
Appeal Decision

Hearing Held on 17 December 2019

Site visit made on 17 December 2019

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2020

Appeal Ref: APP/C5690/W/19/3225093

27-33 Malham Road, Forest Hill, London SE23 1AH

- 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 PA of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO).
 - The appeal is made by Mr Joseph Robson against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/18/109477, dated 26 October 2018, was refused by notice dated 21 December 2018.
 - The development proposed is change of use of the entire building from B1(c) light industrial to C3 residential.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class PA of the GPDO for the change of use of the entire building from B1(c) light industrial to C3 residential at 27-33 Malham Road, Forest Hill, London SE23 1AH in accordance with the terms of the application Ref DC/18/109477, dated 26 October 2018, subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matter

2. A signed Statement of Common Ground (SoCG) was submitted at the Hearing, to which I have had regard.

Application for costs

3. Exceptionally in this case, I agreed to a joint request for a short period for the parties to potentially reach agreement over a partial award of costs to the appellant. The resulting costs application met the deadline set and is the subject of a separate Decision.

Background and Main Issues

4. Schedule 2, Part 3, Class PA of the GPDO states that 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) to a use falling within Class C3 (dwellinghouses) is permitted development.
5. Paragraph PA.1 of the GPDO sets out the limitations of this permitted development right. The seeking of prior approval is a requirement for this Class

of permitted development. For this, paragraph PA.2 requires assessment of the proposed development solely on the basis of its impact on transport and highways, contamination, flood risk and the sustainability of an area in providing industrial services or storage or distribution services, taking into account any representations received. My determination of this appeal has been made on the same basis.

6. The main issues are (i) whether the proposal is permitted development under Schedule 2, Part 3, Class PA of the GPDO and, if on finding that it is, (ii) whether prior approval should be granted and any conditions imposed.

Reasons

(i) Whether permitted development

7. The Class PA permitted development right applies to premises in light industrial use. Development is not permitted under PA.1.(b) of the GPDO if the building was not used solely for a light industrial use on 19 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. The existing use of the building must be as specified in the PD right sought at the time of the application. My reading of the GPDO is that the right does not depend on an ongoing light industrial operation at the time of the prior approval application, provided the lawful use of the building stood and there had been no intervening change to this.
8. The latter would be assessed in respect of matters of fact and degree. It would appear the appellant acquired the vacated premises in 2016. Only very superficial internal changes have taken place, and there was recently a temporary use when the building hosted a 'pop up' art gallery. It is evident the building is being put to use for the garaging of a number of models of classic car. I do not consider these to establish a material change in use of the building. That use, in relation to whether it existed on or before 19 March 2014, is a matter of fact to be determined on the balance of probability based on the evidence provided.
9. The property comprises a three-storey building with a single-storey rear and side addition and an open front forecourt with access onto Malham Road. The property history shows the three-storey building to have been a 19th century chapel, which is quite apparent from its appearance. The planning history shows this building to have been acquired by a construction company in 1967 and the evidence is reasonably clear, based on a covenant made, that the original chapel use then ended. There appears to have originally been a quite specific use intended, for the plastic coating of wire and small steel goods. The single storey extension approvals in 1971 relate to the manufacture of light metal and joinery products and light industrial purposes. The 1972 consent, relating to the chapel part, refers to ancillary office accommodation.
10. The early 1970s permissions provide reasonable evidence that the building was put to a light industrial use and was extended at the rear and side for this purpose. There is no firm evidence the light industrial use actually commenced but given the building had been extended, with the provision of the ground floor workshop space, I think it more likely than not that it did.
11. From the early 1970s up until 2006 there is a long hiatus during which there is scant evidence over the activities taking place at 27-33 Malham Road. Between

2006 and 2016, however, the premises were evidently used by Chillspace UK LLP; an event design company. The signed testimonies provided as to what the use of the premises by Chillspace actually entailed are rather brief and contradictory. However, piecing together the evidence, including the photographs provided and the website description of what this company does, the use appears to have involved creative activities, with the on-site production of sets involving the processing of materials to produce tailor-made event products.

12. The evidence suggests that from the late 1960s the chapel use has ceased and that the original D1 use of part of the property has become extinguished. The recent run of prior application refusals, before this appeal case, provide some evidence to conclude that there was not a main Class B1(a) office use. However, there is evidence of some B1(a) office use within parts of the former chapel building, ancillary to the business being run in the premises as a whole.
13. The evidence over the manufacture of event sets suggests a significant amount of space within the premises was used for storage. However, taking into account the likely bulky nature of event furniture, this would still appear to be an ancillary use to the main production activities. The leading activity, involving the production of event materials, indicates the use not to be that of a Class B8 storage and distribution centre. I also consider it appropriate to review evidence of the activities carried out by Chillspace, rather than rely entirely upon a warehouse use being defined for business rates purposes.
14. There was not a case made that any previous operations amounted to a Class B2 general industrial use. I have found no evidence that the activities might not have theoretically been carried out in any residential area, with regard to detriment to amenity by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
15. On the balance of probability, the appeal property has been shown to have been used solely for a light industrial Class B1(c) use on or before 19th March 2014 and no other use has subsequently become established. Therefore 27-33 Malham Road would benefit from the permitted development right sought, subject to satisfying the conditions in paragraph PA.2. Of these it is PA.2.(1)(b)(iv) that is partly in contention between the parties.

(ii) Whether prior approval should be granted

16. The parties agree that the proposal is within an area that is important for providing industrial or storage or distribution services or a mix of these, and from my observations I would concur. The Class PA permitted development right then depends on the introduction of a residential use in the area not having an adverse impact on the sustainability of the provision of these services.
17. The parties are further in agreement that this relates to the amenities of residential occupiers in industrial areas, whereby such a location might provide less than ideal living conditions, due to matters such as air quality and noise. I agree and consider the condition seeks to ensure the permitted development right does not lead to residential occupiers resisting industrial proposals, in areas important for providing these, on amenity grounds.

18. The Council is satisfied that any harm due to noise can be adequately mitigated through the measures proposed and by a suitable condition to secure these. I find no reason to disagree. The same would apply to air quality and odour, except that the Council considers a condition securing the appropriate mitigation for this issue, which depends on the maintenance of air filters, would fail the test of enforceability.
19. The draft conditions submitted at the Hearing regarding air quality and odour mitigation would in my view be enforceable if these controlled the details and application of maintenance, including requiring these to be logged and for the records to be accessible to the Council. Subject to this, and other appropriate conditions, I am of the view that this proposal would not have an adverse impact on the sustainability of the provision of industrial or storage or distribution services in this area.
20. In reaching this conclusion I have taken into account that the permitted development right assumes the principle of the proposal is acceptable and that, in this context, the prior approval process applies a lighter touch than were express planning permission to be required. I have also had regard to the fact that, whilst the appeal site is within and surrounded by employment uses, it amounts to a small proportion of this industrial area.

Conditions

21. Under the GPDO, development under Class PA is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date. Other than this, prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval. I have considered the conditions set out in the SoCG, as well as the two subsequently submitted regarding ventilation, against the tests in paragraph 55 of the National Planning Policy Framework. I have applied these tests and condensed the ventilation requirements into a single condition, making amendments to the others in the interests of preciseness and enforceability.
22. In the interests of certainty, a condition ties the approval to the submitted plans and reports (1). In the interests of the living conditions of future occupiers, conditions are necessary requiring odour (2) and noise (9) mitigation. To foster sustainable transport, conditions need to address car parking and cycle storage (3,4). In the interests of addressing satisfactorily the following respective matters, conditions require agreement over waste management (5), unexploded ordnance (6) and site contamination (7, 8).

Conclusion

23. On the basis of the reasons given, I conclude the development is permitted under Schedule 2, Part 3, Class PA of the GPDO and that prior approval may be granted subject to the conditions set out below.

Jonathan Price

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 site location plan AGL THA EX

GA 001 P4; proposed ground floor AGL-THA-PR-AL-100-P10; proposed first floor AGL-THA-PR-AL-110-P7; proposed second floor AGL-THA-PR-AL-120-P8; proposed west elevation AGL-THA-PR-EL-320-P1; proposed south elevation AGL-THA-PR-EL-300-P1; proposed north elevation AGL-THA-PR-EL-310-P1; proposed east elevation AGL-THA-PR-EL-330-P1; Design Document by Tate Harmer dated 23rd October 2018; Transport Statement prepared by TTP Consulting dated October 2018; Phase 1: Desktop Study Preliminary Risk Assessment Report by Your Environment dated March 2018; Noise and Vibration Assessment prepared by WYG dated October 2018; Air Quality and Odour Assessment prepared by WYG dated October 2018.

- 2) Prior to the residential occupation of the development hereby allowed, a ventilation filtration system shall be installed and thereafter be retained and maintained in accordance with details that shall have had the prior written approval of the local planning authority. These details shall include a maintenance regime, including for the replacement of carbon filters, and the upkeep of a log book to record this that shall be made available for inspection upon the reasonable request of the local planning authority.
- 3) Prior to the residential occupation of the development hereby allowed, a Car Parking Management Plan shall be implemented and thereafter retained, in accordance with details that shall have had the prior written approval of the local planning authority.
- 4) Prior to the residential occupation of the development hereby allowed, on-site cycle parking shall be provided and thereafter retained, in accordance with details that shall have had the prior written approval of the local planning authority.
- 5) Prior to the residential occupation of the development hereby allowed, a Waste Management Plan (WMP) shall be submitted to and approved in writing by the local planning authority. The WMP shall thereafter be implemented as approved and maintained during the residential occupation of the development.
- 6) Prior to the residential occupation of the development hereby allowed, a Phase 1 UXO assessment shall be submitted to and approved in writing by the local planning authority and any mitigation proposed implemented in accordance with the details agreed.
- 7) Prior to the residential occupation of the development hereby allowed, a Contamination Assessment (CA) shall be submitted to and approved in writing by the local planning authority. Any mitigation proposed by the approved CA shall thereafter be implemented as approved and maintained during the residential occupation of the development.
- 8) The hardstanding areas outside the buildings within the site to which this approval relates shall remain as hardstanding and not be broken up or removed.
- 9) Prior to the residential occupation of the development hereby approved, noise mitigation measures shall be provided and thereafter maintained in accordance with details that shall first have had the prior written approval of the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Joseph Robson	Appellant
Jacky Jubert	Appellant
Tim Miles	Montagu Evans
David Taylor	Montagu Evans
Nigel Mann	WYG

FOR THE LOCAL PLANNING AUTHORITY:

Isabella Crowdy	Counsel for London Borough of Lewisham (LBC)
Amanda Ghani	LBC
James Hughes	LBC

DOCUMENTS

- 1 Final and signed Statement of Common Ground between the parties
- 2 Agreed wording of suggested two conditions governing odour mitigation