



Appeal Decision

Site visit made on 9 January 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Appeal Ref: APP/N5660/W/21/3288301

1-4 Brixton Hill Place, Lambeth SW2 1HJ

- 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 Platinum Land Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/02788/P3O, dated 6 July 2021, was refused by notice dated 13 September 2021.
 - The development proposed is an application for Prior Approval for a change of use of existing offices to 12 self contained flats with associated secure cycle parking and bin storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have also dealt with another Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) Prior Approval appeal on this site (Ref: APP/N5660/W/22/3305193). That appeal is the subject of a separate decision.
3. A prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. The principle of development is established through the grant of permission by the GPDO. I have determined this appeal on that basis.

Main Issues

4. The main issues are:
 - whether the proposal would be permitted development under Schedule 2, Part 3, Class O of the GPDO;
 - the transport effects of the proposal.

Reasons

Permitted Development under Schedule 2, Part 3, Class O of the GPDO

5. It is not disputed that the Council granted a Lawful Development Certificate (LDC), under s191 of the Town and Country Planning Act 1990 (as amended)

- (the Act), for a B1(a) use at the appeal site on 22 September 2020¹. The appellant has provided a copy of this LDC, which confirms the B1(a) use, the address of the site and includes a plan showing the LDC site.
6. The address and the site of the LDC are substantively the same as the address and the site of the appeal proposal.
 7. I note the Council's references to the evidence submitted to support the LDC application, including the OS map listed on the LDC, the existing floorplan showing 'Site A', and, section 6 of the Statement of Evidence for that application. The Council considers this shows that the LDC only covers part of the appeal site but acknowledges that this could have been better defined in the Officer report for the LDC.
 8. Whilst I note the inconsistencies between the LDC and the evidence submitted to support it, these are matters that the Council should have addressed in granting the LDC, in the wording of the officer report, but more importantly in the content and wording of the LDC itself.
 9. The LDC does contain limited references to the evidence upon which it was granted. However, I am satisfied that the overall content and wording of the LDC, including the address and the attached site plan, shows that the LDC applies to the whole of the appeal site.
 10. I also note that section 191(6) of the Act states that 'The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.'
 11. The Council considers the proposal would not comply with Article 3, Paragraphs 9A and 9B of the GPDO. However, it is not disputed that the Gross Internal Area (GIA) of any of the proposed flats would be greater than 37sqm. Consequently, I find that the proposal would comply with Article 3, Paragraph 9A(a) of the GPDO.
 12. Article 3, Paragraph 9A(b) of the GPDO states that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse that does not comply with the nationally described space standard (NDSS) issued by the Department for Communities and Local Government on 27 March 2015. Article 3, Paragraph 9B of the GPDO states that the reference in paragraph (9A) to the NDSS is to that standard read together with the notes dated 19 May 2016 which apply to it.
 13. Flat 12 would be a 1-bed/1 person flat and would manifestly meet the requirements of the NDSS for such a property.
 14. I am also satisfied that bedroom 2 in proposed Flat 1 would meet the NDSS. This is an L-shaped room and whilst part of it would measure less than the minimum width for a single-bed room, if this part were to be discounted, the room would still meet both the minimum width and minimum floorspace requirements contained in the NDSS.
 15. Bedroom 2 in proposed Flat 2 contains an ensuite and so part of the room is less than the minimum width for a two-bed room specified in the NDSS. However, unlike Flat 1, it is not clear from the evidence that by discounting this

¹ LPA Ref. 20/01597/LDCE

part of the room to achieve compliance with the minimum width requirement, the minimum floorspace standard would still be achieved.

16. The current floorspace of the room is 13.3 sqm, meaning a reduction of 1.8 sqm would still achieve the 11.5 sqm floorspace for a two bedspace room specified in the NDSS. However, the ensuite is 2.3 sqm and is a similar, if not smaller size, to the area that would need to be discounted to accord with the minimum width requirement. Consequently, I am not satisfied that Flat 2 would meet both the minimum width and minimum floorspace requirements contained in the NDSS.
17. For proposed Flat 7 the appellant states that part of the bedroom would be a 1.8 sqm storage cupboard. However, this is not annotated on the submitted drawings, unlike storage or wardrobe space in other proposed flats. It is not, therefore, clear from the evidence that Flat 7 would contain the 1 sqm of built-in storage required by the NDSS.
18. For these reasons I am satisfied that the lawful use of the appeal site is for B1(a) offices. Consequently, a proposal for a change of use to C3 dwellinghouses would be permitted under Schedule 2, Part 3, Class O of the GPDO, subject to the relevant articles, conditions, limitations and restrictions contained within the GPDO.
19. However, I am not satisfied that the proposed development would meet the requirements of the NDSS, specifically Flat 2 and Flat 7. Consequently, with reference to Article 3, Paragraph 9A(b) and 9B, the proposal would not be permitted development under Schedule 2, Part 3, Class O of the GPDO.

Transport

20. I note that the Council is now satisfied that the information submitted with the proposal is sufficient to conclude (that with appropriately worded conditions) the proposal would have an acceptable impact on the flow of traffic on Brixton Hill; would allow for safe pedestrian access to the site; and access for refuse collection vehicles and emergency vehicles.
21. With reference to Paragraph O.2.(1)(a), Class O, Part 3, Schedule 2 of the GPDO, the appellant has provided a Transport Statement for the proposed development. This concludes that there would be fewer trips by all modes than the existing office use and notes that there would be a reduction in car parking spaces on site.
22. Whilst this is not disputed by the Council, the absence of a s106 planning obligation to address the residual transport impacts of the proposed development was a reason for the Council refusing prior approval.
23. As part of their appeal, the appellant has submitted a s106 planning obligation² that addresses the Council's concerns regarding securing the proposed development as car free; providing a time-limited car club membership to future occupiers; providing a cycle hire membership to the first occupiers of each of the proposed flats; and, providing and implementing a car park management plan. The Council considers that such a planning obligation would address their concerns.

² Including provision of powers under s16 of the Greater London Council (General Powers) Act 1974

24. I am satisfied that a planning obligation would be a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development³.
25. The submitted planning obligation states that 'the owner' is BHPD Limited (Co. Regn. No. 13507634) of Suite 11, Fulham Business Exchange, The Boulevard, London SW8 2TL, and is 'the freeholder [sic] owner of Site registered with freehold title absolute under Title Numbers LN57668 and SGL220281 at the Land Registry.'
26. However, the evidence of title submitted by the appellant for Title Numbers LN57668 and SGL220281, shows that the owner, with Title absolute, is *Clapham Park Project* (Co. Regn. No. 4237777) of 45 Streatham Place, London, SW2 4QG. The evidence of title dates from 8 August 2018.
27. Furthermore, I note that *BHPD Limited* is not listed on the application form or the appeal form for the proposed development and that there is a missing date at the top of the second page of the submitted planning obligation.
28. With reference to Annexe N of the Procedural Guide: Planning appeals – England, December 2022, I am not satisfied that the submitted s106 planning obligation is legally sound or complete. It therefore carries no weight in my determination.
29. With regard to bicycle storage, the appellant has proposed a communal ground floor store for up to 14 bicycles accessed from the courtyard area. The communal store would be available to the occupiers of the flats without separate internal bicycle storage space.
30. Flats 2, 3, 4, 5 and 6 would have separate, internal bicycle storage rooms, accessed through the living accommodation and some distance from the entrance/exit to the flats.
31. Whilst internal bicycle storage within flats can be an acceptable solution in some cases, there are clearly disadvantages with such an approach. Bicycles are inherently outdoor vehicles and can collect dirt and water on their wheels and frames through use. Moving a wet or dirty bicycle a considerable distance through a home and storing it in an enclosed space, as would be the case here, is unlikely to be attractive to residents and so would discourage them from cycling.
32. For these reasons, the proposed development would have an unacceptable impact on Transport.

Other Matters

33. I note that the Council is now satisfied that the information submitted with the proposal is sufficient to conclude (that with an appropriately worded condition) the proposal would have an acceptable impact on the living conditions of nearby occupiers during construction.
34. I also note the Council accepts the error made on the proposed ground floor plan, omitting an external doorway from proposed Flat 7. A revised plan has

³ Paragraph 57 of the National Planning Policy Framework 2021 (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

been submitted to correct this mistake, and I am satisfied that the very limited scale of the error means that interested parties would not be disadvantaged by such a substitution of plans.

35. Neither of these matters affect my determination of the appeal development, as set out above.

Conclusion

36. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR