



Appeal Decisions

Site visit made on 9 August 2022

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

an Inspector appointed by the Secretary of State

Decision date: 10 OCTOBER 2022

Appeal A: Appeal Ref: APP/D5120/W/21/3285393

West Lodge, Russell Close, Bexleyheath, Bexley DA7 4HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class O, Part 3, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Motzen against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/00140/PRIOR, dated 31 December 2020, was refused by notice dated 30 April 2021.
 - The development proposed is to convert the building into 9 residential units.
-

Appeal B: Appeal Ref: APP/D5120/W/21/3285391

West Lodge, Russell Close, Bexleyheath, Bexley DA7 4HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class O, Part 3, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Motzen against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/00088/PRIOR, dated 31 December 2020, was refused by notice dated 30 April 2021.
 - The development proposed is to convert the building into 8 residential units.
-

Decision

Appeal A: Appeal Ref: APP/D5120/W/21/3285393

1. The appeal is dismissed.

Appeal B: Appeal Ref: APP/D5120/W/21/3285391

2. The appeal is dismissed.

Applications for Costs

3. Applications for costs were made by Mr Motzen against the Council of the London Borough of Bexley. These applications are the subject of a separate Decision.

Preliminary Matters

4. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 made changes to the Town and Country Planning (Use

Classes) Order 1987. Under these changes, offices which were previously Class B1, became part of Class E (Commercial, Business and Service). Subsequent changes to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) replaced permitted development rights to convert from offices to residential under Part 3, Class O, with a new Class MA. However, under transitional and saving provisions, the applications subject to these appeals should be considered under Class O.

Background and Main Issue

5. The Council's reason for refusal in respect of both Appeal A and Appeal B refers to insufficient information being submitted in respect of highway safety and noise.
6. However, the appellant has submitted a Transport Report in respect of both appeals. The Highway Authority has considered this report and has confirmed that it withdraws its objections and would support the proposals subject to conditions.
7. With regards to noise, the Council refers to elevated levels of traffic noise, and noise associated with bus standings opposite the site. However, the appellant has submitted a Noise Impact Assessment (NIA) in respect of both appeals which concludes that there is no significant noise impact from any commercial premises on the proposals. The Council also refers to the NIA and concludes that no mitigation measures are required in this instance.
8. Based on the evidence before me, sufficient evidence has been provided to demonstrate that the proposal would comply with the conditions of Class O which are referred to in the Council's decisions.
9. That said, condition O.2(1)(e) of Class O refers to the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council's officer reports in respect of both appeals concludes that the proposed plans illustrate that each unit will have access to adequately sized windows which would likely provide adequate amounts of light. However, I observed that the dwellings would be served by windows of various sizes and orientations, including some relatively narrow windows set at a high level and windows facing north.
10. The appellant has submitted an 'Analysis of Site layout for Sunlight and Daylight' for both schemes which refer to the Building Research Establishment publication 'Site layout and planning for daylight and sunlight, a guide to good practice' second edition published in 2011 (the BRE Guide), and concludes that its recommendations for daylight would be satisfied for all rooms. However, the 2011 BRE Guide has been superseded by a new 2022 edition which has significantly altered the assessment of daylight and sunlight within new developments. In response, the appellant has submitted a new 'Analysis of Site Layout for Daylight' for both schemes and the Council has had the opportunity to comment on these.
11. On the basis of my observations on site and the publication of the 2022 edition of the BRE Guide, the main issue in this appeal is whether sufficient information has been provided in respect of the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

12. Paragraph W(3)(b) of Part 3 of the GPDO sets out that an application for prior approval may be refused where insufficient information has been provided to establish whether the proposed development complies with any conditions, limitations or restrictions which are applicable to the proposed development. Amongst other things, this includes condition O.2(1)(e) relating to the provision of adequate natural light in all habitable rooms of the dwellinghouses.
13. Paragraph W(10)(b) of the GPDO also requires that I have regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
14. Paragraph 125(c) of the Framework encourages the efficient use of land. When considering applications for housing, the Framework requires that a flexible approach should be taken in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site, as long as the resulting scheme would provide acceptable living standards.
15. In respect of both appeals, the appellant has submitted an 'Analysis of Site Layout for Daylight' (the Analyses) which refers to the 2022 edition of the BRE Guide. These Analyses conclude that the natural light to all rooms within the proposed dwellings is better than the recommendations for daylight in the BRE Guide.
16. However, the Analyses do not address the issue of sunlight. As indicated in the BRE Guide, sunlight is important in providing light and warmth, making rooms look bright and cheerful and also having a therapeutic, health-giving effect. Based on my observations on the layout of the site as well as the nature of windows serving the dwellings, I am not persuaded that a suitable amount of sunlight would be provided for residents.
17. Paragraph 125(c) of the Framework emphasises that a flexible approach should be taken in applying guidance on this matter. However, this specifically refers to both daylight and sunlight. Due to the lack of evidence on sunlight and my concerns on the layout and fenestration of the proposal, the Analyses submitted by the appellant do not provide sufficient information for me to reach a balanced conclusion on whether the proposals would provide acceptable living standards.
18. I conclude that in respect of both appeals, insufficient information has been provided to establish whether the proposed development would provide adequate natural light in all habitable rooms of the dwellinghouses. The proposals would therefore not accord with condition O.2(1)(e) of Schedule 2, Part 3, Class O of the GPDO. The proposals would also not comply with the Framework in respect of the consideration of amenity and living standards.

Other Matters

19. The Council refers to changes to the GPDO and compliance with the nationally described space standard set out in paragraph 9A. However, the transitional and saving provisions of the amendment to the GPDO which inserted paragraph 9A state that the amendment does not have effect where the relevant application for prior approval is submitted before 6 April 2021. As the applications for both of these appeals were submitted prior to that date,

paragraph 9A does not have effect and there is no requirement for me to consider the nationally described space standard.

Conclusion

20. For the reasons given above, I conclude that both Appeal A and Appeal B should be dismissed

David Cross

INSPECTOR