



Appeal Decision

Site visit made on 4 January 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Appeal Ref: APP/Q3820/W/22/3294167

Gatwick House, Peeks Brook Lane, Shipley Bridge, Crawley RH6 9ST

- 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 Quidnet REIT Ltd against the decision of Crawley Borough Council.
 - The application Ref CR/2021/0581/PA3, dated 30 July 2021, was refused by notice dated 5 October 2021.
 - The development proposed is described as the existing commercial property, to be partially converted into residential. Office suites 1, 2, 2A, 7 and 8 to be converted into 9 no. one and two bed residential apartments.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As part of the appeal the appellant submitted an additional set of floor plans and elevations which are based on a technical survey of the building. They are more detailed than the plans submitted with the original application and provide a higher level of accuracy. I am satisfied they do not physically alter the proposed development but rather seek to clarify elements of that proposed. Their inclusion as part of the submission would not, therefore, be prejudicial to any other parties and they have had opportunity to comment. I have therefore made my decision with consideration of the following plans: 5786-001C; 5786-002C; 5786-003C; 5786-004L; 5786-005F; and 5786-006C.

Policy Position

3. The Council considered the proposal under Schedule 2, Part 3, Class MA (Class MA) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO. However, paragraph MA.2 (3) states an application for prior approval for development under Class MA may not be made before 1 August 2021.
4. The application associated to this appeal was submitted to the Council on 30 July 2021 and this is confirmed by letter of receipt from the Council, also dated 30 July 2021. It is noted that a minor alteration to the blue line showing the boundary of adjacent land owned by the appellant was requested by the Council on 11 August 2021. Nevertheless, according to Schedule 2, Part 3, Paragraph W (2), amongst other things, a plan indicating the site and showing the proposed development is required to accompany an application of this

nature. I am satisfied that the plan submitted on 30 July 2021 showed this and therefore for the purposes of this appeal, the application was made before 1 August 2021.

5. Consequently, it is necessary to consider the proposal under Schedule 2, Part 3, Class O (Class O) of the GPDO, which allows for the change of use from Class B1(a) (offices) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) to Class C3 (dwellinghouses) of the UCO, subject to limitations and conditions.

Background and Main Issues

6. The plans submitted at appeal accurately represent the appeal building, as observed during my site visit. They show that to create the 9 proposed dwellings only internal alterations would be required. Consequently, I am satisfied the proposal would not require operational development and there is nothing substantive before me to uphold the Council's reason for refusal on these grounds.
7. The Council had also refused the application in relation to Paragraph MA.1 (1) (a) of Class MA which relates to the vacancy of the building in question. However as set out above, it is necessary to consider the proposal under Class O and not Class MA so this ground for refusal no longer applies.
8. The main issues are, therefore, whether the proposed development would constitute permitted development in respect to Class O; and if the proposal is found to constitute permitted development, whether noise from commercial premises would affect intended occupiers of the development, and whether the proposed development would provide adequate natural light to all habitable rooms of the proposed apartments.

Reasons

Class O

9. Paragraph O.1 of Class O of the GPDO sets out 5 criteria when development is not permitted under Class O. As the appeal site is not, nor forms part of, a safety hazard area, military explosives storage area, a listed building or the curtilage of a listed building, or a schedule monument, 4 of the 5 criteria are met. The fifth criterium requires that the appeal site building was not used for a use falling outside of Class B1(a) on 29 May 2013; or if in use before that date but not on that date, when it was last used.
10. The main parties agree the current lawful use of the appeal site is Class B1(a) and from the planning history this has been the case since the granting of an application (reference CR/2000/0544/FUL) in late 2000, although it was not until 2016 when a certificate of lawfulness was granted for the full building, including the parts beyond the appeal site, for the continuation of the existing Class B1(a) use (reference CR/2016/0010/191). The specifics of each application have not been submitted. However, I am satisfied that the use of the appeal site on 29 May 2013 was in Class B1(a) and there is nothing before me stating otherwise.
11. The proposed development would, therefore, constitute permitted development in respect to Class O and so it is necessary to consider the remaining factors relating to noise and natural light.

Noise from commercial premises

12. The appeal site forms part of a large commercial premises which is predominantly offices. The main parties agree that the noise from this would not be detrimental to future occupants of the proposal. As there is nothing before me to contradict this position, I am satisfied this would be the case.
13. There are no other commercial premises within the direct vicinity of the appeal site, however it is around 2km from Gatwick Airport. Gatwick Airport is a commercial premises whereby the movement of aircraft both on land and travelling to and from the airport is inextricably linked to its commercial undertakings. Therefore, in this case, I find it necessary to take into consideration the noise of the aircraft as part of the overall noise from Gatwick Airport.
14. Policy ENV11 of the Crawley Borough Local Plan 2030 (LP) seeks to prevent residential and other noise sensitive development where future users would be exposed to unacceptable noise level. This policy is supported by the LP Noise Annex (LPNA) which sets out the specific technical guidance to assist with the assessment of noise impact.
15. Noise surveys were taken on 3 separate occasions between August 2020 and December 2021 and compiled within the appellant's Acoustic Report (AR) and Acoustic Appeal Statement (AAS). The recorded aircraft noise during the day in all 3 surveys fell within the Significant Observed Adverse Effect Level (SOAEL) as set out in the LPNA, which would mean it was noticeable and disruptive. During the night the aircraft noise increased from SOAEL to an Unacceptable Adverse Effect (UAE) across the 3 sets of results, which would mean the noise was noticeable and very disruptive. In all sets of results the A weighted maximum sound pressure level also fell into the UAE category.
16. Therefore, the appeal site, and consequently potential future residential occupants, would be exposed to unacceptable noise levels from aircraft. As such the AR goes on to set out potential measures which could mitigate against this noise disturbance including secondary glazing, mechanical ventilation to reduce the need to open windows, and the upgrading of the ceiling and roof structures.
17. Notwithstanding the concerns of the Council's Environmental Health Officer in relation to the quality of acoustic design such measures would provide, there is nothing before me to show how these measures could be installed. Due to the extent and nature of mitigation required it is likely that it would be necessary, amongst other things, to install plant, and undertake alterations to the existing windows and roof structure, which would likely constitute operational development. Consequently, from the information before me, I am not satisfied that the implementation of such mitigating measures either by design or by condition, would ensure the proposal would continue to be permitted development as set out in Class O.
18. It is appreciated that there are existing residential dwellings in proximity to the appeal site. However, there is no evidence that the occupants' of those properties are not negatively impacted by noise, what mitigation measures maybe in place at those dwellings, or the circumstance of those dwellings being approved. It is appreciated that nearby Fernhill Farm achieved prior approval in 2015 (CR/2015/0067/PA3) however it has not been identified under which

part of the GPDO this had occurred. Nevertheless, had it been under Class O of the GPDO, the need to consider the impact of noise from commercial premises was not introduced until April 2016 by amendment¹ so would not have applied in 2015. Therefore, these examples are not sufficiently similar for me to draw a direct comparison to that proposed.

19. A lack of comment from Gatwick Airport Planning Department in relation to noise does not constitute support for the proposal.
20. Therefore, I find the appeal site's exposure to noise from commercial premises would result in a detrimental impact on the intended occupants of the proposed development and this effect would be unacceptable in regard to O.2(1)(d) of Schedule 2, Part 3, Class O of the GPDO. This is evidenced by a lack of compliance with LP Policy ENV11, and LP Policies H1 and CH3 insofar as they seek to ensure a good quality of amenity for all future occupants.

Natural light

21. The proposal would ensure all habitable rooms would have access to existing windows and roof lights. These are clearly identified on the submitted plans.
22. The submitted Daylight/Sunlight Assessment (DSA) confirms that all windows would have access to acceptable levels of daylight and sunlight. It is appreciated that the DSA identifies the windows on the previous iteration of the proposed floor plans. However, I am satisfied that the findings of the DSA would correlate with the submitted plans. Thus, in conjunction with my observations on site, on an overcast day, I am satisfied the proposal would ensure adequate natural light for all habitable rooms proposed.
23. Whilst I conclude that the proposal would not entail unacceptable effects in regard to O.2(1)(e) of Schedule 2, Part 3, Class O of the GPDO, this is a neutral finding rather than one that weighs positively in favour of allowing the appeal.

Other Matters

24. The Council's concerns relating to the effect of the proposal on the future operations and growth of Gatwick Airport in relation to the 'agent of change' principle are noted. However, as this appeal has been made under the terms of the GPDO, I am limited to deliberations relating to a finite list of matters as set out in the Policy Context above.

Conclusion

25. For the reason given in my second main issue above, I therefore conclude that the appeal should be dismissed.

RJ Redford

INSPECTOR

¹ Statutory Instrument 2016 No. 332 – The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016