



## Appeal Decision

Site visit made on 18 October 2022

**by Alexander O'Doherty LLB (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21<sup>st</sup> February 2023**

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**Appeal Ref: APP/D1780/W/21/3283829**

**Allport House, Princes Street, Southampton SO14 5RP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr A Bajar against the decision of Southampton City Council.
  - The application Ref 21/00992/PA56, dated 24 June 2021, was refused by notice dated 16 September 2021.
  - The development proposed is change of use of first floor of building in Class B1(a) (offices) to a use falling within Class C3 (dwellinghouses).
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### Decision

1. The appeal is dismissed.

### Application for costs

2. The appellant made an application for costs. This application for costs has been dealt with in a separate decision.

### Preliminary Matters

3. Under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), planning permission is granted for offices to dwellinghouses. The Council refused to grant prior approval in respect of paragraphs O.2(1)(c) and O.2(1)(d) of Class O of Part 3 of Schedule 2 of the GPDO, making reference to matters of flood risk and noise impacts. The Council's decision notice also referred to internationally protected birds and habitats.
4. Reference has been made to the National Planning Policy Framework (the Framework). In line with paragraph W(10)(b) of Part 3 of Schedule 2 of the GPDO, I have had regard to the Framework so far as relevant to the subject matters of the prior approval.

### Main Issues

5. The main issues are whether prior approval should be granted under Class O of Part 3 of Schedule 2 of the GPDO, having particular regard to flood risk and noise impacts.

## Reasons

### *Flood risk*

6. As the proposal relates to a change of use, following paragraph 168 of the Framework, the proposal is not subject to the sequential or exception tests, but must still meet the requirements for site-specific flood risk assessments set out in footnote 55 of the Framework.
7. Reference has been made to Policy MSA 16 of the City of Southampton Local Plan Review (as amended 2015), which provides that, amongst other things, the Drivers Wharf Development Area is identified for an employment-led mixed-use scheme including offices, light industry, and residential uses. Even so, the adoption of this policy does not alter the need for the proposal to conform to the requirements of paragraph 168 of the Framework.
8. In this regard, the submitted Flood Risk Assessment Report<sup>1</sup> (FRA) concludes that, whilst the site is within Flood Zone 3 with associated flood risk, due to the proposed residential units being at first-floor level, and the resulting freeboard above the maximum predicted flood level, the proposed flats would be above the predicted flood level. Nevertheless, as the future occupiers of the proposed residential units would not be able to escape the building via the ground floor during a flood event of the types analysed in the FRA, risks remain in ensuring that people are not trapped inside the building during such flood events.
9. In relation to this, although approximately £10 million has been allocated for the River Itchen Flood Alleviation Scheme (RIFAS)<sup>2</sup>, the Council have subsequently confirmed that planning permission Ref 16/01699/R3CFL, relating to the RIFAS, is no longer implementable, with any defence construction not likely to be completed until 2028 at the earliest. As such, the RIFAS cannot be relied upon to mitigate the above-mentioned risks in the near-term for the proposal.
10. The FRA suggests that the above-mentioned risks could be mitigated by residents monitoring flood warnings and being advised about any emergency plan for tidal flood evacuation. In this regard, I note that in relation to planning application Ref 18/02125/FUL, for Unit 1, Muira Estate, William Street, Southampton, neither the Environment Agency nor the Council's Sustainability Officer (flooding) raised an objection to the proposal, and the Council's Sustainability Officer (flooding) recommended that a planning condition relating to a Site Flood Plan be imposed.
11. However, whilst that site is in a similar location to the appeal site, and flood defence structures exist along the River Itchen which would act as a barrier thereby giving residents more time to evacuate, for this appeal proposal few site-specific details have been provided to demonstrate whether these methods would in reality provide adequate time for residents to escape to a place of safety. In particular, a nearby dry ground zone has not been identified, nor has the distance to any such zone been specified. Additionally, the Council maintain that evacuation routes would not be safe under design conditions, and the evidence before me does not refute this claim. Hence, it has not been clearly demonstrated that such a plan, including the use of alerts from a warning

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<sup>1</sup> Flood Risk Assessment Report, Cowan Consultancy Ltd (reference: HS/435218/djb) (dated: 16 July 2021)

<sup>2</sup> According to the Minutes of the Southampton City Council meeting held on 17 November 2021

service, would be effective with respect to the future residents of the proposal escaping to safety.

12. The FRA also suggests that easy access should be ensured to the flat roof area above the proposed cycle store, which the FRA recommends as an assembly point/refuge area. However, the evidence before me does not demonstrate that climbing out of a window would necessarily be appropriate for all users, including individuals with mobility issues. In any event, the use of the flat roof area would leave residents awaiting rescue by the emergency services, thereby putting those services under strain and potentially endangering emergency workers during a flood event.
13. On this basis, although residential properties lie nearby to the south of the site, and housing developments in the vicinity have recently come forward, and the Environment Agency did not object to the proposal, given the uncertainties identified above as to whether the proposed scheme could be made safe for its lifetime, it would not be reasonable to impose similar conditions to those put forward for planning application Ref 18/02125/FUL relating to a Flood Warning and Evacuation Plan and Risk Management. For the same reasons, it would not be reasonable to impose the 2 pre-commencement conditions suggested by the Council relating to a Flood Evacuation Plan and Flood Resilience measures.
14. Planning application Ref 20/00599/OUT, relating to Vespasian Road, Southampton, is near the appeal site. Although no objection was raised by the Council's Flooding Team, subject to the imposition of conditions, the Council has confirmed that the flood depths of the 2 sites are materially different, and this has not been disputed by the appellant.
15. Similarly, whilst the Inspector in appeal decision Ref APP/N5660/W/17/3186420, relating to 1a Dorset Road, Lambeth, concluded that the office-to-residential proposal would be acceptable in relation to flood risk, the Council has mentioned that these occupiers would be at less severe risk from refuge, evacuation, or rescue, because of the proximity of that site to the edge of the flood zone and dry ground during a flood event. The appellant has suggested that the appeal site is no further from a safe area than that site in Lambeth, but no details have been provided to support this assertion. As, for the reasons given above, the Vespasian Road and Lambeth cases are not directly comparable with the appeal proposal, they do not change my findings on this main issue.
16. I therefore find that it has not been demonstrated that the proposal would be safe with respect to the flooding risks on the site. Whilst not determinative, I have had regard to chapter 14 of the Framework. To the extent that it is a relevant consideration within the terms of the GPDO, the proposal would conflict with paragraph 159 of the Framework which provides that, amongst other things, development should be made safe for its lifetime.

### *Noise impacts*

17. The submitted Noise Impact Assessment Report<sup>3</sup> finds that, by comparison with the guidance given in BS 4142: 2014, a "significant adverse impact" is predicted during daytime periods for the potential external impact of existing commercial noise on the proposed residential units. This is in the context of the

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<sup>3</sup> Noise Impact Assessment Report, auricl acoustic consulting (document reference: R/NIA/1/210722) (issue date: 22 July 2021)

nearby scrapyards at 10 Princes Street being granted a temporary planning consent in 2022 to continue to operate for 5 years<sup>4</sup> (following on from a previous permission<sup>5</sup>), although there would be no evening, weekend or Bank Holiday working (apart from on a Saturday morning).

18. Whilst such adverse impacts would be limited to the operational periods of the nearby commercial sites and BS 4142: 2014 notes that “not all adverse impact will lead to complaints and not every complaint is proof of an adverse impact”, as these adverse impacts would be significant it is imperative that they are adequately mitigated to protect the living conditions of the future occupiers of the proposed residential units.
19. I have not been referred to any planning policy or other source which supports the contention that as the noise sources are existing the activities could be considered to be of a lower impact than a new noise source introduced to an existing residential receptor. Therefore, I have given this matter limited weight in my consideration of this main issue.
20. Based on the evidence before me, I appreciate the utility of the noise mitigation measures proposed, including internal secondary glazing and ventilation via mechanical means with comfort cooling.
21. However, given that the residential units would be one-bedroom flats, with no communal space within the building itself, and considering the size of the units as a whole, having all the windows in every room permanently closed would result in an unpleasant and oppressive living environment for the future occupiers of the proposed residential units. In coming to this conclusion I note that the Council’s Environmental Health team also considered that, even with the proposed controls, the proposal would not be conducive to residential use.
22. As, with the windows open, the proposed mitigation measures would likely be ineffective during the daytime on weekdays, it has not been demonstrated that the noise impacts of the nearby commercial premises would not have a significant adverse impact on the living conditions of the future occupiers of the proposed residential units.
23. The Council’s Environmental Health team did not object to the proposal for planning application Ref 21/01366/OUT on noise grounds, but given the absence of reasoning from the Environmental Health team (as quoted in the Officer’s Report) as to how this conclusion was reached, this matter does not change my findings. My findings are based upon the evidence before me with respect to the appeal proposal, and accordingly the presence of existing residential units to the south of the site does not change my findings.
24. I therefore find that the proposal would have an unacceptable effect with respect to the impacts of noise from commercial premises on the intended occupiers of the development. Whilst not determinative, I have had regard to paragraph 130 f) of the Framework. To the extent that it is a relevant consideration within the terms of the GPDO, the proposal would conflict with paragraph 130 f) of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places which promote health and well-being, with a high standard of amenity for future users.

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<sup>4</sup> 21/01389/FUL

<sup>5</sup> 17/01494/FUL

## **Other Matters**

25. The appellant has referred to benefits which would arise via the proposal, including the proposal's contribution of 6 residential units towards the Council's housing supply position. However, the GPDO offers no discretion where conflict is found with its requirements; its requirements are a matter of law. As such, the various purported benefits of the proposal do not change my findings on the main issues in this appeal.
26. As mentioned in the third reason for refusal given in the Council's decision notice, the Council considers that the proposal has the potential to have a significant effect on the Special Protection Areas of the Solent Coastline. However, as I am dismissing the appeal for other reasons, there is no need to consider the potential implications of the proposal in this respect. I therefore make no further comments on this matter.

## **Conclusion**

27. As the proposal would not comply paragraph O.2(1)(c), nor paragraph O.2(1)(d), of Class O of Part 3 of Schedule 2 of the GPDO, prior approval cannot be given for the proposal, and the appeal should therefore be dismissed.

*Alexander O'Doherty*

INSPECTOR