



Appeal Decision

Site visit made on 20 September 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/W2465/W/21/3289826

60 Charles Street, Leicester LE1 1FB

- 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 of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr A Patel (Slough Central Property Co Ltd) against the decision of Leicester City Council.
 - The application Ref 20211604, dated 25 June 2021, was refused by notice dated 20 August 2021.
 - The development proposed is 'Notification of change of use of offices (Class B1(a)) to 72 flats (Class C3).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (the GDPO), for a change of use of offices (Class B1(a)) to 72 flats (Class C3) at 60 Charles Street, Leicester LE1 1FB, in accordance with application Ref 20211604, dated 25 June 2021, subject to the conditions set out in a Schedule attached to this Decision.

Preliminary Matters

2. For the purposes of the appeal, the appellant has provided additional plans which were not before the Council when it made its decision. These show external glazing dimensions and floor areas annotated. As they do not change the proposals for which prior approval was sought, I do not consider that any party will be prejudiced if I take them into account.
3. Since the date of the Council's decision, new guidance¹ has been issued by the Building Research Establishment (BRE) in relation to the assessment of daylight and sunlight. I sought the further views of the main parties in this regard and have taken their comments into account in reaching my decision.

Background and Main Issues

4. The site is a corner plot fronting on to Charles Street, a broad town centre route which is heavily trafficked. The road is predominantly flanked by commercial premises at ground floor with mixed uses at upper floor levels. The street features a high number of bus stops and is a primary route to and from the city's main bus station. The site features a prominent commercial building consisting of a tower of 14 floors with lower flanking elements of 5 floors.

¹ Site layout planning for daylight and sunlight: a guide to good practice (BR 209 2022)

5. The application was made under Class O of Part 3 of the GDPO. There is no dispute between the main parties that the proposal would fall within the scope of Class O in terms of its existing use and would not conflict with the limitations set out in Paragraph O.1. Having regard to the information before me, I find no reason to disagree with that position.
6. Of the Conditions set out in Paragraph O.2. of Class O and Article 3(9A) the parties agree that no adverse effects would arise in relation to the matters of transport and highways or contamination and flood risks. Accordingly, the main issues are whether the proposed development would achieve a suitable standard of living conditions having particular regard to the nationally described space standards, noise and disturbance, and the amount of natural daylight reaching habitable rooms.

Reasons

Technical housing standards – nationally described space standards

7. Article 3(9A) states that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse - (a) where the gross internal floor area is less than 37 square metres in size; or (b) that does not comply with the nationally described space standard (NDSS) issued by the Department for Communities and Local Government on 27th March 2015.
8. The revised plans show the total floor areas of each unit and the arrangement of habitable rooms within them. They demonstrate that the proposed units are capable of meeting minimum space standards and technical requirements set out in Table 1 of the NDSS. They do not, however, define the amount of bed spaces intended for each housing unit. In order to benefit from the Class O provisions there would be a requirement for the appellant to impose limitations on occupancy in accordance with Table 1 of the NDSS to avoid conflict with the terms of the GDPO.
9. The appellant clearly states that 'all proposed apartments comply with or exceed the technical housing standards – nationally described space standards'. As it would be within the gift of the appellant to control occupancy, I find no grounds to reject the claim for a development demonstrated as capable of meeting the minimum NDSS.

Noise

10. Paragraph O.2(1)(d) requires consideration of the prior approval matter of impacts of noise from commercial premises on the intended occupiers of the development. In support of the application, the appellant provided an assessment of the likely noise impacts on prospective residents. The report identified that some noise attenuation would be required to provide a suitable standard of living conditions for prospective occupiers. This is due to the proximity of the site to night time venues and, in particular, a live music venue on Yeoman Street.
11. The appellant has provided examples of secondary double glazing which could be installed internally to improve the sound attenuation of existing glazing areas. This would achieve a suitable standard of living conditions for prospective occupiers in relation to noise. As a detailed matter capable of being secured by planning condition, I am satisfied that the noise effects of nearby commercial premises could be adequately mitigated.

12. I acknowledge the Council's concern that a requirement to enhance the poor sound attenuation qualities of the glazed areas of the building would require windows to be closed at noisy times. This would have potential knock-on implications for ventilation. I also note that this matter could be exacerbated by the exposure of higher floors to direct sunlight where potentially significant levels of solar gain could occur. However, the elevations most affected by commercial noise would be those experiencing limited direct sunlight. Accordingly, any effects on internal ventilation requirements would be limited.
13. Nevertheless, a requirement to keep windows closed due to potential noise disturbance would potentially affect intended occupiers. There is limited detail of the mechanisms to provide such ventilation or their likely performance. I note the appellant's reference to a case elsewhere² whereupon the Council was content to address that matter through a planning condition.
14. A condition requiring ventilation that might require external alterations, and thereby require planning permission would not satisfy the test of reasonableness as set out in Paragraph 56 of the National Planning Policy Framework. This is because it could nullify the effect of any permission it was attached to. However, the appellant asserts that ventilation enhancements could be provided internally and without necessity to make any external alteration to the building.
15. Given the age and existing use of the building, there is little to cause me to doubt that claim. In the absence of contrary evidence, and subject to agreement with the Council, I find that the effects associated with noise from nearby commercial premises could be adequately mitigated.

Daylight

16. The GPDO was amended by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 so that, for any prior approval application made on or after 1 August 2020 the matters for a change of use to a dwelling under Part 3, Classes M, N, O, PA and Q include the provision of 'adequate natural light in all habitable rooms'. Those rooms include any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes.
17. A statement in respect of light achievable within the proposed flats was submitted in support of the application. Although the amount of detail provided is limited to a summary assessment of the flats, the appellant indicates that this was based on, then, best practice advice and on worst case scenarios associated with flats on the most constrained floor levels. It concludes that suitable levels of daylight would be achieved within the proposed units.
18. The updated document issued by the BRE has since revised the guidance on daylight assessment. An assessment in accordance with it has not taken place and there is little dispute that its requirements are likely to be more onerous than the superseded document. However, as non-statutory guidance, it accepts that a degree of flexibility is necessary – particularly in relation to built up areas. This reflects Paragraph 125 of the Framework and associated guidance in the Planning Practice Guidance³ in relation to the effective use of land and the need to consider proposals in their context. Indeed, the latter provides the

² Prior approval application Ref 20211510

³ ID: 66-007-20190722

example of 'city centre locations where tall modern buildings predominate' when considering the matters of daylight and sunlight.

19. There is no dispute that for the majority of the proposed flats there would be ample daylight. The relatively modern building benefits from large areas of glazing which would make up the majority of any external elevation to the individual flats.
20. Some first and second floor level flats – notably those lying opposite existing buildings on the southern side of Yeoman Lane, would be subject to extensive overshadowing due to the limited width of the street and the height of the opposing buildings. However, having regard to the amount of glazing alongside rooms of mainly limited depth, I find that natural light would permeate much of the internal spaces.
21. Although not determinative, I note that the degree of daylight within the proposed habitable rooms of lower floor levels fronting Yeoman Lane would likely be greater than those at an adjacent ongoing development including residential accommodation at the corner of Yeoman Lane with Yeoman Street. That building would have a similar relationship with a building on the opposite side of Yeoman Lane, but it would have more limited areas of glazing.
22. I acknowledge the Council's concerns in regard to the use of a single indicative angle for the calculations of daylight – particularly in relation to the lower floor windows on the southern elevation alongside Yeomans Lane. The appellant explains that these are based on worst case scenario and there is little before me to demonstrate that the daylighting claims are not credible.
23. Based on the evidence before me, I find that the proposed accommodation would benefit from suitable amounts of daylight having regard to the site context and particular circumstances of the case.

Conditions

24. Paragraph W13) of Part 3 the GPDO allows a grant of prior approval subject to conditions reasonably related to the subject matters of the prior approval. Paragraph O.2 requires that the development must be completed within a period of 3 years starting with the prior approval date, so does not need to be repeated in the decision.
25. Conditions specifying the relevant drawings and limitation of use are imposed for the avoidance of doubt. Conditions requiring noise attenuation and ventilation measures to avoid overheating are necessary to ensure a suitable standard of accommodation for prospective occupiers. These are of necessity pre-commencement to achieve that outcome during all periods of occupation.

Conclusion

26. For the reasons above, I conclude that the appeal should be allowed.

R Hitchcock

INSPECTOR

Schedule of Conditions to prior approval Ref 20211604

- 1) The use authorised by this permission shall not commence until details of secondary glazing to each flat suitable to mitigate the impact of noise from nearby commercial premises have been submitted to and approved in writing by the local planning authority, and the approved secondary glazing installed as approved. Windows shall not be fixed shut.

These measures shall be retained as approved for the lifetime of the development.

- 2) The use authorised by this permission shall not commence until either:
 - a) an assessment of overheating (TM59 assessment) taking account of solar gain has been carried out taking into account any design features that mitigate overheating, including orientation of individual flats, and including details of ventilation arrangements that adequately mitigate overheating (without external vents other than at roof level), and the findings of the assessment have been submitted to and approved in writing by the local planning authority; or
 - b) details of mechanical ventilation (without external vents other than at roof level) that allows for 4 air changes per hour and does not exceed 30dB(A) in bedrooms and 35dB(A) in living rooms have been submitted to and approved in writing by the local planning authority;and, the approved measures have been fully implemented and all mechanical elements are fully operational.

These measures shall be retained as approved and at the same minimum performance levels indicated above for the lifetime of the development.

- 3) The development shall be carried out in accordance with the following approved plans:
Basement and Ground Floor plans 050221/P/03 Rev B
Typical First to Thirteenth Floor Plans as Proposed 050221/P/04 Rev B
West and south elevations 050221/P/05 Rev B
East and north elevations 050221/P/06 Rev B
Site Plan 050221/P/07 Rev B.
- 4) The dwellings must be used as dwellings within the meaning of Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1989 (as amended) and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

END.