



Appeal Decision

Site visit made on 28 March 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/T0355/W/23/3329638

Eton Travel Agency, 104 - 105 High Street, Eton, Windsor SL4 6AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) (as amended).
 - The appeal is made by Mr R Ellis against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 23/01110/CLAMA.
 - The development proposed is Prior approval to change the use of the first and second floor office accommodation (Class E) in the rear part of the building to 3no. dwellinghouses (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the appeal was made, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023. I have taken the revised Framework into account as part of the determination of this appeal.

Background and Main Issue

3. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses).
4. Paragraph MA.1 of Class MA sets out a number of requirements. The Council considers that the development complies with the requirements set out in this paragraph. Based on the evidence before me, I see no reason to disagree.
5. However, Paragraph MA.2 sets out that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2). One of these conditions is MA.2(2)(c) which relates to the flooding risks in relation to the building. The prior approval was refused on the basis that the proposal would not meet the requirement of this condition. I note that the Council considered that the development complied with the other conditions set out in Paragraph MA.2(2). Based on the evidence before me, there is no reason to disagree. As such, there is no need to give them further consideration in this decision.
6. Accordingly, I consider the main issue in this case to be whether the proposal would be permitted development under Class MA, with particular regard to

whether the proposal would satisfy condition MA.2(2)(c), in regard to the flooding risks in relation to the building.

Reasons

7. The appeal site relates to the first and second floors of 104-105 High Street in Eton. It was most recently occupied by Eton Travel, a commercial premises in Class E use. The rear part of the building has three floors of office accommodation, of which the proposal would change the first and second floors.
8. The site is located within Flood Zone 3. Both paragraph 173 of the Framework and Policy NR1 of the Borough Local Plan (BLP) (adopted 2022) states that development should only be allowed in areas at risk of flooding where, it can be demonstrated that safe access and escape routes can be provided, and where appropriate a flood evacuation plan, as part of an agreed emergency plan.
9. The Planning Practice Guidance (PPG)¹ states that when assessing the safety implications of flood risk for development, the safety of people within a building if it floods and also the safety of people around a building and in adjacent areas, including people who are less mobile or who have a physical impairment, should be considered. This includes the ability of residents and users to safely access and exit a building during a design flood and to evacuate before an extreme flood (0.1% annual probability of flooding with allowance for climate change).
10. The proposal would be a change of use of a 'less vulnerable' use to a 'more vulnerable' use as identified in Table 2: Flood Risk Vulnerability Classification in the PPG. The Environment Agency (EA) previously stated that the proposal needs to demonstrate a "very low hazard" means of safe access and egress. I acknowledge that the site is not at risk of flooding in the 1% annual probability flood in the River Thames and is not in the area shown to be at risk in a breach in the raised defences that form part of the Maidenhead, Windsor and Eton Flood Alleviation Scheme. However, once an allowance for climate change is added to predict the 100 year event in 100 years' time, the EA model does show shallow flooding on the High Street (up to 300mm).
11. A Flood Risk Assessment and Emergency Plan by Water Environment Ltd have been prepared. The Emergency Plan identifies a pedestrian escape route from the site south to Windsor Bridge, and states that in the event of a flood, safe access and escape would be managed through a flood warning and evacuation plan.
12. However, whilst the majority of the pedestrian evacuation route would be in an area of 'very low hazard', there is a short area, approximately 30m between Eton Court and Eton Square, which is categorised as 'danger for some'. The pedestrian entrance to the proposal would also exit out very close to an area categorised as 'danger for most'. Therefore, by virtue of the fact that future occupants would have to pass through an area defined as 'danger for some', the appellant is unable to demonstrate a 'very low hazard' means of safe access and egress to and from the site for pedestrians. Even though 'the danger for some' would only be 30m, this would still represent a significant distance of the escape route, 30m of a total of 185m, before reaching safety.

¹ Paragraph: 005 Reference ID: 7-005-20220825

13. Whilst the 'danger for some' category would be safe for the majority of pedestrians, according to the DEFRA Flood Risks to People report, it is not safe for 'the very old, very young or disabled'. I note that the site would be subject to infrequent flooding, with shallow flooding only predicted once an allowance for climate change is added to predict the 100 year event in 100 years' time. However, this still means that the proposal would not be safe for its lifetime and would not ensure the safety of the people within a building, including people who are less mobile or who have a physical impairment. This would be contrary to the guidance in the PPG.
14. The Windsor and Maidenhead Strategic Flood Risk Assessment states that the EA issues warnings of anticipated River Thames flooding, endeavouring to provide a 2 hour warning prior to a flood event for main rivers. The lack of a 'very low hazard' means of safe access and egress to and from the site would mean that future occupants would solely rely on the EA flood warnings.
15. However, I share the concerns of the Council, in that these warnings would not be guaranteed to work if the flood event occurred during the night when future occupants are asleep. In such instances, future occupants may become stranded and require emergency assistance. It would place future occupants at greater and unnecessary risk from flooding and its consequences. The PPG states that proposals that are likely to increase the number of people living in areas of flood risk require particularly careful consideration, as they could increase the scale of any evacuation required. It would therefore be unreasonable to add to demands on the emergency services who would already be under pressure during a flood event.
16. Whilst flood evacuation plans may be considered appropriate in exceptional cases, it is for the decision maker to assess and determine whether this option is satisfactory depending on the specific circumstances of each case. Based on the reasons set out above, it is not considered that appropriate evacuation procedures and flood response infrastructure would be in place to manage the residual risk associated with an extreme flood event at the site.
17. The proposal relates to the first and second floor of the building so there would be no significant flood risk within the dwellings themselves. However, this would not be sufficient to outweigh the inadequate pedestrian escape route.
18. Therefore, based on the evidence before me, I cannot be certain that the development would have an acceptable effect on flood risk or upon the safety of future occupants. Therefore, the proposal would not satisfy condition MA.2 (2)(c) of Class MA in regard to the flooding risks in relation to the building, and prior approval is not given. The proposal would conflict with Policy NR1 of the BLP and paragraph 173 of the Framework which, in combination, requires development proposals to demonstrate safe access and escape routes, and incorporate flood evacuation plans, as part of an agreed emergency plan.

Conclusion

19. For the reasons given above and taking into account all other matters raised, the appeal is dismissed.

Laura Cuthbert

INSPECTOR