



Appeal Decision

Site visit made on 31 January 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal Ref: APP/Q3630/W/22/3294545

Tamesis 2, The Glanty, Egham TW20 9AW

- 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 Royal London Asset Management against the decision of Runnymede Borough Council.
 - The application Ref RU.21/1328, dated 27 July 2021, was refused by notice dated 10 September 2021.
 - The development proposed is Change of use from office (B1(a)) to residential (C3) to provide 73 residential dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Office to dwellinghouse conversions are permitted development under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Under paragraph O.2 of the GPDO, the developer is required to apply to the Local Planning Authority as to whether prior approval is required.
3. The Local Planning Authority should assess the scheme only on the basis of transport and highway impacts of the proposed development; contamination risks on site; flooding risks on the site; impacts of noise from commercial premises on the intended occupiers of the development and the provision of adequate natural light in all habitable rooms of the dwellinghouses.
4. The Council refused to grant prior approval for the scheme under Class O of the GPDO, due to inadequate information in relation to flood risk. However, since that decision the Council have received notification from the Health and Safety Executive (HSE) that the appeal site is located within a Safety Hazard Area. At the time of the prior approval application both parties were unaware of this designation, although as I understand, both parties are now seeking clarification from the HSE in regard to revoking the designation. Nevertheless, for the purpose of this appeal, this is the current position against which the proposal should be assessed.

Main Issues

5. The main issues therefore are i) whether the development is permitted under the GPDO and ii) impact of the development on flooding risk.

Reasons

6. Under paragraph O.1(d) of the GPDO, development is not permitted by Schedule 2, Part 3, Class O of the above Order if the site is, or forms part of, a safety hazard area.
7. I am unaware of any transitional or saving provisions, and therefore I must determine the prior approval appeal with regard to the Order as in force at the date of the appeal decision and not the date of the Councils decision. From the evidence before me the site is located within a safety hazard area as designated by the HSE.
8. I therefore conclude that the proposal is not permitted under the above Order. As the proposal does not constitute permitted development, I have no need to consider the impact of the development on flooding risk.

Other Matters

9. The appellant draws my attention to another appeal decision¹ where the Inspector allowed planning permission for an appeal proposal, despite its proximity to an existing gasometer, which was subject to a Hazardous Substances Consent (HSC). Here, the Inspector attached a negatively worded condition in order to protect public safety which prevented occupation of the development until the HSC had been revoked. The appellant considers a similarly worded condition would be appropriate here whilst clarification is sought to revoke the HSE Safety Hazard Area designation.
10. The Planning Practice Guidance² (PPG) states conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body can be achieved using a condition worded in a negative form. However, the decision referred to by the appellant was a Section 78 appeal against the refusal of planning permission and did not relate to whether or not the development was permitted under the GPDO. Given that I have established that the proposal does not constitute permitted development and there is no provision in the GPDO for attaching additional conditions, I consider that these decisions are not directly comparable.

Conclusion

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

Robert Naylor

INSPECTOR

¹ PINS Appeal Refs: APP/E5900/W/17/3189374 & APP/E5900/W/17/3179119

² Paragraph: 009 Reference ID: 21a-009-20140306