



Appeal Decision

Site visit made on 7 June 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2022

Appeal Ref: APP/Z1510/W/21/3283029

9A East Street, Coggeshall, CO6 1SH

- 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) (GPDO).
 - The appeal is made by Collins & Coward Ltd against the decision of Braintree District Council.
 - The application Ref 21/01877/COUPA, dated 8 June 2021, was refused by notice dated 9 August 2021.
 - The development proposed is Notification for prior approval for a proposed change of use of a building from Office Use (Class B1 (a)) to a dwelling house (Class C3).
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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 of a building from Office Use (Class B1 (a)) to a dwelling house (Class C3) at 9A East Street, Coggeshall, CO6 1SH in accordance with the application ref 21/01877/COUPA dated 8 June 2021 and the plans and details submitted with it, including plan references: CC/1000/01, CC/1000/02 REV A and CC/1000/03 REV A.

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and amended various use classes. This included use Class B1, which has been subsumed into the new Use Class E. However, the amendment included transitional arrangements for the period between 1 September 2020 and 31 July 2021. These specified that any references to uses or use classes specified in the Schedule to the UCO should be read as meaning the uses or use classes that applied on 31 August 2020 for the purposes of making a prior approval application. As such, given that the application was submitted prior to 31st July, the previous classes apply.

Background and Main Issue

3. 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 (as it applied on 31st August 2020), to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted by Schedule 2, Part 3,

Class O of the GPDO subject to limitations which are specified at paragraph O.1, and conditions which are set out at paragraph O.2.

4. 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'. The Council considers that the proposed development would not make provision for adequate natural light in these terms.
5. 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 (albeit I address this further in 'other matters').
6. The main issue is therefore whether or not prior approval should be granted under Class O, having regard to the requirement for the provision of adequate natural light in all habitable rooms.

Reasons

7. The proposed living room and kitchen diner at ground floor level would be served by 2 roof lights and a south facing window. At first floor level there is a north facing window which would serve the proposed bedroom. These windows were all in place at the time of my site visit. Whilst I note that this visit only represents a snapshot in time, weather conditions were overcast late in the day, and I consider that my observations therefore provided a good indication of the likely level of natural light in each of the rooms. In addition, the appellant has submitted an Internal Daylight Assessment (IDA) as part of this appeal.
8. The appellant's IDA indicates that all of the proposed habitable rooms would meet the criteria of Building Research Establishment ('BRE') guidance entitled 'Site Layout Planning for Daylight & Sunlight – A Guide to Good Practice in terms of Average Daylight Factor ('ADF')'. This is also consistent with the observations I made during the site visit, where I noted that there were good levels of natural light throughout the ground and first floor. The roof lights and ground floor window allow for adequate penetration of daylight at ground floor level. Furthermore, the first floor window is relatively large in relation to the size of the proposed bedroom, again allowing for adequate natural daylight.
9. The Council has suggested that future occupiers may be inclined to cover the ground floor window to the front of the building in the interest of privacy and due to the outlook towards a boundary wall. However, there is no substantive evidence to suggest that there would be any such privacy issues. As such, this consideration does not alter my findings.
10. I therefore conclude that there would be adequate natural light provided to all habitable rooms of the dwelling. The appellant has suggested that additional windows could be installed under an extant consent but there is no need for me to consider this matter given my conclusions on the existing situation.

Other Matters

11. GPDO Article 3(4) states: 'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.' I have been

provided with a copy of the original planning permission granting consent for the office use (Council reference: 13/00065/FUL). This includes a condition (No 3) which states:

‘Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) the premises shall be used as an office within the Use Class B1(a) and for no other purpose within Class B’

12. Even though this matter was not raised by the parties, given that it is before me, it is necessary for me to reach a conclusion on whether there are any conditions of the type referred to in Article 3(4). I therefore asked the parties for representations on this matter and the appellant has responded with further representations. The Council did not respond.
13. Firstly, the condition does not refer to the GPDO (in any iteration). As such, its function is as a definitional condition, which identifies the relevant use pursuant to the planning permission. It could be said to preclude changes within Use Class B (albeit that is again debatable given the absence of a reference to the GPDO). However, the wording of the condition does not expressly state that no other use is permitted. For example, through words such as ‘shall only be used for’ or ‘solely used for offices and no other use’. It could be argued that other changes (beyond those within Class B) would have (at that time) required planning permission. However, Part 3 of the GPDO grants such permission (in this case under Class O), subject to conditions, limitations and restrictions.
14. As such, taking all of these factors into consideration, the effect of the condition is to define the lawful use and preclude the change to alternative uses within Use Class B. This is not therefore a condition which restricts the proposed development.
15. The appeal site is located within the Coggeshall Conservation Area (CA). Under section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am obliged to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area. The CA encompasses much of Coggeshall and primarily derives its significance from the broad collection of historic architecture including its close-knit, narrow and tightly developed streets. The proposed development will preserve the significance of the CA. This is because the proposed residential use is compatible with other residential uses within the CA and no significant external alterations are proposed.

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.

Luke Simpson

INSPECTOR