



Appeal Decision

Site visit made on 5 October 2022

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal Ref: APP/W1525/W/21/3285263

1 Legg Street, Chelmsford CM1 1JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Eyal Moran of Eyal Moran Architects Ltd against the decision of Chelmsford City Council.
 - The application Ref 21/01504/CUPAO, dated 16 July 2021, was refused by notice dated 13 September 2021.
 - The development proposed is determination as to whether the prior approval of the local planning authority is required for the proposed change of use from offices to 94 dwellings.
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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 3, Class O of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use from offices to 94 dwellings at 1 Legg Street, Chelmsford CM1 1JS in accordance with the terms of the application, Ref 21/01504/CUPAO, dated 16 July 2021, pursuant to Schedule 2, Part 3, Class O of the GPDO, subject to the following conditions:
 - 1) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 32107/P010 Revision C for vehicles and bicycles to be parked and that space shall thereafter be kept available at all times for the parking of vehicles and bicycles.
 - 2) No dwelling shall be occupied until details of a proposed cover system to deal with the identified ground based contamination has been submitted to and approved in writing by the local planning authority.

Preliminary Matters

2. I have used the description of development set out in the Council's decision notice and the appeal form as this more accurately describes the proposed development.

Main Issue

3. The provisions of paragraph O.2 of the GPDO establish a requirement for developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters. This includes: (a) transport and highway impacts of the proposed development; (b) contamination risks on site; (c) flooding risks on the site; (d) impacts of noise from commercial premises on the intended occupiers of the

development; and (e) the provision of adequate natural light in all habitable rooms of the dwellinghouses.

4. The Council has raised objections in relation to the prior approval matter concerning the provision of adequate natural light (e). The Council has not argued that the proposed development fails to comply with Class O in other respects, and I have no compelling reasons to find otherwise.
5. The main issue is therefore whether or not the proposed development would provide adequate living conditions for future residents, with particular regard to the provision of natural light.

Reasons

6. The application was refused on the grounds that the proposed units at lower ground floor level, specifically those labelled LG1.02, LG1.03, LG1.04, LG1.05 and LG1.06, would likely need to rely on artificial light, resulting in a gloomy and unpleasant living environment for future occupiers. Although not referenced within the decision notice, the Council also refers to the unit labelled LG1.01 in its officer report and appeal documents. I have considered the appeal on that basis.
7. Proposed units LG1.01, LG1.02, LG1.03, LG1.04, LG1.05 and LG1.06 would be positioned to the west side of the appeal building, fronting Church Street. They would provide 1 bedroom, 1 person studio accommodation. The units would be served by existing windows which are largely set down below street level and which face onto the existing lightwell. Some units would be served by multiple windows whilst others by a single window. The appeal site is surrounded by buildings of a varied scale.
8. An internal daylight assessment was submitted in support of the proposed development. The assessment uses the average daylight factor (ADF) test and has regard to the Building Research Establishment's (BRE) '*Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*' and BS 8206: Part 2: '*Lighting for Buildings - Code of Practice for Daylighting*'. The assessment indicates that whilst daylight levels to the proposed lower ground floor units would be lower than that of units proposed on upper floors, they would meet the criteria of the above guidance.
9. The Council is of the view that the assessment fails to take into account the presence of physical external structures which have the potential to hamper light reaching the proposed units relative to their layout and position. However, the evidence before me indicates that the assessment, using a 3D model, took into account the external obstructions highlighted by the Council, including the setback and set down nature of the lower ground level windows and surrounding buildings. A modelling sketch has been provided to illustrate this. Irrespective of the number of windows which would serve each unit or their precise position, I have no compelling evidence before me to suggest that the assessment is inaccurate or otherwise misleading.
10. Based on the evidence before me and my observations on site, I have no reason to doubt the conclusions of the submitted internal daylight assessment, that the ADF to all the habitable rooms of the proposed flats would be above the values recommended by the BRE and the relevant British Standard¹. I am

¹ BS 8206: Part 2: 'Lighting for Buildings - Code of Practice for Daylighting

satisfied that the assessment demonstrates that natural light levels to the proposed units would be provided and would be acceptable.

11. Therefore, I find that the proposal would provide adequate living conditions for future residents with respect to the provision of natural light in all habitable rooms of the new dwellinghouses at lower ground floor level, in accordance with the requirements of Class O of the GPDO.

Other Matters

12. A number of matters have been raised by the Council. I have dealt with matters pertaining to living conditions above. In respect of the existence of protective bars over windows, outlook and the precise layout of units, including the location of beds and dining areas, these are outside the scope of the GPDO assessment of this appeal. Property and land values are not a planning consideration and I acknowledge that the Council can demonstrate a five-year housing land supply. These are not matters which alter my assessment of the current appeal which I have considered on the evidence before me and my observations on site.

Conditions

13. Development permitted under Article 3(1) and Schedule 2, Part 3, Class O is subject to standard conditions, including a time limit for completion and a requirement that development is carried out in accordance with the submitted details. As such, the Council's suggested conditions relating to these same matters have not been included as they are unnecessary.
14. Paragraph W (13) of the GPDO allows conditions other than the standard conditions to be imposed that are reasonably related to the subject matter of the prior approval. In respect of cycle parking and reduced vehicle parking I consider it is necessary to impose the Council's suggested condition in order that the development provides sufficient parking space.
15. Previous responses from the Council's Health and Protection Service relating to residential development on this site suggest there is a need for contamination mitigation. In the absence of any evidence to suggest their position has changed, I consider it necessary to impose the Council's suggested condition in this respect.
16. In respect of the Council's suggested conditions, I have amended the wording of some, and combined provisions of others, without altering their fundamental aims.

Conclusion

17. For the above reasons, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed and prior approval granted.

A Price

INSPECTOR