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## Appeal Decisions

Site visit made on 23 November 2022

**by David Smith BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 November 2022**

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### **Appeal A - Ref: APP/B1550/W/21/3288262**

#### **123-153 High Street, Rayleigh, SS6 7QA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Overpier Limited against the decision of Rochford District Council.
  - The application Ref 21/00857/DPDP3J, dated 29 July 2021, was refused by notice dated 20 October 2021.  
The development proposed is change of use of upper floors from office (Use Class B1) to residential (Use Class C3) to create sixteen flats.
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### **Appeal B - Ref: APP/B1550/W/21/3288263**

#### **123-153 High Street, Rayleigh, SS6 7QA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Overpier Limited against the decision of Rochford District Council.
  - The application Ref 21/00856/DPDP3J, dated 29 July 2021, was refused by notice dated 20 October 2021.
  - The development proposed is change of use of upper floors from office (Use Class B1) to residential (Use Class C3) to create sixteen flats.
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### **Appeal C - Ref: APP/B1550/W/21/3288265**

#### **123-153 High Street, Rayleigh, SS6 7QA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Overpier Limited against the decision of Rochford District Council.
  - The application Ref 21/00846/DPDP3J, dated 29 July 2021, was refused by notice dated 20 October 2021.
  - The development proposed is change of use of upper floors from office (Use Class B1) to residential (Use Class C3) to create sixteen flats.
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## **Decisions**

### **Appeal A**

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning

(General Permitted Development) (England) Order 2015 (as amended) for change of use of upper floors from office (Use Class B1) to residential (Use Class C3) to create sixteen flats at 123-153 High Street, Rayleigh, SS6 7QA in accordance with the terms of application Ref 21/00857/DPDP3J, dated 29 July 2021, and the plans submitted with it, subject to the following condition:

- 1) Noise mitigation measures, as recommended in the Noise Impact Assessment (Venta Acoustics Ref VA3681.210519.NIA, dated 20 May 2021) and as approved in writing by the local planning authority, shall be installed prior to the first occupation of any of the flats hereby approved.

### **Appeal B**

2. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of upper floors from office (Use Class B1) to residential (Use Class C3) to create sixteen flats at 123-153 High Street, Rayleigh, SS6 7QA in accordance with the terms of application Ref 21/00856/DPDP3J, dated 29 July 2021, and the plans submitted with it, subject to the following condition:

- 1) Noise mitigation measures, as recommended in the Noise Impact Assessment (Venta Acoustics Ref VA3681.210519.NIA, dated 20 May 2021) and as approved in writing by the local planning authority, shall be installed prior to the first occupation of any of the flats hereby approved.

### **Appeal C**

3. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of upper floors from office (Use Class B1) to residential (Use Class C3) to create sixteen flats at 123-153 High Street, Rayleigh, SS6 7QA in accordance with the terms of application Ref 21/00846/DPDP3J, dated 29 July 2021, and the plans submitted with it, subject to the following condition:

- 1) Noise mitigation measures, as recommended in the Noise Impact Assessment (Venta Acoustics Ref VA3681.210519.NIA, dated 20 May 2021) and as approved in writing by the local planning authority, shall be installed prior to the first occupation of any of the flats hereby approved.

### **Preliminary Matters**

4. Class O of Part 3 of the Order contains a permitted development right for changes of use from offices to dwellinghouses subject to several restrictions and conditions. One of these requires application to be made for prior approval as to the transport and highways impacts of the development. As the application was made before 31 July 2021, the appeal should be considered under Class O even though this has now been superseded by Class MA.
5. In determining an application, the local planning authority must have regard to the National Planning Policy Framework so far as relevant to the prior approval matters and as if the application were a planning application. The same approach will be taken in deciding the appeal. In this respect, paragraph 111 of the Framework provides that development should only be prevented on

highway grounds if there would be an unacceptable impact on highway safety or if the residual cumulative impacts on the road network would be severe.

### **Main Issue**

6. The effect of the transport and highways impacts of the proposed developments with reference to cycle and refuse storage arrangements.

### **Reasons**

7. Each of the proposed developments is to convert office space into 16 flats at first and second floor level. However, the arrangements that would be made for refuse and cycle storage would be different in each case.

#### *Appeals A and B*

8. In both appeals, provision would be made for 20 bikes in place of two parking spaces which are to the rear of High Street and accessed from Castle Close. In Appeal A refuse storage is proposed within an undercroft alongside the existing timber enclosure that serves Central Apartments. In Appeal B it would be located next to the proposed cycle storage and so occupy a further two car parking spaces.
9. The parking spaces currently serve Central Apartments. The planning permission for the conversion to 8 apartments in 2012 includes a condition requiring them to be retained in perpetuity. However, there are 7 other spaces in the same area that are within the appellant's ownership that are allocated for the existing offices. The parking spaces to be removed could therefore be replaced by others so that 8 spaces remained available to the occupiers of Central Apartments.
10. In any event, the proposed residential units are intended to be car-free due to the very good access to public transport and proximity to local shops and services. In this location there is similarly no reason why those living at Central Apartments could not manage without a parking space. This would also promote sustainable transport in line with the Framework. Furthermore, whilst the Council refers to impacts on transport, there is nothing to indicate what these would be. There is therefore no evidence that there would be any issues for highway safety or for the road network if up to 4 private parking spaces were lost.
11. The refuse store in Appeal A would be located on highway land. The Highway Authority objects on the basis that this would be obstructed and so prevent the free and safe passage of all users. There is also a concern that this proposal would set a precedent for future similar developments. However, other legislation covers works to the public highway. In practice, the proposed store would not be wide and so a generous thoroughfare would remain for pedestrians between High Street and Castle Close. Consequently the transport and highways impacts of this part of the proposal would be insignificant.

#### *Appeal C*

12. In this scheme the cycle store would be located within a ground floor retail unit. Future residents would utilise a system of sack collection and would put bags out in designated areas along the pavement in High Street. The appellant proposes a waste management plan to minimise the time that sacks remain at

the side of the road. But it is difficult to see how this could effectively ensure that they were only placed outside shortly before the due collection time.

13. The Council objects on the basis that the sacks would encroach onto areas of public highway. However, it is normal for both bins and sacks to be temporarily placed on the footway prior to collection by refuse operatives. The danger that it is alleged would be caused has not been specified. The footway along this part of High Street is wide enough to accommodate both sacks and pedestrians but other legislation could deal with any issues of obstruction should they arise.
14. From the point of view of the amenity and health of future residents and of the community, this option for dealing with refuse is sub-optimal. However, such matters cannot be considered through the prior approval process. The transport and highways impacts would be unobjectionable.

### **Conditions**

15. Under Class O, development is permitted subject to a condition that it must be completed within 3 years starting from the date of this decision. The development must also be carried out in accordance with the approved details.
16. Prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The impact of noise from commercial premises on the intended occupiers of the development is a prior approval matter. The noise impact assessment recommends potential mitigation measures to the building envelope to mitigate external noise levels. A condition to secure this is necessary to ensure satisfactory living conditions.
17. The Council also suggests conditions for Appeals A and B relating to the design of the cycle and refuse stores but matters of external appearance are outside the prior approval process of Class O. The transport and highways impacts of placing sacks by the roadside on the public highway would be minimal and so requiring a waste management plan for Appeal C is not justified.

### **Conclusion**

18. Having regard to the reasons given above, prior approval should be granted and all the appeals allowed.

*David Smith*

INSPECTOR