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Flooding and Planning: Sink or Swim?



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Lauryn Hill said: “Miscommunication leads to complication.” The complexity of the planning process often means that we have to communicate complex or technical ideas in a way that is easily understood by others, including, but not limited to, planning officers.

Even where two experts from similar disciplines, from the applicant and from the Council side are in discussion, there can still be a divide that can only be bridged by better communication.

This is the case of a development that we recently obtained planning permission on in Christchurch, near Bournemouth on the South Coast for 46 new flats. Flood risk was a major issue on which this proposal turned.



The overall strategy

The aim of the project was to obtain permission for 48 dwelling units in total within this 10,000 sq ft building. This would have required extensions to the building through an extra floor on the roof, bay extensions to the side and a small ground floor extension.



This would need a full application for planning permission at some stage. As the building had a lawful B1 office use, this would have meant proving that it had been marketed for an extended period of time (most Councils ask for evidence of at least 12 months open marketing).

However, most Councils will not be so strict on the need to ‘prove’ a period of marketing if Prior Approval for the change of use has already been obtained. The reasoning here is basically because, if the Council knows that Prior Approval has already been granted for the change of use, then they will not do much to stand in the way of something that is almost inevitable.

Usually when starting a project such as this, a Marketing or Valuation Report will have been produced by the bank’s valuers or surveyors and this can be a useful starting point for the marketing evidence on local office demand and the history of marketing of the building, sought by the planners.

Therefore, we started off in May 2019 by obtaining Prior Approval for a change of use to 27 flats, which was granted 56 days later in July 2019.

Dwelling mix

It is often the case that the applicant’s perception of what size of dwellings or dwelling mix is justified in a proposal will not be shared with Council Housing or Policy Officers.

Each Council prepares its own Strategic Housing Market Assessment (the SHMA). When preparing any planning proposal you should look for this on the Council’s website; there might be an annual update on it, known as the “Annual Monitoring Report”. It is usually tucked away in the ‘evidence-based documents’ section to the Council’s Local Plan pages.

The SHMA sets out what the Council perceives as its ‘priority dwelling mixes’.

Unsurprisingly, this tends to be tilted towards larger units, often 2-bedroom and 3-bedroom units; this will not make for an optimum density scheme and will affect the end value. Therefore, it is always worth trying to push back against this by obtaining a Housing Market report from a very reputable firm of local residential agents (or you could go with a national firm with a local presence; e.g. Savills, Knight Frank, CBRE).

The Council was prepared to be flexible about this after seeing our Housing Market report. Initially, we had 90% of the scheme as 1-bed units. We offered a couple of extra 2-bed units, bringing the scheme down to 46 units from 48 units, with 80% of the scheme comprising of 1-bed flats.

Flood risk

The biggest sticking point in the scheme was to do with flood risk. It is here where we seemed to have trouble in making our case understood by officers. Flood risk is assessed in applications for Prior Approval, but not as strictly as in applications for new build extensions in applications for planning permission.

When applying for planning permission, as opposed to Prior Approval, the Council asks for a ‘sequential test’ assessment. Paragraph 158 of the National Planning Policy Framework (NPPF) states that: “The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas at lower risk of flooding.”

On the Council’s Strategic Flood Map, a small corner of the building and some of the site falls within anticipated future Flood Zone 3a and Flood Zone 2.

The Council therefore required us to go through all of the sites allocated in the ▶

local plan for Christchurch for residential development and consider whether they would be a better alternative to our own site for residential development, especially where they are located in Flood Zone 1 instead.

Problems with sequential testing

There are a number of problems with sequential testing, which make it very difficult to use it to support a case for developing on land in Flood Zone 2 or 3, and these issues have been highlighted in planning appeal decisions that have gone against developers:

INCONSISTENCY: as the initial focus and sequential preference is on allocated sites, some of these will be in Flood Zone 2 or 3 anyway!

PRACTICALITY: in reality, although many sites might appear as 'allocated' in a Local Plan, this does not mean they are 'likely to be developed' in the near future – e.g. sites may be encumbered by poor access, ownership problems or a lack of funding.

FIVE-YEAR HOUSING TARGETS: oddly enough, the Council can disregard the fact that it may be woefully short of its five-year housing land targets, so even if the proposal site is desperately needed in order to meet these targets, it is irrelevant to passing the sequential test.

FRAGMENTATION: the Council can look to several sites to cumulatively provide the required number of houses that the proposal site would have provided on its own, so even if one or two of the allocated sites fail, an unspecified number of alternative cumulative sites might all together be sufficient to prevent the proposal from going ahead. What is not clear from the appeal decisions is to what degree it would be 'reasonable' for the Council to fragment the alternative distribution of sites – could you have this proposal for 46 dwellings fragmented over 46 separate Flood Zone 1 small sites for instance? It would seem unreasonable.

It is clear to see from the above problems that there is a danger of plenty of 'grey areas' in how this is applied and we did find for several weeks we were going around in circles with officers.

Practical problems in communication

The flood risk issues were first raised by the lead Policy Officer in February 2020, a month before the first UK lockdown in response to the COVID-19 pandemic.

Officers can be difficult to draw responses from at the best of times and our case officer

was not in the office full-time. Therefore, lockdown meant that it then became harder to get a prompt response from officers.

Furthermore, the officer leading on the flood risk response from the Council was, unusually so, a Policy Officer, not a specialist flood or environmental officer. Messages and emails were sometimes relayed through the filter of the planning case officer and then later directly to the Policy Officer. Clearly though, there was a disconnect between how they understood a niche and highly technical area of policy and how it was understood by our client's flood risk consultant.

The situation was also compounded by a local government reorganisation between Bournemouth, Christchurch and Poole Local Authorities in the East Dorset area, causing time pressure on officers, and shifting priorities and differences in policy, none of which helped cut through the technical issues. It can be very difficult to get people to focus properly on the critical issues when there is so much in the way of other 'organisational clutter' and 'noise' going on around them!

Simplicity is the key

Looking at the list of problems thrown up by sequential testing, along with the communication challenges that we faced, we needed to take a fresh approach urgently. The solution was in the levels of the site.

LiDAR mapping and modelling flood risk

Rather than getting bogged down in the numerical exercise around sequential testing we went back to the sole, single question that was at the heart of this issue: What is the likelihood of flooding to the proposed area of development?

In getting to the answer to this question, it is important to remember that flood maps produced by the local authority or by the Environment Agency only provide a 2-D analysis. In order to get a full picture, one needs to look at changes in levels across a site and its topography and then one can also model likely patterns of flooding or water dispersion following a possible flooding event. Hence, there was also a need to look at LiDAR mapping of the site to build up a 3-D picture.

Put simply, a 2-D map might show the site as being within a Flood Zone 2 or 3, but if part of the site rises above the land around it (even only slightly), then in 3-D terms that part of the land might be relatively 'dry' and not so susceptible to flooding – i.e. practically speaking, equivalent to Flood Zone 1.

Opportunities for development

Understanding that it may be possible to get around concerns over development of extensions or new buildings in Flood Zone 2 or 3 land, where it may be possible to make use of changes in topography and site levels, is key to unlocking opportunity on sites that others may have walked away from.

Therefore, in this case, where the proposed extensions to the building were in vulnerable areas of the site, we modelled the likely flow of flood waters using this 3-D approach and managed to persuade the Council that there would be no flood risk. Simply and succinctly put to the Council, this then became the main plank of our flood risk case and we decided not to push the sequential test case anymore due to its ambiguity and inconsistency.

'Noisy' neighbours

Just as we were close to getting the application through, a final issue arose with the neighbouring retail park. The owners of the neighbouring retail park tried to argue that our Noise Assessment had not properly assessed the full potential impact of the use of their site, including the potential for deliveries in the dead of night, and the noise generated by lorries and how this might lead to noise complaints from future occupiers of our flats, placing an unfair restraint on their lawful operations.

We did try to push back on these claims, but the Council started to fear that it might have to face an application for judicial review of its grant of permission to us unless we agreed to undertake some marginal further assessment, just to square off any doubts.

In the end, the threats of judicial review from the neighbouring owners came to nothing and planning permission was granted for 46 dwellings in August 2020.

Just to be on the safe side, we decided to wait for the end of the 6-week judicial review claim period before celebrating or making any announcements on social media! 



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