



Appeal Decision

Site visit made on 13 December 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/F5540/W/22/3294272

Mulliner House, Flanders Road, Chiswick, London W4 1NN

- 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 Maizelands Ltd and Arringford Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00455/B/PA1, dated 30 July 2021, was refused by notice dated 16 September 2021.
 - The development proposed is 'change of use from office (Use Class E(g)(i)) (previously Use Class B1(a)) to form 50no. residential units comprising 37no. studios, 11no. 1 bedroom units and 2no. 2 bedroom units (Use Class C3)'.
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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 Planning (General Permitted Development) (England) Order 2015 (as amended) for 'change of use from office (Use Class E(g)(i)) (previously Use Class B1(a)) to form 50no. residential units comprising 37no. studios, 11no. 1 bedroom units and 2no. 2 bedroom units (Use Class C3)' at Mulliner House, Flanders Road, Chiswick, London W4 1NN in accordance with the application ref 00455/B/PA1 dated 30 July 2021 and the plans and details submitted with it including plan Nos D1000 rev 00, D1100 rev 00, D1101 rev 00, D1199 rev 00, D1700 rev 00, D1701 rev 00, D2100 rev 01, D2101 rev 01, D2199 rev 00, D2700 rev 00 and D2701 rev 00, and subject to the conditions in the attached schedule.

Background and Preliminary Matters

2. Class O of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') as it applies to the proposal contains a permitted development right for the change of use of a building and any 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.
3. The conditions at O.2 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. In determining such an application, Schedule 2, Part 3, paragraph W(10) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework ('the Framework'), so far as relevant to the subject matter of the prior

approval, as if the application were a planning application. I have considered the appeal on the same basis.

4. In support of the application, the appellants prepared a Daylight and Sunlight Report dated July 2021 ('DSR'). The Council's report on the application suggests that this had not been included within the submission, but this is disputed by the appellants who have also provided a copy of an email from the Council which refers to 'daylight testing'. I cannot be sure from the information submitted to me whether the DSR was before the Council at the time of its decision. Nevertheless, the Council was able to comment on the DSR as part of the appeal process, albeit that it has not done so, and given the nature of the DSR as an assessment of the scheme rather than making changes to it, I do not consider my having regard to this evidence would unfairly prejudice any party.
5. Moreover, the DSR referred to the Building Research Establishment ('BRE') guide 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice 2011' ('BRE 2011'). Subsequent to the submission of the appeal, this was revised and replaced by a new edition ('BRE 2022'). The main parties were therefore invited to comment on the updated BRE 2022 guidance and its relevance to their cases. As part of the appellants' response, an updated Daylight and Sunlight Report dated December 2022 ('Updated DSR') was submitted. The Council was afforded an opportunity to comment on the appellants' evidence, and I am satisfied that my consideration of both parties' further evidence on natural light, including the Updated DSR, would not be prejudicial to any party. I have therefore taken it into account.
6. The appellants indicate that amended plans were submitted to the Council prior to its decision on the application. These amended plans (plan nos D2100 rev 01 and D2101 rev 01) are not listed as drawings in the Council's officer report. Nevertheless, the amendments made comprised annotation of the internal areas of flats rather than alterations to the development originally proposed. Because I am therefore satisfied that no prejudice would be caused by my doing so, I have determined the appeal having regard to these amended plans.

Main Issue

7. The main issue is whether or not prior approval should be granted having regard to whether or not there would be adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

8. The appeal proposes the change of use of a three-storey office building to 50 flats. The majority of flats would be single aspect, facing either north towards Flanders Road/the rear of buildings on Bath Road, or south towards the railway, although a few would have windows facing east or west.
9. Most of the flats would have separate kitchens which would not have any windows. Having regard to the limited size and layout of these kitchens though, I consider that they would be solely used for cooking purposes. Under the definition at paragraph X of Part 3 of the GPDO, they would not therefore be considered habitable rooms for the purposes of Part 3. The Council suggest that it has not been demonstrated that the kitchens would benefit from adequate daylight and orientation in accordance with London Plan Housing Supplementary Guidance. Be that as it may, the prior approval matter at

O.2(1)(e) concerns only the provision of adequate natural light in all habitable rooms of the dwellinghouses. Ventilation is outside of the scope of the prior approval matters relevant to the assessment of the appeal, and, in the context of the prior approval appeal, the lack of natural light to the separate kitchens which are not habitable rooms would not be unacceptable.

10. In respect of those rooms that would be considered 'habitable', the DSR considered daylight on the basis of the Average Daylight Factor ('ADF') method outlined in BRE 2011. It indicated that all rooms would meet, and in most cases significantly exceed recommended minimum ADF standards. The Updated DSR provides an assessment of daylight according to the Climate Based Daylight Modelling ('CBDM') method, and indicates that the majority of rooms would achieve recommended CBDM targets. It suggests that the rate of compliance would increase if one dwelling with a combined living/kitchen/dining room is assessed against the daylight target for a living room, rather than the higher target that would apply to a kitchen. Having regard to the layout of this room and size of the kitchen element, and the BRE guidance, I agree that this would be reasonable. That said, the results of the CBDM analysis set out at Appendix 2 of the Updated DSR seem to me to already apply the lower target for this room, and indicate that 9 habitable rooms across 8 dwellings would not meet BRE 2022 guidelines for daylight.
11. In relation to sunlight, the DSR indicated that fewer than two thirds of rooms would achieve recommended levels according to the BRE 2011. The Updated DSR shows a very slight increase in the proportion of rooms achieving the recommended levels according to the BRE 2022, although this would still be just below two-thirds. In addition, the proportion of dwellings with a room achieving BRE 2022 recommendations (rather than individual rooms) would be lower, and the appellant has not disputed the Council's comments that 27 of the flats would not receive sunlight in accordance with the guidelines. Most of the rooms and dwellings that would not meet recommended sunlight standards are those served by north-facing windows, although there are also some served by east or west-facing windows.
12. I note the proximity of some parts of the building to the site boundaries. However, the assessments within the DSR and Updated DSR were informed by 3D modelling which reflects adjacent development including the raised railway embankment to the south of the site, and I have no firm reason to doubt that the assessments of daylight and sunlight are suitably robust. I accept that these assessment show that the development would not fully meet BRE 2022 guidelines for daylight, and that a fairly high proportion of rooms and dwellings would not meet guidelines for sunlight. Even so, the BRE guidance is not mandatory, and advises that the guidelines should be interpreted flexibly. The Framework further states that when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
13. In this regard, the appellants refer particularly to the appeal site's urban setting where there is unlikely to be the same expectation of daylight and sunlight as in a suburban or rural environment. I acknowledge that single-aspect, and particularly north-facing single-aspect, dwellings are far from ideal. However, all of the dwellings would receive daylight meeting the

BRE 2011 guidelines which applied at the time that the scheme was prepared, and shortfalls from the BRE 2022 guidelines for daylight would in many cases be relatively small. In addition, most of the dwellings that would not receive guideline levels of sunlight would still meet guidelines for daylight under BRE 2022. A few would not, but having regard to the location of the site within an urban area and the levels of daylight that would be received, I am satisfied that all of the dwellings would, on balance, receive sufficient natural light overall to provide for acceptable living standards for occupiers.

14. The prior approval matter refers to the provision of adequate natural light, rather than good sunlight. For the reasons given above and having regard to the particular circumstances of the proposal and the evidence before me, there would in my judgement be adequate natural light to all habitable rooms of the dwellings, and I conclude that prior approval should in this case be granted.

Other Matters

15. The appellants propose that the development would be car-free, with the exception of two disabled parking bays. Subject to provision for potential additional disabled bays if need arose which could be accommodated within the site, this would accord with standards outlined by the London Plan 2021. Detail of how the parking within the site would be managed including to restrict use of the remaining bays, and restriction of eligibility for parking permits in the surrounding Controlled Parking Zone could be sought by a planning condition. Subject to these measures, I am satisfied that the proposal would not exacerbate parking stress or result in a significant increase in traffic movements to the detriment of the surrounding highway network. Given that each of the dwellings would meet Nationally Described Space Standards in accordance with the requirements of the GPDO, I am also satisfied that the internal area of the dwellings would be acceptable.
16. I note additional concerns raised by interested parties including in relation to the living conditions of neighbouring occupiers, loss of office space, effects on the capacity of local infrastructure and utilities, environmental sustainability measures, noise and disruption during construction, provision for waste and recycling and that the proposal would result in overdevelopment and a change in character of the road. However, these concerns are all outside of the scope of the prior approval matters that I am able to consider in my assessment of the appeal.

Conditions

17. Development permitted under Class O of the GPDO must adhere to the conditions set out at Paragraph O.2. These include that the development must be completed within a period of 3 years starting with the prior approval date. The provisions at Paragraph W(12) of Part 3 further require that the development must be carried out in accordance with the approved details. Conditions suggested by the Council that would duplicate these requirements are not therefore necessary.
18. Paragraph W(13) of Part 3 allows that prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval. To address the prior approval matter of the transport and highways impacts of development, a condition to secure cycle parking is necessary to support sustainable transport choices. In addition, conditions relating to the

management of parking on the site and to secure the development as car free, a delivery and service plan, and details of how construction will be managed are necessary to ensure the safe and efficient operation of the surrounding highway network. I have however amended the Council's suggested conditions in the interests of clarity and consistency and to ensure that they would be related to the land rather than the actions of individuals such that they would be reasonable, relevant to planning and enforceable. I have also omitted elements that would not relate to the transport and highways impacts of development, and unnecessary prescription of standards which the Council would be able to consider in assessing the details submitted.

19. Given that the proposal does not include external works, I do not consider that a condition to seek details requested by Transport for London ('TfL') of external changes, use of tall plant/scaffolding or to demonstrate access to the elevations of the building without recourse to entering TfL land would be necessary or reasonable. However, the internal works could result in vibration that could affect the adjacent railway lines. I have therefore amended the construction management condition to include a suggested requirement for details of how construction vibration effects on the adjacent railway infrastructure would be mitigated which I consider would be necessary in the interests of the safety and operation of the transport infrastructure.
20. The Council had additionally suggested a condition to require details of arrangements for the storage and collection of waste and recycled materials. However, the reason given for this condition is to ensure adequate provision for waste and recycling, and it is not clear from the evidence before me how this would be reasonably related to the subject matter of the prior approval. I have not therefore imposed it.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) No development shall take place until a Construction Logistics Plan ('CLP') has been submitted to and approved in writing by the Local Planning Authority. The CLP shall include:
 - i) a site plan (showing the elements set out below);
 - ii) confirmation that a pre-start record of site conditions on the adjoining public highway will be undertaken with Hounslow Highways and a commitment to repair any damage caused;
 - iii) provision for the parking of vehicles of site operatives and visitors;
 - iv) provision for loading, unloading and storage of plant and materials within the site;

- v) details of access to the site, including means to control and manage access and egress of vehicles to and from the site for the duration of construction including phasing arrangements;
- vi) details of vehicle routeing from the site to the wider strategic road network;
- vii) assessment of vibration effects of construction on the adjacent railway infrastructure, and, where necessary, details of how these will be mitigated;
- viii) provision of wheel washing facilities at the site exit and provision for sweeping of adjacent roads;
- ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- x) measures to ensure the safety of all users of the public highway in the vicinity of the site including cyclists and pedestrians;
- xi) details of liaison with other contractors in the vicinity of the site to maximise the potential for consolidation and to minimise traffic impacts;
- xii) details of delivery hours and a booking system to avoid vehicles waiting on the public highway;
- xiii) the implementation of all necessary traffic orders and other permissions required to allow safe access to the site prior to commencement of construction;
- xiv) details of the construction programme and a schedule of traffic movements;
- xv) confirmation of use of TfL's Freight Operator Recognition Scheme ('FORS') or similar.

The approved CLP shall be adhered to throughout the construction period for the development.

- 2) Notwithstanding the submitted details, the development hereby permitted shall not be occupied until cycle storage has been provided in accordance with full details (including manufacturer's specifications) of cycle stands for the occupants of and visitors to the development which have first been submitted to and approved in writing by the Local Planning Authority. The cycle storage shall thereafter be retained unobstructed and for this use at all times.
- 3) The development hereby permitted shall not be first occupied until a Parking Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include:
 - i) details of measures proposed to restrict parking to designated bays only and prohibit parking on the access route, including means of operation and enforcement;
 - ii) a commitment to retain capacity for an increase in blue badge bays to a provision of up to 7% if and when demand requires;
 - iii) details of the operation of any gates or barriers;
 - iv) measures to ensure that all prospective residents are informed of the Parking Management Plan and that all future residents will not be assigned a parking space or a right to park within the development other than blue badge holders.

- The parking area and access shall thereafter be managed in accordance with the approved Parking Management Plan.
- 4) The development hereby permitted shall not be first occupied until arrangements have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which has first been submitted to and approved in writing by the Local Planning Authority. The approved scheme or agreement shall ensure that no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the Local Planning Authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation). Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby approved continues.
- 5) The development hereby permitted shall not be first occupied until a Delivery and Servicing Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Delivery and Servicing Plan.

End of Schedule