
Appeal Decisions

Site visit made on 13 April 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2021

Appeal A Ref: APP/Q5300/W/20/3260507

Blackhorse Tower, Holbrook House and Churchwood House, 116 Cockfosters Road EN4 0DY

- 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 A Ward (Chase New Homes Limited) against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/02032/PRJ, dated 30 June 2020, was refused by notice dated 27 August 2020.
 - The development proposed is described as 'Change of use from offices (B1(a)) to residential (C3) to provide 200 residential units within the buildings of Blackhorse Tower, Holbrook House And Churchwood House, 116 Cockfosters Road and land within its curtilage for associated use'.
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Appeal B Ref: APP/Q5300/W/20/3265561

Blackhorse Tower, Holbrook House and Churchwood House, 116 Cockfosters Road EN4 0DY

- 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 A Ward (Chase New Homes Limited) against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/03017/PRJ, dated 17 September 2020, was refused by notice dated 13 November 2020.
 - The development proposed was originally described as 'Change of use from offices (B1(a)) to residential (C3) to provide 197 residential units within the buildings of Blackhorse Tower, Holbrook House And Churchwood House, 116 Cockfosters Road and land within its curtilage for associated use. All habitable rooms will be furnished with large windows on the external facade to ensure the provision of adequate natural light'.
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Decisions

1. Appeal A is dismissed.
2. Appeal B 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 change of use from offices (B1(a)) to residential (C3) to provide 197 residential units within the property and land within its curtilage for associated use together with 148 car parking spaces at Blackhorse Tower, Holbrook House and Churchwood House, 116 Cockfosters Road EN4 0DY in accordance with the terms of the

application Ref 20/03017/PRJ, dated 17 September 2020, pursuant to the above Order and subject to the following conditions:

- 1) Prior to first occupation of the development, the measures to reduce exposure to noise for the occupiers of the residential units specified at paragraph 4.17 of the Noise Assessment by Cass Allen, reference RP01-20326, dated 9 September 2020, shall be undertaken and retained in that form thereafter.
- 2) Prior to first occupation of the development, cycle parking and refuse storage shall be provided within the site in accordance with the details provided in the application and retained in that form thereafter.

Applications for costs

3. Applications for costs have been made by Mr A Ward (Chase New Homes Limited) against the Council of the London Borough of Enfield in respect of both appeals. These are the subject of separate decisions on a single letter.

Procedural Matters

4. The descriptions of the developments in the above headings have been taken from the application forms. However, for the formal decision for Appeal B, I have used the description as set out in the appellant's evidence, which omits the site's location and references to light provision, for concision.
5. The London Plan 2021 (LP) was published during the appeals processes. Both main parties were able to comment on any implications arising from this during the processes.
6. The Town and Country Planning (Use Classes) Order 1987 (the UCO) has been amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The latter provides that any references in the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) to uses or use classes specified in the UCO are to be read until 31 July 2021 as if those references were to the uses or use classes which applied on 31 August 2020. This letter should be interpreted accordingly.
7. Class O of Part 3, Schedule 2 of the GPDO permits 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 (dwellinghouses) subject to various conditions, limitations and restrictions.
8. The GPDO has also been amended by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020. Amongst other things, it requires that the developer apply for a determination as to the provision of adequate natural light. However, it features transitional provisions. The implications of these are that Class O continues to have effect as if the amendments had not been made for the Appeal A scheme, but not the Appeal B one. The Council considered light provision in the officer's report for the Appeal B scheme and therefore I am satisfied that it was cognisant of the amendments when it made its decision. Further amendments to the GPDO have been made by legislation; however, these are not relevant due to the transitional provisions therein.

9. The proposals involve the provision of mitigation measures to address noise impacts from commercial premises on the intended occupiers of the site. The Council contends that the Appeal A scheme would fail to be permitted as the mitigation measures involve external works that fall outside the scope of development permitted by Class O and thus require permission in their own right. Notwithstanding that prior approval was refused for both schemes in respect of some of the matters set out at paragraph O.2.(1) of Class O, the Council has not argued that the proposals fail to comply with Class O in other respects. I have no compelling reasons to find otherwise and have framed the main issues accordingly.

Main Issues

10. The main issues in respect of Appeal A are: (i) whether or not the proposed external works are permitted under the provisions of Class O and the impacts of noise from commercial premises on the intended occupiers of the development; and (ii) the transport and highway impacts of the development.
11. The main issue in respect of Appeal B is the transport and highway impacts of the development. As such, I deal with the transport and highway impacts for both appeals under the same sub-heading below.

Reasons

External works and noise impacts

12. The site comprises 3 interconnected office buildings of varying heights that are adjacent to Cockfosters Road, a car wash and railway lines to Cockfosters Station. It straddles Public Transport Accessibility Level (PTAL) 3 and 4 areas.
13. The appellant undertook noise assessments in support of the proposals. The Council's Environmental Health Officer has not identified any concerns regarding noise and as such I have no reasons to question the findings of the assessments. It is explained that noise levels in the area are generally dictated by transport sources and the car wash would be the only commercial premise that would generate notable noise impacts. In order to mitigate the impacts, a minimum 1.8m acoustic fence is needed along the boundary with the car wash. It is also put forward that the windows of the dwellings facing the car wash should be replaced; however, it states that secondary glazing could be used as an alternative. Mechanical ventilation for those dwellings is also needed.
14. Notwithstanding the Council's position regarding the scope of Class O, it accepts that the noise impacts on the intended occupiers would be acceptable if the mitigation measures could be provided.
15. Paragraph O.2.(1) explains that the provisions of paragraph W of Part 3 of the GPDO apply in respect of the Class O prior approval matters. Paragraph W.(13) sets out that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has referred to an appeal decision¹ that purportedly supports its stance that the noise mitigation measures fall outside the scope of Class O. However, the measures are reasonably related to noise impacts. Moreover, while I have not been provided with full details of that appeal scheme, the appellant has

¹ Appeal reference: APP/N5090/W/19/3243616

shown that the decision was quashed by the High Court. The redetermined appeal was allowed subject to a condition requiring noise mitigation measures.

16. To my mind and having regard to the Planning Practice Guidance (PPG)², whether any external works require permission is a matter for the appellant. In any case, I have no firm or substantive reasons to disagree with the appellant's contention that the fencing could be installed by means of permitted development rights under Class A of Part 2, Schedule 2 of the GPDO. In addition, adequate ventilation and insulation could be achieved internally or without materially affecting the external appearance of the buildings such that separate planning permission would not be required for those measures.
17. I conclude that the proposed external works do not fall outside the scope of Class O. Furthermore, subject to the mitigation measures, the impacts of noise on the intended occupiers of the development would be acceptable for both schemes.

Transport and highway impacts

18. In respect of Appeal A, the Council has issues with the accessibility of the proposed cycle storage. In addition, for both schemes, concerns are raised regarding an overprovision of car parking having regard to development plan policies. In that regard, it has referred to an appeal decision³ which explains that the development plan and national policies are material considerations.
19. Paragraph W.(10)(b) requires that regard must be had to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matters of the prior approval, as if the proposal were a planning application. However, case law⁴ has held that there is no statutory obligation to decide a prior approval application on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004. Development plan policies may be relevant, but only as evidence to support rather than being the basis of planning judgements. Furthermore, the development plan and the Framework must be interpreted through the prism of, and cannot be applied so as to frustrate, the purposes of the GPDO.
20. For the Appeal A scheme, the appellant's transport note sets out that 260 long stay cycle spaces should be provided, so that the proposal would accord with cycle parking standards in the emerging version of the LP, as it was at the time that the application was made. It is not disputed that those standards have not changed since the publication of the LP.
21. The scheme includes 260 cycle spaces. However, these would be provided in a basement accessed through sets of doors, including some less than 1m in width, and down an 'L-shaped' staircase. The stairs are relatively narrow and steep. The appellant states that a ramp would be provided on the staircase; however, no information has been provided as to its design. Based on what I saw during my visit, a ramp would be difficult to use given the characteristics of the staircase. In combination with the number, width and position of the doors en route, access to and from the cycle store with a bicycle would be highly awkward, difficult and inconvenient. This would significantly deter cycle

² Reference ID: 13-055-20140306

³ Appeal reference: APP/Q5300/W/20/3248963

⁴ R (on the application of Patel) v SSCLG & Johal & Wandsworth Borough Council [2016] EWHC 3354 (Admin)

- use by the intended occupiers. Only 7 cycle spaces, which are proposed at ground floor level, would be adequately accessible.
22. I cannot be certain that there would be sufficient space to provide cycle parking in alternate locations around the site without compromising vehicular access and manoeuvring and parking areas. The appellant acknowledges that where cycle parking is for practical purposes inaccessible this may fall within the scope of transport or highway impacts. Whilst the cycle parking standards in the LP are not determinative and the PPG emphasises that prior approval is a 'light-touch' process⁵, I nevertheless consider that the Appeal A scheme would fail to provide an appropriate amount of practicably accessible cycle spaces relative to the number of residential units.
23. On the basis of the maximum car parking standards for PTAL 4 set out by Policy T6.1 of the LP, there would be an overprovision of between 4 and 54 spaces for the Appeal A scheme and between 0 to 50 spaces for the Appeal B one, depending on an assessment of the density and accessibility of the development. Based on the evidence before me, the proposal would be dense and accessible and thus the level of indicative overprovision would be at the upper end of those ranges.
24. However, there would be fewer parking spaces for the dwellings than the existing development, which features 189 spaces. Additionally, the appellant's transport consultants have provided evidence indicating that the residential use would generate fewer daily vehicle trips compared to the office use and result in a reduction of movements during peak hours. The Council has not proffered any firm or substantive evidence which counters the appellant's evidence.
25. The overprovision of car parking indicated by the LP is unlikely to result in an increased demand for on street parking and, even if it did, compelling evidence has not been provided which suggests that such a scenario would result in issues regarding the free flow of traffic, highway safety or other adverse transport and highway impacts.
26. It is advanced that the amount of car parking would fail to prioritise sustainability. However, notwithstanding my findings in respect of cycle storage for the Appeal A scheme, the future occupiers would nevertheless have access to transport options other than cars and uptake of such options is likely as fewer car parking spaces are proposed than are currently on site.
27. In the context of the foregoing, the indicative overprovision of car parking in both schemes would not be significant and the transport and highways impacts arising from that would not be significant either. The Appeal B scheme is thus acceptable in respect of transport and highways impacts.
28. However, the Appeal A scheme would fail to provide adequate cycle parking. This would result in transport impacts in conflict with paragraphs 102 and 108 of the Framework, which require proposals to take opportunities to promote cycling and ensure safe and suitable access is provided. The Appeal A scheme therefore fails to accord with paragraph O.2.(1)(a) of Class O.

⁵ Reference ID: 13-028-20140306

Conditions for Appeal B

29. Paragraph O.2.(2) requires that the development is completed within a period of 3 years starting with the prior approval date. In addition, paragraph W.(12) requires that the development is carried out in accordance with the details provided in the application. An additional condition to require that the proposal accords with the submitted drawings is thus unnecessary.
30. The Council has suggested, and the appellant has agreed to, a condition to require the provision of the noise mitigation measures identified in the noise assessment prior to occupation. This is needed in order to safeguard the living conditions of the future occupiers.
31. The Council has also suggested conditions to require the submission of further details in respect of cycle parking and refuse storage. These are unnecessary due to the requirements of paragraph W.(12); however, a condition to ensure that the parking and storage is provided prior to occupation of the development is needed to ensure that adequate provision is made.
32. Based on the evidence before me and having regard to the status of the development plan, the provision of electric vehicle charging points is unnecessary as it has not been demonstrated that their inclusion is required in order to prevent unacceptable transport and highway impacts.
33. Transport for London has recommended a condition to require the approval of various details such as the method of construction and the location of scaffolding. However, the Council has not suggested that it is imposed and I am not satisfied that it is needed given the limited extent of external work, or that it is directly related to the Class O prior approval matters. Its inclusion is therefore unnecessary.

Conclusions

34. For the above reasons, Appeal A is dismissed and Appeal B is allowed.

Mark Philpott

INSPECTOR