
Appeal Decision

Site visit made on 26 June 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 28 July 2017

Appeal Ref: APP/R0335/W/17/3170661

Building 'A', Berkshire Court, Bracknell RG12 1RE

- 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, Class O of the Town and Country Planning General Permitted Development (England) Order 2015.
 - The appeal is made by Brooks Murray against the decision of Bracknell Forest Borough Council.
 - The application Ref 17/00060/PAC, dated 19 January 2017, was refused by notice dated 23 February 2017.
 - The development proposed is described as the change of use of the 1st and 2nd floor of the building, from office use (B1) to residential (C3). For transport and flooding risks information refer to the accompanying statement. For impacts of noise and contamination risks refer to the respecting reports.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning General Permitted Development (England) Order 2015 for the change of use of the ground and first floors of the building from office use (B1) to residential (C3), at Building 'A', Berkshire Court, Bracknell RG12 1RE, in accordance with the terms of the application Ref 17/00060/PAC, dated 19 January 2017, and the plans submitted with it, subject to the following condition.
 - 1) No development shall take place until a detailed remediation scheme based on the findings and recommendations of the Contamination Risk Assessment, reference GWPR1985, by Messrs Ground and Water Limited, shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that after the change of use is effected, the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the building is occupied for residential use.
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Preliminary Matters

2. I have amended the description of development in the formal decision above as the building does not include a 2nd floor above ground. This accords with the description given in the appeal form.
3. The Council's decision notice describes the information upon which it made its determination and excludes the Flood Risk Assessment and Contamination Risk Assessment which were included in the appeal submission. I have had regard to both these documents in my considerations below.

Background and Main Issues

4. The provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (GPDO) Class O require the local planning authority to assess the proposed development on transport and highways impacts, contamination and flooding risks on site, and impacts of noise from commercial premises on the intended occupiers. My determination of this appeal has been made on the same basis.
5. Having regard to the evidence before me, which indicates that there are no transport or noise risks associated with the site, I consider the main issues to be the risks from flooding and contamination. The main issues are therefore:
 - whether there would be an unacceptable risk to future occupiers from flooding; and,
 - whether there would be an unacceptable risk to future occupiers from land contamination.

Reasons

Flooding

6. While the appellant's Flood Risk Assessment shows that the building stands in Flood Zone 1, the car-park and road in front of the building which form its principal access are in Flood Zones 2 and 3. The change of use would increase the vulnerability of the building's occupants in the event of flooding nearby.
7. However, there is a continuous footpath around the building which leads via an adjacent footpath onto Western Road, which is in Flood Zone 1. This would provide future occupants with a safe, dry escape. The appellant also points to the nearby watercourse being culverted and that there is no history of flooding in the area.
8. I therefore identify no risk to future occupants from flooding within the building, and there would be an effective means of escape should flooding occur nearby. There would therefore be no conflict with paragraph 103 of the National Planning Policy Framework (the Framework) which requires development to be appropriately flood resilient including safe access and escape routes where required.

Contamination

9. The appellant's Phase 1 Risk Assessment identified potential on-site sources of contamination. It recommended a site investigation to determine the nature of any fill, and whether low volumes of methane and carbon dioxide are present.

10. The appellant has submitted a Contamination Risk Assessment, based on bore holes and trial pits. It concludes that two levels of protection against the ingress of bio-gas are necessary. It suggests a range of protection systems including sub-floor ventilation, a ground-bearing raft or suspended slab and the installation of a gas resistant membrane. However, the assessment is unclear as to which, if any, of these measures might have been previously installed in this existing building, their effectiveness, or which of these measures, if any, should reasonably be installed before its change of use.
11. Paragraph W(13) of Schedule 2, Part 3 of the GPDO states that prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval. I note that the appellant considers that a precautionary approach is necessary. Therefore, a condition to secure the details of a remediation scheme, as required by the Contamination Risk Assessment would ensure that the site would be suitable for its intended use and that there would not be an unacceptable risk from pollution. There would therefore be no conflict with paragraph 120 of the Framework.

Conclusion

12. I conclude that based on the information submitted with the appeal, the appeal should be allowed and approval granted. In granting approval, the appellant should note that the GPDO requires at paragraph O.2(2) that development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

Patrick Whelan

INSPECTOR