



Appeal Decisions

Site visit made on 2 October 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2019

Appeal A Ref: APP/T5150/W/19/3224533

Block 2, Central Business Centre, Iron Bridge Close, Neasden NW10 0UR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Deepak Chainrai of Hornington Investments Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 18/2885, dated 20 July 2018, was refused by notice dated 13 September 2018.
 - The development proposed is prior approval for a proposed change of use of the first floor of Block 2 from office use (Class B1(a)) to dwellinghouses (Class C3).
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Appeal B Ref: APP/T5150/W/19/3224535

Block 3, Central Business Centre, Iron Bridge Close, Neasden NW10 0UR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Deepak Chainrai of Hornington Investments Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 18/2886, dated 20 July 2018, was refused by notice dated 17 September 2018.
 - The development proposed is prior approval for a proposed change of use of the first floor of Block 3 from office use (Class B1(a)) to dwellinghouses (Class C3).
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Decision

1. Appeals A and B are dismissed.

Procedural Matter

2. As set out above, this decision letter covers two appeals on adjacent sites. Both appeals seek prior approval for a proposed change of use from office use (Class B1(a)¹) to dwellinghouses (Class C3²), but they relate to different, but adjacent, buildings. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issue

3. In view of the foregoing and the submissions of the Council and appellant, the main issue in both appeals is:

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

² *ibid*

- Whether the proposals satisfy the requirements of the Town & Country (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) with regard to being permitted development under Class O.

Reasons

4. Appeal A seeks prior approval for the creation of 24 residential units in Block 2 and Appeal B for 8 residential units in Block 3.

Permitted Development

5. Class O of Part 3 of Schedule 2 to the GPDO grants planning permission for the change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) to a use falling within Class C3 (dwellinghouses). Development under Class O is permitted subject, amongst others, to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to highways impact, contamination and flood risks, and the impacts of noise from commercial premises on the intended occupiers of the development.
6. Amongst the terms of Paragraph W to Part 3 of the GPDO (Paragraph W) are the requirements for an application under Class O and the procedures for processing such an application. Sub-paragraph 11 to Paragraph W states that development must not begin until: (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or (c) the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.
7. Article 4 of the GPDO allows a Direction to be made that would have the effect that development described in prescribed classes of the GPDO, including Class O, should not be carried out unless planning permission is granted for it. That is to say, it removes the permitted development rights under the class or classes in the GPDO, referred to in the Direction.
8. On the 4 August 2017 the Council confirmed a Direction under Article 4 of the GPDO (the Direction³). This gave Notice of the Council's intention to remove the permitted development rights conferred by, amongst others, Class O. A plan attached to the Direction identified several areas of land within which its terms would apply. One of these includes both appeal sites. The Direction came into effect on the 11 August 2018. From this date on, any applications for prior approval under classes of the GPDO covered by the Article 4 Direction that were undetermined had to be determined in accordance with its terms.
9. The Prior Notification applications were dated 20 July 2018 and were received by the Council on the 24 July 2018. The required fee was paid by cheque and, as this did not clear until the 27 July 2018, the Council validated the application on this date. Given the terms of Class O and Paragraph W, I find that the application should have been validated on the date that the cheque was received. However, for the reasons that are set out, below, the date of validation had little bearing on the decision that the Council reached.

³ 'Strategic Industrial Locations, Locally Significant Industrial Sites and Alperton Growth Area'

10. Class O requires, amongst other things, an assessment of the impacts of noise from commercial premises on the intended occupiers of the development. Whether or not such an assessment was required in the application for Units 1-5 is irrelevant to this appeal; here, the Council was entitled to ask for a study in this regard and it was under no obligation to accept the application without it. This is not what the Government meant by a "light-touch" approach. This term applies to the prior notification process as a whole, where planning permission is granted in principle, as long as certain requirements in each class of development are met.
11. Paragraph W allows the Council 56 days in which to make its decision. Failure to do so would lead to approval of the application by default. Although it allows Councils to determine applications before the 56 days lapse, subject to appropriate consultation being carried out, it does not set out any circumstances where they have to do so. Although the National Planning Policy Framework (the Framework) encourages applications to be handled in an efficient, effective and positive manner, it, too, does not set out any such requirement.
12. In this case, the Council determined the applications within the time allowed by the GPDO. That the applications could have been determined at an earlier date is immaterial, as the Council was not duty bound to do so. Whether it was morally obliged to is not a matter for this appeal, which is bound by the terms of the GPDO.
13. Amongst its terms, Article 4(2) of the GPDO sets out that an Article 4 Direction does not affect the carrying out of development permitted by any Class in Schedule 2 where the prior approval date occurs before the date on which the Direction comes into force. Here, the terms of the Article 4 Direction had come into effect before the Council's decision and, as such, the Council had to take them into account. As this Direction removed the permitted development rights conferred by Class O from the two sites, it could not grant prior approval for either application. The Direction represents a fundamental material change in circumstances from those in place at the time of the application for Block 1. Therefore, even though all three blocks share a Title Number, the different decision reached here was not the result of an inconsistent approach by the Council.
14. Given my findings in the preceding paragraph, the subject of refusal reason 2 on the decision notices is somewhat academic. However, the evidence indicates that the required information relating to transport, highways, contamination, flooding and noise was submitted in accordance with Paragraph W and the Framework.
15. By definition, the prior approval process requires the approval of the decision-maker before the development is commenced. When I visited the site, I accessed the first floor of Block 3. Here, work was well advanced on the conversion of the office units to create the 8 flats shown in the plans that accompanied the application made to the Council. This work included the erection of walls to sub-divide the floor space, plumbing, electrical and insulation works. These works clearly equated to the commencement of the development that is the subject of Appeal B. Therefore, even had I not found that the Council had acted correctly in refusing the applications, Appeal B would have had to have been dismissed.

Other Matters

16. As I have been given very little evidence with regards to the earlier applications regarding the change of use of Units 7, 10 and 10A, which I am told were not implemented, I have given them very little weight in my decision. The comments attributed to Council Officers, regarding future applications for the proposed works, and questions of their professionalism and ethics are not relevant to my decision. This is also the case with regards to the need to apply for this form of development via email. Any allegations of maladministration by the Council, or questions of its administrative procedures, including with regards to its making of the Article 4 Direction, lack of response to Subject Access Requests and other correspondence cannot be addressed through the planning appeal system.
17. That the appeals would result in the creation of 32 residential units in an accessible location that might provide significant benefits for those people seeking accommodation, utilise unused business units and support the area's regeneration whilst reducing anti-social activities, is not material to the prior approval process.
18. As these appeals against the refusals of developments under Class O have failed, I cannot unilaterally grant planning permission for the proposed works.
19. I have taken account of all the matters raised in the evidence including that there would be no unacceptable effects with regards to highways, flooding, contamination or noise issues. I am also aware that the sites do not lie within the list of prescribed areas in Class O, where permitted development rights do not exist, or that no objections were raised to the applications. However neither these nor any of the matters raised would overcome the fact that the permitted development rights conferred by Class O of the GPDO were withdrawn by an Article 4 Direction covering the land.

Conclusion

20. Given the above, the proposals in both Appeal A and B cannot be considered as permitted development under the prior approval process. Therefore, I conclude that both Appeals A and B should fail.

Roy Curnow

INSPECTOR