



Appeal Decision

Site visit made on 11 August 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th August 2020

Appeal Ref: APP/N1920/W/20/3251501

Units 8 and 9 Lismirrane Industrial Estate, Elstree Road, Elstree, Hertfordshire WD6 3EA

- 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 Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Tersley Estates Limited against the decision of Hertsmere Borough Council.
 - The application Ref 20/0124/PD56, dated 7 February 2020, was refused by notice dated 19 March 2020.
 - The development proposed is the change of use of the lower ground, ground, first and second floors from office (Use Class B1a) to 48 Residential Units (Use Class C3).
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal relates to a proposal under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Class O permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule of the Use Classes Order¹ to a use falling within Class C3 (dwellinghouses) of that Schedule.
3. For development to be permitted by Class O, it must satisfy limitations set out at paragraph O.1, and conditions at paragraph O.2. The Council consider that the limitation at O.1 (b) would not be satisfied. This specifies that development is not permitted if the building was not used for a use falling within Class B1(a) (offices) on 29th May 2013, 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.
4. On 26 April 2019, the Council made a Direction under Article 4(1) of the GPDO which came into effect on 27 April 2020. In summary, the Direction provides that from that date, a change of use from Class B1(a) (offices) to Class C3 (dwellinghouses) shall cease to qualify as permitted development within a number of employment areas and sites within the borough. These areas include the Lismirrane Industrial Park, Elstree within which the appeal site is located.
5. The Article 4 Direction took effect after the Council determined the application and the appeal was made. However, I must determine the appeal with regard to the background which is now in place. The main parties are aware of the

¹ The Town and Country Planning (Use Classes) Order 1987

Direction and have been able to comment on its relevance, and I consider that no injustice is caused by the change in circumstances.

6. The main issues are therefore whether or not the proposal constitutes permitted development under Schedule 2, Part 3, Class O of the GPDO, with particular regard to:
 - i) the Article 4 Direction; and if it does,
 - ii) whether or not the limitation at O.1 (b) is satisfied with regard to the use of the appeal building.

Reasons

7. Paragraph O.2 of the GPDO states that development under Class O is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval will be required with respect to a number of specified matters.
8. Article 4(2) of the GPDO sets out that an Article 4 Direction does not affect the carrying out of certain development, including that permitted by any Class in Schedule 2 where the prior approval date occurs before the date on which the Direction comes into force. In this case, the appellant sought prior approval before the Direction came into force, but prior approval was not given.
9. I must take account of such legal restrictions that are in force at the time of my decision and determine the appeal in accordance with the legal framework and material planning circumstances prevailing at the current time.
10. I have noted the appellant's view that the appeal should be assessed against the law prevailing at the time the application was submitted and reference to amendments made by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 ('the Regulations'). Some provisions within the Regulations, including relating to the provision of adequate natural light in all habitable rooms for proposed changes of use under Class O, are not applicable to proposals where an application for prior approval was submitted before 1 August 2020. However, this reflects the operation of transitional provisions which are specifically outlined at Regulation 27. These changes do not therefore offer a direct parallel or comparison for the coming into force of the Article 4 Direction.
11. I recognise that the appellant submitted both the application and the appeal prior to the Direction coming into force, but I therefore see no reason to depart from my view that it is the date of determination of the appeal which is key
12. As the Direction is in effect and removes permitted development rights conferred by Class O from the appeal site, prior approval cannot be given as the site no longer benefits from permitted development rights for the relevant change of use. I therefore conclude that the proposal does not constitute permitted development under Schedule 2, Part 3, Class O of the GPDO, and planning permission would be required for the development.
13. I have had regard to the Council's reason for refusal of the application for prior approval and the evidence of both main parties in relation to this matter, and was able to view the building internally at my visit. However, the proposal is not permitted development. It is not therefore necessary for me to examine further whether or not it would satisfy the limitations set out at paragraph O.1

with regard to the use of the building because this could not alter my conclusion as to whether the appeal scheme constitutes permitted development.

Conclusion

14. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR