



Appeal Decision

Site visit made on 7 March 2022

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/E5900/W/21/3283712

42 Headlam Street, London E1 5RT

- 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 A, Paragraph A.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Ranjeet Singh (Lohia Ltd) against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/21/00502, dated 5 March 2021, was refused by notice dated 10 May 2021.
 - The development proposed is a single additional level comprising 2 x one-bedroom flats with associated refuse and recycling facilities and cycle storage.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Ranjeet Singh (Lohia Ltd) against the Council of the London Borough of Tower Hamlets. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council's statement raises an additional reason for refusal, relating to the site's proximity to the Royal London Hospital's helipad, and asserts that as the site would be within 3 kilometres (km) of the helipad, the proposal would not be permitted development. The appellant has responded to this matter in their final comments.
4. In the interests of fairness, I also requested the Council issued the appellant with a legal opinion¹ presented to me in another appeal I was assessing, as the same additional reason for refusal was added by the Council. I have addressed the issue within the Reasons below.
5. The Council's statement states that it no longer wishes to defend refusal reasons 1 and 2 after paying due regard to a previous Appeal Decision². I have considered the appeal accordingly.

Background and Main Issue

6. Under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

¹ "In the Matter of the Helipad at The Royal London Hospital" Kate Olley, Francis Taylor Building, December 2021

² APP/E5900/W/21/3277326

(the GPDO), planning permission is granted for new dwellinghouses on detached blocks of flats subject to limitations and conditions.

7. Where an application is made for a determination as to whether prior approval is required for development, paragraph B(3) provides that the local planning authority may refuse the application where it considers the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.
8. Paragraph A.2(1) requires the developer to apply to the local planning authority for prior approval as to, amongst other things, the external appearance of the building.
9. Accordingly, the main issues in this appeal are whether the proposed development would be granted planning permission by Article 3 (1) and Schedule 2, Part 20, Class A of the GPDO with specific regard as to whether the building is within 3 km of the perimeter of an aerodrome. If it would be granted planning permission, I would then consider whether the external appearance of the building would be acceptable.

Reasons

Whether the proposed development would be granted planning permission

10. Paragraph A.1(o)(viii) sets out that development is not permitted if the land or site on which the building is located, is or forms part of land within 3 km of the perimeter of an aerodrome. The proposal is within 3 km of the helipad for the Royal London Hospital, which is used by the hospital in operating the air ambulance helicopter.
11. Article 2 of the GPDO sets out that in this Order, "aerodrome" means an aerodrome as defined in [paragraph 1 of Schedule 1 to the Air Navigation Order 2016 (ANO)] which is—
 - (a) licensed under that Order,
 - (b) a Government aerodrome,
 - (c) one at which the manufacture, repair or maintenance of aircraft is carried out by a person carrying on business as a manufacturer or repairer of aircraft,
 - (d) one used by aircraft engaged in the public transport of passengers or cargo or in aerial work, or
 - (e) one identified to the Civil Aviation Authority before 1st March 1986 for inclusion in the UK Aerodrome Index,and, for the purposes of this definition, the terms "aerial work" , "Government aerodrome" and "public transport" have the meanings given in paragraph 1 of Schedule 1 to that Order.
12. The appellant refutes that the helipad is an aerodrome under the terms of the GPDO. The first stage is to establish if the helipad would meet the ANO definition of an aerodrome, which is set out in paragraph 1 of schedule 1 as:
 - (a) means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft; and
 - (b) includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for

- affording facilities for the landing and departure of aircraft capable of descending or climbing vertically; but
- (c) does not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed;
13. The helipad is designed to afford facilities for the departure and landing of helicopters, which are capable of descending or climbing vertically. Therefore, it is clear to me that the helipad would meet both (a) and (b) in the definition, and thus the helipad is an aerodrome.
14. The second stage is to establish if the aerodrome meets any of the 5 (a) to (e) requirements from Article 2 of the GPDO. The Council's advice focuses on (d) - *one used by aircraft engaged in the public transport of passengers or cargo or in aerial work*.
15. Article 6 (2) of the ANO states an aircraft in flight is flying on a public transport flight if-...:
- (a) the flight is not a flight for the purpose of commercial air transport; and
- (b) the flight is-
- (i) for the carriage of passengers or cargo and valuable consideration is given or promised for that flight in the aircraft; or
- (ii) operated by the holder of a national air operator's certificate or a Part-CAT air operator certificate and any passengers or cargo are carried gratuitously in the aircraft except for persons specified in paragraph (3) or cargo specified in paragraph (4).
16. The appellant contends that no evidence has been provided to prove that the London Air Ambulance is the holder of the relevant air operator certificate. However, the Council's Counsel legal advice sets out that the London Air Ambulance Limited is the holder of an air operator certificate. I find it highly unlikely that the London Air Ambulance would not have an air operator certificate. Furthermore, I suspect without a certificate, it could not operate the helicopter or transport passengers. It is also reasonable to assume that the helicopter would carry passengers gratuitously in these circumstances. Therefore, I consider it meets ANO, Article 6,(2)(b)(ii).
17. The appellant considers that the air ambulance is not used for public transport but is an emergency service transporting patients in need of critical care. I disagree. Patients in the helicopter are members of the public. It is not a pre-booked service or private charter and is used by any member of the public who needs emergency transportation via a helicopter to or from the hospital.
18. Moreover, it is imperative to note that the 3 km aerodrome condition is based on a need to protect air space close to aerodromes; to ensure aircraft are not put in danger by a development's height increase. While the intricacies and interpretation of law are important, of upmost importance is the preservation of life - which is exactly what this helipad and air ambulance service seeks to do.
19. Consequently, the building would be within 3 km of the perimeter of an aerodrome, which is used by aircraft engaged in the public transport of passengers. Thus, the proposed development would not be granted planning permission by Article 3 (1) and Schedule 2, Part 20, Class A of the GPDO. Given this, there is no requirement to consider the external appearance.

Conclusion

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

Katie McDonald

INSPECTOR