The Planning Inspectorate

Appeal Decision

Site Visit made on 5 January 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2021

Appeal Ref: APP/Q5300/W/20/3256688
169A Hertford Road, Edmonton, N9 7EL

- 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 (General Permitted Development) (England) Order 2015.
- The appeal is made by Hillcrest Properties against the decision of the Council of the London Borough of Enfield.
- The application Ref 20/01064/PRJ, dated 30 March 2020, was refused by notice dated 26 May 2020.
- The development proposed is described as 'change of use from office to residential'.

Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) for the change of use of part ground floor office (B1) to 1 self-contained flat (C3) at 169A Hertford Road, Edmonton, N9 7EL in accordance with the terms of the application, Ref 20/01064/PRJ, dated 30 March 2020, and the details submitted with it pursuant to Schedule 2, Part 3 Class O of the GPDO, subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the following approved plans:1454_300 Location Plan; 1454_312 Existing and Proposed Plans; 1434_301 Proposed Site Plan.

    2) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 1454_301 for 2 bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles for the occupiers of the hereby approved dwelling.

    3) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 1454_301 for the storage of refuse and that space shall thereafter be kept available for the use of the occupiers of the hereby approved dwelling for the storage of refuse.

    4) No dwelling shall be occupied until the results of a sound insulation test has been submitted to and approved in writing by the Local Planning Authority demonstrating that the airborne sound attenuation of the wall between the dwelling and workshop has a minimum sound reduction of 50 DnTw + Ctr. The sound insulation works shall be completed before the building is occupied and retained thereafter.

Application for costs

2. An application for costs was made by Hillcrest Properties against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form the description has been changed to the one that the Council used to deal with the proposal. I consider that the subsequent description to be usefully more precise and I have therefore used it within this decision.

4. As part of the appeal the appellant has submitted an updated floor plan (1454_312) which was to correct an error. I have considered this plan as part of the appeal as I consider that this change would not materially alter the nature of the application and would not prejudice the interests of interested parties. The Council have had the opportunity to comment on the revised plan as part of the appeal.

Background and Main Issues

5. Schedule 2, Part 3, Class O of the GPDO sets out that 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), to a use falling within Class C3 (dwelling houses) is permitted subject to various limitations and conditions.

6. Under the provisions of the GPDO, development is permitted under Part 3, Schedule 2, Class O subject to Condition O.2(1) 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 range of potential issues. In this case, it relates to the transport and highway impacts of the proposed development and impacts of noise from commercial premises on the intended occupiers of the development.

7. Having regard to the GPDO and the reasons for refusal for the Prior Approval, the main issues are:

    - whether the proposal is permitted development under Schedule 2, Part 3, Class O of the GPDO, with particular reference to whether the appeal premises was in an office use under Class B1(a) on the 29 May 2013; and if so, whether the proposal would be acceptable with reference to the following;

    - the transport and highway impacts of the development; and
    - the impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

8. Schedule 2, Part 3, Class O of the GPDO sets out that 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), to a use falling within Class C3 (dwelling houses) is permitted subject to various limitations and conditions.

9. One of those limitations, at paragraph O.1.(b), is that development is not permitted if the building was not used for a use falling within Class B1(a) (offices) on 29 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.

10. There is no record of planning permission having been granted for the use of the appeal premises as a B1(a) office. However, in establishing the use on the relevant date for the purposes of Class O, the appellant does not need to prove matters beyond reasonable doubt and the appellant's own evidence does not need to be corroborated by independent evidence to be accepted. Nor is it essential for the appellant to submit a lawful development certificate.

11. Instead, the assessment turns on the balance of probability based on the facts. Thus, if the Council has no evidence of their own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to accept it. This should not however, be interpreted as an unqualified requirement to accept the evidence presented. Instead, the evidence still has to be sufficiently precise and unambiguous and should therefore be scrutinised accordingly.

12. The appeal site comprises a ground floor unit, attached to an existing workshop with residential accommodation in the form of self contained flats above. The planning history indicates that in 1993 the ground floor was in use as a builders workshop and office and I have not been provided with any evidence to suggest that there have been any intervening uses between 1993 and 2013.

13. I have been provided with evidence which shows that the appeal property was valued for the purposes of Business Rates with an element of office use. Moreover, the appellants evidence also consists of a Statutory Declaration which states that the building has been used as offices since May 2012 by a company that designs signs and art work.

14. The Councils evidence is limited and relies heavily upon the need for a Certificate of Lawfulness. They have also undertaken an internet search for the company Maison Furniture Ltd, which they understand to be a furniture showroom. However, the director of this company provided the statutory declaration and operate the workshop which adjoins the office and they used the office for admin and accounts, but the declaration confirms that the offices were rented out from May 2012 to a separate company. Therefore, the business operation of Maison Furniture is not directly relevant to the use of the building on the specified date. Representations have also been received which suggest that the Sign and Print business is operating as a shop. However, there is no further evidence to confirm this point.

15. Having regard to the evidence submitted by both parties, I find that the information contained in the appellant's submitted declaration is clear and unambiguous. This evidence is not seriously undermined by the wider evidence such that it reasonably demonstrates that on the balance of probabilities, the property was lawfully in use as a B1(a) (office) on 29 May 2013. In principle therefore, permitted development rights apply to the building allowing its residential conversion.

Transport and Highway Matters

16. Paragraph O.2 states that development under Class O is permitted subject to an assessment of certain specified requirements, including at Paragraph O.2 (a) the transport and highway impacts of the development. The site has a Public Transport Accessibility Level (PTAL) rating of 4, which indicates good access to frequent public transport services and the submitted transport statement indicates that no parking will be provided as part of the proposal.

17. I note that the proposed site plan does indicate a parking space on land within the appellant's ownership, however I have considered the appeal on the basis that future occupiers of the proposed development would not have access to an off-road parking space. I did not witness any parking problems at the time of my visit, noting that this was during the day, and that demand for parking is likely to be greater during the evening and weekends. However, I did note that it was possible to park directly outside of the site and along Bury Road and therefore on-street parking was available.

18. The sites good PTAL rating is a strong indication that it is well related to services and facilities and public transport. Thus, the future occupiers of the proposed dwelling would have options other than the private motor car. Therefore, in this instance the lack of on-site parking would be acceptable provided that appropriate cycle parking was provided.

19. The appellant's transport statement indicates that 2 secure and dedicated cycle parking spaces will be provided, but the plans attached to the statement include the wider site which is not part of the appeal site. These are shown on drawing no 1454_301 but not within the red line of the appeal site, but on land edged blue that is adjacent to the appeal site and shown as within the appellant's ownership.

20. Pursuant to section 72(1) of the Town and Country Planning Act 1990 (TCPA), conditions may be imposed for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission. These sections provide the power to impose conditions on land within the red and blue line land.

21. Therefore, I am satisfied that the required secure cycle spaces can be provided on land within the appellant's control and therefore secured by condition to ensure they remain available for the lifetime of the development. In addition, the appellant has indicated within their appeal statement that they would be willing to accept such a condition.

22. In conclusion, noting the scale of the dwelling proposed and the proximity of the site to public transport options, I consider the lack of on-site parking would not be detrimental to highway or pedestrian safety and adequate cycle storage can be provided within land within the appellants control.

23. Paragraph 102 of the National Planning Policy Framework (the Framework) requires development proposals to take opportunities to promote walking, cycling and public transport use and at paragraph 104 d that planning policies should support facilities such as cycle parking. Therefore, I consider that the development would accord with the provisions of the Framework, which promotes sustainable transport.

24. The development would also accord with Policy CP25 of The Enfield Plan Core Strategy 2010-2025 adopted November 2010 (CS) which requires safe, convenient and accessible routes for pedestrians, cyclists and other non-motorised modes. It is also in accordance with Policy DMD45 of the Improving Enfield Development Management Document 2014 (DMD) which requires new development to be considered against agreed standards in the London Plan for car parking and make adequate provision for cyclists.

25. Therefore, none of the matters set out at Paragraph O.2 (a) in the context of this appeal indicate that prior approval should be withheld

Noise and Disturbance

26. The requirements of the GPDO at O.2(1)(d) set out that the developer must apply for a determination as to whether the prior approval of the authority will be required as to impacts of noise from commercial premises on the intended occupiers of the development.

27. The appellant has indicated that the adjacent workshop, which has a light industrial use, is occupied by a specialist repair company which deals with bespoke antique and custom made furniture and the Council has not disputed this. The surrounding residential development, including the existing flats on the upper floors, have a similar relationship to the appeal premises as that now proposed. The existing flats will already place considerable restraints on the operation of the repair company in order to protect existing residents from noise and disturbance. This situation will endure for future residents of the proposed dwelling. Moreover, I have also not been provided with any evidence to suggest that the uses within the workshop are particularly noisy or have proved unsatisfactory to existing residents.

28. Any residual impact from noise could be mitigated by incorporating sound attenuation measures between the two buildings and I am satisfied that such detail could be agreed through the imposition of a planning condition that requires the submission and approval of an appropriate scheme of noise mitigation.

29. Therefore the development would provide suitable living conditions for future occupiers with particular regard to noise and disturbance in accordance with Policy CP32 of the CS which seeks to ensure that noise is minimised and Policy DMD68 of the DMD which states that development must be designed to reduce exposure to noise.

30. Therefore, none of the matters set out at Paragraph O.2 (d) in the context of this appeal indicate that prior approval should be withheld.

Other Matters

31. The Council's decision notice includes a reason for refusal which references a lack of refuse and recycling facilities, however the developer is not required to apply to the Local Planning Authority for a determination as to whether prior approval of the authority will be required as to impacts of storage and handling of waste in relation to the development.

Conditions

32. Paragraph O.2(2) of the GPDO specifies that development under Class O must be completed within a period of 3 years starting with the prior approval date, so it is not necessary or reasonable to impose a separate time limit.

33. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. To ensure certainty and clarity, it is necessary to impose a condition setting out the approved plans.

34. In order to ensure an appropriate level of secure cycle parking provision, I have imposed a condition requiring the cycle parking spaces to be provided prior to occupation of the dwelling and retained for the life of the development.

35. I have also imposed a condition requiring details of refuse and recycling, as although this is not directly related to the subject matter of the prior approval, I consider that this is necessary to ensure that bins are not stored in a manner which could be detrimental to highway safety which is a relevant subject matter.

36. In order to ensure any residual impact from noise is mitigated for future occupiers, I have found it necessary to impose a planning condition that requires the submission and approval of an appropriate scheme of noise mitigation.

Conclusion

37. For the reasons set out above, I conclude that the appeal should be allowed and prior approval is granted.

G Pannell

INSPECTOR