



Appeal Decision

Site visit made on 12 October 2020

by Sian Griffiths BSc(Hons) DipTP MScRealEst MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 04 November 2020.

Appeal Ref: APP/R5510/D/20/3248339

3c High Road, Eastcote HA5 2EN

- 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 O of the Town and Country Planning (General Permitted Development) Order (England) 2015 (as amended) (GPDO).
 - The appeal is made by Mr Johan Viljoen against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 39393/APP/2019/2530, dated 25 October 2019, was refused by notice dated 31 December 2019.
 - The development proposed is conversion of office building into two x 1 bed residential flats with associated internal alterations.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Class O of the GPDO permits development consisting of a change of use of an office under use class B1(a) to a dwelling, including any building operations reasonably necessary to convert the building.
3. There are a number of circumstances where such development is not permitted, which are listed in Paragraph O.1. 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 the prior approval of the authority will be required as to (a) the transport and highways impacts of the development; (b) contamination risks on the site; (c) flooding risks on the site; (d) impacts of noise from commercial premises on the intended occupiers of the development, and (e) the provision of adequate natural light in all habitable rooms of the dwellings.
4. Having regard to the refusal reasons, I consider the main issues to be as follows:
 - Whether the proposal would be permitted development under the provisions of Class O of the GPDO, with particular regard to whether the appeal site was used solely for an office use under B1(a) on 29 May 2013 (Paragraph O.1 (b)).
 - Whether the proposed development would result in harm to living conditions to future occupiers as a result of noise from adjacent uses,

- Whether there would be any contamination risk, and
- Whether the proposed development would result in an increase in flood risk elsewhere.

Reasons

Whether the proposal would be permitted development under Class O

5. The appeal site is located to the rear of a small shopping parade. Adjacent to the site is a dental surgery and hand car wash facility (the appellant also describes this as a garage). The building is single storey and situated at the end of a short single-track driveway which also provides pedestrian access to the rear of the dental surgery, where there is a second doorway. Both buildings are linked by a single pitched obscure glazed overhanging roof, which acts as a porch to the main door of the appeal site.
6. It appears that the details the appellant sought to provide in relation to the previous use would have been included at paragraph 17 of their appeal statement, but much of the information they seek to provide is clearly missing. The council state that the business rates being paid for the unit relate to a 'workshop' use.
7. At the site visit, I observed the building being apparently used as storage for the adjacent dental surgery. The building comprises two main rooms (one of which has a roller shutter door), both of which were being used for storage, together with a room to the rear which appeared to be fitted with a laboratory-style bench, extraction unit and sink and what appeared to be a separate staff kitchen and toilet also to the rear.
8. Nevertheless, whilst the observations I have made do not in itself demonstrate that the building was not last in office use, in light of the lack of any substantive information submitted by the appellant, I am not satisfied that the building was in office use on 29 May 2013.
9. I therefore conclude that the proposals are not permitted development under Class O.1(b).

Whether the proposal would result in harm to living conditions of future occupiers

10. I note the appellants contention that the adjacent garage operates Monday to Friday and 'presumably' on occasional weekends, but no evidence has been submitted to substantiate this. I also note that the appellant states that no noise complaints have been made to the Environmental Health team at the council in relation to these uses.
11. However, the appellant has not submitted an acoustic report to support their view that there would be no harm associated with noise emanating from existing businesses and I am therefore unable to conclude that the proposals would not harm the living conditions of future occupiers.
12. Part 3, Class W of the GPDO sets out the procedure for prior approval applications under Part 3. Paragraph W.10(b) requires the decision-maker to 'have regard to the National Planning Policy Framework... so far as relevant to the subject of the prior approval, as if the application were a planning

application'. In addition, paragraph 127 (f) of the Framework requires proposals to offer a high standard of amenity for existing and future users.

13. Further, paragraph 170 (e) of the Framework requires that development should not contribute to, or be put at an unacceptable risk from, or be adversely affected by (amongst other things) noise pollution.
14. It is possible for a commercial use to be able to rely on mechanical ventilation during a normal working day, but it would not be unreasonable to expect residential occupiers to want to open their windows during warm weather without being subjected to noise levels in excess of suggested limits.
15. Having regard to the advice in the Framework and the expectation of a good standard of amenity for future occupiers, placing residential development adjacent to noise-generating uses would be unacceptable, without evidence that clearly demonstrates there would be no unacceptable level of harm.
16. I therefore conclude that the proposals would not constitute permitted development under Class O.2 (d).

Whether there would be any contamination risk

17. I have already cited paragraph 170 of the Framework, which also requires that development should not contribute to, or be put at unacceptable risk from, or be adversely affected by soil, air or water pollution.
18. The appellants simply state that there is no known contamination within the appeal site, nor asbestos within the building itself, but this is not supported by any survey work carried out by an appropriately qualified professional.
19. Again, without such supporting information, I am unable to conclude that the development would not potentially pose a risk to future occupiers.
20. I therefore conclude that the proposals would not constitute permitted development under Class O.2 (b).

Whether the proposals would result in an increase in flood risk elsewhere

21. The Framework at paragraph 164 states that '*applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 50*'
22. The Planning Practice Guidance (PPG) at paragraph 049 states that '*to assist local planning authorities in their determination of an application as to whether their prior approval is required for a change of use of agricultural buildings, or a change from office to dwelling houses in an area at risk of flooding, the applicant should provide with their application an assessment of flood risk. This should demonstrate how the flood risks to the development will be managed so that it remains safe through its lifetime.*'
23. The appellants include a flood plain map in their appeal statement showing that the appeal site falls into flood zone 1. I therefore consider that given the nature and scale of the proposals, flood risk is unlikely to materially increase elsewhere, as a result of the proposed development.

24. I do not consider the proposals would be in conflict with policy EM6 (Flood Risk Management) of the Hillingdon Local Plan (2012) which seeks, amongst other things, to locate new development away from flood zones 2 and 3. I therefore consider the proposals would be aligned to Class O.2 (c).

Conclusion

25. I have considered whether the use of planning conditions might address some of the main issues and note the appellant has offered this as a solution. Indeed, the GPDO at Part 3, Paragraph W (13) states that the local planning authority may grant prior approval, subject to conditions reasonably related to the subject matter of the prior approval. However, given the fundamental nature of the matters discussed, I consider that prior approval could not be granted without satisfactory evidence being made available in advance of determination.
26. For the reasons given above, and having regard to all other matters raised, the proposed scheme could not benefit from deemed permission under Schedule 2, Part 1, Class O of the GPDO. I therefore conclude that the appeal should be dismissed.

Sian Griffiths

INSPECTOR