



Appeal Decisions

Site visit made on 12 July 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2022

Appeal A Ref: APP/J1535/W/21/3284878

Trinity House, Ground Floor only, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 JJ Gluck, Shivisi Investments Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/2054/21, dated 23 July 2021, was refused by notice dated 20 September 2021.
 - The development proposed is the change of use of offices (Class B1a) to form 2 apartments.
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Appeal B Ref: APP/J1535/W/21/3284881

Trinity House, First & Second Floors only, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 JJ Gluck, Shivisi Investments Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/2145/21, dated 23 July 2021, was refused by notice dated 20 September 2021.
 - The development proposed is the change of use of offices (Class B1a) to form 11 apartments.
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Decisions

1. Appeal A 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) (GPDO) for the change of use of offices (Class B1a) to form 2 apartments at Trinity House, Ground Floor only, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH in accordance with the application EPF/2054/21, dated 23 July 2021, in accordance with the details submitted pursuant to Schedule 2, Part 3, Class O of the GPDO, and subject to the following condition:
 - 1) No dwelling hereby permitted shall be first occupied until a scheme for protecting intended occupiers of the development from noise from commercial premises shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme

shall be completed before the noise sensitive development is occupied and retained thereafter.

2. Appeal B is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the GPDO for the change of use of offices (Class B1a) to form 11 apartments at Trinity House, First & Second Floors only, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH in accordance with the application EPF/2145/21, dated 23 July 2021, in accordance with the details submitted pursuant to Schedule 2, Part 3, Class O of the GPDO, and subject to the following condition:
 - 1) No dwelling hereby permitted shall be first occupied until a scheme for protecting intended occupiers of the development from noise from commercial premises shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the noise sensitive development is occupied and retained thereafter.

Preliminary Matters

3. The Council's decision notices in each appeal provide matching reasons for refusal. The pertinent issues in each appeal are the same, and as such I shall deal with both appeals together.
4. Amended plans were submitted as part of the appeals, changing annotated room names and adding indicative positions of showers, hand basins and toilets. The Council were afforded the opportunity to comment on these as part of the appeals, and it has referred to them in its appeal statement. I am satisfied that no injustice would be caused to any parties by the amended plans being taken into account as part of the appeals.

Main Issue

5. The main issue in both appeals is whether the proposed development would comply with the nationally described space standard¹ (NDSS).

Reasons

6. The proposals include 13 flats. Flat 3 would comprise duplex living space with a gross internal floor area (GIA) of 58.2 sqm, whereas all other proposed dwellings would comprise studios with GIAs ranging between 37 – 38 sqm. The NDSS advises that a one bedroom one person dwelling should have a minimum GIA of 39 sqm, but that where such a dwelling has a shower room instead of a bathroom, this may be reduced to 37 sqm. The NDSS advises that a one bedroom two person dwelling set over two floors should have a minimum GIA of 58 sqm.
7. The plans submitted as part of the original applications were annotated to show bathrooms. Amended plans have been submitted as part of each appeal which show the bathrooms relabelled as 'WC/Shower' and the indicative positions of showers, toilets and hand basins show they would be of an appropriate size for such purposes.

¹ Technical housing standards – nationally described space standard issued by the Department for Communities and Local Government on 27 March 2015

8. Flat 3 would comply with the NDSS. Based on the amended plans showing all other proposed dwellings would be served by a shower room instead of a bathroom, they too would accord with the NDSS. The Council's appeal statement reaches the same conclusion.

Conditions

9. The planning permission granted by Article 3(1) and Schedule 2, Part 3, Class O of the GPDO is subject to the conditions set out at Paragraphs O.2 and W. of Part 3, so there is no need for me to restate those conditions in this decision. The provisions of Paragraph W. allow me to grant prior approval unconditionally or subject to additional conditions reasonably related to the subject matter of the prior approval and in this regard, I note the Council's list of suggested conditions.
10. A Noise Exposure Assessment² (NEA) was submitted as part of the applications which makes recommendations in respect of mitigation measures sufficient to ensure future occupants of the proposals would be protected from the impacts of noise from commercial premises, but specific details of appropriate secondary glazing and trickle vents have not been provided. As such, it would be reasonable and necessary to require further details of those mitigation measures to be approved and implemented prior to the first occupation of any dwelling in each appeal.
11. A suggested condition has been put forward which would prohibit the commencement of development until written notification of the approval under Regulation 77 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) has been provided. This is because the appeal sites are located within 3 kilometres of, and have the potential to affect, the Epping Forest Special Area of Conservation.
12. Article 3(1) of the GPDO grants planning permission for the proposals subject to Regulations 75-78 of the Habitats Regulations. Regulation 75 provides that it is a condition of the planning permission granted by the GPDO in these cases that development which is (a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the site must not begin until the developer has received written notification of the approval of the LPA under Regulation 77.
13. Under Regulation 78(3)(a), a Regulation 75 approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provisions of the Town and Country Planning Act 1990. As such, Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat and the proposed development could not be lawfully begun until the process set out in Regulation 77 has been completed. An additional condition in this regard is not therefore required.
14. I have not been provided with information to convince me that any of the other conditions suggested by the Council would comply with the advice of paragraph 56 of the National Planning Policy Framework. This is because, based on the information provided, they would not be reasonable or relevant to the

² Report 16733-NEA-01 dated 15 June 2021 by Clement Acoustics

development granted planning permission by the GPDO, and they would not be necessary to make the permitted development acceptable having regard to the Framework.

Conclusion

15. For the reasons given above, I conclude that the appeals should be allowed.

L Douglas

INSPECTOR