



Appeal Decision

Site visit made on 6 August 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 20 August 2019

Appeal Ref: APP/M5450/W/19/3229041

2 Dalston Gardens, Stanmore, London HA7 1BQ

- 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 O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
 - The appeal is made by Mr JJ Gluck of Shivishi Ltd against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/0138/19/PRIOR, dated 11 January 2019, was refused by notice dated 8 March 2019.
 - The development proposed is described on the application form as the prior notification requirement under Part O of the GPDO for the change of use of offices (Class B1a) to form 24 apartments.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the conversion of offices (Class B1(a)) to 24 self-contained flats (Class C3) (prior approval of transport & highways impacts of the development, and of contamination risks and flooding risks on the site, and impacts of noise from commercial premises on the intended occupiers) at land at 2 Dalston Gardens, Stanmore, London HA7 1BQ in accordance with the terms of the application Ref: P/0138/19/PRIOR, dated 11 January 2019, and the plans submitted with it.
2. In addition to the above, it should be noted that Paragraph O.2(2) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) requires that development permitted by Part O is to be completed within a period of three years starting with the prior approval date. Paragraph W(12) requires that the development must be carried out in accordance with the details provided in the application.

Procedural matter

3. The Council have amended the description of the proposed development and I note that the Appellant has utilised this revised description on their appeal form. As this description accurately reflects the proposed development, I have determined the appeal on this basis.

Main Issues

4. The main issues are whether the proposal would be permitted development and whether it would provide suitable living conditions for the future occupiers of the development with particular regard to noise.

Reasons

5. The proposal is for the change of use of the existing building to form 24 apartments as permitted development under Schedule 2, Part 3, Class O of the GPDO.
6. Paragraph O.1 states that development is not permitted by Class O if the building was not used for a use falling within Class B1(a) (offices) of the schedule to the Use Classes Order¹ (UCO).
7. For the site to benefit from the provisions of the GPDO, the use of the premises involved must be lawful. Paragraph W.3 (b) also sets out that if the developer has provided insufficient information to enable the local planning authority to establish whether the proposed development complies with any conditions, limitations or restrictions then an application may be refused.
8. The planning history to the site provided by the Council indicates that the premises was originally given planning permission as a factory and office block, with subsequent applications to extend both the factory and the offices. The Council consider that the lawful use of the premises falls within Class B2 of the UCO.
9. At my site visit I saw that with the exception of the south-west wing of the building (which was occupied as an office by Spex Certiprep Limited) the site was unoccupied. The building as a whole had several rooms which were empty but could well have been last used as offices. Between the rooms at the property frontage and the two wings to the rear was a steel framed building which the Appellant has stated was used for ancillary storage space to the office use. That said, this part of the building does not form part of the proposed conversion to residential accommodation.
10. The Appellant has also provided evidence which indicates that since 2012 the primary use of the site has been as offices. It was also evident from my site visit that the part of the building occupied by Spex Certiprep was being used solely as offices. From the evidence before me this use would not require planning permission as an independent use given the provisions of both the current and the 1995 version of the GPDO.
11. In addition to the above, the Council have not provided any substantive evidence to suggest that the premises had not been operated as a Class B1(a) use either in part or in its entirety and appear to have relied on the planning history of the site.
12. Taking the above into account, I have no reason to dispute the Appellants position in this respect. I therefore conclude that the development would be permitted development.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Living conditions

13. Paragraph O.2 1(d) outlines that the impacts of noise from commercial premises on the intended occupiers of the development can be a matter which prior approval may be required.
14. A noise exposure assessment has been submitted which concludes that the noise levels within the appeal building would provide suitable living conditions for its future occupiers.
15. At my site visit I observed, and heard, little noise from the immediate area. Whilst I acknowledge that my visit was only a snapshot in time, this combined with the submitted noise assessment indicates to me that there is not a high level of noise in the area. To that end, I find that the future occupiers of the development would not be subjected to inappropriate levels of noise disturbance from nearby commercial uses.
16. I also note that the Council have raised concerns over vibrations and odour/fumes into the new residential properties. However, none of these factors relate to the provisions of paragraph O.2 1(d), or any other paragraph for which the prior approval process relates to. Consequently, they are not relevant to the consideration of the proposal.
17. For the above reasons I consider that the future occupiers of the development would not be subjected to excessive noise from commercial premises in the area and would accord with Policy DM1 of the Harrow Council Development Management Policies (2013) insofar that it relates to matters relating to noise from commercial premises.

Conditions

18. Paragraph W(13) of the GPDO allows prior approval to be granted subject to conditions that are reasonably related to the subject matter of the prior approval. However, the Council have not provided a list of suggested conditions. From the evidence before me, no conditions are required in relation to any of the matters which are subject to prior approval and therefore I have not imposed any.

Conclusion

19. Taking all matters into consideration, for the reasons given above I conclude that the appeal should be allowed and prior approval granted.

Chris Forrett

INSPECTOR