
Appeal Decision

Site visit made on 12 April 2018

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2018

Appeal Ref: APP/T5150/W/17/3181861
Turpins Yard, Oaklands Road NW2 6LL

- 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 Theme Traders Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 17/1977, dated 4 May 2017, was refused by notice dated 28 June 2017.
 - The development proposed is for change of use of storage and distribution centre (Use class B8) into residential (Use class C3) involving the creation of 2x two-bed residential units.
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3 Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of storage and distribution centre (Use class B8) into residential (Use class C3) involving the creation of 2x two-bed residential units at Turpins Yard, Oaklands Road NW2 6LL in accordance with the terms of the application Ref 17/1977, dated 4 May 2017, subject to the following conditions.
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing GA.00 Rev B and EX.03 Rev C.
 - 2) No development shall take place where (following an Intrusive Ground Investigation as required by Environmental Desk Study and Preliminary Risk Assessment, by Apple Environmental, February 2017. Reference CL/2141/C) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development is occupied.

- 3) The development hereby permitted shall not be occupied until cycle storage facilities for 4 cycles have been provided within the development hereby approved. The cycle storage facilities shall thereafter be retained for the life of the development.

Procedural Matters

2. For the purposes of my Decision I have used the Council's description of the proposal, as the appellants' application form did not provide this.
3. The appellants' application form identifies the appeal property as: 'building as marked on red line plan at Turpins yard'. However, I have been provided with two red line plans (Drawings GA.00 Rev A and GA.00 Rev B). Drawing GA.00 Rev A identifies the appeal property and drawing GA.00 Rev B identifies the appeal property and another building. Therefore, in the interests of precision and for the purposes of my Decision, I have referred to Drawing GA.00 Rev A.

Application for costs

4. An application for costs was made by Theme Traders Limited against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Main Issue

5. The Council has confirmed that the proposed development falls within the scope of Schedule 2, Part 3 Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) which allows for the change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule. I have not found anything to dispute this.
6. However, to benefit from the above provisions the proposal needs to comply with certain conditions. In particular Paragraph P.2. (b) of the GPDO requires the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required for amongst other things contamination risks in relation to the building. In this particular case the Council is concerned that proposal has failed to adequately assess and mitigate the contamination impacts of the proposed development.
7. Accordingly, the main issue is whether there are contamination risks which would be likely to make the site unsuitable for residential use.

Reasons

8. The appeal site forms part of a small complex of buildings, which are located in a former industrial yard, with a gated access off Oaklands Road. The building subject of this appeal is a detached building constructed from brick and blockwork with a pitched roof. The building has had former industrial uses, although it has been in use by the current occupier Theme Traders Limited for the last 10 years approximately and is currently used to store furniture and other associated items such as theatrical props.

9. As part of the application the appellants submitted a Phase I environmental desk study report¹. This report confirms that the appeal site and wider area has seen a variety of previous light-medium industrial past uses and that there is some potential for ground contamination to be present on the site from these former activities, in conjunction with expected made-ground deposits. The report recommends further assessment of risk will need to be undertaken, in the form of an intrusive site investigation, concentrating on areas where either ground excavations are to take place or soft landscaping is to be introduced.
10. In this case the proposals would only involve excavation in respect of the proposed 'planting areas'.
11. The appellants have also drawn to my attention to a planning application², which related to the development of the entire industrial yard area, that the appeal site forms part of. Although, I have limited information in respect of this proposal, it does confirm that residential development has previously been supported at the appeal site subject to a ground contamination condition, which was subsequently discharged.
12. Moreover, I note that the Council's Environmental Health Enforcement Officer has not suggested that the residential use would be unacceptable due to the presence of contaminants but that further investigations and remediation would be required. Based on the above it would appear to me that the contamination would be at a level that could be made suitable for the residential use.
13. Section W (13) of Part 3 of Schedule 2 of the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. A condition to require more detailed investigation and necessary remediation as suggested by the Environmental Health Enforcement Officer would be related to one of the matters for which prior approval may be required. Therefore, there would appear to be the power to incorporate a suitably worded remediation condition in this case, notwithstanding the sensitive nature of the proposed use.
14. In conclusion the contamination risks would be unlikely to make the site unsuitable for residential use subject to the imposition of a suitably worded condition. In granting approval I have imposed such a condition in respect of the investigation and remediation of ground contamination in the interest of the health and safety of future occupiers. This condition which prevents any development approved from commencing until it has been complied with is considered fundamental to the development hereby approved.
15. In addition, to ensure certainty, I have imposed a condition setting out the approved plans. A condition requiring the provision of cycle storage facilities is necessary in the interests of promoting sustainable means of transport.

Conclusion

16. For the reasons given above I conclude the appeal should be allowed.

M Aqbal INSPECTOR

¹ Environmental Desk Study and Preliminary Risk Assessment, by Apple Environmental, February 2017. Reference CL/2141/C

² 03/3351 - Application Outline planning application for the demolition of existing buildings and erection of up to 20 residential units (matters to be determined: means of access).