



Appeal Decision

Site visit made on 17 December 2019

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/Z5060/W/19/3234795

Rear of 765 Beacontree Avenue, London RM8 3HH

- 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 Euro Georgian Properties Limited against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 19/00678/PRIIND, dated 10 April 2019, was refused by notice dated 10 June 2019.
 - The development proposed is to convert the property from B8 to C3 use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the interests of clarity, I have taken the description of development from the Council's decision notice.

Background

3. Schedule 2, Part 3, Class P of The Town and Country Planning (General Permitted Development) (England) Order 2015 'the Order', outlines that development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) to a use falling within Class C3 (dwellinghouses) constitutes permitted development, subject to certain limitations and conditions.
4. Paragraph P.1 of the Order sets out the situations whereby development would not be permitted. Paragraph P.1(a) states that development is not permitted if the building was not used solely for a storage or distribution centre 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. Paragraph P.1(b) continues that development is not permitted if the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins. These requirements are pre-requisite of permitted development in this case and must be complied with regardless of the date of the Council's decision.
5. Paragraph W of the Order outlines the procedure for prior approval under Part 3. Paragraph W(11)(c) requires that development must not begin before 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. The appellant claims that the 56 days had expired before the notice was issued.

6. Paragraph P.2 of the Order gives conditions under which the developer must apply to the local planning authority for a determination as to whether prior approval will be required, and one of these, (b)(ii), is the transport and highways impact of the development, as referred to in the Council's reasons for refusal.

Main Issues

7. The main issues are;

- 1) Whether the proposal satisfies the requirements of The Town and Country Planning (General Permitted Development) (England) Order 2015 with regard to being permitted development under Class P.
- 2) If so, whether planning permission is deemed to have been granted by reason of the timing of the Council's Decision.

And;

- 3) If planning permission is not deemed to have been granted, whether the transport and highways impacts of the development are such as to warrant refusal of prior approval under paragraphs P.2(b)(ii) and W(3).

Reasons

Permitted development

8. As set out in the Background above, the proposal would not be permitted development if, amongst other things, the building was not used solely for a storage or distribution centre 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; or if the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins.
9. The building subject to the appeal is a single storey building to the rear of 765 Beacontree Avenue. The site is accessed via a back lane which also provides access to, amongst other things, an MOT garage. A back lane and a forecourt area sit between the appeal site and the MOT garage.
10. The Council consider that the building subject to the appeal operates ancillary to the MOT garage and therefore cannot constitute a use within Class B8 which would allow for a permitted change to Class C3 by way of Schedule 2, Part 3, Class P of the Order.
11. I have not been provided with any planning permission or certificate of lawfulness under s191 of the Act¹ to clearly demonstrate the use of the building falls within Class B8. I have therefore needed to reach a view based on the evidence provided and what I saw on my site visit.
12. The appellant contests that the use of the building is not ancillary and forms a physically and functionally separate unit within Class B8. To this end the appellant has submitted a declaration made by Gary Hall on 12 April 2019

¹ Town and Country Planning Act 1990

before a Solicitor. Mr Hall is the operator of the MOT garage located on the same back lane as the appeal building. The declaration identifies the building subject to the appeal as having been occupied for the storage of materials in connection with Mr Hall's business since 1991 and having been rented from the appellant since this time. This document carries significant weight due to its legal status.

13. The root of the argument is effectively whether the building forms its own planning unit within Class B8 or is ancillary to the MOT garage.
14. In considering the planning unit, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. It may also however occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning units.
15. The appellant argues that the building ought to be considered separate from the MOT garage as it is separated by the back lane and is rented to the MOT garage operator as a separate and individual entity. I accept that the physical separation is a factor in considering the planning unit. However, in this instance, the separation is not substantial and merely on the other side of the back lane. I would surmise that the reason the building came to be used as storage for the MOT garage in the first instance, notwithstanding obvious storage needs, is due to its immediate proximity to the remainder of the MOT garage site.
16. The appellant refers to the site being in separate ownership in support of the appeal. I find that the matter of ownership to be less of a determinative factor than the land use planning matters. The building may well be in separate ownership to the MOT garage, however they are both used by the same operator for the same business. This thread of use, regardless of ownership, runs through both sites, despite their minor separation across the back lane.
17. The declaration states that the building has been used for storage 'in connection' with the business since 1991. I do not find that this is substantially different or unrelated to the use of the MOT garage.
18. I have considered the judgement² put forward by the appellant in relation to the identification of the planning unit, although I do not have full details of the case. Were the appeal site to be occupied as its own clearly distinguishable and separate use, the content of the judgement would apply. However, the site is not held by a separate occupier carrying out a clearly distinguishable and separate use. I therefore consider it is less relevant in this instance.
19. For these reasons, I am not persuaded that the appeal building currently has a B8 use. There is no planning permission or Certificate of Lawfulness to clearly demonstrate such a use, and such evidence as is available to me suggests a use in connection with the MOT garage business. My view on this matter is based on the information before me and does not prevent the appellant from

² Johnston v Secretary of State for the Environment (1974) 28 P & CR 424

seeking to establish the existing lawful use of the building in the future through an application under s191 of the Act.

20. I therefore conclude that the building does not form a separate B8 use. As a result the requirements of paragraph P.1 are not met and the proposal is not permitted development under Class P.

Timing of Council's Decision

21. Since I have concluded that the appeal proposal is not development permitted under Class P, it is not now necessary to consider this further.

Transport and highways

22. Since I have concluded that the appeal proposal is not development permitted under Class P, it is not now necessary to consider this further.

Conclusion

23. The proposal fails to satisfy the requirements of The Town and Country Planning (General Permitted Development) (England) Order 2015 with regard to being permitted development under paragraph P.1. The proposal is therefore not permitted development under Schedule 2, Part 3, Class P of the Order.
24. For the reasons given above, and having had regard to all other matters raised, the appeal is dismissed.

A M Nilsson

INSPECTOR