

Appeal Decision

Site visit made on 20 July 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal Ref: APP/R3650/W/20/3265846

**Land to the North East of Magna Riverside, Flambard Way
Godalming GU7 1JB**

- 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 Magna Group against the decision of Waverley Borough Council.
 - The application Ref WA/2019/1476, dated 20 August 2019, was refused by notice dated 23 October 2020.
 - The development proposed is erection of a three storey building comprising 6no. two bedroom flats with associated parking and bin store.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site is within the zone of influence of the Wealden Heaths (Thursley, Hankley and Frensham) Special Protection Area (SPA). Accordingly, the proposal needs to be considered in the context of both the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) and the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). I have dealt with these matters later on in my decision.
3. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021 and introduced a number of revisions that may be pertinent to the proposal under this appeal. Consequently, the main parties were given an opportunity to comment on the revised Framework and any subsequent implications that may have emerged.
4. The appellant submitted new evidence under the appeal comprising a sequential test. Parties will have had an opportunity to comment on the new evidence under the appeal and it has been accepted accordingly. It is noted the Council has not taken the opportunity to comment on the sequential test in their statement. Therefore, for all intents and purposes its content is unchallenged. All other contested matters of flood risk have been duly considered under the appeal.

Main Issues

5. The main issues are:
 - (a) the effect of the proposal on biodiversity;
 - (b) whether the proposal is acceptable in relation to flood risk; and
 - (c) the effect of the proposal on parking and highway safety.

Reasons

Biodiversity

6. The site is located on land directly to the south of the River Wey and comprises a vacant plot of concrete hardstanding for parking. It is within the buffer zone designed to protect the biodiversity of the river corridor, and which is locally designated as a Site of Nature Conservation Interest (SNCI) and Biodiversity Opportunity Area (BOA). Given the limited scale and extent of the hardstanding, it is likely to have a correspondingly limited effect on the river's biodiversity and there is no evidence that it currently has more than a limited effect in this context.
7. The proposal would deliver a building of three storeys, standing at around 9.8 metres in height and with a substantial width of around 26 metres parallel to the river. It would be sited between approximately 2 metres and 5 metres of the river, which would locate it within the buffer zone.
8. The existing hardstanding also lies within this buffer zone, and the footprint of the proposal would appear to be slightly further from the river. Nonetheless, as a result of its scale, it would generate materially different effects on the river corridor relative to the existing hardstanding, which is of limited extent and scale by comparison.
9. The height and width of the building, in conjunction with its proximity to the river corridor, would generate significant levels of overshadowing, and the amount of daylight that currently supports biodiversity within the river corridor would be diminished.
10. It is self-evident that overshadowing is going to be a function of scale and proximity. Consequently, I do not agree with the appellant's position that the scale of the building is not the issue and that it is merely a dispute relating to the buffer zone in and of itself.
11. For clarity, Paragraph 6 of the Council's statement makes it clear that the dispute does relate to scale. Furthermore, the Environment Agency's consultation response dated 3 June 2020 sets out that the height of the building is likely to cause permanent shading of the river. Overall, it is clear that the scale of the building and the buffer zone are considerable interlinked issues.
12. It is also clear from the Environment Agency's consultation response dated 31 October 2019 that a buffer zone protects the river corridor in a number of ways. Consequently, although overshadowing is one of the principal issues, there are other issues generated by the lack of buffer zone and exacerbated by the scale of the proposal.
13. For example, an adequate buffer zone is important in allowing the watercourse to undergo natural processes of erosion and deposition, and reducing the risk of accidental pollution, among other things. Without countervailing evidence demonstrating that these aspects of the buffer zone are not relevant to this particular river corridor, or that a policy compliant buffer zone is not necessary, I cannot conclude that harmful effects would be avoided.

14. The appellant argues that there would be unimpeded maintenance access to the river corridor as part of the proposal. However, I have limited evidence to demonstrate that sufficient working space would still exist to facilitate the safe movement of maintenance workers and machinery.
15. Although the proposal would comprise a raised platform to the extent that the ground floor would be largely free from structures, and to that extent that it would remain similar to the existing situation, overshadowing effects would still occur due to the upper floors.
16. For all intents and purposes, the buffer zone would not be free from structures to the extent argued by the appellant. Moreover, the car parking area is still development and would impede the buffer zone, whilst also giving rise to other potential effects such as pollutant runoff, among other things. Therefore, the ground floor arrangement would not necessarily improve on the existing situation in any event.
17. It is acknowledged that the proposal would deliver landscaping along the river bank and throughout the site. However, there does not appear to be evidence that such landscaping is conducive to the existing habitat or that it would support the river corridor's biodiversity functions.
18. Furthermore, any additional landscaping would be limited. Consequently, even if biodiversity enhancements did materialise, they would not outweigh the harm derived from the scale and siting of the building, which results in significant overshadowing.
19. Matters relating to protected species fall within the wider ambit of biodiversity. Consequently, there is no evidence that the Council's conclusions on the grounds of protected species specifically, where they found no harm, should apply to biodiversity and the river's ecosystem more broadly.
20. Policy NE1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018 (LP) sets out that proposals should explore opportunities to protect, manage and enhance biodiversity within locally designated sites. There is no evidence in front of me demonstrating that the proposal has comprehensively explored such opportunities, or that any enhancements put forward relate directly to the specific objectives of locally designated sites.
21. There is also a clear requirement under Policy NE2 of the LP for proposals to create undeveloped buffer zones to the extent required, rather than just deliver limited improvements, or maintain what is existing if it would remain substandard. Consequently, notwithstanding the existing substandard buffer zone, there is no evidence in front of me that the proposal in this case has explored ways to create an adequate buffer zone.
22. On the point of permanence, both the existing development and the proposed development have the same level of permanence in theory. However, it is plain that it would be more straightforward and viable to retrospectively introduce a buffer zone in place of hard standing, compared to a substantial building. This is because once a building of scale has been introduced, an appropriate buffer zone may never come forward as it would not be viable to move the building.

23. The presence of lighting introduced by the movement of cars associated with the existing neighbouring development is acknowledged and provides somewhat of a baseline relative to lighting associated with the proposal. However, this would not mitigate the other harmful effects associated with a substandard buffer zone.
24. Paragraph 174 of the Framework requires proposals to contribute to and enhance the natural and local environment. Policies within the development plan achieve this by promoting adequate buffer zones to preserve and enhance the biodiversity within the river corridor. Consequently, such policies are consistent with the Framework in this regard and carry full weight.
25. Overall, the proposal would generate harmful effects on the biodiversity of the river corridor and conflict with Policies NE1 and NE2 the LP, which among other things require development to come forward in a manner that does not have a detrimental impact on the biodiversity of river corridors.

Flood Risk

26. The site is located in Flood Zone 3a, which is a flood zone with a high probability of flooding¹. It is acknowledged that the site was subject to a flood zone reclassification, but the appeal needs to be decided based on the material considerations presented at this time. Consequently, the site has been considered in accordance with its existing flood zone classification, and the associated requirements therein. The proposal is for residential development, which is classed as being more vulnerable to the effects of flooding².
27. The sequential test submitted with the appeal seeks to establish that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The Council had the opportunity to comment on the sequential test but did not do so. The conclusions of it, in light of this absence of comment, are therefore not disputed.
28. The submitted site specific flood risk assessment demonstrates that the development would mitigate flood risk both onsite and offsite. This can be achieved by ensuring finished floor levels of the development are 40.41 metres above ordnance datum, the loss of floodplain storage is mitigated, and that the ground floor area of the development remains fully open to ensure flood water is not impeded or redirected. These measures could be subject to planning condition.
29. On the basis of this information the Environment Agency has withdrawn its objection. However, the Council continue to dispute whether the proposal satisfies the exception tests within the Framework, in relation to weighing any sustainability benefits against flood risk and whether safe access and egress has been provided to secure the safety of occupiers for the lifetime of the development.
30. Given my conclusions in relation to biodiversity harm in this particular case, I cannot reasonably conclude that the proposal would give rise to overall wider sustainability benefits. The development would impinge on the biodiversity of the river corridor because it is within the required buffer zone.

¹ Planning Practice Guidance, Paragraph: 065 Reference ID: 7-065-20140306

² Planning Practice Guidance, Paragraph: 066 Reference ID: 7-066-20140306

31. Furthermore, any works to manage flood risk such as floodplain storage, would appear to be mitigation rather than a real benefit. For example, the Environment Agency describes the mitigation as a volumetric scheme with fluctuating albeit insignificant gains and losses in floodplain storage, which is dependent on the order of the flooding event. Consequently, there would not be a meaningful or tangible benefit from this.
32. The proposal would deliver residential development in a location well related to services. However, the relatively limited quantum of development would only make a small contribution to housing land supply and there is no evidence of a shortfall in housing land supply to suggest greater weight should be attached. Any other socio-economic benefits, whether generated through construction related employment or increased footfall in the town centre, among other things, would be similarly limited.
33. The site may be brownfield land, but Paragraph 119 of the Framework is clear that even when promoting the effective use of land, the environment still needs to be safeguarded. Furthermore, Paragraph 120 of the Framework only requires substantial weight to be given when dealing with suitable brownfield land. In this case, it is clear that because of the biodiversity harm the site should not be considered suitable brownfield land and I have not therefore attached substantial weight to the matter.
34. Other limited improvements associated with the proposal, including to the public realm, landscaping and pedestrian links are generally not disputed but there is no evidence that they would carry any more than limited weight. Altogether, due to effects on the biodiversity of the river corridor, the proposal would not provide sustainability benefits in the round and would not satisfy the exception test in this context.
35. The Framework sets out that development will be safe for its lifetime and Paragraph 167 requires that safe access and escape routes are included where appropriate. Given the combination of risk (flood zone) and baseline vulnerability (residential development where people sleep in the building) it is appropriate to ensure that safe access and escape routes are provided as part of the proposal. Planning Practice Guidance³ states that such routes should allow occupants to safely access and exit their property in design flood conditions. That is, during design flood conditions
36. The ability to evacuate prior to design flood conditions does not necessarily remove this requirement or influence whether it is appropriate or not. Limited depths of flooding along the route may be acceptable, but only where such depths are not dangerous. Even low levels of flooding can pose a risk to people in situ (because of, for example, the presence of unseen hazards and contaminants in floodwater, or the risk that people remaining may require medical attention).
37. There is no evidence that the flood depths would not be dangerous in this case. For example, although the depth bollard gauges would appear to demonstrate flood depths to inform occupier evacuation timings, it has not been demonstrated that the evacuation route and depths would be entirely safe during flooding events.

³ Planning Practice Guidance, Paragraph: 039 Reference ID: 7-039-20140306

38. To this end, the site specific Flood Risk Assessment confirms that a route from the building to land outside of the floodplain is available with a hazard to people classification of danger for some.
39. Regarding temporary refuge, it is not clear whether the time taken for flooding to recede would be appropriate. Consequently, it may be the case that occupiers become stranded in a place of refuge for periods of time that are not suitable, requiring rescue, and subsequently increasing the pressures on, and risks to the emergency services.
40. Notwithstanding, the existence of temporary refuge does not remove the requirement to deliver safe access and escape routes during design flood conditions. Consequently, and altogether, I cannot conclude that safe access and escape routes have been provided to secure the safety of occupiers for the lifetime of the development.
41. Overall, the proposal would not be acceptable in relation to flood risk, failing to provide overall sustainability benefits and safe access for occupiers for the lifetime of the development. It would therefore conflict with Policies CC1 and CC4 of the LP and Paragraphs 164 and 167 of the Framework, which among other things requires development to come forward with acceptable flood risk, passing the relevant exception tests.

Parking

42. The site is located outside of Godalming town centre, directly adjacent to the existing residential development of Magna Riverside, where the proposal would build upon land currently used for parking. Consequently, the proposal would need to provide parking spaces for both existing and future occupiers.
43. Policy GOD6 of the Godalming and Farncombe Neighbourhood Plan 2019 (NP) is clear that in the case of residential development a set of minimum standards will apply. The policy requires two bedroom units outside of Godalming town centre to provide two parking spaces. Consequently, the proposal would not provide sufficient parking to deal with the likely demand of existing and future occupiers, wherein there would be a shortfall of around six parking spaces.
44. The NP was recently subject to examination and brought into force following a referendum. It is therefore reasonable to conclude that its policy content is still reflective of the situation on the ground and responds to the inherent local considerations at play within Godalming. Where, for the purposes of parking provision, it has been determined that a policy distinction is required between land within and outside of the town centre.
45. There is no evidence that the policy is inconsistent with the multiple criteria set out within Paragraph 107 of the Framework, which governs local parking standards. Accessibility and availability of public transport are only some of the criteria, among car ownership and other things, and there is no evidence that satisfying some of those criteria alone means the proposal would be acceptable overall.
46. Furthermore, providing sufficient parking for cars, and promoting use of alternative forms of transport do not appear mutually exclusive aims. People can be encouraged to use public transport or walk, even if they own a car.

47. This local approach to parking matters is consistent with Paragraph 127 of the Framework, which confirms that policies should be developed with local communities, so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics.
48. Whilst acknowledging broader regional standards adopted by Surrey County Council, these may not be reflective of the local context or respond to the inherent local considerations at play within Godalming.
49. Overall, the proposal would provide insufficient parking for occupiers and this would conflict with Policy GOD6 of the NP. However, notwithstanding my assessment, the Council has relied on conflict with this policy almost in isolation. Even though the policy may be sound, and there may be harmful effects resultant from conflict with it, the level or nature of harm has not been substantiated.
50. For example, there is no evidence before me demonstrating that a shortfall of six parking spaces would give rise to an unacceptable impact on highway safety, through dangerous indiscriminate parking or otherwise. A shortfall of six parking spaces in and of itself would appear limited in relative terms.
51. In this context, Paragraph 111 of the Framework is clear that proposals should only be refused where they have an unacceptable impact on highway safety. It has not been demonstrated that a shortfall of six parking spaces would generate an unacceptable impact in this case. Therefore, I cannot conclude that the proposal should be dismissed on the grounds of highway safety.

Other Matters

52. Even though the site is within the zone of influence of the Wealden Heaths SPA, as I am dismissing the appeal for other reasons, I have not dealt with the implications of the proposal for the purposes of the EIA Regulations or the Habitats Regulations.
53. The site is located within the River Wey and Godalming Navigations Conservation Area. The heritage significance of the conservation area relates to the historic industrial use of the river, due to it being amongst the oldest river navigations in the country, among other things. The site is located at the end point of the navigations, where the industrial past would have given rise to buildings of appreciable scale. This is also reflected in the present, by Magna Riverside and Homebase buildings.
54. The proposal would be appreciable in scale and sit amongst the backdrop of other appreciably sized buildings nearby, meaning that it would assimilate into both the historical and present day context. Furthermore, intervening landscaping would mean that the building would receive a high level of screening when viewed from along the river, reducing its visual impact.
55. Having attached considerable importance and weight to the matter, I can conclude that the proposal would preserve the character and appearance of the conservation area. It is therefore a neutral matter under the appeal.
56. The Grade II listed building of Town Bridge is located around 30 metres to the west of the site. The heritage significance of the listed building is largely derived from evidential, historic, and aesthetic value associated with its physical fabric.

57. The setting makes a more limited contribution to the listed building's heritage significance, largely derived from its relationship with Bridge Street and the River Wey, including its visibility along the course of the river.
58. Notwithstanding the site's location in relatively close proximity to the listed building and its setting, the generally vacant nature of the land does not positively contribute to its historical associations or views within its setting. As previously reasoned in the context of the conservation area, the proposal would assimilate into both the historical and present day context and be screened by intervening landscaping. Consequently, the setting of the listed building would be preserved.
59. A number of other listed buildings are around 100 metres to the south west and north west of the site but there is no evidence that the proposal would have an effect on their setting. This is mainly due to intervening development, among other things. Consequently, the heritage significance of these other listed buildings would also be preserved by the proposal.
60. Having attached considerable importance and weight to the matter, I can conclude that the proposal would preserve the settings of the listed buildings in question. It is therefore a neutral matter under the appeal.
61. Most of the planning history associated with the site was some time ago, around the year 2005. The intervening time period and likely changing material considerations, including a newly adopted local plan, means that the planning history would carry limited weight under the appeal. A more recent application was submitted in 2018, but it was not determined and similarly carries limited weight under the appeal.

Conclusion

62. Overall, Paragraph 111 of the Framework is a material consideration that suggests the proposal should not be dismissed in accordance with Policy GOD6 of the NP. However, harmful effects remain in relation to biodiversity and flood risk where there are no material considerations that indicate a decision should be made otherwise than in accordance with the development plan. The appeal is therefore dismissed.

Liam Page

INSPECTOR