



Appeal Decision

Site visit made on 13 June 2019

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: Friday, 26 July 2019

Appeal Ref: APP/X1545/W/18/3213901

Woodrope Building, Woodrolfe Road, Tollesbury, Maldon, CM9 8SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Tinson (Hallfield Developments Ltd) against the decision of Maldon District Council.
 - The application Ref COUPA/MAL/18/00266, dated 26 February 2018, was refused by notice dated 23 April 2018.
 - The development proposed is described as "*the change of use of Offices Class B1(c) to 7 No residential flats Class C3.*"
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 3, Class O of the General Permitted Development Order (GPDO) permits development of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.
3. The application was made by the appellant in respect of Class O and determined by the Council on that basis. However, as described by the appellant, the use of the building falls within Class B1 (c) whereas Class O of the GDPO relates only to Class B1 (a) use.
4. Based upon a previous appeal at the site¹ while the first floor was found to comprise of a Class B1 (a) use, the Inspector observed that the ground floor of the building appeared to have been used for industrial purposes including manufacturing. While that appeal was allowed, it is clear that the proposals related only to the first floor and thus the Inspector was satisfied that the proposals were compliant with the limitations and conditions for Class O of the GDPO on this basis.
5. The appeal proposals before me relate to both floors, with habitable accommodation at first floor level and stairways, services, and cycle storage at ground floor level. In this regard, I consider that the building would not fall

¹ Reference APP/X1545/W/15/3051168

under Class B1 (a) and thus Class O of the GDPO is not relevant to my determination of the appeal.

6. Class PA was introduced by amended order in 2016². This permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule.
7. Accordingly, based upon the appellant's description of the use at the appeal property, it is Class PA which is relevant to my consideration rather than Class O. I will therefore deal with the proposal on this basis.
8. A noise report was submitted with the application and a supplementary report was also issued as part of the appeal. Following the submission of the appeal, British Standard BS BS4142:2014 relating to rating and assessing industrial and commercial sound was superseded by BS4142:2014+A1:2019. Parties were given an opportunity to comment on this change.

Main Issue

9. The main issue is therefore whether the proposal would be permitted development under Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Reasons

10. The appeal site comprises of a two-storey vacant building located at Tollesbury Marina, a mixed-use area with a variety of industrial and other commercial properties.
11. In order to benefit from the provisions of Schedule 2, Part 3, Class PA of the GDPO (as amended) must comply with the limitations and conditions set out within this in order to be permitted development for which prior approval could be granted.
12. Specifically, under PA.1 development is not permitted by Class PA if:
 - a) an application under paragraph PA.2(1) in respect of the development is received by the local planning authority on or before 30th September 2017;
 - b) the building was not used solely for a light industrial use on 19th March 2014 or, in the case of a building which was in use before that date but was not in use on that date, when it was last in use;
 - c) the prior approval date falls on or after 1st October 2020;
 - d) the gross floor space of the existing building exceeds 500 square metres;
 - e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;

² The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016

- f) less than 1 year before the date the development begins— (i) an agricultural tenancy over the site has been terminated, and (ii) the termination was for the purpose of carrying out development under this Class, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural purposes;
 - g) the site is, or forms part of— (i) a site of special scientific interest; (ii) a safety hazard area; (iii) a military explosives storage area;
 - h) the building is a listed building or is within the curtilage of a listed building; or
 - i) the site is, or contains, a scheduled monument.
13. In addition, under PA.2 development is permitted subject to the following conditions whereby the developer must:
- a) submit a statement, which must accompany the application referred to in paragraph (b), to the local planning authority setting out the evidence the developer relies upon to demonstrate that the building was used solely for a light industrial use on the date referred to in paragraph PA.1(b);
 - b) apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
 - (i) transport and highways impacts of the development,
 - (ii) contamination risks in relation to the building,
 - (iii) flooding risks in relation to the building,
 - (iv) where the authority considers the building to which the development relates is within an area that is important for providing industrial services or storage or distribution services or a mix of those services (which includes, where the development relates to part of a building, services provided from any other part of the building), whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.
- and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.
14. While some of the necessary information relating to Class O also relates to my determination under Class PA, I do not have detailed evidence relating to the criteria under PA.1. Accordingly, I do not have enough evidence to conclude whether or not the development would represent permitted development in this regard.
15. In addition, I do not have information pertaining to a) and b) (iv) under PA.2. I note that the Council were satisfied in terms of highways and contamination, but that the application was refused due to concerns relating to flooding, noise and external alterations. However, due to my conclusions relating to PA.1, even

though some evidence has been provided in respect of these matters, it is not necessary to consider these matters further at this time.

16. While the circumstances are somewhat unusual in this case, the appeal process cannot be used to evolve a scheme.³ The requirements under Class PA are more onerous than what is required for under Class O. In my view, due to the extent and scope of the additional information required, to have sought the requisite information as part of the appeal proceedings would be potentially prejudicial in terms of fairness to parties who may have wished to express a view on such a proposition. This is consistent with the 'Wheatcroft Principles'⁴ which establish that judgement should be exercised in whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation. I therefore have no alternative other than to dismiss the appeal.
17. Accordingly, given the absence of information, the proposal does not comply with Class PA of Schedule 2, Part 3 of the GPDO 2015 (as amended) and is not permitted development.

Conclusion

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

C Searson

INSPECTOR

³ Annexe M of the Procedural Guide Planning Appeals – England (March 2019)

⁴ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].