
Appeal Decisions

Site visit made on 13 February 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal A - Appeal Ref: APP/G3110/X/19/3232077 The Studio, 9 Green Street, Oxford OX4 1YB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr William Carey against the decision of Oxford City Council.
 - The application Ref 18/02710/CPU, dated 10 October 2018, was refused by notice dated 13 February 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is change of use to residential (C3).
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Appeal B - Appeal Ref: APP/G3110/X/19/3232078 The Workshop, 9 Green Street, Oxford OX4 1YB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr William Carey against the decision of Oxford City Council.
 - The application Ref 18/02705/CPU, dated 10 October 2018, was refused by notice dated 13 February 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is change of use to residential (C3).
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for costs

3. An application for costs was made by Mr William Carey against Oxford City Council. This application is the subject of a separate Decision.

Preliminary Matters

4. An accompanied site visit was arranged for 13 February 2020. However, due to a timing error on my part, the Council's representatives unfortunately left before my arrival. However, as the appellant and his agent were still available, I carried out the visit on an access required basis.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant the LDCs was well-founded.

Reasons

6. The appeals relate to two adjoining units, The Studio and The Workshop, which comprise the property at 9 Green Street. In 2018, the appellant submitted prior approval applications in respect of The Studio and the Workshop for the change of use from industrial to residential under Class PA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
7. In respect of The Studio, the Council sent two invalidation letters (refs: 18/00802/FUL and 18/00802/B56), both stating that insufficient information had been received. In respect of The Workshop, the Council sent one invalidation letter (ref: 18/01519/B56) similarly stating that insufficient information had been received.
8. Following the expiry of 56 days, and in the absence of any communication from the Council to say that the applications had been refused, the appellant took the view that he had discharged the onus to prove that the proposals were permitted development. In light of this position, he then submitted an LDC application for each of the units to confirm that the proposals were lawful and could proceed. The Council refused both the LDC applications on the grounds that the prior approval applications had not been validated, and so no deemed permission existed for either unit.
9. As stated above, the relevant permitted development in this case is Class PA, which is 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 Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule.
10. As the first part of the prior approval process, applications are to be made in accordance with the procedure set out in paragraph W of Part 3. Paragraph W, as amended in 2016, states that the application must be accompanied by (a) a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q, must include any building or other operations; (b) a plan indicating the site and showing the proposed development; and (ba) in relation to development proposed under Classes M, N, O, P, PA and Q, a statement specifying the net increase in dwellinghouses proposed by the development.
11. The statutory period for determination of prior approval applications will not start unless all the required information has been received by the Council. It is therefore necessary to consider whether the Council were correct in their approach to invalidate the applications.
12. Beginning with the third mandatory requirement, the confirmation of the net increase in dwellinghouses proposed by the development is sought under section 5 of the prior approval application forms. In both application forms, these boxes were completed, confirming that the net increase for The Studio and The Workshop units would be one dwelling each. This information was therefore available to the Council.

13. The first mandatory requirement is a written description of the proposed development, which is sought by section 5 of the forms. The Planning Practice Guidance (PPG) states that an application needs to describe precisely what is being applied for, and not simply the use class¹. In both the submitted forms, the appellant's response referred to the information in the covering letters.
14. In their email of 4 February 2019 to the appellant, the Council stated that the covering letters supplied no description of the proposed developments over and above the description of the application type. Specifically, they were concerned that the covering letters gave no detail about the C3 use and what types of dwelling house were being proposed i.e. how many bedrooms etc.
15. The development is indicated in each covering letter as a change of use from light industrial (B1(c) to 'dwellinghouses (C3)' or 'use falling within Class C3'. Descriptions are given of the existing premises, and a number of criteria within the GPDO are addressed. However, there is little written description of the development other than the reference to the use classes, which in my view falls short of the mandatory requirement, particularly in light of the PPG advice.
16. With regard to the second mandatory requirement to provide a plan showing the proposed development, only existing floor plans were provided with the prior approval applications. These were labelled 'Ground Floor Plan As Built' and 'First Floor Plan As Built'. Red outlines are shown on the plans which appear to correspond to the written descriptions of the existing units given in the covering letters. However, there is no key given for the red outlines, and so it is difficult to be certain about what is being proposed. Therefore, the plans cannot reasonably be said to 'show the proposed development' so as to satisfy the second mandatory requirement. Although proposed plans have since been produced, they do not appear to have been available to the Council within the prior approval submissions.
17. In the invalidation letters, the Council requested additional information, including existing and proposed floorplans and elevations at a scale of 1:100 or 1:50. They also sought a block plan showing details of car parking, cycle parking, amenity space and refuse storage. However, these requests went beyond the initial level of information required by paragraph W.
18. Whilst I acknowledge the Council's concern to know more about the types and sizes of the dwellinghouses proposed, these details do not fall to be considered under Class PA. Instead, highways impact, contamination, flood risk and the importance of the buildings in providing services to industry are the relevant considerations under the second part of the prior approval process.
19. On balance, therefore, although I consider that the Council requested more details than were strictly required for validation, the prior approval applications did not contain enough information to satisfy the first and second mandatory requirements of paragraph W. For that reason, I am satisfied that the Council were correct not to validate the applications.
20. Turning to the LDC appeals, these were both refused on the grounds that the two sites did not benefit from deemed planning permission. As no validation took place, I am satisfied that the statutory prior approval processes were not

¹ Paragraph: 005 Reference ID: 17c-005-20140306

started or completed. Crucially, there has been no opportunity for the proper consideration of potential highways impact, contamination, flood risk, or the importance of the buildings in providing services to industry. That being the case, it has not been demonstrated that the proposed changes of use were lawful at the time of the LDC applications.

Conclusions

21. For the reasons above, I find that the Council's refusal to grant LDCs for the proposed changes of use were well-founded, and so both the appeals are dismissed.

Elaine Gray

INSPECTOR