



Appeal Decision

Site visit made on 15 March 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2022

Appeal Ref: APP/D5120/W/21/3278949

77 and 77a Bexley High Street, Bexley DA5 1JX

- 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 Sydon Investments Ltd against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/01190/PRIOR, dated 1 April 2021, was refused by notice dated 26 May 2021.
 - The development proposed is Application for Prior Approval for change of use from offices (Use Class B1a) to provide 6no. residential units (Use Class C3) on first and second floors of the property.
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Decision

1. The Appeal 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 Prior Approval for change of use from offices (Use Class B1a) to provide 6no. residential units (Use Class C3) on first and second floors of the property at 77 and 77a Bexley High Street, Bexley DA5 1JX in accordance with the terms of the application Ref 21/01190/PRIOR dated 1 April 2021 and the plans submitted with it, together with the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following plans and drawings: 1009-A110, 1009-A210D, 1009-A310, 1009-A500A, 1009-A510A, 1009-A520, 1009-A530.
 - 2) Notwithstanding the plans hereby approved, prior to the occupation of any dwelling permitted, an acoustic assessment shall be undertaken (by a suitably qualified acoustician) and submitted to and approved in writing by the Local Planning Authority. The assessment scheme shall include details of appropriate noise mitigation measures including acoustic glazing and ventilation for all habitable rooms to meet the criteria specified in BS8233:2014. The scheme approved by the Local Planning Authority shall be implemented before each unit is occupied and shall be maintained thereafter at all times.
 - 3) No dwelling hereby permitted shall be occupied until arrangements have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been

submitted to and approved in writing by the Local Planning Authority. The approved scheme shall ensure that, with the exception of disabled persons, no occupiers of the approved development shall obtain a permit to park a vehicle on the public highway within the Bexley Station Controlled Parking Zone at any time. Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.

- 4) Notwithstanding the plans hereby approved, prior to the occupation of any dwelling permitted, bicycle parking and refuse storage shall be provided at the site in accordance with a scheme that has been previously submitted to and approved in writing by the Local Planning Authority. Bicycle parking shall be provided in accordance with the London Plan minimum requirements. The scheme shall be permanently maintained thereafter at all times.

Procedural Matters

2. The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 (2020 No. 1243) (the Regulations) came into force on 6 April 2021 amending Article 3(9A) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Regulation 3 states Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse – (a) where the gross internal floor area is less than 37 square metres in size; or (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government (2015) (the NDSS). I have given the Council and the Appellant the opportunity to comment upon the implications of the changes.
3. The Council did not refuse the application for prior approval due to the size of the dwellings, which was raised in comments by an interested party. Plan/drawing Ref. 1009-A210D and A1009-310A have annotations that indicate the area of some new dwellinghouses are below those required by the NDSS. However, Regulation 12 of the Regulations states where a prior approval event occurs, the permission granted by Class O, continues to have effect as if the amendments made by Regulation 3 of the Regulations had not been made.
4. A prior approval event is defined in Regulation 12(5) as the giving of prior approval in relation to an excepted matter, on or after the relevant date in relation to an appeal which was lodged under section 78 of the Town and Country Planning Act 1990 within 6 months of the date of notice of refusal of a prior approval application submitted before the relevant date (defined by Regulation 12 as 6 April 2021). The application was validated on 1 April 2021. Therefore, the development does not have to comply with the NDSS.
5. The Council's delegated report confirms that all the relevant criteria under paragraph O.1 are met and so the proposal would be permitted development, subject to prior approval matters listed in paragraph O.2. Based upon the evidence before me I see no reason to disagree with the Council's conclusions in respect of O.1. Development under Class O is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to O.2(1)(e) — the provision of adequate natural light in all habitable rooms of the dwellinghouses.

6. The principle of the development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan. I can therefore only have regard to the policies of the development plan insofar as they are material to the matters for which prior approval is sought. However, the Local Planning Authority has not quoted any policies or provided any to assist my consideration of the appeal.

Main Issue

7. The main issue is whether or not prior approval should be granted having regard to the requirement for the provision of adequate natural light in all habitable rooms.

Reasons

8. Four of the units (Units S1, S2, S4 and S5) would be single aspect facing to the southwest and two (S3 and S6) would be dual aspect, with windows facing toward the north and northeast. However, the height of surrounding buildings means natural light to the first and second floor external facing windows is not unduly impeded. Each unit would have between 2 – 4 outward facing windows. There is also a sizeable light well to the centre of the building through the first and second floors with good sized windows that would provide natural light to each dwelling. The windows are well-sized and collectively provide good levels of light into the spaces.
9. There would be separate internal storage and bathrooms. However, the layout of the studios does not have doors separating sections of the living area, so the single studio area including kitchen, living, sleeping and circulation space is taken to be the habitable room. The Internal Daylight Assessment (IDA) analysis of each studio indicates that all the habitable rooms exceed the acceptable criteria of both Building Research Establishment guidance (Site Layout Planning for Daylight & Sunlight – A Guide to Good Practice) and BS 8026-2:2008 in terms of Average Daylight Factor (ADF).
10. While there is some variance in light levels away from the windows and in some of the narrower spaces, this is not necessarily unusual, and the extent of these spaces are limited. Given the limited area of the less well-lit spaces it is likely that most will not require year round lighting, as suggested by the Council. The IDA shows that, while some of the spaces are relatively narrow, the habitable rooms overall would each achieve an ADF level of between 2.27% – 3.6% which comfortably exceeds the acceptability criteria, of 2% for each studio area as a whole. The Council's delegated report and decision notice acknowledges the minimum ADF is met.
11. Moreover, in setting out results of the punctual daylight assessment the IDA shows that, while most of the best lit space is within the vicinity of the windows, the studios would have large proportions of habitable room floorspace well above the relevant daylight factors. For these reasons, while some of the studios are relatively deep and narrow in places, having regard to the habitable room space, adequate natural light is provided to each habitable room.

Other Matters

12. The reason for refusal takes no issue in respect of the other prior approval matters of transport and highways impact, contamination risks, flood risk or

- impact of noise from commercial premises on the intended occupants of the development. Based upon the evidence before me I see no reason to disagree.
13. The site has a moderate PTAL rating of 3, being within a town centre location with 5 bus services and Bexley railway station within easy walking distance. The TS confirms given the location it proposes a car-free scheme. Given the limited number of vehicle movements that would be generated even if residents used a private car, I see no reason why this development would result in detrimental effects to the road network.
 14. On-street parking is prohibited by double yellow lines outside the site. Residential streets nearby are covered by the Bexley Station Controlled Parking Zone (CPZ). The parking survey (Lambeth Methodology) found 85% parking stress within 200m within the CPZ, unrestricted night-time parking is at around 15% stress, and it is likely there is sufficient spare capacity to accommodate any ad-hoc parking. On the basis the development is car-free the Highway Authority (HA) raises no objection. A car-free scheme could be achieved by a suitably worded planning condition that could require necessary arrangements are made, such as the modification of the Traffic Regulation Order.
 15. A Noise Assessment has been commissioned so that ventilation and glazing specifications can be appropriately specified, although this is not before me. Given this town centre location a condition would be necessary to ensure glazing is insulated to a suitable standard while providing ventilation. The Environmental Health adviser's condition is sufficient to ensure this.
 16. The fire escape used by a ground floor business is not shown on the existing or proposed plans, suggesting that building exit would not change. Given the space available I see no reason why the shared rear area and access to Bourne Road could not be used for bin storage and cycle parking while retaining access. However, the use of this access and area is a matter under legislation dealing with private legal rights regarding land ownership.
 17. The Flood Risk Assessment (FRA) shows the appeal site is close to areas at medium risk of fluvial and surface water flooding. The appeal site would offer an exit to land outside the flood zones. The FRA confirms residents would be required to sign up to Flood Warnings Direct and be presented with a copy of the FRA as part of the deeds. Therefore, no condition is necessary.
 18. The Metropolitan Police's specifications to meet the Secured by Design standard, and private outdoor space, are not matters subject to requirements of the GPDO and the Council has not pursued them. The studio flats would not be likely to be occupied by families. Furthermore, the site is located close to town centre amenities, some public parks and well located for use of public transport which could be used to access other facilities.

Conditions

19. Paragraph O.2(2) of the GPDO requires that the development must be completed within a period of three years starting with the prior approval date. A plans condition is necessary in the interests of certainty. I have imposed a condition requiring the details of bin storage and cycle parking to ensure the side access remains accessible and to support sustainable travel.
20. Based upon the evidence before me including the shared views of the appellant and HA, it is necessary to impose a condition in respect of car free parking to

ensure that parking stress is not increased in the area and to support sustainable travel. The condition I have imposed in respect of an acoustic assessment including details of glazing and ventilation is necessary to ensure satisfactory living conditions for future occupiers. It is not necessary for this to be a pre-commencement condition.

Conclusion

21. For the reasons given above, the appeal should be allowed, and prior approval is granted.

Dan Szymanski

INSPECTOR