



Appeal Decision

Site visit made on 28 June 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2022

Appeal Ref: APP/W1905/W/21/3288899

223A Turners Hill, Cheshunt, Hertfordshire EN8 9DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr George Nicolaou against the decision of Broxbourne Borough Council.
 - The application Ref 07/21/1131/P4D, dated 26 August 2021, was refused by notice dated 9 November 2021.
 - The development proposed is prior approval for proposed change of use from office (use class E) to a one bedroom flat (C3).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the development provided on the application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately represent the proposal and I have therefore used it within this decision.

Background and Main Issue

3. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses). The Council considers that the development complies with the requirements set out in Paragraph MA.1 of Class MA, and I see no reason to disagree.
4. Paragraph MA.2 sets out that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to the matters set out in paragraphs MA.2(2). This includes matter MA.2(2)(f) which relates to the provision of adequate natural light in all habitable rooms, and it is this matter which is referred to in the Council's reason for refusal.
5. Accordingly, the main issue is whether the development would accord with the conditions of Schedule 2, Part 3, Class MA of the GPDO, with regard to the provision of adequate natural light in all habitable rooms.

Reasons

6. The provision of adequate natural light is not defined in the GPDO. A brief summary of the number of windows and the layout of the property was included in a Planning Statement submitted with the application. Although this concluded that the proposal would provide adequate natural light to all habitable rooms, the Council referred to the northerly aspect of the windows and overshadowing from nearby buildings. On the basis of these concerns the Council refused the application.
7. The appellant has sought to address this through the submission of an Internal Daylight Assessment (IDA) which refers to the criteria established by the Building Research Establishment (BRE). This includes guidance as set out within the BRE's 'Site Layout Planning to Daylight and Sunlight: A Guide to Good Practice' 2011. The IDA assesses criteria set out in the BRE guidance, including the average daylight factor, room depth and no sky line / daylight distribution. The IDA concludes that on each of these criteria that the proposal would satisfy the BRE guidelines.
8. The Council refers to the Borough Wide Supplementary Planning Guidance 2013 (SPG) which states that windows to habitable rooms facing only north or 30° on either side should be avoided. However, I am mindful that this is only guidance, and that the IDA has provided substantive evidence that the proposal would provide adequate natural light to all rooms. Also, based on the evidence before me, the dynamic simulation modelling of the IDA considered the effect of higher buildings in the vicinity of the appeal site.
9. However, although the proposal includes a roof light, the provision of natural light is largely reliant on windows facing onto a service yard. The Council has expressed concern that the parking of high sided vehicles in this service yard would block the amount of light reaching the windows. I am mindful that in many circumstances the parking of large vehicles would be transitory. However, given the proximity of this service yard to the windows of the proposal, and the nature of the properties it serves, including commercial units, I consider that the Council's concerns are well-founded.
10. The appellant submits that the yard is only used for loading and unloading and not for parking. However, it has not been demonstrated that that is the case, and the submitted plans indicate that the yard is not under the control of the appellant. Reference is also made to the limited nature of the businesses using the yard, although there is no certainty that the nature of the businesses and the associated parking of vehicles would endure. The opening hours of the businesses would also not prevent the parking of commercial vehicles on the yard.
11. Given the circumstances of the appeal site, and in particular the relationship with the service yard, I am not satisfied that sufficient information has been provided to establish whether the proposal would provide adequate natural light in all habitable rooms. The proposal would therefore not accord with the conditions of Schedule 2, Part 3, Class MA of the GPDO.
12. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. The proposal would not comply with the SPG in respect of the orientation of

windows to habitable rooms, and consequently policy DSC1 of the Local Plan 2020 which states that development should have regard to the SPG. However, on the basis of the conclusions of the IDA this does not weigh against the development in respect of the provision of adequate natural light. That said, given my conclusions in respect of the relationship between the appeal site and the service yard, and whether sufficient information on this has been submitted in respect of the effect on the provision of adequate natural light, the proposal would conflict with the Framework which seeks to provide a high standard of amenity for users of development.

13. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR