



Appeal Decision

Site visit made on 12 November 2024

by A Veevers BA(Hons) PGDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 January 2025

Appeal Ref: APP/L5810/W/24/3343664

**Riverside Court, River Reach, Richmond Upon Thames, Teddington
TW11 9QN**

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Alexander Brook Properties Ltd against the decision of the Council of the London Borough of Richmond Upon Thames.
 - The application Ref is 23/2511/GPH01.
 - The development proposed is construction of one additional storey to provide 5 additional residential flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The prior approval application form did not provide a description of the development proposed. Instead, a cross reference was made to a submitted cover letter. In Part E of the appeal form it is stated that the description of development has not changed but, unlike the application form, a description is provided. The appeal form description matches that provided on the Council's decision notice. Therefore, I have used this description in the banner heading above.

Procedural Matters

3. Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits the construction of up to two additional storeys of new dwellinghouses immediately above the topmost residential storey on a building which is a purpose-built, detached block of flats. For development to be permitted it must satisfy the limitations set out at paragraph A.1 and the conditions at A.2.
4. Compliance with the limitations at A.1 is not an issue in dispute between the main parties and I do not have evidence that leads me to take a contrary view. The conditions at A.2 require developers to apply to the local planning authority for their prior approval in relation to a number of specified matters.
5. The Council refused prior approval in respect of three matters set out at paragraph A.2 (1), that is (a) the transport and highway impacts of the development, (d) flooding risks in relation to the building, and (e), the external

appearance of the building. As before, I have no evidence to dispute the Council's conclusions in respect of the other sub-sections of paragraph A.2.

6. In its third reason for refusal, the Council refer to the effect of the proposal on the setting of the Broom Water Conservation Area and the setting of Buildings of Townscape Merit as non-designated heritage assets within it. The Officer Report refers to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 72(1) requires that special attention shall be paid to the desirability of "preserving or enhancing the character or appearance" in a conservation area. However, the appeal site lies outside the conservation area, therefore the consideration of its setting does not apply within current legislation.
7. Nonetheless, I have had regard to recent case law¹ which indicates that where prior approval is required in relation to the effect of development on the external appearance of a building, it is appropriate to have regard to its effect on the appearance of neighbouring properties and the locality. Therefore, the location of the site in relation to the identified conservation area and the NDHAs is relevant to the consideration of the external appearance of the building.
8. Paragraph B of Part 20 sets out the procedure for prior approvals and requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (the Framework). An amended version of the Framework was published in December 2024. In the interest of natural justice and to ensure neither of the main parties were prejudiced by this matter, I consulted both parties on the changes to the Framework, and this has informed my determination of the appeal.
9. Policies in the London Borough of Richmond Upon Thames Local Plan, July 2018 (RLP) are referenced in the Council's reason for refusal. However, the principle of the development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan insofar as they are material to the matters for which prior approval is sought.

Main Issues

10. The main issues are whether prior approval should be granted having regard to:
 - flooding risks in relation to the building;
 - the external appearance of the building; and,
 - transport and highway impacts of the development.

Reasons

Flooding risks

11. The appeal site is located in Flood Zone 3 (FZ3). Paragraph 170 of the Framework sets out that inappropriate development in areas of flooding should

¹ CAB Housing Limited v Secretary of State for Levelling Up Housing and Communities and Broxbourne Borough Council [23 February 2023] EWCA Civ 194

be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

12. Policy LP 21 of the RLP requires that all development should avoid, or minimise, contributing to all sources of flooding. It states that development will be guided to areas of lower risk of by applying the Sequential Test as set out national policy guidance, and where necessary, the Exception Test will be applied. I have been provided with the Council's Strategic Flood Risk Assessment: Level 1, June 2008² (SRFA1), which identifies that the site lies within Character Area R7 – Teddington (south) and Hampton Wick, an area largely situated within Flood Zone 3a (high probability of flooding), although parts are also within Flood Zone 3b (functional floodplain). I have also been provided with the Council's updated Strategic Flood Risk Assessment-Level 1, Update March 2021³ (SRFA2) which confirms that the area is subject to fluvial flooding from the River Thames and flood warnings are provided by the Environment Agency (EA) for the area.
13. In this context, the Framework goes on to set out the requirements for a sequential risk-based approach to applications in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment (FRA) demonstrates that no built development within the site boundary, including access or escape routes, would be located on land at risk of flooding. Other exceptions to the requirement for a sequential test are set out at paragraph 176, but none of these apply to the proposed development.
14. No sequential test has been submitted by the appellant, despite the appellant's own FRA identifying at paragraph 3.3 that the proposal may require the application of the sequential test. Rather, the appellant argues that the relevant provisions of the GPDO do not require one to be submitted and that the Council's approach to assessing flood risk has been inconsistent because no sequential test was deemed necessary in relation to a previous application on the site which was dismissed at appeal⁴.
15. The GPDO is clear that there is only a need for a site-specific FRA to be provided with an application for prior approval located in FZ3, and that the EA should be consulted. Although not explicitly stated, the aim of this is to ensure that the site would be safe for its lifetime.
16. In relation to the application of the sequential and exception tests, albeit referring to a different GPDO Class, case law⁵ indicates that the Framework can only be referred to insofar as it is relevant to the development and prior approval matters which must be interpreted through 'the prism of the purpose of the legislation'. The Framework and indeed development plan policies cannot be applied so as to frustrate the purpose of the grant of permitted development rights through the GPDO in the first place. Furthermore, Planning Practice Guidance (PPG) is clear that the matters for prior approval are set out in full in the relevant Parts in Schedule 2 of the GPDO and a local planning authority

² Jacobs London Borough of Richmond Upon Thames SRFA, dated June 2008

³ Metis Consultants Ltd, Strategic Flood Risk Assessment – Level 1, Prepared for the London Borough of Richmond Upon Thames, version 1.3

⁴ Appeal Ref: App/L5810/W/22/3290307

⁵ *East Hertfordshire DC v SSLG* [2017] EWHC 465 (Admin)

cannot consider any other matters when determining a prior approval application, impose unnecessarily onerous requirements on developers, and does not seek to replicate the planning application system.⁶ On this basis, I am satisfied that neither a sequential test nor an exception test is required.

17. A site-specific FRA and addendum⁷ were submitted with the application, as required by the GPDO. These outline that because the site is located within FZ3 it could be affected by flooding in the modelled 1 in 100 year and 1 in 100 year plus 35% climate change event. However, the FRA concludes that, as there would be no increase in the footprint of the existing building and the additional floor would be above the highest likely level of flooding, there would be no impact of flood risk to residents of the proposed development or elsewhere, subject to a number of mitigation measures, including the implementation of a flood evacuation plan.
18. The PPG⁸ states that when assessing the safety implications of flood risk for development in terms of whether it would be safe for its lifetime, 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).
19. A flood evacuation plan has been provided which indicates that residents evacuating the building in the event of a flood incident would be required to walk a considerable distance before reaching safety. Evidence at figure 9 of the FRA suggests the evacuation route from the building would be along Broom Water and Atbara Road, which lie within FZ2 and FZ3, before taking refuge at Collis Primary School. Future residents, particularly those with more limited mobility, would potentially have significant difficulty evacuating a site where pedestrian and vehicle routes could be inundated. The lengthy evacuation route would be across areas identified as a maximum hazard with a potential depth of water in the event of a flood, greater than 2 metres. Walking through moving water at this depth would present a 'danger for all' and would not be safe.
20. Even though this would be the case for existing residents, the number of occupants in the building would increase as a result of the proposal.
21. The SRFA2 states that the EA issues warnings of anticipated River Thames flooding. 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. Even if future occupants were encouraged to sign up to the EA flood warning service, warnings would not be guaranteed to work if the flood event occurred during the night when future occupants could be 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.

⁶ PPG Reference ID: 13-026-20140306 to 13-028-20140306

⁷ Ambiental Environmental Assessment, Flood Risk Assessment Ref: 6379, dated July 2021 and Royal HasoningDHV 'Addendum to 6379 Flood Risk Assessment for Riverside Court', Ref 6966-RHD-XX-XX-RP-X-0001, dated 7 November 2023

⁸ Paragraph: 005 Reference ID: 7-005-20220825

22. 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. The provision of five additional residential units at the appeal site would increase the burden on emergency services were a flood to occur.
23. I note the EA have not objected to the proposal. Nevertheless, the Council's Guidance on Producing a Flood Emergency Plan, November 2011, referred to in the SRFA2, clearly states that 'the EA will not comment on the acceptability of the flood plan, i.e. whether the access and egress arrangements are "safe". The Council's reason for refusal in relation to flood risk refers to the management of flood risk and, in accordance with the requirements of the GPDO, I must assess the flooding risks in relation to the building.
24. Evidence indicates that there would not be appropriate evacuation procedures and flood response infrastructure in place to manage the residual risk associated with an extreme flood event at the site. The development would therefore not be safe for its lifetime.
25. Given the proposal relates to the sixth floor of the building, well above predicted flood levels, there would be no significant flood risk within the dwellings themselves. However, this would not be sufficient to outweigh the inadequate escape route.
26. Consequently, based on the evidence before me, the development would have an unacceptable effect on flood risk and the safety of future occupants. The proposal would therefore conflict with Policy LP 21 of the RLP, which, amongst other things, states that unacceptable development will be refused in line with national policy and guidance. It would also not comply with guidance in Section 14 of the Framework concerned with planning and flood risk.
27. For the above reasons, the proposal would not satisfy condition A.2 (1) (d) of Class A, Part 20, Schedule 2 of the GPDO with regard to the flooding risks in relation to the building.

External appearance

28. Riverside Court is a six storey detached block of flats located close to the River Thames. It sits at the end of a cul-de-sac of two storey dwellings. To the east of the site are several blocks of flats that vary in height between three and five storeys. In assessing the effect of the proposal upon the external appearance of the appeal building, Riverside Court, consideration must be given to its context.
29. In this case, although erroneously referred to as the Broom Lock Teddington Conservation Area in the Officer Report, the appeal site lies outside but directly adjacent to the Broom Water Conservation Area (CA). Evidence provided and my own observations suggest that the extent of the CA is relatively compact and is centred around a river inlet that was formed by a natural creek of the River Thames. Residential properties were developed to enclose the inlet in the late 19th century. The properties inside the CA have a notably traditional appearance and many have been identified by the Council as non-designated heritage assets (NDHAs). While they do not include the same detailing, the consistency of building period, their height and proximity to the street provide

- a recognisable regularity and aesthetic value to the character and appearance of the CA.
30. As such the significance of the CA and the NDHAs is derived from the age, high quality architecture and materials of the buildings and their location surrounding the river inlet. The Council's 'Broom Water Conservation Area 28' (undated) sets out that the CA was extended in 2003 to include 40 Broom Water (No 40), a detached dwelling within a large plot located adjacent to the appeal site. It also identifies an important view south along the inlet terminated by a boathouse.
 31. The Framework defines the setting of a heritage asset as the surroundings in which the asset is experienced. In contrast to the buildings inside the CA, River Reach and Broom Lock comprise more recent residential development arranged in two storey blocks, and includes Beech Court, a four storey flatted development, as well as single storey blocks of garaging.
 32. Given the significance of the CA and NDHAs relates primarily to the individual characteristics of the buildings and their location around the river inlet, and due to its separation from the CA by trees and the more recent age and form of intervening built development, Riverside Court makes a neutral contribution to the ability to appreciate the significance of the CA and the NDHAs.
 33. A previous appeal⁹ has already been considered for the site in which the Council refused prior approval for two additional storeys on top of Riverside Court to add 10 flats due to the effect on the external appearance of the building, having regard to the character and appearance of the surrounding area. In the previous appeal the Inspector found that two additional storeys would appear unduly prominent in its setting, particularly due to its location adjacent to the CA.
 34. The appellant has sought to address this through a reduction in the number of storeys. It is proposed to add one additional storey to Riverside Court to facilitate five flats (three 1-bedroom 2-person flats and two 2-bedroom 3-person flats). The proposed additional storey would be set in from the sides of the building at roof level and finished in light zinc cladding panels. The overall height of the building would remain lower than the existing lift enclosure on the roof. The plans indicate the design and spread of windows would generally reflect those in the existing block. Overall, I find that the materials, vertical rhythm, fenestration and storey height would be sympathetic to the host building and not harm its external appearance.
 35. In terms of its wider context, the setback of the additional storey, its enclosure by protected trees along the boundary of No 40 and the degree of separation from the CA and NDHAs by intervening development along River Reach, means that the proposed upwardly extended Riverside Court would continue to make a neutral contribution to the ability to appreciate the significance of the CA and the NDHAs and their settings. It would preserve their settings.
 36. As well as its location adjacent to the CA, the site sits on the opposite side of the River Thames to Metropolitan Open Land (MOL) as designated in the RLP. Policy LP 13 of the RLP states that when considering development on sites

⁹ APP/L5810/W/22/3290307

outside MOL, any possible visual impacts on the character and appearance and openness of the Green Belt or MOL will be taken into account.

37. When viewed from MOL, Riverside Court is noticeably taller than the adjacent No 40 and other properties to the west. However, there are buildings of three, four and five storeys to the east. Furthermore, Riverside Court is partially screened by trees, even, as I saw on my site visit, during the winter months when leaves were not on the trees. Whilst the existing lift enclosure can be glimpsed through the trees and the additional storey would have a greater spread, it would be no higher than the enclosure. The resultant building would be seen against the backdrop of surrounding built form on the opposite river bank, some distance from MOL. Consequently, I am satisfied that there would be no adverse visual effect on MOL.
38. With regard to views from the surrounding streets, due to the prevalence of trees and the height of the buildings on Bucklands Road, the proposed increased height of Riverside Court would not appear anomalous or overly prominent.
39. In views taken from River Reach, there is already an abrupt and jarring difference in height between the adjacent terraced two storey row and Riverside Court. Its increased height would appear greater than the dwellings on River Reach when viewed from this vantage point as it already does. Nonetheless, given the setback and the light coloured zinc cladding, the proposed additional storey at Riverside Court would remain largely recessive and would not be higher than the existing lift enclosure. In addition, the use of different external walling materials to the rest of the building would prevent an overly monotonous façade and would moderate the perception of scale.
40. The principle of extending upwards is established through the GPDO and while this may result in exacerbating differences in height to nearby buildings, this is an inevitable consequence of the permitted development right. I am satisfied that the proposed one additional storey at Riverside Court would not be of such a height to have a significant material adverse effect on the street scene.
41. For the reasons given above, the external appearance of the building would be acceptable, with particular regard to the character and appearance of the area, including the setting of designated and NDHAs. The proposal would not conflict with Policies LP 1, LP 2, LP 3, LP 4 and LP 13 of the RLP, which, collectively, amongst other things, seek that development respects, contributes to and enhances the local environment and character of MOL, and preserves and enhances the borough's heritage assets, their significance and their setting. I also find that there would be no conflict with paragraph 135 of the Framework, which seeks development which is sympathetic to local character and Chapter 16 which is concerned with the historic environment.
42. The proposal would therefore comply with condition A.2 (1) (e) of Schedule 2, Part 20 Class A of the GPDO.

Transport and highways

43. The appeal site has a PTAL¹⁰ of Zero, the lowest level of public transport accessibility. Policy LP 45 of the RLP is material in this case because it requires new development to provide for car, cycle and 2-wheel parking in accordance

¹⁰ Public Transport Accessibility Level

- with local standards. These are set out in the RLP and in this case, 5 car parking spaces would be required. Although not referred to in the decision notice, the Council's Officer Report refers to the London Plan, 2021 (LP) parking requirement of up to 7.5 spaces.
44. The proposal would include 12 cycle spaces, 10 of which would be within a secure enclosure. A further 3 additional car parking spaces would be provided at the front of the building. While this would be below that required by both the RLP and the LP, the supporting text to Policy LP 45 advises developers may provide fewer parking spaces if they can demonstrate that there would be no unacceptable adverse impact on on-street parking availability, amenity, street scene, road safety or emergency access in the surrounding area as a result of the generation of unacceptable overspill of in-street parking in the vicinity.
 45. The appellant provided a Transport Statement¹¹ with the application which included a car ownership study for the area and a car parking beat survey. The car ownership study indicates that 53% of the occupants of 1 to 3 bedroom flats in the ward within which the appeal site is located did not own a vehicle and 41% owned one vehicle. The proposal would provide access to an off-street parking space for 60% of the flats. On the basis of the 2011 Census Data underpinning the study, this would be commensurate with the level of car ownership within flatted development in the area. Even though the study is based upon Census Data derived in 2011, it provides an indication of car ownership of occupants of flatted development in the area, although this level could have increased.
 46. Since not all occupants of the proposed flats would be provided with an off-street parking space, any additional parking requirements resulting from the proposal would be dependent on opportunities to be found in surrounding streets.
 47. In this regard, the appellants parking beat survey, which was taken over two consecutive nights in May 2021, demonstrates that there were several on-street parking spaces available within 200m of the site, including on River Reach, Broom Water and Broom Lock. Average parking stress on the two nights was between 74% and 80%. My visit, albeit a snap shot in time, also identified that several on-street parking spaces were available on surrounding streets on a midweek lunch-time.
 48. I recognise that the parking beat survey was carried out in 2021 and an increased level of parking stress on streets in the vicinity of the appeal site could have occurred over the last three years. Moreover, parking stress would be likely to be marginally exacerbated if future occupiers of the proposed flats owned a vehicle. I also recognise that occupiers of the proposed flats, given a choice, would choose to park close to their accommodation, and that any increased on-street parking in River Reach or in nearby streets could further restrict the free flow of vehicles in those areas, including bin lorries and emergency services.
 49. Notwithstanding the above, on-street parking is clearly a feature of the surrounding streets, and local residents and drivers will be aware of the need to give due consideration to parked cars and pedestrians. Furthermore, because the immediate surrounding streets are not subject to parking

¹¹ Transport Statement, September 2023, Alexander Brook Properties Ltd.

restrictions, which is generally an indication of parking stress, it suggests that adequate on-street parking exists in the vicinity of the site.

50. Accordingly, any increase in demand arising from an additional 2 to 4 cars is unlikely to result in a significant increase in parking stress in the area such that it would be at or exceed 100%.
51. Notwithstanding the shortfall in off-street parking spaces, when measured against the maximum standard, I am satisfied there would be sufficient on-street parking available to safely accommodate any increase in parking demand arising from the proposal. Consequently, it is unlikely that the proposal would cause significant highway safety problems for vehicle users or pedestrians. Nor, taking into account the potential level and nature of vehicle movements, would there be any materially adverse effect on the free flow of traffic. Furthermore, I note there was no objection from the Council's Highway team in relation to the proposal.
52. Because 3 off-street parking spaces would be provided and since I have found that there would be no unacceptable parking stress on surrounding streets as a result of any additional parking demand created by the proposal, there would be no justification to exclude all residents from any future car parking permit arrangements.
53. For the reasons given above, the proposal would not result in significant transport and highway impacts. It would accord with Policy LP 45 of the RLP in so far as this policy is material to my considerations on this main issue. The policy, amongst other things, is concerned with parking requirements for development. Moreover, and insofar as it is relevant to the subject matter of the prior approval, it would not conflict with the objectives of paragraph 116 of the Framework, which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.
54. Therefore, the proposal would accord with Part 20, paragraph A.2 (1) (a), of the GPDO.

Other Matters

55. I note the appellant's frustration with the Council in respect of consistency in relation to the reasons for refusal given for the previous application, which did not include flood risk. However, this has had no bearing on my consideration as to whether the proposal now before me meets the limitations and conditions of Schedule 2, Part 20, Class A to the GPDO which I have dealt with on its own merits based on the evidence before me.
56. I have had regard to other matters raised by neighbouring residents, including regard to overlooking, light, fire safety, trees, wildlife, noise and structural concerns. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.

Conclusion

57. For the above reasons, the proposed development would not satisfy condition A.2 (1) (d) of Class A, Part 20 , Schedule 2 of the GPDO with regard to the flooding risks in relation to the building.
58. I therefore conclude that prior approval should not be granted, and the appeal should be dismissed.

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INSPECTOR