



Appeal Decision

Site visit made on 20 September 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th October 2021

Appeal Ref: APP/X2220/W/21/3268160

Basement, Wellington Lodge, 15 Prince Of Wales Terrace, Deal CT14 7BE

- 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 Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Ms Margaret Dunn against the decision of Dover District Council.
 - The application Ref 20/00634, dated 16 June 2020, was refused by notice dated 7 August 2020.
 - The development proposed is change of use from Office Use (Class B1) to dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, under Schedule 2, Part 3, Class O, require the local planning authority to assess the proposed development on the basis of its impact on transport and highways; contamination risk; flooding risk; noise and adequacy of natural light in all habitable rooms taking into account any representations received. My determination of this appeal has been made on the same basis.

Main Issues

3. I consider the main issues in this appeal to be whether the proposed development would be granted planning permission by Schedule 2, Part 3, Class O and the impact of the proposed development on flood risk and adequacy of natural light in all habitable rooms.

Reasons

Class O.1(b)

4. Paragraph O.1 of Class O sets limitations as to when development is not permitted by Class O. Class O.1(b) indicates that the development would not be permitted if "*the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Uses Classes Order, (i) on 29 May 2013, or (ii) 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 used*".

5. The Council advises that the planning history indicates that the basement has been in D2 use as a snooker club since 1983 and this use ceased in 2016. A planning permission has been granted for the change of use from D2 (snooker club) to A2 (professional and financial services) pursuant to a 2018 planning application (ref DOV/18/01347). It, therefore, appears that the basement floor premises has been in D2 use historically, even if it was not in operation as a snooker club for a number of latter years. Notwithstanding this, this application seeks approval for a different use class to that of D2. Taken collectively, this does not lead me to conclude that the property has been used for B1(a) on or before 29 May 2013.

Flood risk

6. The Planning Practice Guidance (PPG) states that in areas at risk of flooding developers must undertake a site-specific Flood Risk Assessment (FRA) to accompany applications for prior approval. Where change of use would change the vulnerability classification and thus cause an increase in flood risk, the PPG expects the applicant to show in their FRA that users of the development will not be placed in danger from flooding throughout its lifetime.
7. The appellant has provided an FRA advising that the basement flat is protected by a front wall extending around the corner of the building and that the pavement level is at a high point near the building. The sea wall has been sufficient thus far to prevent flood risk. I note also that the beach from Walmer to Sandown Castle has been raised and broadened. It is pointed out that unlike other basement properties along Prince of Wales Terrace, this basement would have two stairway accesses. It is said that there is no record of the basement flooding and the last flood event left the basement unaffected. The appellant and her family have no recollection of the basements of Prince of Wales Terrace flooding in the past 80 years. Indeed, following enquiries the appellant advises that the occupiers of adjacent basements, including the neighbour at number 14, appear to have had no difficulty in obtaining mortgages or standard insurance against flood risk.
8. The prior approval would create a basement dwelling. An objection has been raised by the Environment Agency as the site lies within flood zone 3a, which is land defined by the PPG as having a high probability of flooding. The development is classed as highly vulnerable in accordance with table 2 of the flood zones and flood risk tables of the PPG on flood risk and coastal change. Tables 1 and 3 indicate that this type of development is not compatible with this flood zone. This provides a clear indication that prior approval should not be approved. The FRA provided by the appellant does not clearly indicate that the basement would not be susceptible to flooding in a future flood event given the site is classified as having a high probability of flooding, nor does it identify any measures that would indicate how the flood risk could be mitigated.

Adequacy of natural light in all habitable rooms

9. The plan that supports the prior approval indicates that in relation to bedroom 1 a new window would be reinstated within a blocked up original opening and a new window would be provided for bedroom 2. I saw at my visit that a window has been created relating to proposed bedroom 1 and there was an existing window relating to proposed bedroom 2.

10. Class O does not permit operational development, it only permits change of use. New openings cannot be approved by Class O and, therefore, I cannot take them into account as part of this prior approval appealed application.
11. It appears to me that operational development has taken place relating to the reinstatement of the window relating to bedroom 1, however, as noted, I cannot take this into account as part of the prior approval. Bedrooms are habitable rooms. Considering the prior approval as a change of use only without alterations to the building, this bedroom would not be provided with adequate natural light with the window being blocked up.
12. It appears to me from my visit that the window opening relating to bedroom 2 may be part of the original fabric of the building and that annotation on the plan may indicate that a new window (frame and glazing) is to be installed. On this basis I consider that bedroom would be provided with adequate natural light. However, if this is a new opening, then the same consideration as to bedroom 1 will apply.

Other matters

13. The appellant advises that much time, effort and expense has been put into improving and upgrading the basement and that some of those improvements would increase natural light to the basement. The improvements would also upgrade the appearance of the building and the dwelling would contribute to housing supply in Deal where it is advised there is a shortfall. The Class O prior approval process allows for the change of use from offices to dwellings and sets out an assessment process for such proposals. Such assessment is solely limited to the stated criteria and does not extend to include consideration of those other matters raised by the appellant.

Conclusion

14. I conclude that the requirements of Class of Class O.1(b) have not been demonstrated to have been sufficiently met and that it has not been sufficiently demonstrated that the proposal would be acceptable in respect of flood risk and adequacy of natural light in all habitable rooms. As such, the change of use from office (Use Class B1a) to residential (Use Class C3) of the basement floor does not benefit from Class O permitted development rights.
15. For the reasons given above, the appeal should be dismissed.

Nicola Davies

INSPECTOR