

Mr Wayne Campbell
Cherwell District Council
Planning & Development Services
Bodicote House White Post Road
Bodicote
Banbury
OX15 4AA

Our ref: WA/2022/129522/01-L01
Your ref: 21/03918/F
Date: 23 February 2022

Dear Mr Campbell

Conversion of 2-6 Waterperry Court to a hotel (use class C1) including eastern extension, associated car parking, landscaping and ancillary works

Waterperry Court, 2-6 Middleton Road, Banbury, OX16 4QG

Thank you for consulting us on the above application.

The application site lies within Flood Zones 2 and 3 defined by the National Planning Policy Framework (NPPF) and associated Flood risk and coastal change Planning Policy Guidance (PPG) as having a medium and high probability of flooding.

Environment Agency position

The proposed development will only meet the National Planning Policy Framework's requirements in relation to flood risk if the following planning conditions are included on the planning permission's decision notice. Without these we would object to the proposal due to its adverse impact on the environment.

As you are aware, the discharge and enforcement of planning conditions rests with your authority. You must therefore be satisfied that the proposed conditions the requirements of the 6 tests in paragraph 56 of the National Planning Policy Framework.

Please notify us immediately if you are unable to apply our suggested conditions to allow further consideration and advice.

Condition 1

The development shall be carried out in accordance with the submitted flood risk assessment (dated October 2021 and prepared by Innervision Design Ltd.) and the following mitigation measures it details:

1. Finished floor levels of the ground floor habitable area shall be set no lower than 91.16 metres above Ordnance Datum (AOD), in accordance with section 5.3
2. The basement will be kept for non-habitable use

This mitigation measure shall be fully implemented prior to occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason

To reduce the risk of flooding to the proposed development and future occupants.

Condition 2

There shall be no raising of existing ground levels on site without the prior written approval of the Local Planning Authority and where it can be demonstrated that existing ground levels will not be raised within the 1% annual probability flood extent with the appropriate allowance for climate change as identified by the approved Flood Risk Assessment.

Reason

To prevent an increase in flood risk elsewhere.

Advice to Planning Authority

Sequential test

What is the sequential test and does it apply to this application?

In accordance with the National Planning Policy Framework (paragraph 162), development in flood risk areas should not be permitted if there are reasonably available alternative sites, appropriate for the proposed development, in areas with a lower risk of flooding. The sequential test establishes if this is the case.

Development is in a flood risk area if it is in Flood Zone 2 or 3, or it is within Flood Zone 1 and your strategic flood risk assessment shows it to be at future flood risk or at risk from other sources of flooding such as surface water or groundwater.

The only developments exempt from the sequential test in flood risk areas are:

- Householder developments such as residential extensions, conservatories or loft conversions
- Small non-residential extensions with a footprint of less than 250sqm
- Changes of use (except changes of use to a caravan, camping or chalet site, or to a mobile home or park home site)
- Applications for development on sites allocated in the development plan through the sequential test, which are consistent with the use for which the site was allocated.

Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures such as flood defences, flood warnings and property level resilience.

Who undertakes the sequential test?

It is for you, as the local planning authority, to decide whether the sequential test has been satisfied, but the applicant should demonstrate to you, with evidence, what area of search has been used. Further guidance on the area of search can be found in the planning practice guidance [here](#).

What is our role in the sequential test?

We can advise on the relative flood risk between the proposed site and any alternative sites identified - although your strategic flood risk assessment should allow you to do this yourself in most cases. We won't advise on whether alternative sites are reasonably available or whether they would be suitable for the proposed development. We also won't advise on whether there are sustainable development objectives that mean steering the development to any alternative sites would be inappropriate. Further guidance on how to apply the sequential test to site specific applications can be found in the planning practice guidance [here](#).

Exception test

The exception test should only be applied as set out in flood risk [table 3](#) of the Planning Practice Guidance (PPG) following application of the sequential test. The exception test should not be used to justify the grant of planning permission in flood risk areas when the sequential test has shown that there are reasonably available, lower risk sites, appropriate for the proposed development.

In those circumstances, planning permission should be refused, unless you consider that sustainable development objectives make steering development to these lower risk sites inappropriate as outlined in PPG ([ref ID: 7-033-20140306](#)).

Our role in the exception test

The exception test is in two parts, described in the NPPF (paragraph 164). In order for the test to be passed it must be demonstrated that

1. The development would provide wider sustainability benefits to the community that outweigh flood risk; and
2. The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 165 of the NPPF makes clear that both parts need to be met for the test to be satisfied. It is for the applicant to demonstrate this.

We provide advice on the second part of the test, but it is for you, as the local planning authority, to consider the first part of the test, accounting for the findings of the flood risk assessment and our flood risk advice, and to determine whether the test, overall, has been satisfied. Development that does not satisfy both parts of the exception test should be refused.

Where the flood risk assessment shows the development will be safe throughout its lifetime without increasing flood risk elsewhere

Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the development will be affected either directly or indirectly by flooding. You will need to weigh these risks against any wider sustainability benefits to the community.

Flood warning and emergency response

We do not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network.

The [planning practice guidance](#) (PPG) to the National Planning Policy Framework states that, in determining whether a development is safe, the ability of residents and users to safely access and exit a building during a [design flood](#) and to evacuate before an extreme flood needs to be considered. One of the key considerations to ensure that any new development is safe is whether adequate flood warnings would be available to people using the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions. As such, we recommend you refer to '[Flood risk emergency plans for new development](#)' and undertake appropriate consultation with your emergency planners and the emergency services to determine whether the proposals are safe in accordance with paragraph 167 of the NPPF and the guiding principles of the PPG.

Please note that the basement is shown to be at risk of flooding to a depth of approximately 1 metre. Vehicles can start to float in flood depths of less than 60cm - less if it is fast-flowing. The applicant must satisfy themselves that any relevant building will be constructed in such a way that vehicles floating or displaced as a result of flooding, would not jeopardise its structural stability.

In addition, the applicant should ensure that any sensitive infrastructure such as gas and water pipes or electrical cabling are located and designed to withstand the potential impacts of floating or displaced vehicles.

Climate change

Please note that the submitted FRA refers to climate change allowances as published on 19 February 2016. Climate change allowances were updated in July 2021 and are now lower for this catchment than figures presented within the FRA. Therefore, the FRA considers higher climate change flood levels than current guidance stipulates.

Closing comments

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

Yours sincerely

Miss Sarah Green
Sustainable Places - Planning Advisor

Direct dial 0208 474 9253

Direct e-mail planning_THM@environment-agency.gov.uk