



Appeal Decision

Site visit made on 28 February 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 APRIL 2023

Appeal Ref: APP/Y3615/W/22/3295114

57 Ladymead, Guildford GU1 1DB

- 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.
 - The appeal is made by Allianz Insurance Plc against the decision of Guildford Borough Council.
 - The application Ref 21/W/00094, dated 27 July 2021, was refused by notice dated 22 September 2021.
 - The development proposed is for prior approval for the proposed change of use from office to residential providing 108 units.
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Decision

1. The appeal is allowed and prior approval is granted for under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the proposed change of use from office to residential providing 108 units at 57 Ladymead, Guildford, GU1 1BZ in accordance with the terms of the application, Ref 21/W/00094, dated 27 July 2021, and the plans and details submitted with it including plan Nos 2413-01-DR-0099 Rev D01; 2413-01-DR-0100 Rev D01; 2413-01-DR-0101 Rev D01; 2413-01-DR-0102 Rev D01; 2413-01-DR-0103 Rev D01; 2413-01-DR-0104 Rev D01; 2413-01-DR-0105 Rev D01; Schedule of Accommodation; Transport Statement (prepared by Caneparo Associates) dated July 2021; Flood Risk Assessment (Ref: 20150-HYD-XX-XX-RP-FR-0001) dated July 2021; Noise Impact Assessment (Ref: R9133-1 Rev 1) dated July 2021; Contamination Risk Assessment (Ref: 20150-HYD-XX-XX-RP-GE-1000) dated July 2021 and Internal Daylight Assessment (Ref: 4003 Issue 2) dated July 2021 and subject to the following conditions:
 - 1) No development shall commence until a Construction Transport Management Plan, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) programme of works (including measures for traffic management)
 - (e) provision of boundary hoarding behind any visibility zones
 - (f) HGV deliveries and hours of operation
 - (g) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused

(h) on-site turning for construction vehicles

has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.

- 2) No development shall commence until a Flood Evacuation Management Plan has been submitted to and approved in writing by the local planning authority. The approved Flood Evacuation Management Plan shall be implemented and strictly adhered to in perpetuity of the development.
- 3) The development hereby approved shall not be first occupied unless and until the following facilities have been provided in accordance with the approved plans (Drawing No. 2413-01-DR-0100 Rev D01) for:
 - (a) The secure, covered parking of bicycles within the development site,
 - (b) Information to be provided to residents regarding the availability of and whereabouts of local public transport / walking / cycling / car clubs.

Thereafter, the said approved cycle parking facilities shall be provided, permanently retained and maintained for their designated purpose.

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 prior approval matters are concerned with 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 with particular regard to safe means of access and egress.
5. Paragraph W (10)(b) of Part 3 of Schedule 2 of the GPDO is clear that applications for prior approval should be determined having regard to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. I have determined the appeal on this basis.

Main Issues

6. The main issue is whether sufficient information has been provided to demonstrate that the proposed development complies with condition O.2 (1) (c) of Part 3 of Schedule 2 of the GPDO regarding flooding risks on the site.

Reasons

7. Paragraph 162 of the Framework sets out that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available

- sites appropriate for the proposed development in areas with a lower risk of flooding.
8. However, paragraph 168 of the Framework is clear that applications for some minor development and changes of use (which would include prior approval applications) should not be subject to the sequential or exception tests. Nevertheless, these applications should still meet the requirements for site-specific flood risk assessments set out in footnote 55. The appeal site is located in Flood Zone 3 which is at a higher probability of flooding¹. The proposal is for a change of use from commercial to residential development, which is 'more vulnerable' to the effects of flooding² and would require the submission of a site specific Flood Risk Assessment (FRA).
 9. Paragraph 167 of the Framework states that development should only be allowed in areas at risk of flooding where, in light of a site-specific FRA (and the sequential and exception tests, as applicable) it can be demonstrated that the development meets a number of criteria. These include ensuring that the development is appropriately flood resistant and resilient, incorporates sustainable urban drainage, safely manages any residual risk, and provides safe access and escape routes.
 10. The appellants submitted FRA³ indicates that the Environment Agency (EA) River Wey (Lower) model confirms that the site is at risk of fluvial flooding from the adjacent River Wey, with maximum external flood depths expected to be around 1.03m in the 1 in 100 year + 20% flood event. In the absence of a detailed survey for the site, the FRA concludes that this would result in inundation of flood water to the ground floor of the existing building.
 11. The FRA has adopted a "vertical sequential approach", highlighting that as shown on the submitted plans, all residential accommodation would be located at the first floor and above, with less vulnerable use at the ground floor. In this respect the proposal would be compliant with the requirements of paragraph 167 of the Framework in relation to locating the most vulnerable development in areas of lowest flood risk and flood resistance and resilience. Furthermore, the FRA highlights that sustainable urban drainage systems would be inappropriate given the existing levels of hardstanding surrounding the site which are not proposed to change, and residual risk would be managed through no loss of floodplain storage.
 12. The site is set down from the surrounding area and is bounded to the north and south by the busy thoroughfares of the A3 and Ladymead (A25) respectively. The FRA highlights that access and egress to the site would be via the A25 on the southern site boundary. Based on the EA's Flood Zone and Flood Risk from Surface Water mapping the access route from the site is located within Flood Zone 3 and is impacted for both the 1 in 100 year and 1 in 100 year plus climate change event. The nearest elevated area located in Flood Zone 1 is approximately 100m further eastwards along the busy A25 close to the junction with Woking Road and Stoke Road.
 13. The EA's Safe Access and Egress Thames Guidance Statement gives due consideration to the provision and adequacy of evacuation arrangements,

¹ Planning Practice Guidance, Paragraph: 078 Reference ID: 7-078-20220825

² Framework Annex 3: Flood risk vulnerability classification

³ Flood Risk Assessment prepared by Hydrock dated July 2021 (ref: 20150-HYD-XX-XX-RP-FR-0001)

- emergency plans and temporary refuge. The EA is clear that these issues are not within their direct remit or expertise and therefore a lack of objection in this regard does not equate to a lack of harm. It is acknowledged that the EA's current River Wey (Lower) model indicates that there is no safe or dry evacuation route during a worst-case scenario and that the EA's detailed flood maps submitted during the appeal indicate the site at high risk of flooding.
14. As part of the appeal, the appellant has submitted further information in the form of a technical design note⁴ (TDN), which seeks to address concerns in respect to the safe access and egress. The TDN states that the EA's River Wey (Lower) model is the current and correct modelling used in FRAs. However, the TDN indicates that this model does not account for a proposed flood alleviation scheme upstream which could result in a reduction in flood risk in the future. Further indicating that updated modelling will be released for Guildford soon.
 15. The TDN highlights that whilst the current EA River Wey (Lower) model represents the most up-to-date position and the correct model to use in assessing risk, there are anomalies between the model and topographical information. These inconsistencies in the data highlight that despite being located within Flood Zone 3, the actual ground levels at the front of the site are higher (30.173 m AOD) than the EA's modelled flood levels of 29.694m AOD and 29.697m AOD for the 1 in 100 year and 1 in 100 year plus climate change event, respectively. On the basis that the building frontage and access routes are elevated, occupiers would be able to safely exit the building (via the main accessible entrance) and site during flood events and either safely wait on the A25 footway or continue along it.
 16. The TDN further provides compelling justification and an alternative model, which includes the Navigational Channel not currently incorporated within the EA River Wey (Lower) model. The appellant considers this model provides a more accurate representation of flooding along the River Wey. The alternative model highlights that there is a reduction in Flood Zone 3 at the appeal site, as shown in Figure 2 of the TDN, concentrated at the rear of the site adjoining the A3. The figure also demonstrates that the building frontage and access routes are shown as being elevated and providing dry access and egress from the site, and in this regard would comply with the Planning Practice Guidance⁵. The appellant further highlights that the same approach has been successful in obtaining planning permission⁶ in close proximity to the appeal proposal.
 17. I have also been referred to other examples of prior approval schemes which have been granted and which the appellant considers show inconsistency in decision making by the Council. From the information I have been provided, it is acknowledged prior approval⁷ has been issued for Liongate House, also on Ladymead, for 76 dwellings. Whilst I acknowledge the similarities between the schemes, I have not been presented with the full details in respect to the FRA and information in respect to the safe access and egress to this site. However, the officer report for that scheme indicates that the application was supplied with a Flood Emergency Plan, unlike the proposal subject to this appeal. Nevertheless, the appellant suggests that prior to occupation the provision of a

⁴ Technical Design Note prepared by Hydrock ref: 20150-HYD-XX-XX-TN-FR-0002 P01

⁵ Paragraph 047 Reference ID: 7-047-20220825 and Paragraph 048 Reference ID: 7-048-20220825

⁶ Guildford Borough Council Planning Ref: 16/W/00085

⁷ Guildford Borough Council Planning Ref: 20/W/00021

Flood Evacuation Management Plan (FEMP) could be secured through a condition, should I be minded to allow the appeal.

18. Based on the information before me, particularly in relation to the detailed site-specific topographical information, the TDN indicates that there is safe access and egress from the site. It therefore would be reasonable and relevant in this instance for full emergency evacuation plan details to be secured by condition. The available evidence also indicates that future updates to flood mapping are likely to identify the site at lower risk of flooding than is currently modelled.
19. Nevertheless, even during the worst-case scenario based on the current Flood Zone mapping and appropriate climate change scenarios, it has been satisfactorily demonstrated that safe means of access and egress to the residential units during a flooding event can be achieved. With the proposed residential units on the first floor, finished floor levels of more vulnerable uses would be well above flood levels detailed in the EA's letter dated 24 August 2022. This leads me to conclude that the development would not be at unacceptable risk from flooding, while the available evidence also indicates that it would be safe for the lifetime of the development and would not increase flood risk to surrounding areas.
20. I therefore find that the proposal is acceptable in respect to condition O.2.(1) (c) of Part 3 of Schedule 2 of the GPDO regarding flood risks on the site. In coming to this view, I have taken into account that it has been put to me that the building could be quickly brought back into use after a flood event and that the EA did not consider the appeal proposal a high-risk case.

Other matters

21. The Thames Basin Heath Special Protection Area (SPA) comprises a network of heathland sites providing a habitat for three internationally important bird species, the woodlark, nightjar and Dartford warbler. These birds nest on or near the ground and are therefore very susceptible to disturbance from informal recreational use, especially walking and dog walking. The appeal site is located within 400m to 5km Zone of Influence of the Thames Basin Heath SPA. New residential development within this zone of influence is likely to have a significant effect on the SPA through increased recreational pressures. The mitigation for proposed residential developments that would result in a net increase in residential units would be required in the form of a financial contribution.
22. The grant of planning permission under Article 3(1) of the GPDO is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). Effectively, Article 3(1) provides a pre-commencement condition which must be met, where the development would affect a European protected habitat, such as a SPA, before the works can be undertaken as permitted development. This includes a separate application to the Council under regulation 77 of the Habitats Regulations to allow the Council to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO.
23. Based on the evidence before me, it does not appear that an application to the Council under regulation 77 has been made. However, as the regulation 77

application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issues that I have examined and, therefore, I do not need to consider this matter further as part of this appeal.

24. Accordingly, with Article 3(1) and Regulations 75-78 securing a separate process by which such development only proceeds where it has been confirmed via a Regulation 77 approval from the Council that there would be no adverse effect on the integrity of designated sites, it is not necessary to secure the financial mitigation as part of this appeal.
25. The process in this instance nevertheless still requires the developer to submit a Regulation 77 application and receive written notification of the approval from the Council prior to commencement of development. This process also allows me to be satisfied that the appeal proposal would not adversely affect the integrity of the Thames Basin Heath SPA.

Conditions

26. The development must adhere to the conditions set out at Paragraph O.2.(2), and the provisions at Paragraph W.(12) of Part 3, which require that development permitted under Class O is completed within a period of 3 years starting with the prior approval date, and that the development must be carried out in accordance with the approved details.
27. Section W.(13) of Part 3 of Schedule 2 of the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
28. I have imposed conditions to require a Construction Transport Management Plan and provision for cycle storage which are necessary to ensure that the transport and highways impacts of the development would be acceptable.
29. I have also imposed a condition requiring the submission of a FEMP prior to the commencement of the development to ensure safe access and egress and evacuation from the building and car park during periods of flooding.
30. However, I am not persuaded that a condition to require charging points for electric vehicles would be reasonably related to the prior approval matters. I have not therefore imposed this condition.

Conclusion

31. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Robert Naylor

INSPECTOR