
Appeal Decision

Site visit made on 10 January 2017

by **S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19th January 2017

Appeal Ref: APP/B1415/W/16/3160696

**2 Silchester Mews, Rear of 7 Silchester Road, St Leonards on Sea,
East Sussex TN38 0JB**

- 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 P, paragraph P.1(d) of the Town and Country Planning (General Permitted Development)(England) Order 2015(as amended).
 - The appeal is made by Mr David Rothbart of Browood Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/PA/00224, dated 30 March 2016, was refused by notice dated 20 May 2016.
 - The development proposed is for the conversion of the existing warehouse B8 classification into 9 self-contained flats C3 classification.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form provided a lengthy description of the proposal which included relevant supporting information. However, for the sake of simplicity and clarity I have used only the first sentence of the description in the header to this decision. This is consistent with the description used in Council's decision notice and on the appeal form.

Main Issue

3. The main issue is whether or not the proposal would constitute development that is permitted under the *Town and Country Planning (General Permitted Development)(England) Order 2015* (the GPDO).

Reasons

4. The appeal site comprises the two lower floors of a larger building that was originally a bakery. The uppermost floor of the building is in existing residential use. The lawful use of the ground and lower ground floors is currently for storage (Class B8). The application sought prior approval to convert these two floors into nine self-contained flats (Class C3).
 5. In order for the proposal to be permitted development, the application must first show that it complies with the ten determining factors set out in paragraph P.1 of Schedule 2, Part 3, Class P of the GPDO. The Council was satisfied that it complied with six of these requirements and that three were not applicable to
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the case. There was no evidence presented with the appeal which leads me to a different conclusion. However, there is a dispute between the parties in relation to criterion (d), which states that development is not permitted by Class P if 'the gross floor space of the existing building exceeds 500 square metres'. The issue of how the floor area of the building should be calculated was the subject of extensive correspondence between the appellant and the Council. These differences of view arise partly from the use of the terms 'floor space' and 'gross floor space' within the GPDO.

6. Article 2(1) of the GPDO defines 'floor space' as the total floor space in a building. The application form gave this to be 489sqm, based on estimating the internal floor area from scaled layout drawings excluding the external walls. However, the Council made its assessment including the external walls and considered it to be 560sqm.
7. Following the refusal of the application, the appellant applied to the Valuation Office Agency (VOA) to reconsider the valuation of the property. This assessment therefore included an on-site survey which measured the 'floor space' excluding the external walls. Its final estimate and valuation notice gave the floor space as 499.76sqm. However, I have not been supplied with a formal report from the VOA and therefore have no information about the methodology or assumptions used in the preparation of this figure.
8. Furthermore, on my site visit I saw that the building is being used for the storage of a large number of motor cycles and associated parts. It was being fully utilised and in places it was difficult to see the walls as a result of material stacked up against them and extensive, well-stocked shelving. It would therefore seem to me that any survey done on the site would be subject to a margin of error, so there must be some uncertainty associated with the figure which is so close to the 500sqm threshold.
9. Whilst I cannot be certain how the VOA figure was derived, it would seem to be consistent with plans showing a red line around the internal walls of both floors of the building that was submitted with the appeal. I note that this red line specifically excludes the stairway and entrance area to the lower ground floor. Its measurements begin at the doorway into this part of the building. However, Article 2(1) defines 'building' to include any structure or erection and includes any part of a building. There is no requirement that the floor area must be an internal room as long as it is 'in' a building or part thereof.
10. Although the staircase appears to be outside the building and beyond its flank wall, the entrance hallway most definitely is not. Its ceiling is part of the building and it is enclosed on both sides by other walls. In my view this area is in the building and should therefore be included in any assessment of the floor area of the building as a whole. Although this area is small, I have no doubt it would add more than 0.24sqm to the VOA's estimate of the overall floor area, resulting in the internal floor space exceeding the 500sqm limit set out in the GPDO.
11. There is another small area on the north-west section of the building which is outside the external doors, but is overhung by the upper storey to the building. It could therefore be argued that this area should also be included in the overall floor space as it could easily be incorporated into the building. However, it is more comparable with the steps leading to the lower ground floor and appears to be part of the external space around the building. I am

therefore not persuaded that it should be included in the overall figure.

Nevertheless, the inclusion of the hallway on the lower ground floor means that the total internal floor space in the building is likely to be closer to the Council's estimate of 508sqm, than the figure provided by the VOA.

12. I will now move on to consider the issue of 'gross floor space' which is not specifically defined in the GPDO. However, it is notable that within Schedule 2, Part 3, Class P is the only class which refers to 'gross floor space' rather than simply 'floor space'. To my mind the use of the word 'gross' suggests that the walls should be included in any measurements undertaken of the building, particularly in the absence of any reference to cumulative floor space which appears in connection with other classes of development. If this approach was adopted in this case, as suggested by the Council, there would be no doubt that the gross floor space figure would significantly exceed the 500sqm threshold.
13. It has been suggested that, in the absence of reference to cumulative maximum floor space figures given under Class P, that prior approval for the change of use could be sought under two separate applications, one for each floor. This would ensure that the floor space limit would not be exceeded on either floor. Whilst that may or may not be the case, the proposal would have to be a significantly different layout to the appeal scheme, which showed that in order to provide self-contained access to each unit, eight of the nine apartments would have accommodation on both floors. No alternative plans were presented showing how independent units of accommodation could be created on the separate floors. There is therefore nothing to indicate that this is a realistic fallback position. In these circumstances I give this matter little weight in my determination of the appeal.
14. I appreciate that the purpose of new permitted development rights is to deliver more homes, to support sustainability through the reuse of buildings and to allow development to be pursued without the need for permission from the local planning authority. However, the regime still requires compliance with the matters set out in the statutory instrument and how this should be assessed in relation to floor space has been determining issue in this appeal.
15. Taking all these factors into consideration, I find that irrespective of whether the size of the building is estimated using 'floor space' based on internal dimensions or 'gross floor space' which includes the external walls, it exceeds 500sqm. I therefore conclude that the proposal is not permitted development.
16. In view of this conclusion, the issue of conditions, as set out in paragraph P.2(b) of Schedule 2, Part 3, Class P, is not relevant to the determination of the appeal.
17. For the reasons given, I conclude that the proposal would not constitute development that is permitted under the GPDO and therefore the appeal fails.

Sheila Holden

INSPECTOR