



Appeal Decisions

Site visit made on 15 June 2022

by Richard Clegg BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2022

Appeal A Ref: APP/Y5420/W/21/3277193

Roeder House, Vale Road, London, N4 1PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr S Shwarz against the decision of the Council of The London Borough of Haringey.
 - The application Ref HGY/2021/0708, dated 1 March 2021, was refused by notice dated 26 April 2021.
 - The development proposed is described on the application form as 'change of use from use as offices (B1 use class – now class E) to residential use (class C3)'.
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Appeal B Ref: APP/Y5420/W/21/3277194

Roeder House, Vale Road, London, N4 1PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr S Shwarz against the decision of the Council of The London Borough of Haringey.
 - The application Ref HGY/2021/0899, dated 16 March 2021, was refused by notice dated 28 April 2021.
 - The development proposed is described on the application form as 'change of use from use as offices (B1 use class – now class E) to residential use (class C3)'.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for costs

3. An application for costs was made by Mr Shwarz against the London Borough of Haringey. This application is the subject of a separate Decision.

Preliminary Matters

4. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides, in Class O of Schedule 2 Part 3, for permitted development rights 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).

5. In accordance with paragraph O.2 of the GPDO, changes of use to offices are 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 prior approval is required in respect of transport and highways impacts, contamination risks on the site, flooding risks on the site, impacts of noise from commercial premises on the intended occupiers, and the provision of adequate natural light in all habitable rooms of the dwellinghouses. Both applications were concerned with prior approval for matters covered by paragraph O.2.
6. Prior to its amendment in 2020, The Town and Country Planning (Use Classes) Order 1987 (UCO) included offices in Class B1(a). Those office uses are now included within Class E of the amended UCO. However transitional provisions provide that between 1 September 2020 and 31 July 2021 references to use classes for the purposes of making an application in respect of prior approval are to be read as if they were references to the use classes which were specified in the UCO on 31 August 2020. Accordingly, in both appeals, the proposed development is more clearly described as the change of use from offices (class B1(a)) to residential use (class C3).
7. Proposals A and B would both involve the formation of 29 residential units, but they differ in respect of the ground floor of the building. In appeal A, it is intended that five rooms situated at the back of the building would be used as offices, whereas in appeal B this part of the building is identified as communal ancillary storage for the proposed flats.
8. The Appellant has submitted two alternative drawings as part of the appeals. Drawing RHVR.41.PR.FP.02 revision A includes revised first floor and second floor plans. These plans show one flat on each floor (Nos 6 and 2) adjacent to the staircase on the south-west side of the building instead of the two flats on the plans considered by the LPA (Nos 6 & 13 on the first floor and Nos 2 & 25 on the second floor). This revision would remove the two smallest flats by avoiding the sub-division of an existing room, and the slightly smaller number of flats would not increase any effects of the proposals. I am satisfied that no prejudice would be caused to any party by consideration of the revised floor plans, and I have taken them into account in determining the appeals.
9. The second alternative drawing is a ground floor plan which shows a revised layout for cycle parking. Not only does this plan show a different arrangement for the large parking rack on the left hand side of the site frontage, but it also introduces a separate shelter with a rack at the other end of the building. I consider that this represents a substantial difference in the cycle parking provision, and, as such, I have not taken the revised ground floor plan into my considerations.

Main Issues

10. Having regard to the representations made, I consider that the main issues in this appeal are:
 - (i) Whether the proposed developments are permitted under Article 3, Schedule 2, Part 3 Class O of the GPDO,
and, subject to the outcome of (i),
 - (ii) The transport and highways effect of the proposals.

- (iii) The effect of noise on the living conditions of occupiers of the proposed flats.
- (iv) Whether the proposed flats would provide satisfactory residential accommodation.

Reasons

Permitted development

Paragraph O.1 limitations

11. Paragraph O.1 of the GPDO sets out a series of limitations: if any of these apply the development is not permitted. In these cases the LPA argues that sub-paragraph O.1(b)(i) applies; that the building was not used for a use falling within Class B1(a) on 29 May 2013.
12. The appeal site comprises the front part of Roeder House, which is a two and three storey structure occupied by Actcell Ltd, a company involved in the manufacture and distribution of jewellery. Adjoining at the rear are the single storey premises of Just Brothers, a separate company which sells and distributes jewellery boxes. However, the LPA, referring to information from planning applications in 1990 and 2020, suggests that the lawful use of Roeder House as a whole is relevant, and that this is Class B8, with any offices being ancillary to the main warehouse use.
13. The evidence from the Appellant is that Actcell and Just Brothers are separate companies. I saw on my site visit that there is a wall between the appeal site and the rear of Roeder House, with no doors within it. The two parts of Roeder House are physically self-contained. Statutory declarations from two employees of Actcell state clearly that the part of Roeder House that this company occupies is separate from the remainder of the property¹. That the occupants of the two parts of Roeder House are both involved in the jewellery trade, and that Actcell acquires boxes from Just Brothers do not indicate that the appeal site is part of a larger planning unit.
14. Insofar as the appeal site is concerned, the LPA points out that information on planning applications in 1990 show this area as workshops with some office use, and that a recent site visit revealed that not all of this part of Roeder House was in use as office accommodation. On my visit to the premises, I observed that, whilst most of the building was used as offices, it also contained areas used for packing and storage, an imaging room, and space on the ground floor which is unused. The test, however, concerns the position in 2013.
15. The statutory declarations of Mr Levy and Mr Sinitsky explain that jewellery manufacture occurred at the site until 1999 when this part of the business was transferred to China. Their statutory declarations maintain that only the office use of Actcell has taken place in the front part of Roeder House since that date. That would cover the period of ten years prior to 2013 necessary for offices to be considered as the lawful use of the site.
16. The only key change in the use of the appeal site since its acquisition by Actcell, which has been brought to my attention, is in the relocation of manufacturing from the premises. There is nothing before me to indicate that

¹ Statutory declarations by Mr Levy and Mr Sinitsky in Appendix 6A to the Appellant's statement.

the use of part of the premises for storage, for packing and for imaging work is a recent addition. The Applicant's statement acknowledges that jewellery is dealt with and handled on the site, but it also says that the presence of safes and a photography area are part and parcel of, or ancillary to, the office use. From what I have seen and read, it seems to me that photographic imaging, packing and storage are integral parts of the business operation carried on at Roeder House rather than being ancillary to a primary office use, and these activities occupy a material part of the appeal site. On the information before me I consider that the front part of Roeder House was occupied for a mixed use, and not for a use falling within Class B1(a) on 29 May 2013.

17. In respect of appeal A, the LPA argued that the proposal involved a mixed use, since the proposed ground floor plan shows a number of rooms for office use. I note that article 2 of the GPDO states that, with a number of exceptions, the term *building* includes any part of a building. Class O in Part 3 of Schedule 3 is not listed as one of the exceptions. Accordingly, I do not consider that it is necessary for the whole of an existing building to be proposed for residential use to come within the ambit of Class O as permitted development.

Paragraph O.2(1) conditions

18. Paragraph O.2(1) of the GPDO sets out the matters on which a determination about prior approval is required (above, para 5). In these cases, the LPA raises no objection in respect of contamination risks (b) or flooding (c), and I have no reason to take a different view.

O.2(1)(a) transport and highways impacts

19. A reason for refusal in the case of both proposals concerns the adequacy of information on transport and highways impacts. The planning statement dealt with this subject briefly, referring to the provision of parking space and cycle storage within the site, and stating that there would be no change to waste collection arrangements.
20. Transport assessments have subsequently been submitted in respect of each appeal. In both cases these provide detailed information on trip generation, including delivery and service movements, parking and cycle storage, make an assessment of highways impact, and refer to mitigation measures in the form of a travel information pack. The assessments address the areas of concern identified in the reason for refusal, and I am satisfied that sufficient information has now been provided to enable transport and highways impacts to be assessed.

O.2(1)(d) impacts of noise

21. Both refusals allege that insufficient information had been provided in respect of noise. A noise impact assessment was submitted at application stage, but the information therein is limited in scope. The survey results refer to a single day and only give the ambient noise levels: maximum noise levels are not given. Reference is made to the recommended internal ambient noise levels for dwellings in table 4 of *British Standard BS8233 Guidance on sound insulation and noise reduction for buildings*, which are 35dBA_{L_{Aeq},16hour} for daytime resting and 40dBA_{L_{Aeq},16hour} in dining areas. It is not clear how these levels would be achieved, given the recorded figures of 66.1dBA_{L_{Aeq}15} and 54.5dBA_{L_{Aeq}15}.

22. A supplementary report covering noise was submitted with the appeal, which refers to an additional survey undertaken during a delivery to the warehouse at the rear of Roeder House. However as the survey data is from a single delivery event, this may not be representative of noise levels on such occasions. The report explains that the average noise level outside a window was 69.2dBA, and that noise levels within the flats are expected to be 45dBA during unloading. It is not clear how this would be achieved, given the expected reduction in noise level of 15dBA into a room where a window is open. Whilst it is claimed that the noise level averaged over the whole day would be substantially below 40dBA, there is no clear explanation of this figure.
23. Although there is housing to the north of the site in Hermitage Road and I have read that there are flats on the first and second floors of Pacific House, the adjacent building to the west, this part of Vale Road is characterised by commercial and business activities. Notwithstanding the description of the surrounding premises in the noise impact assessment, activities in this area have the potential to generate noise which could cause disturbance to the living conditions of residents, and I consider that the limited survey information provided is insufficient to enable the effect of noise to be fully assessed.

O.2(1)(e) natural light

24. Condition O2(e) refers to the provision of adequate natural light. Concerns raised by the LPA in this regard refer to obscure glazing, the positioning of air conditioning units, and the size and position of some windows. Obscure glazing would not materially restrict natural light, and I share the view of the Appellant that a condition could require the removal of air conditioning units obstructing windows. An assessment of daylight using the approach in the Building Research Establishment publication *Site layout and planning for daylight and sunlight* has been submitted, with results provided for each flat. I am satisfied that sufficient information has been provided to enable the adequacy of natural light within the flats to be assessed; moreover the removal of two flats in the revised plan would result in more window space and a greater level of daylight in the resulting larger flats.

Conclusion on permitted development

25. I conclude that the existing building was not used for a use falling within Class B1(a) on 29 May 2013 and that insufficient information has been provided to enable assessment of the noise from commercial premises. For these reasons the proposals do not meet the requirements for permitted development under Class O.

Other matters

Operational development

26. Both schemes include operational development in the form of a bike shelter. Whilst that element of the scheme is not in itself permitted development under Class O, if prior approvals were granted, conditions could be attached preventing occupation of the flats until cycle storage had been provided in accordance with a scheme which had been approved by the LPA.

Suitability of the residential accommodation

27. Paragraph W(2)(bc) in Schedule 2, Part 3 of the GPDO requires the submission of a floor plan showing the dimensions of each room for proposals under Class O. The two smallest flats would have floorspace of 12m², and the LPA has calculated that, excluding the toilet and shower, there would only be 9m² available for living space. Although the Appellant points out that these flats would be larger than those of 7.7-9m² which were found to be inadequate in size in an appeal in Leicester, it has not been demonstrated how everyday living activities would be accommodated in these compact units. That situation is addressed by the alternative floor plan which removes the two small flats.

Conclusion

28. I have found that the proposals do not comply with the limitation in paragraph O.1(b) in that the existing building was not used for a use falling within Class B1(a) on 29 May 2013. Moreover, although sufficient information has been provided to enable assessments of the impact of the transport and highways impact of the proposals and the adequacy of natural light in the flats, that is not the case in respect of the noise from commercial premises, and the details provided do not enable a view to be established that the proposals would comply with condition (d) in paragraph O.2 of the GPDO. That reinforces my view that the proposals do not fall to be considered as permitted development under Class O.

29. Accordingly, I conclude that neither of the proposals falls to be considered as permitted development. In this circumstance, it is not necessary for me to consider the other issues identified above (para 10). For the reasons given above, and having regard to all matters raised, I conclude that the appeals should be dismissed

Richard Clegg

INSPECTOR