

## Appeal Decision

Site visit made on 14 February, 2017

**by G. Rollings, BA(Hons) MA(UD) MRTPI**

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

**Decision date: 6<sup>th</sup> June, 2017**

---

**Appeal Ref: APP/G5750/W/16/3162693**

**OSS House, Canning Road, London, E15 3NW**

- 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, Paragraph O.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by MM Properties (London) Limited against the decision of the Council of the London Borough of Newham.
  - The application Ref: 16/00751/PRECUJ dated 11 March, 2016 was refused by notice dated 9 May, 2016.
  - The development proposed is the change of use from Class B1a office use to class C3 residential use to create 20 residential units.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) require the local planning authority to assess the proposed development solely on the basis of its impact on transport and highways, contamination risks, and flooding risks, taking into account any representations received. My determination of this appeal has been made in the same manner.
3. The application form did not contain a description of development. I have instead used the description provided by the appellant within the appeal forms.
4. The appeal was submitted in conjunction with another, at OMM House, which is directly adjacent to the appeal site<sup>1</sup>. The two separate appeal sites, each the subject of its own appeal, adjoin each other, and the appeals have a common appellant and common main issues based on the Council's reasons for refusal in both cases. I have considered both appeals at the same time. However, as separate sets of evidence have been submitted in respect of both sites, each is the subject of its own decision letter.
5. The Council included two reasons for refusal on its decision notice. The second of these referred to a requirement to begin the proposed use before 30 May, 2016 which was a requirement of GPDO Class O development at the time of the decision's issue. However, this requirement was removed in a recent alteration

---

<sup>1</sup> Appeal ref: APP/G5750/W/16/3162692. Council decision ref: 16/0752/PRECUJ; date of decision: 9 May, 2016.

---

to the GPDO<sup>2</sup>, and therefore this reason is no longer applicable. I shall make no further reference to it.

### **Main Issues**

6. The main issues are whether the proposed works are permitted development for which prior approval can be granted, and if so, whether they would raise any concerns in terms of transportation and highways, land contamination, and flooding.

### **Reasons**

7. The appeal site comprises a three-storey building. At the time of my visit to the property, the building was occupied by a mix of office and storage uses, and partially vacant. OMM House abuts the site to the north, with depot, plant and parking uses operating on the open and enclosed areas of the land to the east and south, outside of the site boundary shown on the appeal plans.
8. The Council has raised concerns that the office use operating from the site is ancillary to the plant hire business operating from an area outside of the site boundary. It has provided evidence that suggests the appeal building accommodates the head office for the business in question, but that this is ancillary to the plant hire operation on surrounding land. The balance of evidence suggests to me that the opposite is true: that the head office is the main operation from the site, acting as an administration facility for the surrounding plant hire, as well as other sites. This differs from the Council's cited example of a previous appeal dismissal elsewhere<sup>3</sup>, which appears to refer to a smaller operation than the one before me. As such, given that the office use could operate independently from the surrounding plant hire and is not dependent on it being in proximity, I do not consider the office use to be ancillary.
9. During my visit to the site, I noticed that a substantial amount of floorspace was not being used for office purposes at that time. The appellant stated that the entire floorspace was in office use at 29 May, 2013. However, despite the record of planning permission (Council ref. 89/0973/PLAN) indicating the approval of the additional floors for use of office space, the valuation supplied by the Council indicates that substantial parts of the building are used for warehouse or storage purposes. The evidence does not convince me that these are either wholly ancillary to the office use in the building, or that these areas were used for office space at 29 May, 2013. As the actual use on a particular date is a question of fact determined on the evidence provided, I cannot be certain that the provisions of Class O of the GPDO would be appropriate.
10. I therefore conclude that the information provided is insufficient to demonstrate that the proposal would be permitted development, for which prior approval can be granted. As such, it is not necessary for me to consider whether there are additional concerns in terms of transportation and highways, land contamination risks, and flooding risks. Consequently, the proposed change of use is development for which an application for planning permission is required. An application for planning permission would be a matter for the

---

<sup>2</sup> Revoked by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016/332 art.7(1)(b) (April 6, 2016).

<sup>3</sup> Appeal Refs: APP/G5750/A/14/2228170 and APP/G5750/A/14/2228172; date of decisions: 19 March 2015.

local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO.

11. During the appeal, the appellant submitted a planning obligation by way of a Unilateral Undertaking, which would provide highway and pedestrian access improvement works. This would only come into effect were I to consider the obligation to be necessary, and allow the appeal. However, in this case the appeal is to be dismissed on other substantive issues and whilst an obligation has been submitted, it is not necessary to look at it in detail, given that the proposal is unacceptable for other reasons.

### **Conclusion**

12. For the reasons stated above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*G Rollings*

INSPECTOR