



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/21/3279831

First Floor only, Trinity House, 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/0876/21, dated 26 March 2021, was refused by notice dated 18 May 2021.
 - The development proposed is the change of use of offices (Class B1a) to form 6 apartments.
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Appeal B Ref: APP/J1535/W/21/3279833

Second floor only, Trinity House, 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/0877/21, dated 26 March 2021, was refused by notice dated 18 May 2021.
 - The development proposed is the change use of offices (Class B1a) to form 6 apartments.
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Appeal C Ref: APP/J1535/W/21/3279838

Third floor only, Trinity House, 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/0878/21, dated 26 March 2021, was refused by notice dated 18 May 2021.
 - The development proposed is the change of use of offices (Class B1a) to form 1 apartment.
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Appeal D Ref: APP/J1535/W/21/3279840

Ground Floor only, Trinity House, 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/0874/21, dated 26 March 2021, was refused by notice dated 18 May 2021.
 - The development proposed is the change of use of offices (Class B1a) to form 2 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 6 apartments at First Floor Only, Trinity House, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH in accordance with the application EPF/0876/21, dated 26 March 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 6 apartments at Second Floor Only, Trinity House, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH in accordance with the application EPF/0877/21, dated 26 March 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.
3. Appeal C 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 1 apartment at Third Floor Only, Trinity House, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH in accordance with the application EPF/0878/21, dated 26 March 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) The dwelling hereby permitted shall not 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.
4. Appeal D 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 2 apartments at Ground Floor Only, Trinity House, Foxes Parade, Sewardstone Road, Waltham Abbey EN9 1PH in accordance with the application EPF/0874/21, dated 26 March 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

5. 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 all appeals together.
6. The Council's appeal statement claims that the proposed development in each appeal would fail to accord with the nationally described space standard, as referred to by Article 3(9A) of the GPDO. The transitional and saving provisions of the amendment to the GPDO¹ which inserted paragraph 9A to Article 3 state that the amendment does not have effect where the relevant application for prior approval is submitted before 6 April 2021. As the applications in all of these appeals were submitted to the Council prior to 6 April 2021, paragraph 9A of Article 3 does not have effect and there is no requirement to consider the nationally described space standard.

Main Issues

7. Paragraph W(3)(b) of Part 3 sets out that an application for prior approval may be refused where insufficient information has been provided to enable the local planning authority to establish whether the proposed development complies with any conditions, limitations or restrictions which are applicable to the proposed development. Amongst other things, conditions O.2(1)(b) and (d) set out that prior approval for the proposed development will be required as to contamination risks on the site and impacts of noise from commercial premises on the intended occupiers of the development.

¹ Part 4 of The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020

8. The Council's reasons for refusal refer to insufficient information being provided to satisfy it that the proposed development in each appeal would not be adversely affected by noise from surrounding commercial premises, or from contamination from air pollution as a result of its proximity to a signal controlled junction.
9. Taking the above into account, the main issues in all appeals are: i) impacts of noise from commercial premises on the intended occupiers of the development; and ii) contamination risks on the site.

Reasons

Noise

10. A Noise Exposure Assessment² (NEA) has been submitted as part of the appeals. This did not form part of the original prior approval applications, but the Council and interested parties have been provided with an opportunity to comment on it as part of the appeals. The Council has taken up that opportunity in their appeal statement. No parties would therefore be caused any injustice by me considering the NEA as part of the appeals.
11. The NEA concludes that, subject to mitigation measures, the proposed development in each appeal would be capable of achieving acceptable internal noise levels. Those mitigation measures include the installation of appropriately designed secondary glazing and trickle vents. The Council has confirmed the NEA's findings and recommendations would address its concerns with respect to noise and I see no reason to disagree.
12. Further details would be required as to the exact specification of noise mitigation measures to be carried out prior to the first occupation of any of the proposals, but the NEA demonstrates how this could be achieved. The proposals are therefore capable of appropriately addressing the impacts of noise from commercial premises on the intended occupiers of the development, subject to conditions requiring the approval of further details.

Contamination Risks

13. It has been suggested by the Council that when considering contamination risks on the appeal sites, any form of pollution that may contaminate the residential environment should be taken into account. That would be a very broad interpretation of Condition O.2(1)(b), exceeding the requirements of paragraph W.
14. Following the procedure set out at paragraph W.(10)(c), with regard to Part 2A of the Environmental Protection Act 1990 (as amended) and the Contaminated Land Statutory Guidance issued in accordance with section 78YA of that Act, I am not convinced that the presence of a signal controlled junction close to the appeal sites would result in them being contaminated land. This would not change if the residential environments proposed would be contaminated by air pollution.
15. No evidence has been provided to demonstrate there are any contamination risks on the appeal sites and the appellant has confirmed the proposals would

² Report 16733-NEA-01-RevA dated 28 June 2021 by Clement Acoustics

not require any ground to be broken. The information provided by the main parties indicates that the appeal sites have only been used as office space previously and as such it would be unlikely that there are any contamination risks on the sites.

16. I note comments in respect of air quality in the locality, where I saw other residential properties exist, but the Council's appeal statement also refers to a subsequent air quality assessment which addressed those concerns. A copy of that air quality assessment has not been presented as part of these appeals, but in its absence, I am satisfied that there are no contamination risks on the appeal sites.

Conditions

17. 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.
18. The NEA 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.
19. 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.
20. 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.
21. 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.

22. 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 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

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

L Douglas

INSPECTOR