



Appeal Decision

Site visit made on 7 December 2020

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Appeal Ref: APP/N5090/W/19/3243616

105 West Hendon Broadway, London NW9 7BN

- 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 Mr D Azuri of Dartland Properties against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/5651/PNO, dated 18 October 2019, was refused by notice dated 12 December 2019.
 - The development proposed is the conversion of part of the building from (Use Class) B1A to (Use Class) C3, to form 24 apartments.
 - This decision supersedes that issued on 6 April 2020. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of part of the building from (Use Class) B1A to (Use Class) C3, to form 24 apartments at 105 West Hendon Broadway, London NW9 7BN in accordance with the terms of the application Ref 19/5651/PNO, dated 18 October 2019, subject to the conditions listed at Annex A.

Background, Costs and Main Issue

2. The Consent Order dated 10 September 2020 and issued by the High Court quashed the original appeal decision dated 6 April 2020. However, the original costs decision, which is separate to the appeal decision and was not included in the appellant's challenge, remains extant.
3. Following the issuing of the aforementioned Consent Order, the appellant re-submitted their previous costs application. However, as the original costs decision is extant and no new grounds for an award of costs have been raised, there is nothing further to be determined with regard to costs.
4. A prior approval development should not be determined, expressly or otherwise, on the basis of s38 (6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied; the principle of development is established through the grant of permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). I have not, therefore, had determinative regard to the development plan policies referenced by the Council. I have had regard to the

National Planning Policy Framework 2019 (the Framework) in so far as it is relevant to the subject matter of the appeal.

5. The Government has already granted planning permission for the appeal development through the GPDO, subject to specific limitations and conditions. It is not disputed that the proposal would be permitted development with regard to Schedule 2, Part 3, Class O, Paragraph O.1. of the GPDO.
6. Therefore, the main issue is whether the proposal would have an acceptable impact upon the matters listed under Schedule 2, Part 3, Class O, Paragraph O.2.(1) of the GPDO.

Reasons

7. The appeal property is a 2-storey, concrete and glass building with undercroft parking, set back a short distance from the western side of West Hendon Broadway, a dual-carriageway road.
8. The area has a mixed commercial and residential character. There are dwellings located to the rear of the appeal property and on the opposite side of West Hendon Broadway. There is a separate commercial garage adjacent to the appeal building to the southeast.
9. The appeal building itself is currently vacant. A car showroom occupied much of the ground level, with another floor above and an undercroft vehicle parking area beneath. Part of the ground floor, and all of the first floor of the appeal building have a lawful use as class B1A office space¹.
10. The Council has indicated that it has no significant concerns with land contamination risks on the site, given the proposal concerns a conversion of part of an existing building without new ground works; or with flooding risks on the site, which lies within an area of Flood Zone 1 that is not subject to critical drainage problems.
11. Nearby residents have raised concerns regarding increased congestion in West Hendon from the proposal. However, the appellant has submitted a Technical Note that shows that fewer trips would be generated from the proposed use than from the existing lawful use. Car parking provision in the existing undercroft parking area is considered to be satisfactory for a development of this size and the Council considers that the transport and highways impacts of the development would be acceptable, subject to a number of conditions. From the submitted evidence I agree.
12. With regard to the impacts of noise from commercial premises on the intended occupiers of the development, the appellant has submitted an Acoustic Report. This document shows that the primary source of noise in the area is from traffic on West Hendon Broadway, and it is not possible to distinguish noise from nearby commercial premises, such as the garage to the southeast, from the ambient noise of traffic on the road².
13. Noise from traffic on West Hendon Broadway is not a matter to be considered under paragraph O.2.(1)(d), which concerns noise from commercial premises only. Nevertheless, in order to ensure noise levels within the habitable rooms of the proposed dwellings meet the requirements outlined in section 3.0 of the

¹ Under the Town and Country Planning (Use Classes) Order 1987 as amended.

² A11307_01_RP001_1.0 Acoustic Report – Paragraph 6.0

- Acoustic Report, works to 'the façade, glazing and ventilation elements of the building envelope' would be needed³. These works would address noise from all sources, including from nearby commercial premises.
14. I am satisfied that a suitably worded condition could be attached to any grant of prior approval, requiring an appropriate scheme of acoustic attenuation to the building envelope to be submitted to and approved by the Local Planning Authority and implemented prior to first occupation of the proposed development.
 15. It is not clear whether these works to the building envelope would require planning permission. However, this is not a matter that I need to reach a conclusion on. In this case, the permitted development concerns the change of use only, not any associated physical works.
 16. With reference to national Planning Practice Guidance (PPG), *Where associated physical development is required to implement the change of use, developers will need to consider whether it constitutes development and ensure they have planning permission if necessary*⁴.
 17. The Government has recently amended the GPDO, including with regard to Schedule 2, Part 3, Class O, where (e) *the provision of adequate natural light in all habitable rooms of the dwellinghouses* is added to paragraph O.2.(1). From the evidence, Studios 1, 9, 10 and 20 would not contain external windows to provide for natural light.
 18. However, with regard to the *Transitional and savings provisions* contained at Regulation 27 of the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020, which amended the GPDO as set out above, this is not a matter that I can consider in the determination of this appeal.
 19. Residents of the adjacent housing estate to the west of the appeal site have objected to the Prior Approval including on the grounds of overlooking, disturbance from the future occupiers and loss of privacy. Again, with reference to paragraph O.2.(1) of Class O, these are not matters that I can consider in the determination of this appeal.
 20. For these reasons the proposal would not have an unacceptable impact upon the matters listed under Schedule 2, Part 3, Class O, Paragraph O.2.(1) of the GPDO.

Conditions and Conclusion

21. The requirements of Section 100ZA(5) of the Town and Country Planning Act 1990 (the Act), concerning pre-commencement conditions, do not apply to Prior Approvals. This is because Prior Approvals do not result in a grant of planning permission on an application under Part 1 of the Act, but through the operation of Article 3(1) of the GPDO.
22. Development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date⁵.

³ A11307_01_RP001_1.0 Acoustic Report - Paragraph 5.0

⁴ PPG Paragraph: 055 Reference ID: 13-055-20140306 Revision date: 06 03 2014

⁵ Schedule 2, Part 3, Class O, Paragraph O.2.(2) of the GPDO.

23. The Council has suggested a number of further conditions be attached to the grant of Prior Approval, were the appeal to be allowed, which the appellant has commented upon. I have had regard to both of these submissions as well as to Government guidance, in the wording of the conditions listed at Annex A.
24. A condition specifying the approved drawings and documents would be necessary for reasons of certainty.
25. Conditions requiring the approval and implementation of details of cycle and refuse storage areas, and the layout of the vehicle parking and turning areas within the undercroft car park, would be necessary to protect the living conditions of future occupiers.
26. A condition requiring the approval and adherence to a Construction Method Statement would be necessary to protect the living conditions of nearby occupiers, development workers and in the interests of highway safety.
27. A condition requiring the approval and implementation of noise attenuation works would be necessary to protect the living conditions of future occupiers.
28. For the reasons given above, I conclude that the appeal is allowed.

Andrew Parkin

INSPECTOR

Annex A – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved documents:
PA-1 Basement car park plan; PA-2 Ground floor plan;
PA-3 First floor plan; PA-4 Elevations; LOC-01 Location plan;
A11307_01_RP001_1.0 Acoustic Report.
- 2) Details of cycle parking, including the type of stands, gaps between stands, location and type of cycle store proposed shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, before the development hereby permitted is occupied, long-stay cycle parking spaces in accordance with the London Plan Cycle Parking Standards and London Cycle Design Standards shall be provided and shall not be used for any purpose other than cycle parking in connection with the approved development.
- 3) Details of refuse storage including elevations of the refuse store shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, before the development hereby permitted is occupied, the refuse store shall be implemented in accordance with the approved plans and shall not be used for any purpose other than refuse storage in connection with the approved development.
- 4) Before the development hereby permitted is first occupied, turning areas and parking spaces shall be marked out within the undercroft parking area, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. That area shall not thereafter be used for any purpose other than the parking and turning of vehicles in connection with the approved development.
- 5) No demolition, construction or preparatory works shall take place on site, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The Construction Method Statement shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoardings;
 - measures to control the emission of dust, dirt and noise, during construction;
 - a scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 - delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) a) No development shall take place until a scheme of noise attenuation measures against nearby commercial noise, consistent with the A11307_01_RP001_1.0 Acoustic Report, has been submitted to and approved in writing by the Local Planning Authority.

b) The attenuation measures approved under this condition shall be implemented in their entirety prior to the first occupation of the development and retained as such thereafter.