



Appeal Decision

Site visit made on 9 August 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12/09/2022

Appeal Ref: APP/K3605/W/21/3289053

A C Court, High Street, Thames Ditton KT7 0SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant approval required under Article 3 and Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Threadneedle Property Unit Trust against the decision of Elmbridge Borough Council.
 - The application Ref 2021/2556, dated 15 July 2021, was refused by notice dated 22 September 2021.
 - The development proposed is described as the change of use from 'office' (formerly Class B1(a)) to 'residential' (Class C3) (51 units).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and amended various use classes as set out in the schedules to the Use Classes Order¹ (UCO). This included use Class B1, which has been subsumed into the new Use Class E. However, the amendment included transitional arrangements for the period between 1 September 2020 and 31 July 2021. These specified that any references to uses or use classes specified in the UCO should be read as meaning the uses or use classes that applied on 31 August 2020 for the purposes of making a prior approval application. As such, given that the application was submitted prior to 31st July 2021, the previous use classes apply.
3. The appeal is accompanied by amended drawings that were not before the Council when it determined the application and these drawings have not been consulted on. This represents new information, and the Procedural Guide – Planning Appeals – England at Annex M.2.1, makes it clear that the appeal process should not be used to evolve a scheme. It is important that what is considered by me is essentially what was considered by the Council, and on which interested party's views were sought. Appeals are generally considered on the basis of the scheme and the plans which were before the Council at the time of their decision. I have not therefore considered the amended drawings in reaching my decision.

¹ The Town and Country Planning (Use Classes) Order 1987, as amended

Background and Main Issues

4. Class O of the GPDO states that development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (office) of the UCO to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted development. This is principally subject to the criteria set out within Paragraph O.1 and Conditions stated in Paragraphs O.2(1) and O.2.(2).
5. Article 3(9A)(b) of the GPDO also confirms that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.
6. There is no dispute between the main parties that the proposal would be consistent with the requirements of Paragraph O.1. The application was refused by the Council for two reasons as the proposed development would fail to:
 - provide adequate natural daylight in all habitable rooms in conflict with Paragraph O.2(1)(e); and
 - ensure all residential units meet Nationally Described Space Standards in conflict with Article 3(9A)(b).
7. Therefore, the main issues are whether the proposal:
 - Provides adequate natural daylight in all habitable rooms; and
 - Meets the Nationally Described Space Standards (NDSS).

Reasons

Natural Daylight

8. The appeal is supported by an Internal Daylight Report and the report, in its introduction at paragraph 1, sets out its scope to 'determine whether the proposed new residential layouts would achieve levels of daylight for the rooms to be fit to be used as habitable rooms'.
9. Paragraph 1.2 of the report confirms that recommendations from British Standard Code of Practice Design Standards and Building Research Establishment (BRE) Guidelines were applied 'to ensure that the future occupants of the new development would enjoy an adequate level of amenity'. Therefore, I consider it reasonable to expect compliance with these recommendations to ensure future occupants would enjoy an adequate level of natural daylight to internal habitable rooms.
10. The report acknowledges that 8 shortfalls of light standards would occur. 6 of these would be marginal and the remaining 2 would be more significant. Of the marginal shortfalls the report concludes that these are either so small as they would make no material difference, or the difference would be of a degree that the rooms would still achieve a good level of internal daylight.
11. However, the report identifies that Room 1, a lounge kitchen diner on the first floor of Unit 5 would have an average daylight factor (ADF) value of 0.84%df (daylight factor), against a target of 1.5%df. Room 4 a lounge kitchen diner on the first floor of Unit 7 would also have an ADF value of 0.94%df, against a

target of 1.5%df. The report accepts that these two rooms would have a lower level of internal daylight and therefore would not comply with the targets set out in the British Standard Code of Practice for Daylighting and the BRE Guidelines.

12. There is nothing before me to suggest the GPDO, Local or National policy sets a specific target to test for the adequate provision of natural light. However, the British Standard Code of Practice for Daylighting and BRE Guidelines are well-established and understood ways of testing natural light and this is acknowledged in the submitted Internal Daylight Report. In the absence of any other appropriate method before me, I attach substantial weight to the findings of this report.
13. While the appellant questions whether a good or adequate standard of lighting should be targeted, there is no qualified definition of these two terms before me. Even if there was, the submitted Daylight Report refers to assessing the "adequacy" of daylight within the proposed habitable rooms. Accordingly, the shortfall of daylight identified above would not provide adequate daylight.
14. Paragraph O.2(1)(e) of the GDPO seeks to provide adequate natural light in all habitable rooms of the dwellinghouses. While the marginal breaches, would still achieve adequate levels of amenity, the more significant breaches as a matter of fact and degree would not. Consequently, the appeal proposal fails to provide adequate natural light in all habitable rooms of the proposed dwellinghouses conflicting with Paragraph O.2(1)(e) of the GDPO.

Nationally Described Space Standards

15. The appellant's Schedule of Areas and Accommodation dated 7 July 2021 and the proposed floorplans confirm that the 3-bedroom 5-person bed dwelling proposed in Unit 1 would have a floor area of 85m². This would be below the required 86m² as set out in the NDSS and there appears to be no dispute that the plans and details considered by the Council showed this.
16. The Council also state the proposed first floor 2-bed 3-person unit and a second floor 1 bed 2-person unit would feature double bedrooms with floor areas below 11.5m² are also below the minimum standards set out in the NDSS. These figures are not disputed by the appellant.
17. Even if these shortfalls on both the floorplans and the schedule of accommodation may have been errors or inconsistencies, a decision maker can only act on the information before them. The onus is on the appellant to ensure their submissions are accurate.
18. While I accept that the figures are minor shortfalls, nevertheless the NDSS sets minimum standards, and any shortfall would fail to meet the NDSS standards as set out at Article 3(9A) of the GPDO.

Other Matters

19. With respect to the second main issue, the appellant has suggested that planning conditions could be imposed to achieve compliance with the NDSS. I have considered that, but it would not make the proposal permitted development given my conclusion on the first main issue.

20. The appellant suggests that the appeal proposal would make a substantial contribution to housing supply in a borough which cannot demonstrate a five-year housing land supply with an overwhelming demand for housing delivery and is under special measures. I am also advised, by the appellant, that the appeal site is close to local services and community infrastructure. While this may be true, Class O of the GPDO does not permit an assessment thereof or to specifically weigh potential benefits.
21. I have also considered Paragraph W(10)(b) of Schedule 2, Part 3 of the GPDO. This sets out that I must have regard to the National Planning Policy Framework so far as relevant to the subject matter of the prior approval. However, as set out above, Class O of the GPDO itemises a closed list of considerations and it has been held that it is only the policies of the Framework that apply to those matters listed that I need to have regard to. As such the additional matters of housing supply or accessibility of the location are not relevant to this class of permitted development.
22. I also note the disappointment of the appellant in relation to the level of communication received prior to the Council's determination of the application. However, while this may be frustrating, this is not a matter for this appeal which I have determined on its own merits.

Conclusion

23. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

N Praine

INSPECTOR