



Appeal Decision

Site visit made on 12 July 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Appeal Ref: APP/H5960/W/22/3291842

74 St Rule Street, London SW8 3EH

- 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 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Suneet Jain of Battersea UK Development Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2021/4967, dated 21 October 2021, was refused by notice dated 16 December 2021.
 - The development proposed is a determination as to whether prior approval is required for the erection of two additional storeys to the existing five-storey mixed use building to provide 2 additional residential units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development as it is shown on the planning application form includes superfluous commentary. For ease of reference, I have adopted the description of development used by the Council in the banner heading, which is also the description used on the appeal form.

Background and Main Issue

3. The appeal property is a five storey (above ground) building that comprises commercial uses at ground floor level and a number of residential flats on the other floors. Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building in commercial or mixed use.
4. Development is permitted under Class AA subject to limitations and conditions and a requirement that the developer applies for prior approval to the local planning authority.
5. The Council refused prior approval on the grounds that it considered the proposal to be unacceptable, having regard to the detailed prior approval matters under Class AA.2 (1) (d) relating to flood risks and (1) (e) relating to the external appearance of the building.
6. Following the submission of the appeal, the Council, in its appeal statement, states that it does not consider that the proposal qualifies for the permitted

development right having regard to Class AA.1 of the GPDO which sets out the instances where development is not permitted by Class AA.

7. The main issues are therefore:

- whether the proposal would be permitted development under Schedule 2, Part 20, Class AA of the GPDO; and
- if so, whether or not the proposal would satisfy the detailed prior approval matters in Class AA.2 of Schedule 2, Part 20 of the GPDO.

Reasons

Whether Permitted Development

8. Class AA.1 includes amongst other matters that development is not permitted by Class AA if *'(o) the land or site on which the building is located, is or forms part of - (vii) land within 3 kilometres of the perimeter of an aerodrome'*. Both parties agree that the building is within 3km of the London Heliport. The matter in dispute is whether the London Heliport is an 'aerodrome' in the context of the GPDO.
9. Article 2 of the GPDO defines an aerodrome as meaning *'an aerodrome as defined in paragraph 1 of Schedule 1 to the Air Navigation Order 2016 (ANO) which is (a) licensed under that Order, (b) a Government aerodrome, (c) one at which the manufacture, repair or maintenance of aircraft is carried out by a person carrying on business as a manufacturer or repairer of aircraft, (d) one used by aircraft engaged in the public transport of passengers or cargo or in aerial work, or (e) one identified to the Civil Aviation Authority before 1st March 1986 for inclusion in the UK Aerodrome Index, and, for the purposes of this definition, the terms "aerial work", "Government aerodrome" and "public transport" have the meanings given in paragraph 1 of Schedule 1 to that Order'*.
10. In paragraph 1 of Schedule 1 to the ANO, 'aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft; and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically.
11. Article 6 (2) of the ANO states that an aircraft in flight is flying on a public transport flight if, amongst other matters, the flight is not a flight for the purpose of commercial air transport; and the flight is for the carriage of passengers or cargo and valuable consideration is given or promised for that flight in the aircraft.
12. The submitted evidence indicates that the London Heliport is a licensed aerodrome (ordinary category) that provides a local air traffic service and category H2 rescue and fire-fighting services and is used to carry passengers.
13. Based on the submitted evidence, the London Heliport would meet the definition of an aerodrome in paragraph 1 of Schedule 1 to the ANO. It is licensed under the ANO and so would meet part (a) of the definition in Article 2 of the GPDO. Based on the definition of 'public transport flight' in the ANO and the reasonable definition of a 'passenger', the London Heliport would also meet

the terms of part (d) of the definition in Article 2 of the GPDO. Overall, therefore, I am persuaded that the London Heliport would be an aerodrome in the context of the GPDO.

14. The appellant highlights that this matter was not raised as a reason for refusal on the application. While this is the case, it is nevertheless necessary to be satisfied that the proposal falls within the scope of the permitted development criteria.
15. The appellant also states that the London Heliport was not cited as a reason for refusal on other applications within its vicinity. No information has been provided on these other applications and I cannot be sure that they represent a direct parallel with the appeal scheme, particularly with regard to permitted development rights. In any case, I have determined this appeal on its own merits, based on the evidence before me.
16. Accordingly, I conclude that the proposal would not comply with paragraph AA.1 (o) (vii) of Schedule 2, Part 20, Class AA of the GPDO and therefore, is not permitted development.

Detailed Prior Approval Matters

17. As I have found that the proposal would not be development permitted by the GPDO, the detailed prior approval matters do not fall to be considered as part of the determination of this appeal.

Conclusion

18. For the reasons outlined above, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR