



Appeal Decision

Site visit made on 29 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2022

Appeal Ref: APP/U5360/W/21/3281987

1 Barretts Grove, Hackney, London N16 8AP

- 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 Bernard Dov Stroh, Rosh Zal Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/0328, dated 3 February 2021, was refused by notice dated 1 April 2021.
 - The development proposed is change of use from B1(a) office use to C3 residential units.
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Decision

1. The appeal is allowed and prior 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 B1(a) office use to C3 residential units at 1 Barretts Grove, Hackney, London N16 8AP in accordance with the application ref 2021/0328 dated 3 February 2021 and the plans and details submitted with it including plan Nos A101, BG.1.PR.01 and Location Plan.

Background and Main Issues

2. 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) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted by Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') subject to limitations which are specified at paragraph O.1, and conditions which are set out at paragraph O.2.
3. The conditions at O.2 establish a requirement for developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters, including at part (1)(e) 'the provision of adequate natural light in all habitable rooms of the dwellinghouses'. In determining such an application, paragraph W(10) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.

4. Having assessed the proposal, the Council has raised objections in relation to the prior approval matter concerning the provision of adequate natural light in all habitable rooms of the dwellinghouses, and it asserts that the proposal includes building operations which are not permitted under Class O. The Council has not argued that the proposal fails to comply with Class O in other respects, and I have no compelling reasons to find otherwise.
5. The main issue is therefore whether or not prior approval should be granted having regard to whether or not the proposed works are permitted under the provisions of Class O; and the requirement for the provision of adequate natural light in all habitable rooms.

Reasons

6. Development permitted under Class O concerns only the change of use of a building and any land within its curtilage, and not any associated physical works. In addition to minor alterations to the internal layout of the appeal building to form 5 flats, the Council suggests that the submitted plans show a lightwell which does not exist on site, and that the proposal includes a rooflight above the living area of Flat 5.
7. However, I saw at my visit that a lightwell does exist on the boundary of the site with 3 Barretts Grove currently, and includes glazed doors which provide light to rooms that would become parts of Flats 2 and 3. The appellant also indicates that there is an existing rooflight over proposed Flat 5. Although there is currently no opening in the ceiling to the rooms in this part of the building, the appellant advises that an opening and light shaft from the rooflight would be formed to allow light into Flat 5. From my observations of the site, the height of the space within the roof to the front part of the building above the existing internal ceiling level is less than a full storey, and I have no firm reason to conclude that these internal works would be likely to materially alter the external appearance of the building, nor that they would be impractical or could not feasibly be undertaken.
8. The national Planning Practice Guidance indicates that developers will need to consider whether physical works required to implement a change of use constitute development and ensure they have planning permission if necessary¹. In any event, I am not persuaded given my findings above and in the absence of substantive evidence to the contrary that the proposal would entail building operations which would fall outside the scope of development permitted by Class O.
9. Turning then to the matter of natural light to the dwellings, the Council has not raised concerns in relation to Flat 1, and I have no compelling reason to take a different view. The appellant's Analysis of Site Layout for Sunlight and Daylight report February 2021 ('SDR') further indicates that all of the proposed habitable rooms to Flats 2, 3, 4 and 5 would meet criteria of Building Research Establishment ('BRE') guidance Site Layout Planning for Daylight & Sunlight – A Guide to Good Practice in terms of Average Daylight Factor ('ADF'), Room Depth and Annual Probable Sunlight Hours ('APSH').
10. The Council suggests that Flats 2, 3 and 4 would not be fitted with windows, and that the reliance on rooflights to these dwellings means that the room

¹ Paragraph: 055 Reference ID: 13-055-20140306

depth calculations in the SDR cannot be relied upon. However, the assessment reflects the glazed doors onto the lightwell that I saw were present on the site and that would serve Flats 2 and 3. In addition, the Analysis of Site Layout for Sunlight and Daylight Supplement in Response to Refusal report August 2021 submitted with the appeal further explains that the formula used to calculate Room Depth is based on the concept that light is reflected by the walls, floor and ceiling. It comments that roof windows are very effective at illuminating rooms, with light propagated across the room just as effectively as from a side window. There is no compelling evidence before me to suggest that this would be unlikely in the appeal development, and I have little cause to consider that the calculations within the report are inaccurate or otherwise misleading.

11. Given my findings above, I am also satisfied that the rooflight indicated to Flat 5 would be able to provide light to the kitchen/dining and living room. The SDR indicates that this rooflight in combination with an existing window would provide suitable levels of ADF and APSH for the kitchen/dining and living room having regard to the BRE guidance, and I can see no substantive reason to doubt this assessment. Furthermore, the appellant indicates that planning permission has been granted² for an additional window to the front of the building which would also serve this room. The additional window would not be necessary to meet the criteria within the BRE guidance, but would further increase daylight and sunlight to the kitchen/dining and living room of Flat 5.
12. From the evidence before me, I am satisfied that the SDR provides a suitably robust assessment of daylight and sunlight within the development. The SDR demonstrates that light levels to habitable rooms would be acceptable having regard to BRE guidelines, and the Council has not indicated any alternative standards or guidance that my assessment of light to the dwellings should be considered against. Whether or not it would be provided in whole or in part by rooflights, I consequently find that there would be adequate natural light to all habitable rooms of the dwellings.
13. For these reasons, I conclude that the proposed works would not fall outside the scope of Class O. Furthermore, there would be adequate natural light provided to all habitable rooms of the dwellings. Prior approval should therefore be granted.

Other Matters

14. The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 ('the Regulations') amend Article 3(9A) of the GPDO to set out that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse where the gross internal floor area is less than 37 square metres in size; or that does not comply with the nationally described space standard issued by the Department for Communities and Local Government 2015. However, the Regulations include transitional provisions which set out that this amendment does not have effect in relation to development under Class O where an application for prior approval was submitted before 6 April 2021. While I have noted representations made about the proposal referring to the small size of the flats, the appeal application was submitted before 6 April 2021, and there is accordingly no restriction on the internal floor area of the dwellings.

² Application ref 2021/2709

15. Matters relating to the heating and ventilation of the flats, their internal layout including space for food preparation, the nature of future occupiers, fire escape, refuse and litter are outside the scope of the GPDO assessment of this appeal. Neither the potential for future proposals for further development on the site nor any previous site management affairs are considerations that would alter my assessment of the current appeal which I have considered on its own merits.

Conditions

16. The Council has not recommended any conditions in the event that the appeal is allowed. Nevertheless, the development must adhere to the conditions set out at Paragraph O.2.(2), and the provisions at Paragraph W(12) of Part 3, which requires that development permitted under Class O is completed within a period of 3 years starting with the prior approval date, and that the development must be carried out in accordance with the approved details.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

J Bowyer

INSPECTOR