



Appeal Decision

Site visit made on 17 December 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Appeal Ref: APP/E2205/W/19/3235510

Rook Toll, Faversham Road, Boughton Lees, Ashford, Kent, TN25 4HS

- 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).
 - The appeal is made by Mr J Bates of Thomas Bates & Sons Ltd against the decision of Ashford Borough Council.
 - The application Ref 19/00191/AS dated 11 February 2019, was refused by notice dated 11 April 2019.
 - The development proposed is change of use from premises in light industrial use class B1(c) and land within its curtilage to two dwelling houses.
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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 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("GPDO") for change of use from premises in light industrial use class B1(c) and land within its curtilage to two dwelling houses, at Rook Toll, Faversham Road, Boughton Lees, Ashford, Kent, TN25 4HS, in accordance with the terms of the application Ref 19/00191/AS dated 11 February 2019 including drawings numbered 17/27/01 rev A and 17/27/02 rev A. This prior approval is granted subject to the following condition:
 - 1) If unexpected contamination is found at any time when carrying out the approved development it must be reported in writing to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared. Following completion of the remediation scheme a verification report that demonstrates the effectiveness of the remediation carried out must be prepared and submitted for approval in writing by the Local Planning Authority.

Background and Main Issue

2. The above provisions of the GPDO provide for a permitted development right for 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) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 ('UCO') to a use falling within Class C3 (dwellinghouses) of that Schedule. This is subject to certain limitations and conditions, as set out in the GPDO. The application that led to this appeal sought to determine whether the proposal is

eligible for the permitted development right, and whether or not the relevant limitations and conditions were met.

3. The Council argue that the proposal is ineligible for the permitted development right on the basis that the existing use of the site is B2 (General industrial) of the UCO rather than B1(c) as maintained by the appellant. Consequently, the main issue in this appeal is whether the proposal comprises a B1(c) use and therefore qualifies for the relevant permitted development right.

Reasons

4. The site comprises two buildings within a complex of metal huts on a large site, surrounded by woodland, which were originally erected in the second world war. They predate the introduction of modern planning controls, and there is no lawful existing use certificate in relation to them.
5. To benefit from the relevant permitted development right the appellant must demonstrate that the proposal falls within use class B1(c). The UCO defines this as any industrial process being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
6. On the evidence before me, including statutory declarations from previous owners and leaseholders of the site, the relevant buildings on the site were most recently used for timber processing. The Council argue that the processes described could not be reasonably carried out in any residential area due to noise, making specific reference to chainsaws and machinery connected with the former operations on the site.
7. The use of such machinery would be likely to generate a degree of noise, particularly when carried out in the open air. However, almost all industrial processes involve noise. The use of chainsaws and axes is not unknown in residential areas, for instance when they are used in association with domestic gardening. Similarly, bonfires are also common within residential areas.
8. The activity described in the statutory declaration of Malcolm John Godden appears to have been heavily reliant on his own labour. Whilst assisted to a degree by machines, for instance in moving the logs around the site and splitting them, the evidence does not indicate that there were multiple noise generating processes taking place on the site at any one time. In my experience, the use being described would not be ordinarily thought of as amounting to heavy industry.
9. Moreover, the modest scale of the operation described would be unlikely to generate a significant or disruptive amount of vehicular traffic to and from the site. Much of the space on the site would have been used for the storage of logs and bulky items, which would not in itself generate significant amounts of noise. The bonfires, and associated fumes and smells appear to have occurred on an infrequent basis. The effects of sawdust would have been contained within the site.
10. Furthermore, there are residential dwellings set in reasonably close proximity to the site, on the Faversham Road. No significant evidence has been found of historic noise complaints in relation to the activities being carried out at the site.

11. These considerations lead me to the view that the industrial processes undertaken at the site could have taken place in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. On the evidence before me the most recent use of the site meets the terms of class B1(c) of the UCO. The proposal therefore qualifies for the relevant permitted development right.

Other limitations and conditions

12. It follows from my findings above that the proposal meets the limitation set out in paragraph PA.1 (b) of the relevant part of the GDPO, as the buildings that are the subject of this proposal were last in a light industrial use. The permitted development statement provided with the original application argues that the other limitations and conditions of the relevant part of the GDPO pertaining to the exercise of this permitted development right are met. These points are considered further in the 'assessment' section of the planning officer report, where the Council appear to accept that this is the case.
13. There is an existing vehicular access to the site from the Faversham Road which has reasonable visibility. Whilst this is currently in an overgrown state, the residential use would be likely to generate fewer comings and goings than the former light industrial use, were it to be resumed. Whilst I note the accounts of recent accidents, the local planning authority did not object to the proposal on highway safety grounds. Given that the access to the site already exists and serves existing built development, I consider that the proposal would be acceptable in terms of its transport and highways impact. Approval should not be withheld on these grounds.
14. As the buildings and associated hardstanding already exist on the site, it is unlikely that there would be a material increase in surface water flooding. There is no significant evidence of contamination or flooding risks that would justify withholding approval for the development. Given the existing condition of the site, there would be no adverse impact on the provision of industrial services in the Borough, as a consequence of this proposal.
15. I therefore conclude that the limitations and conditions set out in Schedule 2, Part 3, Class PA of the GPDO for change of use from premises in light industrial use class B1(c) are met.

Other Matters

16. There were objections to the development on other grounds. These include; that the site is unsuitable for housing and is contrary to planning policies including those set out in the Ashford Borough Local Plan; that the proposal would result in the loss of buildings of historic importance and would have an adverse effect on heritage, concern about the ability to provide infrastructure and services to the site; concern about wildlife, woodland and ecology; concern about surface water drainage upon the completion of development; concern about fire safety; concern that the proposal is out of character with the prevailing built and natural environment; concern about the poor levels of accessibility of the site in relation to services; and that it would increase noise and disturbance over the existing position.
17. However, the statutory tests do not enable approval to be withheld for such reasons. Planning Practice Guidance makes clear that prior approval is a light-

touch process where the principle of development has already been established and does not seek to replicate the planning application system. It also makes clear that decision makers should not consider such matters when determining a prior approval application¹. I have dealt with the appeal accordingly.

Conclusion and Conditions

18. The proposal meets the relevant criteria set out in the GPDO. The appeal should be allowed and prior approval is granted for the proposed development. The planning permission under Article 3 and Schedule 2, Part 3, Class PA of the GPDO is granted subject to the statutory condition set out at paragraph PA.2 (2) of Schedule 2, Part 3, Class PA of the GPDO, which requires that the development is completed within 3 years from the date of this decision.
19. A further condition making provision for the treatment of unsuspected contamination has been added. This is necessary to ensure the proposal is acceptable in terms of the living conditions of future occupants of the proposed development, and reasonably relates to the subject matter. Conditions that otherwise seek to impose controls on the construction process are not necessary to make the development acceptable in relation to this approval process. Nor is a requirement for electric vehicle charging points to be installed at the approved development.

Neil Holdsworth

INSPECTOR

¹ See the guidance on 'When is permission required'. Specific reference: Paragraph: 026 Reference ID: 13-026-20140306