



Appeal Decision

Site visit made on 22 January 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 27 April 2020

Appeal Ref: APP/Y9507/W/19/3239742
71A Station Road, Liss GU33 7AD

- 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 David Graver Building & Property Services Ltd against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/00334/FUL, dated 22 January 2019, was refused by notice dated 31 May 2019.
 - The development is originally described as a “retrospective change of use from office to 1 bed residential flat”.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form indicates that the change of use has already occurred, and the development was completed prior to the submission of the planning application. I saw that the appeal site is currently being used as a one bedroom residential flat. I have therefore treated the development as already having occurred.
3. The National Park Authority (NPA) and appellant agreed a revised description of development during the application process to “retrospective change of use from retail A1 use to 1 bed residential flat”. I have determined the appeal on this basis.
4. The NPA decision refers to policies from the East Hampshire District Local Plan: Joint Core Strategy (adopted June 2014 by the NPA). However, this plan was replaced by the South Downs Local Plan (LP) in July 2019. The NPA have confirmed that Policies SD2, SD5, SD17 and SD49 of the LP are most relevant to the determination of this appeal, which the appellant has had the opportunity to comment on. I have accordingly based my decision on the policies contained in the LP.

Main Issues

5. The main issues are:
 - whether the development would be at an unacceptable risk of flooding; and
 - the effect of the railway line on the living conditions of occupiers, with specific regard to noise.

Reasons

Flood risk

6. The appeal site is located along the River Rother and forms a rear extension to the retail unit at 71A Station Road. There are no internal connections between the appeal site and the existing retail unit, with access to the appeal site obtained externally via a separate access. The appeal site was formerly used as an office ancillary to the retail unit but is currently occupied as a self-contained one bedroom residential flat. The appeal property is wholly located within Flood Zone 3a of the Environment Agency's (EA) mapping, and as such it is not disputed by the main parties that it has a high probability of flooding.
7. Both the National Planning Policy Framework (the Framework) and the Planning Policy Guidance (PPG) outline a clear process for determining whether development can appropriately occur within flood affected areas. These processes and general policy objectives are reflected at the local level by Policy SD49 of the LP. Paragraph 155 of the Framework specifically states that "inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at high risk (whether existing or future)".
8. The appeal development introduces a more vulnerable use within Flood Zone 3a as per the categories defined in Table 2 of the PPG. The PPG states that a change of use may increase the flood risk if more vulnerable classifications of development are introduced. A site-specific flood risk assessment is therefore required to demonstrate that development and its users will not be placed in danger from flood hazards throughout its lifetime as per Paragraph 163 of the Framework.
9. The Flood Risk Assessment (FRA) submitted during the application process identifies that both the finished floor level of the appeal site and access at Station Road fall below the EA's 1:100 year modelled flood event plus climate change. Accordingly, both the occupants of the appeal development and the property itself would be at demonstrably unacceptable risk during the modelled flood event with no flood free or safe access from the site. The single storey nature of the development also provides no opportunity for safe on-site refuge in the event of a flood event.
10. The FRA goes on to outline a list of general physical design mitigation measures that could be implemented within the appeal site to mitigate this harm, and the need to establish a formal flood warning and evacuation plan. However, the FRA does not specifically identify what measures will be, or have been, implemented and how, other than requiring occupants and the owner of the property to register for the EA's "Flood Warnings Direct" service.
11. The appellant has since erected a permanent wall within the rear courtyard, outside of the identified appeal site, to serve as a flood barrier along the boundary adjoining the River Rother. The barrier appeared to be of brick and concrete render construction and is described by the appellant as being 1.2 metres in height. This wall was not identified as a recommended mitigation measure within the submitted FRA. As such the FRA did not assess the consequence that this wall would have upon flood storage capacity and the residual flood risk to other properties in the catchment. Significantly, the height of the constructed wall would still be below the 1:100 year modelled

flood event plus climate change, and as such could potentially introduce a dangerous surge of flood water from overtopping of this wall and result in prolonged flooding of the property. Conversely, the erected wall could also have a negative effect on the natural function of the River Rother as a watercourse and ecosystem service outlined by Policies SD2 and SD17 of the South Downs LP.

12. I note that the appellant has attempted to occupy the appeal site as a retail and office use with little long term success. However, this does not justify the introduction of a more vulnerable land use within an area at high probability of flood risk. Whilst the FRA includes a list of generalised mitigation measures, it is unclear how these physical design measures can be practically implemented given the retrospective nature of the development, and whether the suggested flood warning and evacuation plans are appropriate. Furthermore, the erection of a rear boundary wall to serve as a flood barrier potentially introduces greater risk to both occupants and the property, as well as potentially effecting flood storage capacity, other properties in the catchment and the natural characteristics of the watercourse.
13. Accordingly, in my judgement the appeal development would be at an unacceptable risk of flooding. It would conflict with Policies SD2, SD17 and SD49 of the LP, Policy 6 of the Liss Neighbourhood Plan and Paragraph 155 of the Framework. Collectively, these policies seek, amongst other things, to ensure that development is appropriately located outside of areas at risk of flooding to protect people and property, and enhance the natural characteristics of the flood plain and watercourses without worsening flood risk.

Living conditions

14. The railway line is closely located to the south east of the appeal site and is subject to frequent services running between London and Portsmouth. Concerns have been raised regarding the potential exposure of occupiers of the appeal site to noise generated by the railway line.
15. I observed during my site visit that there is a relatively clear gap between the rear façade of the appeal site and the elevated position of the railway line with limited obstructions, by way of buildings or dense plantings of vegetation, that could defuse or buffer any associated noise generated. As such, it is my view that noise mitigation measures may be necessary to protect living conditions and could be secured through a condition.
16. The appellant has referred to a number of previous development applications within the same complex of buildings as the appeal property and suggested that no acoustic reports were required in support of those applications, and as such one should not be required for this appeal development. The specific details of these cases have not been provided for my consideration and as such I cannot be certain on what basis these decisions were made. Nonetheless, from my observations it is clear that the NPA has approved other residential development in similar proximity to the railway line. The NPA has not provided any substantive evidence and cogent reasoning as to why this appeal development differs to those other approved schemes.
17. Accordingly, it has not been adequately demonstrated that the railway line would harm the living conditions of occupiers, with specific regard to noise. It would not conflict with Policy SD5 of the South Downs LP and Paragraphs 127

and 170 of the Framework. These policies seek, amongst other things, to ensure development is of a high quality and designed to avoid any harmful impacts from surrounding uses and amenities.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

J Gibson

INSPECTOR