



Appeal Decision

Site Visit made on 13 September 2021

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2021

Appeal Ref: APP/D1780/W/21/3276815

81 Church Road, SOUTHAMPTON, SO19 9FU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a Schedule 2, Part 20, Class ZA of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Lloyd Milne of Lakerville Developments against the decision of Southampton City Council.
 - The application Ref 20/01814/PA2A, dated 24 December 2020, was refused by notice dated 9 March 2021.
 - The development proposed is Prior approval for the demolition of the existing industrial unit and construction of 3 storey building to provide 11 x 1 bed flats.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application for determination as to whether prior approval was required for the construction of a three storey block of flats was made under Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). Paragraph ZA.2(2) of the GPDO requires, amongst other things, that a determination be made as to whether the prior approval of the Council will be required as to the issues such as highways impact and external appearance, for example.
3. The prior approval procedure as set out within the GPDO makes no provision for any determination to be made as to whether the proposal would be permitted development. However, the Council is not convinced that the existing building is of a B1 use class. As such there is the question as to whether the proposed development benefits from the provisions of the GPDO.

Main Issues

4. The main issues are:
 - whether or not the proposed development benefits from the provisions of Schedule 2, Part 20, Class ZA of the GPDO
 - if so, whether the transport and highways impacts, provision of natural light for habitable rooms, impact to neighbour amenities, and the design and external appearance of the proposed building is appropriate in its context.

Reasons

5. Class ZA allows for the demolition of buildings and construction of new dwellinghouses in their place. However, paragraph 1 under Class ZA stipulates that the building that is to be demolished prior to its replacement with a house or flats should be either a building comprising a single purpose-built detached block of flats or a building falling within use classes B1(a), B1(b) or B1(c), as set out in the Use Class Order, on the 12 March 2020.
6. The appellant argues that the existing building has a B1(c) use class, with its last use being for car restoration. However, there is very little detail with the evidence provided with regards this previous use, or why it would fall within the B1(c) of the Use Class Order.
7. I recognise that the existing building is within a residential area, but this is an old industrial style building that would have existed before the current Use Class Order. As such, it is not a certainty that the use of the building would be B1 rather than a 'General Industrial' B2 use because it is in a residential area.
8. The Council set out that through the planning history there is no clear lawful use. There is also some evidence it has a history of motor engineering companies within the building, with car spraying. There is some evidence of the use being more typical of a B2 use.
9. If the site was used for car repairs or enhancements then this could be a B2 use or possibly 'sui generis', especially given the potential noise and fumes for example, which would not be typically associated with B1 industrial uses.
10. The onus is on the appellant to demonstrate that the use of the premises on 12th March 2020 was as B1. This has not been satisfactorily demonstrated. On this basis, I conclude that the proposal does not benefit from permitted development rights under Part 20, Class ZA.
11. I recognise that the Council has also reasons for refusal relating to highways impact, neighbour impact, design and external appearance, and impact to the Solent Coastline Special Protection Area. However, I have concluded that there is insufficient evidence to demonstrate that the proposal benefits from permitted development as it does not meet with the qualifying provisions as set out in paragraph ZA(1). It is therefore unnecessary and inappropriate for me to proceed to further consider whether prior approval should be granted.

Conclusion

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

Mr S Rennie

INSPECTOR