



Appeal Decision

Site visit made on 8 July 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/E0345/W/22/3291549

205-207 Alexander House, Kings Road, Reading RG1 4LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Burleigh Estates Ltd against the decision of Reading Borough Council.
 - The application Ref 210906, dated 27 May 2021, was refused by notice dated 28 July 2021.
 - The development proposed is Change of use from office use Class B1a to residential use Class C3 to create 13 new residential dwellings. These are created 11 within the roofspace of the building and a further 2 units on Ground and 1st Floor. Prior Notification under Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town & Country Planning (General Permitted Development) Order 2015 (GDPO) for the change of use from office (Use Class B1a) to residential (Use Class C3) to create 13 new residential dwellings at Alexander House 205-207 Kings Road, Reading, RG1 4LS in accordance with the terms of the application, Ref 210906, dated 2 July 2021, and the plans submitted with it, subject to the following condition:
 - 1) The use as residential apartments (Class C3) shall not commence until the roof alterations and external elevation works have been completed in accordance with the terms and conditions of planning permission 210885 (Dated 24 August 2021) including the relevant approved plans:
 - AHR_PA1 001 (received by the Council on 28 May 2021)
 - AHR_PA1 101 (received by the Council on 28 May 2021)
 - AHR_PA1 102 (received by the Council on 28 May 2021)
 - AHR_PA1 104 Rev A (received by the Council on 19 August 2021)
 - AHR_PA1 105 (received by the Council on 28 May 2021)
 - AHR_PA1 106 (received by the Council on 28 May 2021)
 - AHR_PA1 107 (received by the Council on 28 May 2021)
 - AHR_PA1 108 (received by the Council on 28 May 2021)

The separately approved works shall be retained and maintained as such thereafter.

Procedural Matters

2. The description of development in the banner heading above is taken from the Council's decision notice, as opposed to the original planning application form, as this more accurately reflects the proposal. I note the appellant also used this description on the appeal form.
3. The appeal has been made utilising Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Class O has subsequently been replaced by class MA following the introduction of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which made amendments to the Use Classes Order including moving various categories, including offices, into a new Use Class E.
4. However, under the section entitled Conditions at MA.2(3) it is made clear that an application for prior approval for development under Class MA may not be made before 1 August 2021. As the application and decision by the Council were made before this date, I will consider the appeal under Class O rather than the updated Class MA, with the offices being under the previous Use Class of B1a.
5. The Council highlighted that it did not receive a copy of the appellant's submitted drawing 'Proposed Elevation A and B' (ref: AHR_PD2 005 Dated 28 May 2021), as part of the original application or at submission of the appeal. However, the Council has acknowledged that this does not affect the merits of the case and it is not seeking to resist the proposal on this technical matter. A copy of the drawing was subsequently provided to the Council in any case.

Background and Main Issue

6. Development consisting of a change of use of a building and land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted by Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') subject to limitations which are specified at paragraph O.1, and conditions which are set out at paragraph O.2. The provisions of Schedule 2 Part 3 paragraph W (procedure for prior approval under Part 3) will also apply.
7. The Council consider that the proposal accords with the requirements set out at Paragraph O.1 of the GPDO so is permitted development. There is no evidence before me to the contrary. However, the Council deem that adequate natural light would not be provided to all habitable rooms of the proposed dwellinghouses, as per the condition at Paragraph O.2(1)(e).
8. The main issue is therefore whether prior approval should be granted having regard to the requirement to provide adequate natural light in all habitable rooms.

Reasons

9. The appeal site is an existing two-storey office building on the corner of Kings Road and Rupert Street. The appeal proposal seeks to convert the building's

- existing internal roofspace, as well as part of the ground and first floor into residential use to create thirteen dwellings.
10. Paragraph W(2A) of the GDPO provides that 'Where the application relates to prior approval as to adequate natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses'.
 11. Development permitted under Class O concerns only the change of use of a building and any land within its curtilage, and not any associated physical works. Each of the proposed dwellings, under their current physical arrangements, would not be provided with natural light to all their habitable rooms.
 12. The appellant, however, has secured a separate planning permission (ref: 210885, dated 24 August 2021) for operational development at the appeal site that entails alterations to the roof of the building and the provision of windows. This would enable each of the new units proposed under this appeal to receive adequate natural light.
 13. At the time of my site visit the appeal building appeared to be vacant and there were no obvious indications that the works approved under planning permission 210885 had commenced.
 14. It is proposed by the appellant, that the residential uses currently being sought would not commence until the operational development (approved under planning permission 210885) is complete. It is suggested that this could be secured by a planning condition (to be applied to the grant of prior approval) to ensure that the proposed residential dwellings are compliant with the conditions of Class O and receive adequate natural light.
 15. The Council acknowledge that should the separate works under permission 210885 take place, adequate levels of natural light would be achieved for the future occupants of the proposed units. I see no reason to find otherwise. However, the Council contests that prior approval can be granted subject to a condition(s) necessitating that building operations under a separate planning permission are complete.
 16. Paragraph W(13) of the GDPO provides that 'The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval'.
 17. Paragraph W(13) does not give the power to impose any condition(s) it pleases, rather, the condition(s) must be reasonably related to the subject matter of the prior approval. The approval does not relate to the entirety of the proposed development, but only to those matters which are specified for approval under each class of development.
 18. It is quite clear from paragraph W(13) that conditions may be imposed when granting prior approval. Equally, I consider there is no particular tension, between paragraph W(2A) and W(13) as they deal with separate points. In other words, it would be permissible for a condition to be imposed in relation to the provision of natural light in all the habitable rooms of the dwellinghouses and for the prior approval not to take effect until this provision had been fully met. I also deem that such a condition would be reasonably related to the

subject matter of the prior approval and would therefore satisfy the criteria in paragraph W(13).

19. However, to the extent that prior approval (with or without conditions) is granted in relation to a Class O change of use from office to residential, that prior approval cannot, and does not, also grant permission for any associated physical development required to implement the change of use.
20. Furthermore, the Planning Practice Guidance¹ provides that where associated physical development is required to implement the change of use, developers will need to consider whether it constitutes development and ensure they have planning permission if necessary.
21. This further reinforces my view that a condition requiring operational development under a separate planning permission can be appropriate to secure the necessary provision of adequate natural light, and thus allow for prior approval.
22. The Council suggests that such a condition may result in a prior approval that cannot be implemented. This is because the prior approval development must be complete and occupied within three years, while there is no guarantee that the separate operational development would be complete in sufficient time to allow this. Be that as it may, there is no guarantee that the grant of prior approval for any development under Class O (or now Class MA) would always be completed and occupied within the required timescales. As such, ensuring that the relevant timescales would be met is a matter for the appellant to address, while I do not find this issue would prevent the imposition of such a condition.

Conditions

23. The development must adhere to the conditions set out at Paragraph O.2.(2), and the provisions at Paragraph W(12) of Part 3, which requires that development permitted under Class O is completed within a period of 3 years starting with the prior approval date, and that the development must be carried out in accordance with the approved details.
24. It is necessary to attach a condition requiring that the use granted under this prior approval shall not commence until the operational development approved under planning permission 210885 is complete and thereafter retained. This is to ensure that all habitable rooms are provided with adequate natural light to accord with the requirements of Part O. I am satisfied that such a condition is relevant to the development to be permitted, suitably precise, and would meet all six tests of conditions that are outlined at Paragraph 56 of the Framework.
25. The Council's concerns regarding the legibility and accuracy of the plans that were submitted with the current proposal are noted. However, the condition to be attached to the prior approval does not relate to these submitted plans. Instead, it requires the works approved under planning permission 210885 to first be implemented.

¹ Paragraph: 055 Reference ID: 13-055-20140306

Conclusion

26. For the reasons given above the appeal is allowed and prior approval is granted.

Lewis Condé

INSPECTOR