



Appeal Decision

Site visit made on 20 September 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/U2235/W/21/3280082

**Unit 1 and 2, The Homestead, Gravelly Bottom Road, Kingswood,
Maidstone, Kent, ME17 3NU**

- 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 20, Class ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Robert Schroeder against the decision of Maidstone Borough Council.
 - The application Ref 20/505978/P20ZA, dated 15 December 2020, was refused by notice dated 5 March 2021.
 - The development proposed is described as: 'demolition of existing light industrial/commercial building and the erection of a three-storey block of 24no. flats with landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application for determination as to whether prior approval was required for the construction of a three-storey block of flats was made under Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). Paragraph ZA.2(2) of the GPDO requires, amongst other things, that a determination be made as to whether the prior approval of the Council will be required as to the issues such as highways impact and external appearance, for example.
3. The prior approval procedure as set out within the GPDO makes no provision for any determination to be made as to whether the proposal would be permitted development. However, the Council is not convinced that the site comprises a 'building' due to its condition following an arson attack on 14 September 2019. As such there is the question as to whether the proposed development benefits from the provisions of the GPDO.
4. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the amended UCO) came into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). Consequently, the use classes listed in the GPDO (B1(a), B1(b) and B1(c)) have now been superseded and incorporated within Class E (Commercial, business and service uses) of the amended UCO. In this instance, no party will be prejudiced through the implications of the amended UCO or the introduction of Class E.
5. The main parties have been invited to submit comments in relation to various

judgments¹. Therefore, no party would be prejudiced if I was to take these judgments into consideration in the determination of this appeal. I have taken into consideration the responses received from the main parties and I have dealt with the appeal on this basis.

Main Issues

6. The main issues in this case are:

- whether or not the proposed development benefits from the provisions of Schedule 2, Part 20, Class ZA of the GPDO; and if so,
- whether the transport and highways impacts, provision of natural light for habitable rooms, impact to neighbour amenities, and the design and external appearance of the proposed building is appropriate in its context.

Reasons

7. Class ZA allows for the demolition of buildings and construction of new dwellinghouses in their place. However, paragraph 1 under Class ZA stipulates that the building that is to be demolished prior to its replacement with a house or flats should be either a building comprising a single purpose-built detached block of flats or a building falling within use classes B1(a), B1(b) or B1(c), as set out in the UCO, on the 12 March 2020.
8. The appellant argues that despite the arson attack, which caused significant damage to the building, it still constitutes a 'building' for the purposes of the GPDO. The definition of a 'building' in the GPDO and in the Town and Country Planning Act 1990 (TCPA) are very similar. The GPDO states: (a) includes any structure or erection and, except in Class F of Part 2, Classes P and PA of Part 3, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16, Class T of Part 19 and Class ZA of Part 20, of Schedule 2, includes any part of a building; and (b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure. Whilst the TCPA states: "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
9. Both parties have cited various judgments² in their submissions in respect of their respective positions, which I have taken into account as material considerations. However, in all cases, including the judgments issued to the main parties for comments, they are not specific to Schedule 2, Part 20, Class ZA of the GPDO. Nonetheless, some are of particular relevance when trying to establish whether a building occupies the site or not.
10. The Castle-y-Mynach Estate judgment surrounds the abandonment of a residential use, including the consideration of the four factors for abandonment: the physical condition of the land; the period of non-use; any

¹ Hughes v SSETR & South Holland DC [2000] JPL 826 (the Hughes judgment); Trustees of Castell-y-Mynach Estate v SSW [1985] JPL 40 (the Castle-y-Mynach Estate judgment); Iddenden v SSE [1972] 1 WLR 1433; [1973] JPL 38 (the Iddenden judgment); St Peter the Great, Chichester [1961] 2 All ER 513 (the St Peter the Great judgment) and Cardiff Rating Authority v Guest Keens [1949] 1 KB 385 (The Cardiff RA judgment).

² Barvis Limited v Secretary of State for the Environment [1971] 22 P & CR 710; Smolas v Herefordshire Council [2021] EWHC 1663 (Admin); New World Payphones Ltd v Westminster CC [2019] EWCA Civ 2250; Hibbit v SSCLG & Rushcliffe BC [2016] EWHC 2853 (Admin); Ben R Palmer v The Commissioners of Her Majesty's Revenue and Customs 2006; Carter and Another v Secretary of State for the Environment and Another EWC 1994 W.L.R. 1212 and the Cardiff RA judgment.

other use; and the owner's intentions. In the Hughes judgment, the test was the view to be taken by a reasonable man with knowledge of all the relevant circumstances. The owner's intentions were not more significant than other factors and should be objectively assessed. The thrust of the Iddenden judgment is that a use cannot survive if everything necessary to sustain it – buildings and installations are removed or destroyed by accident.

11. The St Peter the Great judgment, concerned a transformer on consecrated ground, raised 3 particular issues: 1) Would the ordinary man think this was a building? 2) Does the structure have walls and a roof? 3) Can one say the structure is built? The Cardiff RA judgment established that it is not possible to construct an exhaustive test of what 'is or is in the nature of a building or structure' – but the main characteristics of a building are: 1) that it is of a size that it would normally be constructed, as opposed to being brought ready made onto the site; 2) it would cause a physical change of some permanence; and 3) there would be physical attachment to the ground.
12. Taking into account the above, including the definitions of 'building' in the GPDO and the TCPA, I am not satisfied that the remains on site constitute a building for the purpose of this appeal. During my visit, the site was overgrown with the remains of the building comprising a heavily distorted steel frame with some corrugated metal sheeting either located on the frame or loose on the ground. All metalwork appeared to be damaged and rusty. Consequently, I do not consider that an ordinary person could consider these remains to comprise a building, given its dilapidated condition with an obvious lack of walls and a roof.
13. Furthermore, given the requirements in paragraph 1 under Class ZA, and the fact that the arson attack took place before the 12 March 2020, there is nothing before me to suggest that the use of the original building was not lost, through the excessive damage caused by the fire. Therefore, it is concluded that, when, as in this case, no building exists falling within uses identified in paragraph 1(b) under Class Za, or within their subsequent replacement under Class E of the amended UCO, prior approval cannot be given.

Other Matters

14. I have also had regard to various other matters raised by the appellant including, amongst other things, the approval of a planning application on 30 March 2020 for a replacement building, but this factor does not form part of my decision. Additionally, concerns have been expressed by neighbouring occupiers but, given my findings above, any further consideration of those matters would not affect my conclusions on the main issue. The same also applies to any other planning merits of the scheme which, for the reasons set out above, do not fall to be considered as part of this particular appeal.

Conclusion

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

W Johnson

INSPECTOR