



Appeal Decision

Site visit made on 24 January 2025

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 FEBRUARY 2025

Appeal Ref: APP/Q3630/W/24/3349291

1-3 Part First Floor, New Haw Road, Addlestone, Surrey KT15 2BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Arsalan Kazim against the decision of Runnymede Borough Council.
 - The application Ref is RU.23/1447.
 - The development is the change of use from office to part use as a 1 bedroom self contained flat on the upper floor.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The flat appeared to be capable of occupation and therefore I have determined the appeal on the basis that the development has been carried out.
3. The Government published a revised National Planning Policy Framework ("the Framework") in December 2024. However, the policies relevant to the substance of this appeal are not materially different and therefore I have not deemed it necessary to seek the parties' views on the revised document.

Main Issues

4. The main issues in this appeal are:
 - The effect of the development on the character and appearance of the area.
 - Whether the development provides occupants with satisfactory living conditions, with particular regard to outlook, sunlight, noise and disturbance, accessibility and cycle storage.
 - Whether occupation of the development is safe having particular regard to the risk of flooding.
 - The effect of the development on the Thames Basin Heaths Special Protection Area (SPA).

Reasons

Character and appearance

5. The side elevation of the appeal balcony is formed of timber panels and opaque plastic sheets. Whilst the balcony is not visible from a public vantage point, it occupies an elevated position on the host building and is highly visible in views from nearby gardens. In these views the appearance of the balcony's materials and

rudimentary construction contrast jarringly with the light-coloured cladding to the upper walls of the host building and the predominantly masonry construction of buildings in the area. Consequently, the balcony is a visually incongruous element that is harmful to the character and appearance of the host building and area.

6. The appellant is willing to accept a planning condition to secure alternative materials for the balcony. However, this would be unacceptable because details of alternative materials are not before me and deferring them to a planning condition could unfairly deprive interested parties with an opportunity to comment on them, leading to injustice.
7. For these reasons I conclude on this issue that the development is harmful to the character and appearance of the area, contrary to Policy EE1 of the Runnymede 2030 Local Plan Adopted July 2020 ("the RLP"), which expects all development to achieve high quality design which responds to the local context, paying particular regard to materials. For the same reasons the development is contrary to Framework Paragraphs 131, 135 and 139, insofar as they require high quality design, sympathetic to the surrounding built environment.

Living conditions of occupants

8. The block plan shows that a pedestrian route segregated from the MOT station's forecourt area by timber fencing could be created between the appeal building and the roadside footpath. However, this route would not appear to extend to the appeal flat's access door, and therefore it would not avoid the need for residents of the flat to walk across the forecourt, with the potential for conflict with moving vehicles.
9. The flat's ground floor entrance door is positioned just in front of the MOT station's vehicle entrance door and set perpendicular to it. As such, when entering or leaving the flat, occupants or their visitors must walk in front of the MOT station's entrance door and potentially into the path of a vehicle travelling into or out of the building.
10. In this scenario, the driver of the vehicle and the flat's occupants/visitors would have very little time to react to one another and avoid a potential collision, especially if the vehicle was reversing out from the building. This arrangement represents a poorly functioning development that poses a significant risk of conflict with moving vehicles to the detriment of the safety of the appeal flat's occupiers and visitors.
11. The appeal flat is situated above part of the ground floor MOT station and a tyre storage area. The submitted Acoustic Assessment (AA) is based upon a noise measurement from a different MOT testing station because the one beneath the appeal flat was not operational when measurements were taken. The noise measurements in the AA that relate to the area of the appeal site were taken from a measuring point in the garden of Number 7 and not from the appeal flat.
12. The AA takes account of the MOT station's acoustically lined roller shutter doors, which it states are closed when work is taking place. However, those doors were open at the time of my visit, and I am not aware of any restrictions that mandate them being closed when the MOT test station is operational. Therefore, I am not satisfied that closed doors can be relied upon to limit noise transmission.
13. I acknowledge that the commercial uses in the building beneath the appeal flat are likely to be operated during daytime hours when occupiers are not likely to be

sleeping. Nonetheless, for the reasons given above I am not satisfied that the noise levels in the AA are representative of the noise environment at the appeal site, or the likely noise levels within the flat. I therefore have significant doubts over the conclusions reached in the AA and it has failed to demonstrate that occupiers of the flat would not experience harmful levels of noise and disturbance from the commercial premises beneath it.

14. The block plan indicates that refuse and recycling bins could be stored along a segregated route between the flat's ground floor access door and the roadside footpath. However, I am not satisfied on the evidence before me that this space would be sufficient to accommodate the necessary covered and secure cycle parking facility. It would not be practical or convenient for occupiers to carry a cycle up and down the staircase for storage on the flat's balcony area. This arrangement would discourage cycling.
15. Consequently, cycle storage for the appeal flat would conflict with Design Standard 25 of the Runnymede Design Supplementary Planning Document, Adopted July 2021 ("the RDSPD"), which requires cycle storage facilities to be well designed and integrated into a development.
16. Given the appeal flat's size and low occupancy level, the balcony area is of a sufficient size to provide outdoor space for relaxation and dining. It was laid out with chairs and a table at the time of my visit. Whilst the balcony is enclosed along its sides, it had no roof and is partly open to the west. I am therefore satisfied that direct sunlight would reach the balcony for parts of the day, particularly when the sun is at its highest point in the sky from the south.
17. The balcony was not a gloomy or oppressive space at the time of my site visit, partly because of light reflecting off the white coloured walls of the existing building. For these reasons the balcony area provides an adequate outdoor space for its occupiers, consistent with RDSPD Design Standard 24, which states that flats should have access to usable outdoor space providing suitable levels of natural daylight and sunlight.
18. At the time of my visit the internal layout of the flat consisted of a kitchen, shower room, living room and a single bedroom. A wardrobe/storage room was accessed through the bedroom. This is the basis on which I have assessed the appeal. The lounge and bedroom are good sized rooms of practical, usable shapes and the evidence suggests the floor space exceeds the minimum standard set out in RLP Policy SL19. I find that the flat provides adequate space for its level of occupation. The bedroom is served by a window to provide an outlook. The bathroom does not have a window providing views of the outdoor environment. However, given the nature of its use and functionality, this does not cause unacceptable living conditions.
19. The appeal flat shares internal walls with the first floor offices. However, the offices are relatively modest in size and their use would not be likely to be intensive or noisy, and comings and goings would be relatively low. The shared staircase is also separated from the flat's balcony by a wall and doorway, limiting noise transmission to the flat. I am therefore satisfied that noise and disturbance from the offices would not be harmful to the living conditions of the flat's occupiers. I have limited evidence to substantiate the Council's concerns over the security of the flat.

20. Taking all the above into account, I conclude on this issue that the appeal development does not provide occupants of the flat with satisfactory living conditions, with particular regard to noise and disturbance, accessibility and cycle storage. As such, it is contrary to RLP Policy EE1, which expects all development to achieve high quality and inclusive design, ensuring no adverse impact on the amenities of occupiers. There is also conflict with Framework Paragraph 135, which requires development to function well and create places with a high standard of amenity for existing users.

Flooding

21. The Environment Agency flood zone map shows the appeal site as located within Flood Zone 3, which corresponds to a high probability of flooding. Framework Paragraphs 170 and 181 state that development in flood risk areas should be made safe for its lifetime and only allowed where a Flood Risk Assessment (FRA) demonstrates that safe access and escape routes are included as part of an agreed emergency plan.
22. The appellant's FRA describes the evacuation route from the appeal flat but does not assess the likely depth and speed of flood water that could affect this route during the design flood event. Therefore, I cannot be satisfied on the evidence before me that this route would provide occupants of the flat with a safe access and escape route in the event of flooding. This matter is fundamental to the safe occupation of the development. I have no assurance that a safe escape route in the event of flooding is achievable, and therefore it would be unacceptable to defer it to future consideration under a planning condition.
23. For these reasons, I conclude on this issue that occupation of the development would not be safe during flooding, contrary to RLP Policy EE13, insofar as it requires flood risk to be managed, including through operation of an effective flood evacuation procedure. For the same reasons it would be contrary to Framework Paragraphs 170 and 181, the requirements of which are set out above.

Thames Basins Heath SPA

24. The appeal site lies within the 5km buffer of the Thames Basin Heaths SPA, which is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017, as amended ("the Regulations"). The SPA is designated for internationally important bird populations and provides a habitat for woodlark, Dartford warbler, and nightjar birds, which nest near the ground making them susceptible to human disturbance and predation by pets.
25. Occupants of the appeal flat would be expected to visit the SPA for recreational purposes and contribute to disturbance of the qualifying bird species, thus leading to declining populations and threatening the integrity of the SPA. Consequently, occupation of the flat is likely to have a significant adverse effect on the integrity of the SPA, both on its own and cumulatively with other housing developments.
26. The Thames Basin Heaths SPA Supplementary Planning Document 2021, sets out that adverse effects on the integrity of the SPA should be mitigated through financial contributions towards the strategic alternative natural greenspaces and strategic access management and monitoring. I am satisfied that securing those financial contributions would meet the tests in Regulation 122 of the Community Infrastructure Levy Regulations.

27. The appellant has advanced no evidence to demonstrate that these contributions would be legally secured if planning permission was granted. In the context of the Planning Practice Guidance^{1,2}, conditions cannot require the payment of money, and given the scale and nature of the development, there are no exceptional circumstances to justify securing a planning obligation by condition.
28. In my duty as the Competent Authority under the Regulations, I conclude that occupation of the development would have a significant adverse effect on the nature conservation interests of the SPA. No other solutions, imperative reasons of overriding public interest, or other compensatory measures have been put forward by the appellant as alternatives.
29. Consequently, I conclude that the appeal development adversely affects the integrity of the SPA, contrary to RLP Policy EE10, which requires development to put in place adequate measures to avoid and mitigate potential effects on the SPA. The development also conflicts with Framework Paragraphs 187 and 193, which require decisions to protect sites of biodiversity value in a manner consistent with their statutory status, and if significant harm to biodiversity cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused.

Other Matters

30. The appeal flat makes a small contribution to housing supply in an accessible location and its occupiers would spend money in the local economy. Given its scale, these benefits carry limited weight in its favour.
31. Details of the Council's current housing land supply are not before me in evidence. However, even if there was an acute housing shortfall, Footnote 7 to Framework Paragraph 11.d)i. would apply to the appeal development. In that scenario, the appeal development's conflict with the policies in the Framework that seek to protect habitats sites and ensure safe development in flood risk areas, provide strong reasons for refusing permission. As such, the appeal development does not benefit from the Framework's presumption in favour of sustainable development.
32. The appeal flat appears capable of occupation. My decision could therefore lead to an occupier having to vacate the flat and potentially become homeless. However, on the evidence before me I am satisfied that the potential effects of my decision to dismiss the appeal on the rights of the occupiers to a private and family life, and home under Article 1 and Article 8 of the Human Rights Act 1998, would be proportionate, in this instance, to the objectives of the planning policies referred to above.

Conclusion

33. The development's adverse effect on the integrity of the SPA is a determinative matter that justifies the dismissal of the appeal irrespective of the development's benefits. The development is harmful to the character and appearance of the area, and its occupants would not be safe during flooding, nor provided with satisfactory living conditions.

¹ Paragraph: 005 Reference ID: 21a-005-20190723

² Paragraph: 010 Reference ID: 21a-010-20190723

34. The development's harms and the resultant policy conflicts bring the appeal scheme into conflict with the development plan when read as a whole. I give substantial weight to the conflict with the development plan. The material considerations, including the benefits of the development and the provisions of the Framework, do not outweigh the conflict with the development plan. They do not indicate that a decision should be taken other than in accordance with that plan. I conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR