

Appeal Decisions

Site visit made on 24 September 2024

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Appeal A Ref: APP/A3655/W/23/3333797

Allenbuild House Oyster Lane, Byfleet, WEST BYFLEET, Surrey KT14 7JQ

- 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 20, Class ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mountbatten Estates against the decision of Woking Borough Council.
 - The application Ref is PLAN/2023/0342.
 - The development proposed is the demolition of existing two storey detached building together with the construction of a replacement four storey building providing x32 flats together with associated works permitted by Part 20, Class ZA.
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Appeal B Ref: APP/A3655/W/23/3334988

Allenbuild House Oyster Lane, Byfleet, WEST BYFLEET, Surrey KT14 7JQ

- 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 20, Class ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mountbatten Estates against the decision of Woking Borough Council.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. An application for costs was made by Mountbatten Estates against Woking Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

4. Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development Order) Order 2015 (as amended) (GPDO) permits the demolition of buildings and the construction of new dwellinghouses in their place. However, to be permitted development under Part 20, Class ZA of the GPDO, the development must accord with various limitations and conditions.
5. Paragraphs ZA and ZA.1 both set out a list of limitations and criteria by which development is permitted by Class ZA. There is no dispute between the parties that the appeal proposal under Appeal A adheres to these criteria and thus is permitted under paragraphs ZA and ZA.1. I agree and have determined the appeal on that basis.
6. In respect of Appeal B, one of the Council's reasons for refusal relates to the fact that the proposal includes for the erection of a front (west) 1.8m brick fence and 1.2m iron gates, a side (north and south) and rear (east) 3.5m timber close boarded fence which the Council considers does not fall within the provisions of Class ZA of the GPDO. Furthermore the fencing would not be permitted development and therefore the proposal cannot be considered under the prior approval procedures.
7. However, the operations referred to in Class ZA are those reasonably necessary for the demolition and construction, which may include the installation of a basement or cellar in the new building, whether or not there is one in the old building. In this instance I think the works would be reasonably necessary for the construction of the development to ensure it made proper provision for garden space for the flats and to mitigate noise impacts. Both matters feature in those to be considered in the conditions relating to Class ZA. Moreover a further condition to be considered is point (l) the plans for landscaping of the development, including the planting and maintenance of shrubs and trees. Plans for hard landscaping including fencing could reasonable included here. I am satisfied therefore that the proposal as a whole falls within the confines of Class ZA of the GPDO.
8. Paragraph ZA.2 then sets out the conditions which development that is permitted by Class ZA is subject to. These include under (2) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required for various matters covered by criteria a-m. In the event that the local planning authority deem that prior approval is required, in accordance with Paragraph B1(16) of Part 20, the development must not begin before the receipt by the applicant from the local planning authority of a written notice giving their prior approval.
9. The appellant applied for prior approval which was refused on grounds related to design and external appearance of the new building, flooding, garden space and noise¹. A further application for prior approval was submitted with amended design, materials and height of the building². This application was also refused on grounds related to design, flooding, noise and the living conditions of residents with regard to light. As many of the issues are the

¹ PLAN/2023/0342

² PLAN/2023/0823

same, I have considered the two appeals in one decision but also addressed the issues individual to each appeal.

10. Paragraph B(15) of Part 20 states that the local planning authority must, when determining an application - (a) take into account any representations made to them as a result of any consultation; and (b) have regard to the Framework so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
11. There is no statutory obligation to decide a prior approval appeal on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 as the principle of the development is established through the grant of permission by the GPDO. As such, the provisions of Part 20, Class ZA of the GPDO do not require regard to be had to the development plan. The council has only referred to the parts of the Framework it regards as determinative. My determination of this appeal has been made on the same basis. The Framework was revised in December 2023. However, as the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments.

Main Issues

12. The main issues for both appeals are:

- Whether the appeal site is in an appropriate location having regard to flooding risk;
- The effect of the proposal on the character and appearance of the area with regard to the design and external appearance of the new building; and
- Whether the proposed use is in an appropriate location with particular regard to noise.

13. In addition with regard to appeal A only:

- The effect of the development on the amenity of the new building with regard to outdoor space.

14. Finally, with regard to appeal B only:

- Whether there would be adequate natural light in all habitable rooms of each new dwellinghouse.

Reasons

Flooding

15. The appeal site falls within Flood Zone 1. As such it is in an area where new residential development would normally be acceptable. The appellant has submitted a Flood Risk Assessment (FRA) and a Surface Water Drainage Assessment which demonstrate that the development would not place additional property or persons at risk
16. However, the appeal site is close to Flood Zone 3 where land has a 1% or greater annual probability of river flooding. Residential development is classed as a more vulnerable use in Annex 3 of the National Planning Policy

Framework (the Framework) and should not be permitted in Flood Zone 3 in accordance with the Planning Practise Guidance (the PPG)³.

17. Paragraph 167 of the Framework requires that there should be a sequential, risk based approach to the location of development which considers all sources of flood risk and the current and future impacts of climate change. The fluvial extents on Government flooding maps and the Council's Strategic Flood Risk Assessments (SFRA) do not include an allowance for climate change.
18. It is right then that proposals should, via the FRA, consider the future impacts of climate change and this is reflected in the Environment Agency (EA) guidance Flood Risk Assessments; Climate Change Allowances, which sets out predictions of anticipated change for river flows and peak rainfall intensity.
19. As this has not been carried out in the appellant's FRA then it is not known whether the development, and particularly the residents proposed at ground floor of the building, would be susceptible to flooding should the extent of the Flood Zone 3 area extend due to climate change.
20. The appellant contacted the EA for relevant information and was advised that the "EA is unable to provide modelled flood levels and extents for the appeal site as it does not hold any detailed flood risk modelling." However, that would not preclude the appellant carrying out their own modelling using the guidance available from the EA in its publications.
21. The Council's SFRA also identifies the appeal site to be at medium risk from surface water flooding. The Lead Local Flood Authority continues to object to the proposal as it considers that the proposed surface water drainage scheme does not meet the requirements of the Framework, the PPG and the Non-Statutory Technical Standards of sustainable drainage systems (SuDS). This is primarily due to the lack of calculations including the 1 in 30 year (+35% climate change event) results and that the solution includes for pumping which does not meet the drainage hierarchy or standard 12 of the technical standards. Furthermore there is no clarification that the private drainage system is fit for purpose or that the existing system has sufficient capacity to receive flows without increasing flood risk. Nevertheless, having viewed the site and the technical drawings, it seems possible that a scheme could be devised that meets the LLFA requirements and to that end it suggests a condition that could be applied if all other matters are acceptable. I agree.
22. Of more importance is that as the appeal site is in an area designated as medium risk for surface water flooding then the sequential test is engaged. Paragraph 168 of the Framework states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The PPG advises that the sequential test is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, as far as possible, development in current and future medium and high flood risk areas,

³ Paragraph: 079 Reference ID: 7-079-20220825

considering all sources of flooding including areas at risk of surface water flooding⁴.

23. I appreciate that the appeal site is developed, but that building would be demolished and a new one erected for a more vulnerable use. The appellant reports that they have confirmed that any surface water flooding is caused by ponding in naturally low lying areas of the site and does not extend to the building itself and the depth of flooding would be less than 300mm and therefore is not on a flood flow route. Therefore, there would be no surface water flooding at the site. Furthermore, the building could be raised 300mm above the ground level to allow for climate change. However, notwithstanding this could have implications for the integration of the building into the streetscene, this does not negate the need to undertake a sequential test which has not been completed. This is notwithstanding the submission of a strategy that may adequately deal with surface water.
24. For the reasons above, I conclude that it has not been sufficiently demonstrated that the proposal is in an acceptable location with particular regard to flood risk. There is therefore conflict with paragraphs 167 and 168 of the Framework and the PPG. It therefore fails the assessment required under point ZA.2 (2) (c) of the GPDO regarding flooding risks in relation to the new building.

Character and appearance

25. The area within which the appeal site is located is formed from a mix of housing and industrial buildings fronting onto Oyster Road. As a result, there is a marked range of building styles, architecture and materials. Cladded standard boxy industrial sheds are interspersed with brick houses and ad hoc industrial premises with individual designs. As a result the size and height of properties varies and there is no one fundamental characteristic that unites development along the road. To the east and west are further industrial buildings of a variety of sizes and designs which can be glimpsed through the gaps in the buildings on Oyster Road. To the north of the appeal site is a railway bridge and a narrowing of the road which presents a natural end to the mixed area, beyond which is a very different character comprising housing set in a verdant tree lined street. It is not particularly visible from the appeal site due to bridge and road configuration.
26. The building on the appeal site is a brick commercial building with some cladding at first floor with a pitched, hipped roof. It is set back in the site and makes a neutral contribution to the character and appearance of the area maintaining the mixed character and appearance.
27. Both proposals before me look to provide a building of about 1 metre higher than the existing building on the appeal site, that for Appeal B being marginally lower than that proposed in Appeal A. The difference to the existing building on the site is that the roof would be flat so that the resultant massing would be vastly different giving the appearance of a much taller building, albeit the top floor on both schemes would be recessed, providing some relief and articulation.

⁴ Paragraph: 023 Reference ID: 7-023-20220825

28. However, within the mixed context I have described I do not consider that due to its height it would be materially out of place especially given the height of other industrial buildings in the area, including to the rear of the site. The position of the bridge also provides an effective end stop to this part of the road so that the building, at either height would be viewed at the end of a row and consequently not particularly out of context.
29. However, due to the proposed flat roof, the massing of the building under both proposals would be large and would have a block like appearance. This would not in itself be harmful. However, the sense of articulation in the design of the building in Appeal A would be very limited giving it a bland obtrusive appearance. While materials used would be similar to surrounding buildings, there would be limited differentiation between the fenestration and the walls which would reinforce the large massing of the building diminishing its ability to integrate effectively into the streetscene.
30. That on appeal B though would incorporate a wider set back at the third floor with articulation to the front elevation and varied materials to the walls and fenestration which would result in a more articulated building and reduce the massing effect considerably. While the third floor would not be set in at all elevations, it would only be flush on the rear elevation which would be seen purely in the context of surrounding industrial buildings in a different character to that on Oyster Road. The proposal would therefore satisfactorily integrate into the streetscene given its specific context. I acknowledge that the proposal under appeal B would include boundary fencing including a 3.5 metre acoustic fence. However, this would be to the side and rear boundaries some of which is already well screened by landscaping. The other fences would be sited well away from the front road so would not be materially visually harmful. The submitted visuals show that the brick wall across the frontage would be acceptable.
31. For the reasons above, I conclude that the proposal on Appeal A would be harmful to the character and appearance of the area. It would therefore conflict with the requirements of the Framework which seeks to achieve well designed and beautiful places and particularly paragraph 135 which requires that development is sympathetic to local character and history including the surrounding built environment. It would therefore fail the assessments required under points ZA.2.-(2) (d) and (e) of the GPDO regarding the design of the new building, and the external appearance of the new building.
32. However, also for the reasons above, I conclude that the proposal under Appeal B would not harm the character and appearance of the area. It would therefore accord with the requirements of the Framework which seeks to achieve well designed and beautiful places and particularly paragraph 135 which requires that development is sympathetic to local character and history including the surrounding built environment. It would therefore comply with the assessments required under points ZA.2.-(2) (d) and (e) of the GPDO regarding the design of the new building, and the external appearance of the new building.

Noise

33. There are two strands to the consideration of noise issues in these appeals. First whether the occupiers of the proposed development would have an acceptable living environment having regard to noise levels and second whether occupiers of the surrounding industrial premises would be put at risk by the introduction of a residential use which may result in complaints if noise levels were considered to be unacceptable affecting the operation of the businesses.
34. The appellant has submitted a Noise Impact Assessment (NIA) which demonstrates that the proposed glazing specification would adequately mitigate the noise levels determined through noise surveys to achieve acceptable noise levels within the properties. The levels of noise in the garden areas would be above recommended levels, particularly to the west and north façades, adjacent to the road and railway where there are already high noise levels. The NIA recommends the erection of a solid timber fence to provide attenuation of about 8dB, bringing the noise level only marginally above the recommended levels.
35. Notwithstanding comments by the Council on the technical details of the NIA, I do have some concerns regarding the report and subsequent comments submitted by the appellant. At my site visit I saw and heard noisy operations from the property to the south of the appeal site in the form of an MOT, servicing and car repair premises as well as at the bus depot to the south-east of the appeal site where vehicle maintenance was occurring. While the NIA takes account of bus movements, it does not seem to have included these uses. The noises I heard were particularly loud and abrasive, normally associated with such uses and need to be considered in any assessment, as they could have the potential to cause harm to the living conditions of the future occupiers throughout the day.
36. Whether they were there or not at the time of the survey, reinforces the Council's point, that the nature of the surrounding area is such that occupiers may change over time and move between different use classes with the potential for noisier users. Furthermore, the NIA has been undertaken using the times of operation as currently existing for the neighbouring uses rather than those for which planning permission is extant and could be implemented which may have a further impact on the noise levels.
37. This is without doubt a noisy environment, I spent a lengthy period of time in the area listening to the sounds. The impact of the road noise was significant. However, the noise coming from the adjacent car repair premises, and the bus depot was particularly strident, and although intermittent, was nonetheless loud and has the potential to cause noise and disturbance. This would be particularly in the summer with windows open or when occupiers were enjoying the communal and ground floor garden space. I am aware that the guidance in BS8233:2014 states that *it is also recognized that these guideline values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development*

needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited' and that the NIA already found that noise levels would exceed recommended levels in the garden areas for both appeals.

38. However, that the noise associated with car and bus repair does not seem to have been captured in the NIA is concerning. Future residents may be aware of the environment they would be moving into. However, it may not be until they are living there and experiencing it daily that concerns may be raised. I am of the view therefore that there would also be the potential for proposed residents to complain about noise levels putting existing business at risk.
39. I accept that there are existing residential properties scattered amongst the industrial units and there is no evidence before me to suggest that any complaints have been received from the occupiers regarding noise or any other matter relating to the industrial premises. However, none share the particular neighbours that would be adjacent to the appeal site from where I heard noisy activity, which does not seem to have been adequately assessed in the noise report.
40. Other matters relating to odour, dust and vibration have been raised by the Council in relation to both appeals. However, I note there is no evidence before me to suggest that these issues are of particular concern. I also note that the Council's Environmental Health Officer has not raised concern regarding these matters.
41. For the reasons above, I conclude that it has not been adequately demonstrated the proposed occupiers would have acceptable living conditions with regard to noise. Nor has it been adequately demonstrated that the introduction of a residential use at this location would not put surrounding businesses at risk of complaint. The proposals would therefore be in conflict with paragraphs 180 (e) and 191 of the Framework and fails the assessment required under points ZA.2.-(2) (h) and (i) of the GPDO regarding the impacts of noise from any commercial premises on the intended occupiers of the new dwellinghouses and the impact on business and new residents of the development's introduction of, or increase in, residential use in the area in which the development is to take place respectively.

Outdoor space (Appeal A)

42. The Council raise particular concern regarding the lack of outdoor space for the six flats forming family accommodation at units 3, 12, 15, 20, 23 and 30.
43. The relevant part of class ZA within the GPDO is part (g) which includes for "the impact of the development on the amenity of the new building and of neighbouring premises, including overlooking, privacy and light." While this does not specifically mention outdoor space, the word including suggests this is not a closed list but other matters relating to the amenity of the building would be relevant. To my mind the provision of outdoor space would relate to the amenity of the building. On this matter the Council refers me to two other appeal decisions both relating to class ZA and to another class of development with the same wording in the Act regarding the impact on the amenity of the

development where the Inspector has considered outdoor space⁵. While these have not been determinative, they reinforce my views on this point.

44. The proposal provides a roof top outdoor space of 190 sqm which would provide communal garden space for the future occupiers of the 32 flats. I note that this would be contrary to the requirements of the Council's Supplementary Planning Document: Outlook, Amenity, Privacy and Daylight adopted in 2022 (the SPD), which based on the size of the proposed units would require a total of 675 sqm of communal open space. Nevertheless, this is guidance, and the regulations require a decision in accordance with the Framework. While the Framework does not explicitly state a need for outdoor space, it does require that developments create places that, among other things, promote health and well-being, with a high standard of amenity for future users.
45. Of itself, I consider the amount of communal space would provide sufficient communal space, notwithstanding its location adjacent to a main road and an industrial estate. Of more importance is the provision of larger units which could potentially be used by families including children who would need sufficient private open space to play. This is not provided for adequately in the scheme. The plans are contradictory as to whether the space at ground floor would be used for private gardens or not, but in any case, the remaining flats would have no access to private garden space.
46. The impact of the development on the amenity of the building would therefore be materially harmful in this respect and contrary to the requirements of the Framework. Consequently, the proposal fails the assessment required under point ZA.2.-(2) (g) of the GPDO regarding the impact of the development on the amenity of the new building.

Natural light (Appeal B)

47. When the Council considered the scheme which is the subject of Appeal A, it had the benefit of an Internal Daylight Report (2023), which identifies that all of the habitable rooms of the proposed dwellinghouses would meet the illuminance recommendations in that the relevant illuminances would be met or exceeded over half of the room over half of the daylight hours over the year as per the BRE Guide. It was therefore concluded that the proposal was acceptable in respect of point (f) of Class ZA of the GPDO regarding the provision of adequate natural light in all habitable rooms of each new dwellinghouse in or comprising the new building.
48. No Internal Daylight Report was submitted with the application considered under appeal B and therefore the Council refused the application on the grounds of a lack of information. I note the appellants assertion that planning applications should be determined in a consistent manner, backed by relevant case law. However, in this instance the two schemes are sufficiently different in terms of internal layout and fenestration pattern to mean that it does not necessarily follow that they be determined in the same manner with respect to this specific issue.

⁵ APP/M5450/W/22/3292680 & APP/H1515/W/23/3322784

49. Nevertheless, in my view there is sufficient information before me to make an assessment on this issue. Based on the floorplans some units and their habitable rooms would have larger windows than the scheme under appeal A and therefore would have sufficient daylight. The proposal includes for boundary treatment in the form of front (west) 1.8m brick fence and 1.2m iron gates, a side (north and south) and rear (east) 3.5m timber close boarded fence. However, these are some distance from the windows.
50. In particular, the Council is concerned about the habitable rooms which are served by a winter garden and that the effect this would have on daylight levels has not been demonstrated. However, the winter gardens themselves would have a high level of glazing, as would the internal walls leading to them. Furthermore, the rooms would be served by additional windows as well as those to the wintergardens. I am therefore satisfied that there would be an acceptable level of daylight within the rooms such that there would be no conflict with paragraph 135(f) of the Framework which requires that developments create places that, among other things, promote health and well-being, with a high standard of amenity for future users. Consequently the proposal would meet the requirements of point (f) of Class ZA of the GPDO.

Other Matters

51. The appellant draws attention to the pre-application service which they considered was followed and resulted in the schemes as submitted. However, this is advice, and the Council is at liberty to determine the planning applications based on the full evidence before then at the time of its consideration.
52. In addition, the appellant raises concerns regarding what they consider to be prejudices displayed by the Council to this particular type of application. I have though determined the appeals based on the information before me, my observations on site and the requirements of the Framework.

Conclusion

53. For the reasons above I conclude that both Appeal A and Appeal B should be dismissed.

Zoe Raygen

INSPECTOR