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## Appeal Decision

Site visit made on 19 December 2017

**by Grahame Gould BA MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> January 2018**

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**Appeal Ref: APP/B1415/W/17/3180850**

**Part of the lower ground and ground floors of 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, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Browood Limited against the decision of Hastings Borough Council.
  - The application Ref HS/PA/17/00466, dated 8 June 2017, was refused by notice dated 21 July 2017.
  - The development proposed is the change of use of Class B8 to form 6 apartments.
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### Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3 and Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of Class B8 to form 6 apartments on part of the lower ground and ground floors of 2 Silchester Mews, Rear of 7 Silchester Road, St Leonards on Sea, East Sussex TN38 0JB in accordance with the details submitted under application HS/PA/17/00466 made pursuant to Schedule 2, Part 3, Paragraph P.2(b) of the GPDO.

### Main Issues

2. The main issue are:
  - whether the development would constitute permitted development for the purposes of Schedule 2, Part 3, Class P of the GPDO; and
  - if so whether Prior Approval should be granted under Class P for the development, having regard to: the impacts on air quality; the impacts on transport and highways; the contamination risks relating to the building; the flooding risks in relation to the building; the noise impacts of the development; and whether the introduction residential accommodation would have an adverse impact on the sustainability of storage and distribution services (Class B8) in the area.

## Reasons

### *Whether Permitted Development*

3. For a development to constitute permitted development under Class P there are ten limitations listed in paragraph P.1 of the GPDO that must be met. The appellant and the Council are agreed that the part conversion of the warehouse premises into six flats would accord with limitations (a), (b) and (e) to (j). That is because the warehouse use is currently extant and the building had been in that use for four years prior to 19 March 2014 and the site/building is not: subject to an agricultural tenancy; within an area of outstanding natural beauty, a national park, a world heritage site, a site of special scientific interest etc; is not listed or within the curtilage of a listed building; or a scheduled ancient monument. Limitation (c) would be complied with so long as the dwellings to be created from the change of use were in use no later than 15 April 2018.
4. There is, however, disagreement in relation to limitation (d) as to whether 'the gross floor space of the existing building exceeds 500 square metres' (sq.m). Nowhere within Class P of the GPDO is there a definition for 'existing building' and it is therefore necessary to have regard to the definition for 'building' stated in Article 2(1) of the GPDO, ie the GPDO's interpretation section. For the purposes of Article 2(1) building is defined as '*includes any structure or erection and, except in Class F of Part 2, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 and Class T of Part 19, of Schedule 2, includes any part of a building*'. Importantly that definition for a building includes any part of the building in question.
5. The total floor area of the warehouse exceeds 500 sq.m, however, the change of use would only concern part of it. The occupiers of the flats and the retained warehouse would share a lower ground floor bicycle and refuse storage area of 87.6 sq.m<sup>1</sup>. To access the bicycle and refuse storage area the occupiers of the flats could use an enclosed access between the lower ground and ground floors, which the Council has calculated has a floor area of 50 sq.m<sup>2</sup>. That access area would also be shared by the occupiers of the 79 sq.m<sup>3</sup> of retained warehouse on the ground floor. I consider that as the occupiers of the flats would make use of both the shared bicycle and refuse storage area and the shared access (the shared areas) that the combined area of the shared areas of 137.6 sq.m should be included as being part of the building subject to the intended change of use for the purposes of limitation (d).
6. The appellant has calculated that the floor area, excluding the shared areas, for the flats respectively at lower ground and ground floor levels would be 161.7 sq.m and 178.7 sq.m. When those areas are added to the floor space for the shared areas the change of use would concern 478 sq.m. On that basis the flats would occupy part of a building that would not exceed 500 sq.m. I also consider that as the use of the retained warehouse would be independent of the residential use that its area of 79 sq.m should not be included as part of the calculation under limitation (d).

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<sup>1</sup> Based on the figure quoted in paragraph 4.9 of the appellant's appeal statement

<sup>2</sup> Based on the dimensions of 12.5 and 4.5 metres quoted in the Council's officer report

<sup>3</sup> As calculated by the Council

7. For the reasons given above I conclude that the development would be permitted development for the purposes of paragraph P.1, albeit that the use of the flats will need to have commenced by 15 April 2018 to meet the requirements of paragraph P.1(c). As the change of use would concern less than 500 sq.m of floor space, I consider there to be no conflict on my conclusion on this issue and the decision of the Inspector who determined the previous appeal<sup>4</sup> concerning this building, following the Council's refusal of prior approval application HS/PA/16/00224.

*Whether Prior Approval should be granted*

8. The Council refused prior approval on the basis that the change of use would not be permitted development. The Council did not therefore undertake an assessment as to whether the change of use would require prior approval having regard to the matters listed in paragraph P.2(b) of the GPDO. The matters listed in paragraph P.2(b) concern: the development's impacts on air quality; the development's impacts on transport and highways; the contamination risks relating to the building; the flood risks relating to the building; the noise impacts of the development; and whether the change of use would have an adverse impact on the provision of storage and distribution services (Class B8 uses) in the area.
9. Paragraph W of Class 3 of the GPDO sets out the procedural arrangements for the consideration of applications for prior approval and paragraph W(10) states that regard should be paid to: any representations made; and the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
10. With respect to matters listed in paragraph P.2(b) of the GPDO I am mindful that the Council in its officer report has stated that the change of use would not have an adverse impact on the supply of Class B8 space in the area. I also note that no unacceptable flood risk for the occupiers of the development has been identified. I am also of the opinion that the former uses of this building are unlikely to present contamination risks for the occupiers of the flats.
11. The retained warehouse would be modest in scale and I consider that its use, including the comings and goings to it, would not have an adverse impact on the air quality for the occupiers of the flats. I also consider that because the retained warehouse would be directly above the shared bicycle and refuse storage area, rather than the habitable areas of the flats, that the use of the warehouse would not have an adverse noise impact for the occupiers of the flats. While the conversion works would have the potential to have some effect on the living conditions of the occupiers of neighbouring properties there would be nothing particularly unusual about that in the context of construction works being undertaken in built up areas.
12. Concern has been raised that the formation of the six flats could create additional parking pressure in the area, given the limited off-street parking in Silchester Mews. In that regard I note that the highway authority has assessed the parking requirements for the existing warehouse and the

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<sup>4</sup> APP/B1415/W/16/3160696

proposed flats together with the retained warehouse as being comparable<sup>5</sup>. In the Council's officer report it is recorded that parking permits are continuing to be issued in the controlled parking zone that operates in the area. The premises occupy a town centre location where there is reasonable access to public transport facilities. It is therefore unlikely that the proposed flats would generate a level of parking demand that would be excessive for this area. I therefore consider that the development's transport and highway impacts would not conflict with section 4 (Promoting sustainable transport) of the Framework.

13. For the purposes of determining whether prior approval should be granted the matters to be considered are limited to those listed in paragraph P.2(b). Accordingly the quality of the residential accommodation that would be available in the flats is a matter that that I cannot take account of. Similarly there is no requirement for details relating to any external alterations to be made in association with the change of use to be submitted as part of a prior approval application.
14. Concern has been raised that the development would have the potential to overlook the adjoining properties in Alfred Street, however, that is a matter that does not come within the scope of the issues to be considered under paragraph P.2(b). Similarly the arrangements for the storage and collection of refuse are not for consideration under paragraph P.2(b).
15. I conclude, having regard to the scale of the development, the issues raised by it and the provisions of paragraph P.2(b), that prior approval should be granted. In coming to that conclusion I consider that other than the need to comply with the requirement to implement the development in accordance with the submitted plans there is no need for me to impose any conditions under paragraph W(13) of the GPDO.

## Conclusions

16. For the reasons given above, I conclude that the development would be permitted development and that prior approval should be granted. The appeal is therefore allowed for the change of use from Class B8 to form 6 apartments under Article 3 and Schedule 2, Part 3, Class P. In allowing the appeal the appellant's attention is drawn to paragraph P.1(c) of the GPDO which requires the residential use of the building to have begun by 15 April 2018.

*Grahame Gould*

INSPECTOR

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<sup>5</sup> As recorded in the consultation comments section of the Council's officer report