

Guildford Borough Council
Development Control
Millmead House Millmead
Guildford
Surrey
GU2 4BB

Our ref: WA/2021/129477/01-L01
Your ref: 21/P/02232
Date: 02 February 2022

Dear Sir/Madam

Demolition of existing building and erection of two buildings comprising residential accommodation (use class C3), retail floorspace (use class E) and cinema (sui generis), erection of a retail pavilion (use class e), together with car and cycle parking, plant and all highways, landscaping and other associated works

Debenhams, Millbrook, Guildford, GU1 3UU

Thank you for consulting us on the above application. Please accept my apologies for the delay in responding.

Environment Agency position

In accordance with paragraph(s) 165, 174 and 180 of the National Planning Policy Framework (NPPF), we **object** to the proposed development due to its unacceptable risk to the environment. We recommend that planning permission is refused for the following reasons:

Reason 1

This application fails the second part of the flood risk exception test. We recommend that planning permission is refused on this basis.

This application lies within Flood Zone 3a, which is land defined by the planning practice guidance (PPG) as having a high probability of flooding. As shown in the Flood Zones and flood risk tables of the PPG, development classified as More Vulnerable is only appropriate in these areas if the exception test is passed alongside the sequential test.

The National Planning Policy Framework (paragraph 165) makes it clear that both elements of the exception test must be passed for development to be permitted. Part 2 of the test requires the applicant to demonstrate, via a site-specific flood risk assessment (FRA), that the development will be safe, without increasing flood risk elsewhere. Where possible, the development should reduce flood risk overall. The proposal is also contrary to Local Plan Policy P4.

In this instance the developer's flood risk assessment fails to:

1. Demonstrate that the development is safe
2. Demonstrate that flood risk will not increase in the surrounding area
3. Address the opportunities presented by this development for reducing flood risk
4. Flood risk mitigation measures to address flood risk for the lifetime of the development are not included within the design of the development.
Consequently the development proposes inadequate flood storage compensation for that which is being lost.

In addition, the flood risk evidence used to inform the FRA has been compiled by the applicant through fluvial modelling. We have reviewed the modelling during pre-application discussion which has highlighted some inadequacies and the modelling has not been agreed as suitable to use within the FRA.

Therefore, the proposal as submitted will increase the risk of flooding to the site and the surrounding area.

Overcoming our objection

To overcome our objection, the applicant should submit revised fluvial modelling alongside a revised FRA and proposed plans which address the points highlighted above. A detailed response to the submitted hydraulic modelling has been provided directly to the applicant as part of our pre-application advisory service. All required actions should be addressed and the modelling re-submitted for our review. Upon agreement of the fluvial modelling, the FRA should be amended so as to be informed by the agreed flood risk evidence.

If this cannot be achieved, we are likely to maintain our objection. Please re-consult us on any revised FRA and amended design plans submitted and we'll respond within 21 days of receiving it.

Information contained on the plans and sections forming the application seem to suggest that the development including ground level changes will be greater than the existing. This is noted in the northern part of the site where a pavilion and ground level raising is indicated. There must be no loss of floodplain storage associated with this development for floods up to and including the 1% annual probability event, including the appropriate allowance for climate change. This has not been addressed in the FRA. .

Section 6.4 of the Sweco Flood Modelling Technical Note, contained in Appendix H of the FRA, details an Option Scenario and references a depth difference map in Appendix B of the Technical Note. This shows that the proposed flood gate at the carpark entrance results in increased flood levels elsewhere. The depth difference map shows that the increased flood water levels will affect existing property along Millbrook, upstream of the site. This is not acceptable and the applicant should consider mitigation measures to ensure such increases are not realised for floods up to and including the 1% annual probability event, including the appropriate allowance for climate change.

It is disappointing that redevelopment of the site has not taken the opportunity to remove the basement. Any basement with entrances in the floodplain represents a significant hazard, even when flood barriers can be erected to protect them from flooding (as proposed here). Such basements have inherent residual flood risks which can result in sudden inundation and lead to loss of life: if barriers can't be mobilised or if the flood level exceeds the barrier level. We note that the proposed basement includes all the plant rooms for the buildings and inundation would likely mean all services to the building would be rendered inoperative.

If the sequential test is passed, in accordance with the National Planning Policy Framework, the proposed development type is appropriate provided that the site meets the requirements of the exception test. Our comments on the proposals relate to the part of the exception test that demonstrates the development is safe. The local planning authority must decide whether or not the proposal provides wider sustainability benefits to the community that outweigh flood risk.

While the FRA states that occupants can remain in the upper floors of the buildings during a flood, safe access and escape has not been demonstrated. Occupants do not always wish to, or are able to remain in a building during a flood and this can place additional burden on emergency services which can be further hindered if the building becomes unstable.

In accordance with paragraph 167 of the National Planning Policy Framework (NPPF), the planning authority must ensure that the residual flood risk is safely managed and that safe access and escape routes are included. The FRA should clearly demonstrate to the planning authority that a satisfactory route of safe access and egress is achievable.

The Environment Agency does 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 to the National Planning Policy Framework states that those proposing developments should take advice from the emergency services when producing an evacuation plan for the development as part of the flood risk assessment. 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 consult with your Emergency Planners and the Emergency Services to determine whether the proposals are safe in accordance with the guiding principles of the Planning Practice Guidance (PPG).

We have considered the findings of the FRA in relation to the likely duration, depths, velocities and flood hazard rating against the design flood event for the development proposals. We agree that this indicates that there will be a **danger to most people** (e.g. there will be danger of loss of life for the general public) along the proposed evacuation route and a **danger for all people** (e.g. there will be danger of loss of life for the general public and the emergency services) at other points on Millbrook and potentially in the basement and access ramp to the basement.

This does not mean we consider that the access is safe, or the proposals acceptable in this regard. We remind you to consult with your Emergency Planners and the

Emergency Services to confirm the adequacy of the evacuation proposals.

Reason 2

The proposed development will have a detrimental effect on the river Wey and fails to restore the ecological value of the river corridor. Insufficient information has been provided to assess the risks posed by this development and we therefore recommend that planning permission is refused.

While the development includes ecological enhancements that will contribute to a net gain in biodiversity on site, they do not include enhancements to the river environment.

We note that Ecology and Biodiversity was excluded from the scope of the Environmental Impact Assessment, as it is considered the proposals will not have any significant ecological effects. However, the Ecology and Biodiversity Assessment undertaken by Sweco on 16/09/2021 does not adequately assess the impact of the proposals on the ecology of the River Wey. In particular, the report notes the potential for the new development to overshadow the River Wey but considers this is not a significant effect. Evidence for this is provided by drawing P2647/SA/07, but this does not demonstrate the full impact of the additional height of the proposed development and the potential for a greater section of the river to be overshadowed.

This objection is supported by paragraphs 174 and 180 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused. Opportunities to incorporate biodiversity in and around developments should be encouraged

The proposal is also contrary to Local Plan policy ID4 which states that the ecological, landscape and recreational value of watercourses will be protected and enhanced. Development proposals that are likely to have an adverse impact on the functions (including across their catchments) and setting of watercourses and their corridors will not be permitted. Proposals must demonstrate how they will support the achievement of Water Framework Directive objectives and have followed guidance from the Environment Agency on implementation of the River Basin Management Plan and flood risk management and followed guidance in any local catchment management plans.

Overcoming our objection

Whilst an Ecology and Biodiversity Assessment has been provided, this is inadequate in its assessment of the impact on the River Wey and the Water Framework Directive and in its recommendations to improve the river corridor habitats. Ecology and Biodiversity should be brought into the scope of the Environmental Impact Assessment.

A Transient Overshadowing analysis should be provided showing a comparison between the current and proposed developments. This should show the overshadowing throughout the year and at various points during the day.

A Lighting Plan should be submitted with a horizontal illuminance contour plan showing the extent of light spill into the river corridor for both the existing structure and proposed development. This should be compliant with the guidance set out by the Institution of Lighting Professionals <https://www.theilp.org.uk/documents/guidance-note-8-bats-and-artificial-lighting/>.

A scheme should be submitted demonstrating how the watercourse will be restored and/or enhanced to a more natural state and maintained as such thereafter. We would expect to see a net benefit for biodiversity in relation to the riverine environment. For example, floating ecosystem islands could be installed outside of the navigable zone, which would provide both aesthetic and ecological value. They are ideal where marginal vegetation cannot be established in the watercourse, for instance where it is too deep, as they are fixed to the bank and move up and down with fluctuating water levels. They should be planted up with native wetland species of local provenance, appropriate to the Wey catchment. The plants provide habitat for aquatic and riparian species including dragonflies and birds and in addition the roots provide habitat for fish and aquatic invertebrates.

The Guildford Local Plan recognises that the River Wey Navigation is a highly valued asset of borough wide significance, both as an important element of our borough's biodiversity and as a very significant public space. The National Trust has compiled a set of guidelines for what it considers are important characteristics of the river, and how it should be managed. These include the importance of the river as a 'visually important open corridor' and 'an important leisure asset' as well as a conservation area.

Under the provisions of the Water Framework Directive, much of the River Wey in the borough currently achieves 'moderate' potential, with some tributaries achieving only 'poor' or 'bad'. The River Wey directly upstream from the borough is largely 'poor'. Significant pressures on the River Wey include pollution from waste water, agriculture and various sources in towns and from transport infrastructure, and the constraints to its natural function imposed by physical modifications to the river.

The River Thames River Basin Management Plan requires the restoration and enhancement of water bodies to prevent deterioration and promote recovery. The development falls within the 'Wey (Shalford to River Thames confluence at Weybridge)' Water Framework Directive water body which is designated a 'Heavily Modified Water Body'. Engineered river channels are one of the most severe examples of the destruction of ecologically valuable habitat. We seek to restore and enhance watercourses to a more natural channel wherever possible. It will be many decades before this site will be developed again, and the proposed development does not include any elements that will restore the river Wey to ensure it reaches good ecological potential, as is required by the Water Framework Directive. The proposed development does not meet the requirements of the Water Framework Directive unless the provisions of Article 4.7 of the Water Framework Directive can be met.

There are a number of mitigation measures listed for this water body than are necessary to achieve good ecological potential, including:

- Create habitat
- Implement bank rehabilitation
- Preserve or restore habitats
- Remove or soften hard bank engineering
- Restore or increase floodplain (lateral) connectivity
- Restore or increase in-channel morphological diversity

Many sites along the River Wey and its tributaries have been redeveloped. When they are, opportunities for enhancement of the river and its adjacent corridor are sought, along with provision and management of a buffer zone. Over time, more lengths of the river being enhanced in terms of wildlife habitat and landscape value, leads to a more connected wildlife corridor. Rivers and the land adjacent to them form an important and

effective network of linked habitat corridors to allow the movement of species between suitable habitats, thus promoting the expansion of biodiversity.

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.

Environmental permit - advice to applicant

The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culvert (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission.

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03702 422 549. The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Closing comments

If you are minded to approve this application for major development contrary to our flood risk objection, we request that you contact us to allow further discussion and/or representations from us in line with the [Town and Country Planning \(Consultation\) \(England\) Direction 2021](#).

This statutory instrument prevents you from issuing planning permission without first referring the application to the Secretary of State for Housing, Communities and Local Government (via the National Planning Casework Unit) to give them the opportunity to call-in the application for their own determination. This process must be followed unless we are able to withdraw our objection to you in writing. A failure to follow this statutory process could render any decision unlawful, and the resultant permission vulnerable to legal challenge.

Yours faithfully

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