



Appeal Decision

Site visit made on 21 December 2022

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 JANUARY 2023

Appeal Ref: APP/F5730/W/22/3294781

Diageo, 1 Lakeside Drive, London NW10 7HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval.
 - The appeal is made by Diageo Great Britain Ltd against the decision of Old Oak and Park Royal Development Corporation.
 - The application Ref 21/0128/PAOPDC, dated 28 July 2021, was refused by notice dated 16 September 2021.
 - The development proposed is prior notification under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for proposed change of use from offices (Use Class B1a) to provide 200 residential units (Use Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Decision Notice contested states that the proposed development was not able to meet the limitations within Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) due to non-compliance with the Nationally Described Space Standards (NDSS) issued by the Department for Communities and Local Government on 27 March 2015. The decision takes into account the amendments to the GPDO under Part 2 paragraph 3(9A) which came into force 6 April 2021.
3. I acknowledge, as of 1 August 2021, Class O was subsequently removed from the GPDO and changes of use from office to residential under permitted development are now dealt with under the new 'Class MA'. The ability to utilise Class O permitted development rights expired on 31 July 2021, as the last date a prior approval notification application could have been submitted and determined under that Class.
4. The prescriptions of the GPDO clearly set out and establish the principle for any new residential development which is permitted. In that context, I have taken into account the content of the development plan policies and National Planning Policy Framework only insofar as they are material considerations.
5. I note that the transport and highways impact of the development under condition (a) of paragraph O.2 (1) of Schedule 2 of the GDPO, was not, and is not currently objected to by Old Oak and Park Royal Development Commission (OPDC). However, whilst not adding to the reasons for refusal in dispute, they

seek that planning conditions are applied to reduce car parking and to secure travel plan matters in line with their new Local Plan (adopted June 2022), should the appeal be allowed. Therefore, those circumstances have been factored into my decision.

6. The appellant has sought to submit changes to the appeal plans based on the 'Wheatcroft Principles'¹, as well as other previously determined appeals² allowing similar substitution. I have carefully considered scope for such amendments. However, they would alter components of the scheme initially submitted which are fundamental to the prior approval mechanisms in dispute. The changes proposed have the potential to prejudice the outcome of the appeal before appropriate public consultation has taken place leading to material disadvantage. Therefore, my decision is based on the plan and accompanying information OPDC originally determined.

Main Issue

7. The main issue is whether the proposal can constitute permitted development requiring prior approval having regard to the NDSS.

Reasons

8. The main parties dispute whether or not the content of the appeal plans and accompanying supporting information should prevent compliance with the provisions of the GPDO. In that regard, the appeal plans combined with the submitted schedule of accommodation (defining the number of persons potentially occupying each bedroom) indicate 16 of the proposed units would feature double bedrooms (also illustrated by a double bed in the plans). Those particular units would be marginally deficient in minimum floor space terms set by the NDSS, if not otherwise deemed to be single bedrooms.
9. Furthermore, the appellant acknowledges that the plans showing rooms containing personal washing and toilet facilities within 8 of the 1-bedroom studio units, were indicated as "bathrooms". Those units being 0.2sqm below the 39sqm minimum unit size defined by the NDSS if baths are provided. However, they note showers could easily be added to those rooms instead of baths. Doing so would subsequently enable compliance with the NDSS, which allows for units with showers to involve a minimum area of 37sqm rather than the higher defined threshold of 39sqm for units with bathrooms.
10. The appellant also contends that in any event, the misrepresentation of double bedroom provision, and any mislabelling of shower rooms as bathrooms is not critical with respect to demonstrating compliance with the requirements of Part 2 paragraph 3(9A) of the GPDO, referring to the NDSS. There being no formal necessity to provide furnishings in the layout information they provided.
11. I have considered the appellant's points, but the drawings and information they submitted indicated the specification and future use of the rooms within the building. Therefore, led by the appellant's application submissions there was sufficient and detailed information available for OPDC to make a reasonable and informed decision on overall compliance with the GPDO. At the same time the information formed a basis to fulfil the separate but important consultation expectations associated to such development. Given the future use of

¹ *Bernard Wheatcroft Ltd v SSE* [1982]

² APP/Y0435/W/20/3247958; APP/W/J1535/W/21/3284878 & APP/W/J1535/W/21/3284881

individual rooms within the building was well defined, I accept that the unamended appeal plans and supporting information OPDC considered does not accord with the NDSS.

12. On the face of it, the substitution of plan and supporting schedule information or incorrect labelling of the appeal plans appears to be a minor issue. But, unlike the other appeal decisions evidenced by the appellant, the magnitude of this appeal scheme is large scale involving some 200 units with differing implications arising from the suggested changes.
13. Irrespective of there being any potential drafting errors, allowing the changes at this stage would fundamentally alter the nature of the relevant units initially shown by the plans and accompanying information which was assessed and consulted upon, where single bedrooms and shower rooms both have different clearly defined technical requirements set out in the NDSS. Notably, single bedroom provision acceptance would significantly influence gauging the subsequent transport and highways impacts triggered, in the context of recently adopted revisions to the maximum parking standards for the area.
14. The updated plans and associated submission material would have a wider bearing on the anticipated parking and travel needs for future occupants of the building, where Transport for London (TfL) was not satisfied with the transport statement information it was consulted on pre new Local Plan adoption. TfL and other relevant third parties would need to be first given an opportunity to comment on the changes to inform an overall decision in those circumstances.
15. Moreover, there was some limited opportunity for the appellant to attempt to propose an amendment early in the prior approval application process itself. Instead, amendments to rectify this issue have been proposed late on in the appeal process in a way that restricts opportunity for third party comment.
16. Consequently, allowing the alterations would jeopardise the full and proper consideration of any local views, accounting for the alterations and present circumstances, before a decision is made. For those reasons I have not allowed the appellant's proposed updates to the appeal plans to be treated as minor changes.
17. A tertiary case is made by the appellant that the appeal proposal could otherwise be made NDSS compliant through a planning condition. However, similar to the minor amendment route they support, the plan changes if accepted in that way would circumvent the purposeful limitations of the GPDO as to what constitutes a permitted development proposal, as well as changing the nature of the units initially consulted upon. Doing so would still prevent third party views from being properly accounted for. Given the overall size of the scheme and the related highways and transport implications involved it would be inappropriate to impose a condition, where adequate third party consultation has not yet taken place.

Other Matters

18. I agree that once a particular proposal has been deemed as constituting permitted development and any of the subsequent prescribed matters listed requiring prior approval were in some way deficient, then a planning condition may in some circumstances be an appropriate mechanism to utilise.

19. In that regard, the appellant's position remains that the provision of 150 car parking spaces would still be acceptable to meet the requirements of condition (a) of paragraph O.2 (1) of Schedule 2. Nevertheless, they also indicate they would if needed, be able to reduce the level of car parking provision to 40 spaces matching newly adopted parking standards through planning condition use. But accepting such an approach first relies on making the proposal permitted development retrospectively. Even if the option for reduced levels of car parking provision was deemed to be suitable, in principle, by the main parties it would also represent a further substantial change away from the plans initially considered and consulted upon by OPDC.
20. Thus, accepting highways and transportation impacts can be made acceptable through a planning condition would prevent the prior consideration of any updated views from TfL and wider consultees, including from members of the public. Local disagreement as to the level of off road parking or other related mitigation could still arise and cannot be discounted.
21. This issue is particularly relevant given the recent adoption of OPDC's new Local Plan where reduced parking and related mitigation to satisfy prior approval requirements may not be clear cut accounting for statutory consultation responses. Indeed, there is record of some interested party commentary on local infrastructure matters received during the appeal process, which reinforces my concerns regarding the adequacy of public consultation. That said, I have found the proposal unamended to be in breach of the NDSS in any event.

Conclusion

22. Accordingly, taking into account all arguments made it would not be appropriate to obviate a crucial step in the classification of what development is permitted before other prescribed matters are gauged. To do so would be incompatible with the specific terms and limitations being relied upon for prior approval, which are designed to facilitate the full consideration of third party views before a decision is settled upon.
23. Overall, I find that the appeal proposal falls outside of the scope of permitted development rights allowed by the GPDO as it would not comply with the NDSS. For the reasons set out above the appeal does not succeed.

M Shrigley

INSPECTOR