
Appeal Decision

Hearing Held on 26 November 2019

Site visit made on 26 November 2019

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 29th November 2019

Appeal Ref: APP/Y5420/W/19/3233261
49A Oxford Road N4 3EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country (General Permitted Development) (England) Order 2015
 - The appeal is made by Oxford Road Investments Ltd., against the decision of the Council of the London Borough of Haringey.
 - The application for prior approval Ref HGY/2019/0692, dated 6 February 2019, was refused by notice dated 3 April 2019.
 - The development proposed is change of use from office (Use Class B1(a)) to residential (Use Class C3) to create no. 14 residential units.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Class O of Part 3 of Schedule 2 to the Town & Country (General Permitted Development) (England) Order 2015 (as amended) (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)¹ to a use falling within Class C3 (dwelling houses)² subject to a number of conditions and limitations. In accordance with Class O.2(i) the appellant applied for a determination as to whether the prior approval of the Council would be required in respect of the transport and highways impacts of the development; contamination risks on the site; flood risks on the site; and impacts of noise from commercial premises on the intended occupiers of the development.
3. The Council confirmed that their Prior Approval was required and this was refused. The Refusal Notice says "... *given that there is no planning unit on site for which the land or building or part of the building cannot benefit from permitted development.*" In line with the Appellant's Supplementary Statement of Case I assume that the word "cannot" is intended to read "can".
4. The main issue is whether or not there is a building on the site the use of which falls within Class B1(a) office use such that it would benefit from permitted development rights afforded under Class O of the GPDO.

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

² Ibid

Reasons

5. One of the limitations at Class O.1.(b) is 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 Order – (i) on 29th May 2013 or, (ii) 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 use³.
6. The appeal site is roughly triangular in shape and is sited between a railway line and houses on Oxford Road and Woodstock Road. Most of the site is built up. The Parties have treated the built fabric as a single building which has been constructed in different phases over a significant period of time. For the purposes of this appeal I will do the same. There is an extensive planning history on the site including a number of applications for prior approval. I refer directly to the most relevant below.
7. On 12 August 2015 the Council granted prior approval for change of use from B1(a) (offices) to C3 (residential) planning Ref HGY/2015/1763 (the 2015 Prior Approval). At that time the GPDO stated at Class O.1(c) that development was not permitted by Class O if the approved use of the building was begun after 30 May 2016. It is common ground between the Parties that the 2015 Prior Approval was not implemented but it does establish that, at that time, parts⁴ of that building satisfied the requirements of Class O.1.(b). I see no reason to reach a different conclusion.
8. At some point operational development, including demolition, started on the site. I was told at the Hearing that some demolition was observed on 27 October 2016. In any event on 18 January 2019 the Council granted planning permission for “part retrospective planning proposal for the demolition works; re-build works and minor alterations” planning Ref HGY/2018/3528 (the demolition and re-build permission). This was accompanied by the Cook Associates “Report Upon Dismantling and Re-building of Walls” 09/10/2018.
9. There was some discussion at the Hearing about the extent to which the operational works, which are continuing on the site to the extent that no part is currently useable, are completely in accordance with the demolition and re-build permission. At the Hearing the Parties agreed that compliance is not a point of issue in this case for either side. Accordingly, solely for the purposes of this appeal, I rely on the appellant’s statement that the operational works are in accordance with the demolition and re-build permission.
10. This appeal was accompanied by the Cook Associates “Structural Report on Demolition and Re-building Work” 27 June 2019. This confirmed that the original intention was to retain all existing external walls and internal load bearing walls but that serious structural defects were found. A further Cook Associates “Report on Demolitions and Replacement Structure” was prepared on 21 November 2019 (the November Report). This included a Sketch Plan indication Zoning of the building reflecting the fact that the existing building evolved with additions and extensions being formed at different times and the different structural forms in the Zones.
11. I accepted the November Report as evidence because: it provides a useful tool to assist in understanding what works have taken or are taking place; as the

³ The proposal does not conflict with the limitations at Paragraph O.1(a), (c), (d), (e), or (f)

⁴ That part of the building in use as D1 Non-residential Institutions is not included in the appeal proposal

Council confirmed at the Hearing that no adjournment was necessary for them to further assess it; and as I consider no other interests were prejudiced by my doing so. The extent of works was discussed in some detail at the Hearing and subsequently at the site visit.

12. In summary the November Report describes the construction of the property as follows:

Zone 1 - the original structure comprised a steel frame of vertical steel stanchions with horizontal steel beams with concrete floors and roof apart from the roof of the tower in the northeast corner which was timber supported on steelwork.

Zone 2 - the original structure comprised a grillage of horizontal steel beams at both first floor and roof level spanning onto and supported on the north elevation wall and the walls to the south with timber floor joists spanning between the horizontal steels. At midspan the horizontal steels were supported on masonry piers at ground floor and vertical steel stanchions at first floor.

Zone 3 - the original structure comprised a steel frame of horizontal steel beams and vertical steel stanchions with self-supporting masonry walls, a precast concrete first floor and timber roof structure set between the steel members.

Zone 4 - the original structure comprised a loadbearing masonry construction with structural steel elements. The first floor consisted of timber floor joists spanning between load bearing masonry walls and masonry and steel columns. The roof, as shown on the Plan 103 Rev P2, was part hipped and part flat.

Zone 5 – the structure was demolished prior to the inspection. Some of the replacement work was carried out since April 2019.

13. From the November Report; the discussion at the Hearing; and my observations at the site visit; I find that:

- Some 21% of external walls have been demolished – predominantly parts of Zones 1 and 4 (much of which has been re-built) and all of Zone 5.
- Much of the structural steel and timber and the masonry supports have been/or are being replaced having been found to be severely deteriorated/damaged;
- Some new foundations have been made including in parts of Zones 1, 2 and 5; others have been underpinned;
- Most, if not all, the ground and first floors have been/are being replaced;
- Most, if not all, of the roofs, apart from the hipped roof in Zone 4, are replacements;
- Some 32% of the internal walls have been demolished some of which have been or will be re-instated or re-positioned;
- The footprint has been slightly extended between Zones 1, 2 and 3 with provision of a new lift shaft;

- Zone 5 (the smallest Zone) has been wholly demolished and rebuilt in a differently shaped footprint.
14. I acknowledge that where possible external walls, foundations and steelwork have been retained and repaired keeping a similar external appearance where possible; that some materials have been reclaimed and used; and that works to internal walls generally do not amount to development that requires planning permission. However, in principle, taking into account the totality of works as a whole I conclude that, as a matter of fact and degree⁵, in this case a new building has been/is in the process of being created on-site through part-demolition, part retention/repair and part new build structure – the works amount to more than alteration. The resulting building physically, as being constructed, is/will not be the same and amounts/will amount to a new building: the original building has ceased to exist. I find this irrespective of, as indicated in the evidence accompanying the demolition and re-build permission, the works were carried out to reinstate a structurally unstable building and whether or not they were intended to facilitate the internal arrangements needed to implement the proposed residential use.
15. On this basis I conclude that the limitations at Class O.1.(b) as set out above are not met and that there is no building on the site the use of which falls within Class B1(a) office use such that it would benefit from permitted development rights afforded under Class O of the GPDO.
16. As I have concluded the proposal does not benefit from the Class O permitted development rights it is not necessary for me to consider whether prior approval is required or should be granted.

Conclusions

17. For the reasons set out above the appeal is dismissed.

S Harley

INSPECTOR

⁵ Oates v SoS CLG and Canterbury CC [2018] EWCA Civ 2229

APPEARANCES

FOR THE APPELLANT:

James Neil	Landmark Chambers
Geoffrey Burton	Cook Associates
John Ferguson	Collective Planning
Susie Taylor	Collective Planning
Susanne Andreasen	Pinsent Masons
Avi Manoach	Oxford Road Investments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Alex Williams	Cornerstone Barristers
Elizabeth Williams	Planner
Matthew Gunning	Planner
Robert Walker	Solicitor
Bianca Atesli	Solicitor

DOCUMENTS

- 1 Extracts from the London Plan, the Draft London Plan and the Development Management DPD
- 2 Signed and dated Unilateral Undertaking
- 3 Paginated version of Consolidated Statement of Common Ground from the Council
- 4 Documents related to HGY/055380
- 5 Appeal decision APP/Y5420/E/10/2127472 and APP/Y5420/A/10/2127471
- 6 Wording for condition to address contamination
- 7 Agreed Statement of Common Ground Revision 2 dated 25 November 2019