



Appeal Decision

Site visit made on 9 March 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2021

Appeal Ref: APP/R5510/W/20/3264423

71-73 Frays Court, Cowley Road, Uxbridge, Middlesex UB8 2AE

- 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 20, Class AA, Paragraph AA.2.(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Westcombe Group against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 13010/APP/2020/2853, dated 2 September 2020, was refused by notice dated 5 November 2020.
 - The development proposed is described as 'construction of two additional storeys of new dwellinghouses to provide 11 residential units (Class AA 'New dwellinghouses on detached buildings in commercial or mixed use', Part 20, of Schedule 2 of the GPDO, Prior Approval Application)'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Class AA of Part 20, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits new dwellinghouses on detached buildings in commercial or mixed use.
3. Class AA has been amended by The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 4) Order 2020. However, it states that the amendment does not take effect where a prior approval application is submitted before 30 December 2020. Therefore, the amendment does not apply in this case.
4. The Council contends that the development would fail to accord with the provisions of Class AA. In addition, paragraph AA.2.(1) of Class AA sets out that developers must apply for prior approval as to a range of matters. The Council refused to grant approval in respect of matters relating to the external appearance of the building, loss of light to neighbouring premises and transport and highway impacts.

Main Issue

5. The main issue is whether or not the development would accord with the provisions of Class AA.

Reasons

6. The site relates to a vacant building that comprises a maximum of 4 storeys including an undercroft parking and servicing area at lower ground floor level. The building features a mansard style roof with dormer windows, with the topmost storey at second floor level located within the roof space. The appellant puts forward that the building was last in use as an office. In 2020 the Council granted prior approval¹ to convert the building into residential accommodation (the approved scheme).
7. The appellant seeks prior approval for the construction of additional storeys to the building to create residential accommodation. The Council considers that the proposal falls outside the limitations of paragraph AA.(1) of Class AA. In addition, it is claimed that the approved scheme has already been implemented. Consequently, the Council argues that the building is no longer in lawful use as an office and thus the proposal conflicts with paragraph AA.(2).
8. Paragraph AA.(1) permits '*development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building*'. The proposal would require the removal of the roof and the construction of walls in order to rebuild the second floor, which would constitute works to, rather than immediately above, the topmost storey of the building. Consequently, the proposal falls outside the limitations of paragraph AA.(1).
9. I note that paragraph AA.(1)(a) provides for engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses. However, the effect of paragraph AA.1.(j) is to narrow the engineering operations permitted to only the strengthening of existing walls and foundations and the installation and replacement of services. As such, the rebuilding of the second floor would not constitute engineering operations for the purposes of paragraph AA.(1)(a).
10. The appellant contends that such an interpretation of Class AA would prevent a significant proportion of development coming forward because an upward extension to any building would require the removal of the roof and partial rebuilding of the top level of the building. However, that would not necessarily be the case for buildings where the topmost storey is not within the roof space. In any event, the appeal proposal would include works that would not be immediately above the topmost storey and is not permitted development.
11. The existing floor plans indicate that the building has a generally open plan layout, whereas the proposed ground to second floor plans and the drawings for the approved scheme show that walls would be inserted in order to create flats. When I visited, internal construction work had been undertaken. Walls had been constructed at ground and first floor level and electric wiring had been partly installed. However, no plumbing had been fitted and no part of the building was suitable for human occupation. Based on what I have read and seen and as a matter of fact and degree, the building is not currently in residential use. Moreover, there is no evidence to suggest that the building could not be used as offices once the work is completed. The proposal does not conflict with paragraph AA.(2) as a result.

¹ Council Ref 13010/APP/2020/1006; granted under the provisions of Class O of Part 3, Schedule 2 of the GPDO

12. Nevertheless, the development would fall outside the limitations of paragraph AA.(1) and thus the provisions of Class AA. The proposal does not constitute permitted development as a result. Consequently, there is no need for me to consider the prior approval matters set out by paragraph AA.2.(1), as this would not alter the outcome of the appeal.

Conclusion

13. For the above reasons the appeal is dismissed.

Mark Philpott

INSPECTOR