is 'change of use of B1 Offices to C3 Residential (being 2, 2 bedroom and 1, 3 bedroom houses) including relevant information covering transport and highways impacts of the development, contamination risks on the site and impacts of noise from commercial premises on the intended occupiers of the development'.
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Appeal Ref: APP/U2235/W/17/3173413 (Appeal B)

Unit A, Church Farm, Collier Street, Maidstone TN12 9RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Paragraph P of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Ralf Alwani against the decision of Maidstone Borough Council.
 - The application Ref 16/508370/PNP, dated 5 December 2016, was refused by notice dated 2 February 2017.
 - The development proposed is 'change of use from Class B8 Warehouse to Class C3 Residential divided into 3 dwellings'.
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Decisions

1. Both appeals are dismissed.

Preliminary Matters and Main Issues

2. Appeal A and Appeal B relate to a change of use to Class C3 (residential) of two adjacent buildings on the same site. Whilst I have considered each on its own merits, as they have much in common and in the interests of brevity, I have dealt with them in one decision letter.
3. I have referred throughout to the proposals as Appeal A and Appeal B respectively, in accordance with the way they are listed in the header above.
4. In relation to Appeal A, the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) require the local planning authority to assess the proposed development

solely on the basis of whether it constitutes permitted development under the terms of Class O and its impact on a number of factors specified in paragraph O.2 (1) of the GPDO. My determination of Appeal A has been made in the same manner.

5. From the evidence before me, it is apparent that the Council accepts that the evidence provided confirms that the proposed development would meet the requirements of paragraph O.1 of the GPDO. Consequently it would fall within the permitted development right under Class O: that is, change of use from office B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within C3 (dwelling houses) of that Schedule. I have not been provided with any strong evidence to the contrary.
6. Therefore, I consider that the main issue, in relation to Appeal A is, in terms of paragraphs O.2 (1) of the GPDO, whether the impact of the development on flood risk would be acceptable, having particular regard to the provision of safe access and /or egress during a flooding event.
7. In relation to Appeal B, the provisions of the GPDO require the local planning authority to assess the proposed development solely on the basis of whether it constitutes permitted development under the terms of Class P and its impact on a number of factors specified in paragraph P.2(b) of the GPDO. My determination of Appeal B has been made in the same manner.
8. From the evidence before me, it is apparent that the Council accepts that the provisions of paragraph P.1 do not apply in this case and the evidence provided confirms that the proposed development would meet the requirements of paragraph P.2(a) of the GPDO, regarding the previous or current use of the property. Consequently it would fall within the permitted development right under Class P: that is, change of use from a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwelling houses) of that Schedule. I have not been provided with any strong evidence to the contrary.
9. Therefore, I consider that the main issue, in relation to Appeal B is, in terms of paragraph P.2 (b) of the GPDO, whether the impact of the development on flood risk would be acceptable, having particular regard to the provision of safe access and /or egress during a flooding event.

Reasons

10. Appeal A relates to a detached oast house; Appeal B to the adjacent detached metal corrugated storage unit. They both front onto a track that leads from Collier Street. That track serves some other commercial uses and the agricultural land nearby. A building of similar scale sits fronting onto the same track. To the rear is a pond and an area of grass and some planting.
11. The surrounding area is generally in an agricultural use. There are residential properties nearby which front onto Collier Street. Saxonden, one of these is a grade II listed building. The Council does not raise concern regarding the effect of the appeal proposal on the setting of that listed building. Mindful of my statutory duties¹, on the basis of the nature of the appeal proposal and

¹ section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

separation distance involved, I have no reason to take an alternative view on this matter.

12. The appeal site and surrounding land is situated within Flood Zone 3a, which the Environment Agency (EA) confirms is at a high risk of flooding. It is agreed between the two main parties that the proposed residential use is classified as 'more vulnerable' in the National Planning Policy Framework Technical Guide Table 2. It is also agreed between the two main parties that the proposed floor levels within the proposed dwellings would be high enough to acceptably minimise the risk of water ingress. As the proposed floor levels would be raised, I have no reason to take a different view.
13. Both parties agree that safe access and egress in the event of flooding, is likely to be available along the access track, even though that is subject to shallow surface water flooding as well as fluvial flooding. On the basis of the raised pathway along its length linking Collier Street to the proposed dwellings, along with the proposed height of the access track, I have no reason to take an alternative view.
14. The Council's concern is travel in the wider area in the event of flooding and the possibility that the appeal dwelling could become isolated. Both parties assess the route south along Colliers Street as a safest means of access and egress during a flooding event. It is agreed that its lowest point, in the vicinity of the appeal site, is some 400 metres to its south. However, there is disagreement about the flooding that may occur at this point and along this route, which casts some doubt on the appellant's findings.
15. The EA suggests that the roads in the wider area, including Collier Street, have in the past suffered from widespread flooding (2000 and 2013) which has made them impassable to traffic in places. The EA's position is substantiated by photographic evidence of flood events in 2000 and 2013. This evidence, supported by the comments of local residents, together with the EA's predictions of flooding taking account of climate change, leave me unconvinced that flood levels would not result in danger to those attempting to drive or walk in the locality. If this were the case, travel by foot or vehicles including emergency vehicles, would require travelling through flood waters. This would pose a danger to future occupiers of the appeal dwellings. It would present difficulties to emergency vehicles and cause problems of passage for medical assistance if required. Such danger would be posed by mechanical failure of vehicles, contamination, trip and other hazards and debris. This is demonstrated through an assessment against Research and Development Technical Report FD/2320/TR2: *Flood Risk Assessment Guidance for New Development*, Table 13, which suggests the flood hazard on this part of the route would be classified as 'Danger to Some' at its least. Other routes assessed present a greater flood hazard.
16. The appellant suggests that future residents would be informed of the flood risk and that warning would be given well in advance of flood waters reaching the appeal site. However, observed evidence indicates that flood water advances quickly and such warning would not avoid the impact of a flood event on the safe voluntary and free movement for future occupiers under flood conditions, which would result in the risk of isolation. This matter does not overcome my concern therefore.

17. I have taken account of planning permission Ref 16/504621/PNQCLA for land at 2 Moat Farm Cottages, Collier Street. However, that application was approved prior to the most recent Medway Model Estimates which take into account climate change and is in a different locality. That case does not replicate the circumstances of these appeals therefore. Benefits that would be brought about through the provision of additional dwellings, a reduction in traffic to the appeal buildings and noise and disturbance to neighbouring residents do not outweigh my concern regarding potential flood risk.
18. Accordingly, for the above reasons, and taking all other matters raised into consideration, I conclude that Appeal A and Appeal B should be dismissed.

R Barrett

INSPECTOR