The Planning Inspectorate

Appeal Decision

Site Visit made on 17 March 2021

by Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2021

Appeal Ref: APP/T5720/W/20/3256829
Wandle House, 10 Riverside Drive, London, CR4 8BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Sintl Ltd against the decision of London Borough of Merton.
- The application Ref 20/P1495, dated 19 May 2020, was refused by notice dated 28 July 2020.The development proposed is Determination as to whether the prior approval of the local planning authority is required under condition O.2 and the process set out in paragraph W of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015.

Decision

1. The appeal is dismissed.

Background

2. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grants planning permission for certain classes of development, described as permitted development. To amount to permitted development, it is necessary for proposals to accord fully with the limitations relevant to the development concerned, as set out in the Order. Having regard to the Council's reason for refusal, it will first be necessary to consider whether or not the proposal would meet the relevant criteria for permitted development. If so, it will then be necessary to assess the potential impacts of the proposal. In considering an application for prior approval under Schedule 3, Class O of Schedule 2, the GPDO sets out that there are permitted development rights enabling offices to be converted to residential use:

> "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 to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule."

3. However, development is not permitted by Class O if, amongst other things, the building is a listed building or is within the curtilage of a listed building. It is on the basis of the second limitation that the main issue arises in this appeal.

Reasons

4. Wandle House was first listed in 1954 as a building of special historic or architectural interest according to the Council. The house is a large Palladian-style villa dating from the 1790s and stands within its own relatively extensive grounds. From the evidence, it appears that the property was extended during the nineteenth century although this element was replaced by the present four-storey office building occupying a similar footprint in around 1963.

This building survives as an office building and is attached to Wandle House with connections to each floor via a glazed stairwell link. Wandle House itself is used in part as offices with a warden/caretaker's accommodation. A narrow shrubbed area forms a postage-stamped landscaped area to the rear of the listed building but otherwise the remainder of the land is devoted to a car park associated with the office complex.

5. A revised listed building description was included in the register of listed buildings by the Secretary of State in 2020, which removed reference to the modern office block and glazed link and which followed the granting of planning permission and listed building consent in 2019 for the removal of the glazed link and conversion of Wandle House to flats and storage together with an external staircase. These consents have not been implemented. The Council believes that because of this, the curtilage to the listed building would comprise the extensive grounds, including the office structure and glazed link.

6. The issue is whether the four-storey office building and glazed link falls within the curtilage of the listed building. Both parties draw attention to a number of Court judgements to aid their respective positions. The appellant points out that there is no definition of curtilage in the GPDO other than in the case of agricultural buildings, which is not relevant to this appeal. In the most recent decision of the Courts, Mrs Justice Lieven[1] having regard to previous relevant judgments on the subject of curtilage, sets out that the extent of the curtilage of a building is a matter of fact and degree and drew attention to three factors that must be considered. These involve the physical layout; the ownership, past and present; and, the use or function of the land, past and present.

7. From my site visit, I observed that Wandle House and the adjoining building sit within a shared space that appears not to have changed substantially for many years. This shared space is extensive, is used primarily as car parking for the offices and is enclosed by walls, fences and trees. Although there are a few rather poor overgrown shrubs to the rear of Wandle House, it appears to me that the purpose of this was to landscape the entrance to the building and does not define any boundary as such. Similarly, from my inspection, the size of the site as a whole would have been commensurate with and proportional to the size and former importance of Wandle House.

8. The buildings remain attached and I agree with the Council that although the revised listing removed reference to the glazed link in the description, the two buildings cannot reasonably be viewed on their own and form part of the same curtilage. The Courts have held that for a structure or building within the curtilage of a listed building to be part of a listed building it must be ancillary to the principal building, that it must have served the purposes of the principal building at the date of listing in a necessary or reasonably useful way and must not be historically an independent building.

9. It is clear to me that the purpose of the four-storey building was to expand the office use at Wandle House. Despite its substantial size, it also appears to me that the office structure was designed to function as an ancillary building and has clearly served the purpose of offices in a necessary and reasonably useful way in connection with the listed building since its construction. There is no indication that the larger building has at any time been used as an independent

[1] Challenge Fencing Limited v Secretary of State for Housing Communities and Local Government [2019] EWHC 553 (Admin)

building while single ownership has been consistent throughout. The buildings continue to function together within the curtilage of Wandle House and there remains a clear functional link between the land that remains and the listed building.

10. The appellant's arguments that the larger office block cannot be deemed to be subservient to the listed building on account of its size is irrelevant given the ownership both historically and at the time of its listing. The later re-listing does not alter the fact the buildings continue to be physically linked and are not viewed in isolation but rather form a setting together. Part of the original curtilage to Wandle House has been reduced and replaced by modern housing with their own curtilages and separate amenities, landscaping, access and ownership. However, this is quite unlike the shared relationship, shared association and shared ownership that exist at the appeal site.

11. Accordingly, for these reasons, the development proposed would not meet the limitations of Paragraph O.1(f) and, as such, I conclude that the proposal is not permitted development under the provisions of Schedule 3, Class O of Schedule 2 of the GPDO. Consequently, the proposal is development for which an application for planning permission is required. Such an application would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions of the Order. As I have found that the proposal falls outside the limitations of permitted development, it is not necessary to make a determination on the matters for prior approval.

Conclusion

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

Gareth W Thomas

INSPECTOR