



Appeal Decision

Site visit made on 1 February 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2023

Appeal Ref: APP/C1435/W/22/3296188

Rydon House, Station Road, Forest Row RH18 5DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Doss London Limited against the decision of Wealden District Council.
 - The application Ref WD/2021/2040/P01, dated 27 July 2021, was refused by notice dated 6 October 2021. The development proposed is change of use from offices to residential.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It has been put to me by the appellant that there has been a failure by the Council to provide its written response confirming whether prior approval is given or refused within the required 56-day period. Thus, they consider the development to have deemed consent.
3. I note that in this case there was an agreed extension of time until 6 October 2021, and that the Courts have found agreed extensions of time to be lawful in determining applications for prior approval. However, the appellant considers the Council's Formal Determination to be defective, as it does not explicitly state whether prior approval is given or refused and infers that planning permission has been granted.
4. The Council's Formal Determination clearly states that in this case prior approval is required. While it does not explicitly state that prior approval is refused, when read as a whole it is implicit that prior approval has not been given due to concerns regarding flooding risks of the site, which are a prior approval matter set out at paragraph O.2 (1) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO).
5. Numbered paragraph 2 of the Formal Determination directs the reader to the officer's report, which reiterates the Council's concerns regarding flood risk and concludes that prior approval should be refused on the basis of flood risk to future occupants. Although this paragraph refers to a decision to grant planning permission, this is evidently a mistake, given that the Council can neither grant or refuse planning permission under the provisions of the GDPO, rather permission is deemed to be either granted or refused by the provisions of the GDPO itself.

6. I recognise that the first paragraph of the Informatives on the Formal Determination also refers to a grant of permission under the correct GDPO provisions. However, this does not lead me away from the statement on the first page of the Formal Determination. The Informatives are provided for information and are not an operative part of the formal decision. While the second paragraph of the Informatives also refers to permitted works, it is another error as it relates to development under Part 1 of Schedule 2 of the GDPO. Therefore, it cannot be read as granting approval for this development that falls under Part 3 of Schedule 2 of the GDPO.
7. Overall, while the Formal Determination is flawed, I am satisfied that it was made in time and can reasonably be read as a refusal of prior approval. I have determined the appeal on this basis.

Main Issues

8. Accordingly, the main issue is whether the proposed development complies with condition O.2 (1) (c) of Part 3 of Schedule 2 of the GDPO regarding flooding risks of the site.

Reasons

9. Paragraph W (10)(b) of Part 3 of Schedule 2 of the GDPO 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.
10. 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 flood risk assessment (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.
11. The EA Flood Map for Planning shows the appeal site to be located within Flood Zone 3 without the benefit of flood defences. While there would be a high probability of flooding, paragraph 168 of the Framework is clear that applications for some minor development and changes of use should not be subject to the sequential or exception tests. This includes changes of use such as the proposed development. Thus, despite the proposed use being more vulnerable than the extant office use, neither a sequential nor exceptions test is needed in this case. While the Planning Practice Guidance advises local planning authorities to consider what changes of use would be acceptable where a sequential or exception test is not required, this relates to formulating policy and therefore is not relevant in this case.
12. The Flood Risk Assessments submitted by the appellant at application and appeal stages demonstrate that the building would be unlikely to flood in a 1:20 or 1:100 year flood event and I am satisfied that the proposed finished floor level (FFL) could be secured by condition. However, the assessments also show the site, including land under and around the building would flood in these events and the risk of flooding would be high from both fluvial sources and surface water flooding. The pluvial flood depths experienced on the site

could be up to 0.90m in a 1:30 year event and 1.20m in a 1:100 year event. No physical measures have been put forward to mitigate the flooding of the site outside the building.

13. I saw that the site is set below most of the surrounding development and highway. There are two main points of access and egress for users of the site, consisting of Station Road and a footpath that runs to the north of the site connecting Station Road with Lower Road. Both the footpath and access into the site from Station Road are closer to the main river than the existing building, meaning that the egress points are likely to be in parts of the site that would flood first in a flood event. The EA Flood Map for Planning shows the nearest area of Flood Zone 1 to be about 100 metres from these egress points.
14. I note the concerns of the District and County Councils regarding safe access and egress from the site during a flood event and the advice of the Environment Agency to give due consideration to the provision and adequacy of evacuation arrangements, emergency plans and temporary refuge. The Environment Agency is clear that these issues are not within their direct remit or expertise and therefore the lack of an objection in this regard does not equate to a lack of harm.
15. The EA Flood Warning Service is a free service that provides warnings of flooding direct by telephone, email or text message and can give people valuable time to prepare for flooding. However, there is no way to control whether future occupants of the development would sign up to this service.
16. In terms of access and egress, while the access into the site is from Station Road, which is located in Flood Zone 2, future occupants and site users would need to cross the site from the building exits to the site entrance. The pluvial flood depth maps in the more recent Flood Risk Assessment (August 2021), figures 7 and 8, show that in a 1:30 year event most of the building would be surrounded by flood waters exceeding 25cm and in a 1:100 year event all of the building would. Therefore, it would be unlikely that the exit routes would be viable during a flood event and there would be no safe access and escape route contrary to paragraph 167 of the Framework.
17. Overall, 43 incidents of flooding were recorded in the Forest Row parish between 2011-2016. While the location of the site with regard to recorded flooding is unknown, I have been provided with accounts of recent flood events by third parties and photos showing how they have affected the site. These indicate that flooding of the site to depths more than 25cm has been relatively frequent in recent years.
18. Given the above, it is likely that temporary refuge on the upper floors would need to be undertaken by future occupants and site users more regularly rather than in a worst-case scenario. When seeking refuge at the upper floors on site, future occupants and site users would be confined to the circulation space with no access to any facilities. This would not constitute acceptable mitigation.
19. Furthermore, the submitted plans show a minimum of 38 parking spaces. These vehicles would all be at risk of damage during flooding events, and it is unclear where they could be relocated.

20. Therefore, although the proposal would not increase flood risk elsewhere, it has not been demonstrated that future occupants would be able to safely leave the building during a flood event. Given the high probability of the site flooding, paragraph 167 of the Framework advises that the development should not be allowed. There is no substantive evidence before me that this issue could be fully addressed by reducing the amount of hardstanding and incorporating more soft landscaping and sustainable drainage on to the site. Accordingly, the proposal would be unacceptable with regards to the flooding risks of the site.

Other Matters

21. The site lies within 7km of the Ashdown Forest Special Protection Area (SPA), Special Area of Conservation (SAC) and the Site of Specific Scientific Interest (SSSI). The Conservation of Habitats Regulations 2017 require that all development permitted by the GDPO, which would affect a European protected site, cannot be lawfully begun until a Regulation 77 application has been made to the LPA and the LPA are satisfied that the development would have no adverse effect on the integrity of the site.
22. I understand that a Regulation 77 application has not yet been made to the Council. Nevertheless, given I am dismissing the appeal due to the flooding risks of the site, no pathways to significant likely effects on the SPA would arise from my decision. I, therefore, do not need to consider this issue further.

Conclusion

23. For the reasons above I conclude that the appeal is dismissed.

Hannah Guest

INSPECTOR