The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2023

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/A2280/W/22/3294970
Lloyds Banking Group Operations Centre, Bailey Drive, Gillingham Business Park, Gillingham ME8 0LS

- 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 Lloyds Banking Group against the decision of Medway Council.
- The application Ref MC/21/2101, dated 14 July 2021, was refused by notice dated 16 September 2021.
- The development proposed is the conversion of existing office, provision made for 44 new residential units including a mix of 16 x 1 bed and 28 x 2 bed.

Decision

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 the conversion of existing office, provision made for 44 new residential units including a mix of 16 x 1 bed and 28 x 2 bed at Lloyds Banking Group Operations Centre, Bailey Drive, Gillingham Business Park, Gillingham ME8 0LS in accordance with the terms of the application Ref MC/21/2101, dated 14 July 2021, the plans submitted with it including 21.097 0100 S0 Rev F, 21.097 0200 S0 Rev D, 21.097 0201 S0 Rev B, 21.097 0202 S0 Rev A and 21.097 0300 S0 and subject to the conditions contained in the schedule to this decision.

Preliminary Matters

2. 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 (GPDO 2015), planning permission is granted for development consisting of a 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 provisions of Class O of the GPDO 2015 require the local planning authority to assess the proposed development on the basis of transport and highways impacts of the proposed development; contamination risks on the site; flood risks on the site; and the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council has confirmed that the sole matter in contention in this appeal is the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Main Issues

4. The main issue is whether the proposed development provides adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

5. The appeal site is occupied by a large three-storey building that is currently vacant. The building was previously used as an office with the land surrounding it used for associated car parking. Directly adjoining the boundaries to the south and west of the appeal site is a relatively large and well-established woodland which the Council refers to as Ambley Wood.

6. The trees within Ambley Wood are dense and significant in size, with many greater than the height of the appeal building and some which have canopies that extend over the boundaries of the appeal site. The proposed residential units on the southern and western elevations of the appeal building would face this existing woodland.

7. With the application for prior approval, the appellant submitted an internal daylight report indicating that all of the proposed habitable rooms within the appeal building would meet the desired average daylight factor value and are in compliance with BRE guidance in terms of internal daylight amenity. However, this did not take into consideration the presence of the woodland and its proximity to the boundaries. Consequently, another assessment was undertaken by the appellant as part of this appeal to include the potential tree coverage as well as a 6 metre tall structure around the boundary of the site. In a letter dated 15 September 2021, this indicates that all proposed habitable rooms would still meet the internal daylight targets recommended within the BRE guidelines.

8. During my site visit I noted that the existing building was well separated from the southern and western boundaries and the trees within Ambley Wood. Whilst the height and dense nature of the trees may partially restrict some daylight from entering the building, this would largely be in the spring and summer months when the trees have their leaves and when daylight levels are greatest. The light would also still be able to penetrate through the branches unlike a solid building or wall. Furthermore, the existing windows on the appeal building are generous in size and I saw during my site visit that they currently let ample light into the building even at ground floor level on the elevations closest to the woodland.

9. Due to the unoccupied nature of the building at present, the area of land to the south and west of the appeal building is somewhat overgrown and the canopies of the neighbouring trees hang over the boundaries of the appeal site. However, the appellant has stated that this could be cut back to the boundary to increase the space between the building and the trees and further improve the levels of natural light in the proposed habitable rooms. I note that the Council raise concerns regarding an increased pressure to remove trees from the proposed development. However, this is not a matter for consideration under the prior approvals process.

10. Two appeals[1] have been highlighted by the Council which, they state, were dismissed in part due to the impact of the proposed development from

[1] Ref APP/R3650/W/18/3213575 and APP/A2280/W/16/3154372

surrounding trees. However, whilst I agree that such a matter could be considered when assessing the provision of adequate natural light, these examples would not outweigh my finding in this instance as they are materially different from the appeal before me.

11. Therefore, I conclude that the development would provide adequate natural light in all habitable rooms of the proposed residential units. It would therefore comply with condition O.2(1)(e) of Schedule 2, Part 3, Class O of the GPDO 2015.

Other Matters

12. The appeal site is located within 6km of the North Kent Marshes SPA/Ramsar sites and therefore falls within the zone of influence for these sites. The submitted evidence indicates that the appeal scheme would have a likely significant effect on the SAC/Ramsar sites from recreational disturbance on the over-wintering bird interest. The Council's report indicates that mitigation for the proposed residential units would be required in the form of a financial contribution, which the appellant has agreed to pay and a unilateral undertaking has been submitted to secure this.

13. The grant of planning permission under Article (3)1 of the GPDO 2015 is subject to the provisions of the GPDO 2015 for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). Effectively, Article (3)1 provides a pre-commencement condition which must be met, where the development would affect a European protected habitat, before the works can be undertaken as permitted development. This includes a separate application to the Council under regulation 77 of the Habitats Regulations to allow the Council to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO 2015.

14. Based on the evidence before me, it does not appear that an application to the Council under regulation 77 has been made. However, as the regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issues that I have examined. Therefore, I do not need to consider this matter further as part of the appeal.

Conditions

15. Any prior approval and planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class O of the GPDO 2015 is subject to the condition that it must be completed within a period of 3 years starting with the prior approval date. Given I have listed the submitted plans in my decision and Paragraph W(12) of Schedule 2, Part 3 of the GPDO 2015 requires development to be carried out in accordance with the details submitted, the Council's suggested plans condition is unnecessary and has not been imposed. I have also not included a condition relating the provision of cycle parking, as this provision is detailed on the submitted plans and therefore such a condition is also unnecessary.

16. Paragraph W(13), Schedule 2, Part 3 of the GPDO 2015 allows conditions to be imposed that are reasonably related to the subject matter of the prior

approval. As such, I have included a condition requiring compliance with the recommendations of the phase 1 contaminated land assessment submitted as part of the application. I have amended this from the pre-commencement condition recommended by the Council to a pre-occupation condition, as this monitoring could be carried out in tandem with the necessary works required for the change of use and any necessary gas protection measures are only necessary prior to its use as a residential premises. I have also included a condition requiring compliance with the mitigation measures set out in the submitted flood risk assessment. This has been amended from the condition suggested by the Council, so as to require compliance prior to the occupation of the development rather than in the event of a flood incident, as this more accurately reflects the requirements of the mitigation measures outlined. These conditions are reasonable and necessary and are reasonably related to the subject matter of the prior approval.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed and prior approval is granted under Schedule 2, Part 3, Class O of the GPDO 2015.

E Grierson

INSPECTOR

Schedule of Conditions

1) Prior to the occupation of the development, ground gas monitoring must be completed as recommended in section 8 of the Desk Top Study Report by Brownfield Consultancy (BC560 RE001) dated 28 June 2021. A risk assessment must be carried out and proposals for gas protection measures, where necessary, submitted to and approved in writing by the local planning authority. Gas protection measures must be carried out as approved and a verification report submitted to and approved in writing by the local planning authority, prior to the occupation of the development.

2) Prior to the occupation of the development, the mitigation measures as set out in paragraph 4.6 of the Flood Risk Assessment (2103760-01B) dated July 2021 shall be implemented on site.

END OF SCHEDULE