
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: 6th June, 2017

Appeal Ref: APP/G5750/W/16/3162692

OMM 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: 16/0752/PRECUJ dated 11 March, 2016 was refused by notice dated 9 May, 2016.
 - The development proposed is a change of use from Class B1a office use to Class C3 residential use to create 10 residential units.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Paragraph O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the a change of use from Class B1a office use to Class C3 residential use to create 10 residential units on land at OMM House, Canning Road, London, E15 3NW in accordance with the terms of the application Ref: 16/0752/PRECUJ dated 11 March, 2016 and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: P001 rev. A; P100; P101; P102; P200; P201.
 - 2) Prior to the commencement of works on the development, an investigation into ground conditions shall be undertaken in accordance with the Model Procedures for the Management of Land Contamination, Environment Agency, Contaminated Land Report 11 (or equivalent Model Procedures if replaced). The report of the investigation and proposals for any remediation required shall be submitted to and approved in writing by the Local Planning Authority. All works approved shall be undertaken to the satisfaction of the Local Planning Authority. As soon as reasonably practicable, and before the occupation of any remediated area of the site, a validation report shall be submitted and approved by the Local Planning Authority in writing, stating what works were undertaken and that the remedial scheme was completed in accordance with the approved remediation strategy.
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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 OSS House, which is directly adjacent to the appeal site¹. 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. 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's reason for refusal 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 to the GPDO², and therefore this reason is no longer applicable. I shall make no further reference to it. However, it stands that the Council has refused the application, and its decision notice contains no valid reasons for refusal.
6. The GPDO alteration also introduced the requirement to consider the impacts of noise from commercial premises on the intended occupiers of the development. However, no transitional provisions were put in place for applications submitted prior to the amendment coming into force on 6 April, 2016. Given that the application was made to the local planning authority prior to this date, I must consider only those grounds which applied to the application at that time, and therefore omit the alteration's noise considerations from my determination.
7. Accordingly, the main issues are derived from the substantive evidence of both main parties, in accordance with the provisions of the GPDO in force at the time of the application being made.

Main Issues

8. 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.

¹ Appeal ref: APP/G5750/W/16/3162693. Council decision ref: 16/0751/PRECUJ; date of decision: 9 May 2016.

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

Reasons

Whether permitted development?

9. The appeal site comprises a building ranging in height between one and three storeys. At the time of my visit to the building, it was occupied by office uses. OSS House is sited to the south, abutting the edge of the appeal building. All external areas of the building are outside the site boundary shown on the appeal plans, including access routes from the public highway to the building, which cross hardstanding currently used for parking, servicing, and access to surrounding uses.
10. The proposal seeks the conversion of only the first and second floors to residential use, with the ground floor to retain its existing use. The building is currently fully occupied by office uses, with the exception of some areas allocated to storage. However, these appeared to be ancillary to the office use, and were of a scale and type commonly undertaken by such businesses. The Council has not objected to the appellant's evidence suggesting that the building was similarly occupied by office uses at 29 May, 2013 and on the balance of evidence, there are no substantive reasons for me to disagree with this assessment. Therefore, taking into account the submitted evidence in conjunction with my observations, I consider that there is sufficient evidence to demonstrate that the proposal complies with the relevant limitations and conditions set out in the GPDO and so would be permitted development if prior approval were to be granted.

Transport and highways

11. Having been satisfied that the required consultation has been carried out by the Council, I now turn to the matters set out in the conditions relevant to Class O development. A Transport Statement was submitted by the appellant, which indicates that the change of use would result in an overall reduction in vehicle trips to and from the site. An appropriate amount of car and cycle parking would be provided; the former outside the appeal site boundary but on land under the same ownership, and accords with Council standards. Given the site's accessibility and intended parking provision, it is unlikely that additional demand for parking would have harmful impacts on the surrounding area.
12. The site has a very good level of public transport accessibility, but this is tempered by the poor condition of the surrounding highway network, specifically for pedestrians, as well as shared pedestrian and vehicular access onto the site. A section 106 planning obligation, in the form of a Unilateral Undertaking, has been offered by the appellant in mitigation of these matters. Under its terms, the appellant would improve pedestrian access between the highway and the site by constructing an exclusive access ramp and enter into a section 278 agreement with the local planning authority for improvements to the highway in the vicinity of the site.
13. I have considered the planning obligation in light of the Community Infrastructure Regulations 2010 (CIL Regulations) and the Planning Practice Guidance (PPG). Regulation 122 of the CIL Regulations does not apply to prior approval determinations, and the obligation does not refer to pooled contributions per Regulation 123. I am satisfied that the obligation is limited

only to matters requiring prior approval, as per PPG advice³. Taking these factors into account, I conclude that the proposal would not have a harmful impact on transport and highways.

Land contamination

14. The appellant's land contamination phase I Preliminary Risk Assessment suggests a moderate risk of potentially significant harm from land contamination, arising from inhalation of vapours, and movement of contaminants within the soil, including from surrounding land. The site is covered with hardstanding which will remain, and the lack of proposed significant ground works reduces the potential for harm. Remedial measures are possible should such conditions change. Furthermore, both main parties recommend that a phase II site investigation be undertaken and assessed prior to any residential occupation of the site. Taking all of these matters into account, I am satisfied that such a condition would mitigate potentially harmful impacts.

Flood risk

15. The Environment Agency (EA) has advised that the site is within flood risk zone 1 and has not objected to the proposal. This contrasts with its response for the concurrent consultation of the risk at OSS House, where it raised concerns regarding the appellant's Flood Risk Assessment methodology, and there was disagreement between the Council and EA on the risk zone designation of that site. Nonetheless, the appeal site is within zone 1, as confirmed by the statutory consultee, which is a designation with a low probability of flooding. The proposal therefore raises no concerns in this regard.

Other issues

16. Representations were received from concerned occupiers of surrounding sites, on parking and noise matters. I have dealt with the former above. The latter regards the operation of the surrounding land as a commercial and industrial estate, and the potential for noise from its activities to disturb future occupiers of the proposed development. Although I am sympathetic to these concerns, this is not an issue to which I can afford weight because, as set out within the procedural matters above, as it is not a consideration that can be applied to the assessment of this proposal.

Conclusion and conditions

17. I conclude that the proposed works are permitted development for which prior approval can be granted, and that no significant harm would arise with regard to its impacts in terms of transportation and highways, land contamination, and flooding. The proposal complies with the relevant provisions of the GDPO. For the reasons given above, I conclude that the appeal should be allowed and approval granted.
18. With the grant of approval, the appellant should note that the GPDO Schedule 2, Part 3, requires at paragraph W(12) that the development must be carried out with the details hereby approved. For the absence of doubt and to ensure certainty, I have applied condition no. 1 for this reason. Paragraph

³ PPG ref ID: 23b-005-20140306.

W(13) of Schedule 2, Part 3 of the GPDO, states that prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval. Given that identified contamination risk in this instance, I have applied the Council's suggested condition as no. 2.

19. The appellant should also note the provisions of GPDO Schedule 2, Part 3, Paragraph O.2(2) requiring completion of the development hereby approved within three years of the date of this decision.

G Rollings

INSPECTOR