



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/22/3305193

1 - 4 Brixton Hill Place 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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Platinum Land against the decision of London Borough of Lambeth.
 - The application Ref 22/00495/P3MA, dated 2 February 2022, was refused by notice dated 11 April 2022.
 - The development proposed is an application for Prior Approval for change of use of the building from offices (Class E) to 12 self contained flats (Use Class C3).
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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/21/3288301). That appeal is the subject of a separate decision.
3. On the appeal form the name of the appellant is different to the name of the applicant on the application form. Only the applicant has a right of appeal. However, there is only a very minor difference in what is a company name; the address is unchanged and the same agent is also listed. This is not a matter of dispute between the parties and in this case, I am satisfied that the appellant and the applicant are the same.
4. During my site visit I noted that the buildings were not fully vacant, and that there was a functional office space occupied by two people, together with a separate office space. With reference to Paragraph MA.1.(1)(a), Class MA, Part 3, Schedule 2 of the GPDO I sought the views of both main parties with regard to this matter. I have considered the responses received in determining this appeal.
5. 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

6. The main issues are:

- whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO; and,
- the transport effects of the proposal.

Reasons

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

7. 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.
8. The address and the site of the LDC are substantively the same as the address and the site of the appeal proposal.
9. 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.
10. 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.
11. 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.
12. 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.'
13. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and provided (amongst other things) that Classes A1, A2, A3, B1, D1 and D2 are replaced by Class E in Part A of Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO).
14. From its Statement of Case I am satisfied that the Council considers a B1(a) office use would be fully consistent with a Class E(g)(i) office use under the UCO and I also consider that such office uses are mutually consistent.
15. Consequently, I am satisfied that the lawful use of the appeal site falls under Class E of the UCO and that a proposal for a change of use to C3 dwellinghouses would be permitted under Schedule 2, Part 3, Class MA of the

¹ LPA Ref. 20/01597/LDCE

GPDO, subject to the specified conditions, restrictions and limitations contained within the GPDO.

16. In response to my query regarding the partial occupation of the building as office space at the time of my site visit, the Council confirmed that it had not visited the appeal site and relied upon the appellant's signed declaration on the application form. The Council acknowledged that as a result the building could have been in office use contrary to the submitted evidence.
17. The appellant confirmed that the building was vacant for a continuous period of at least three months before the date of the application for Prior Approval and so accorded with the requirements of Paragraph MA.1.(1)(a), Class MA, Part 3, Schedule 2 of the GPDO. The current occupation of the building by 3 persons for office use is not disputed and is said to be an interim 'caretaking' measure in response to security concerns.
18. Whilst this is a somewhat unusual arrangement and the number of 'caretakers' seems excessive given the size of the building and the limited scope for access, there is no substantive evidence before me that causes me to doubt the appellant's explanation. Moreover, the current occupation of the building in this way would not conflict with Paragraph MA.1.(1)(a), Class MA, Part 3, Schedule 2 of the GPDO, which concerns the three months before the Prior Approval application.
19. However, the appellant also volunteered additional information showing correspondence with the Council regarding the quantity of floorspace for this appeal and the linked appeal at the same site².
20. I note that the existing floorplans for both appeals are almost identical. However, the quantity of existing floorspace on the application form for the linked appeal is said to be 1710 square metres (sqm), whilst the appellant has confirmed on the application form for this appeal that the cumulative floorspace for the existing building does not exceed 1500sqm, a difference of some 210sqm.
21. I note that the Council queried this discrepancy but was satisfied with the explanation provided by the appellant, that the linked proposal 'involved proposed changes to floor levels, to make use of the existing loft space at 2nd floor level.' The appellant went on to say that for this appeal proposal 'no such changes are proposed to floor levels, and hence the existing loft space at 2nd floor is maintained as loft space, as noted on the drawings, hence the difference in areas.'
22. I do not find this explanation coherent or plausible. The proposed loft floorspace plans for both appeals are very similar in size and show parts of six flats, including a bedroom space for Flat 10, demonstrating an intended change of use in the loft area.
23. Given the similarities between the existing plans for both appeals, and the similarities between the proposed plans for both appeals, including at loft level, it is not at all clear why the floorspace for this appeal would be some 210sqm less than the floorspace for the linked appeal.

² Ref: APP/N5660/W/21/3288301

24. Paragraph MA.1.(1)(c), Class MA, Part 3, Schedule 2 of the GPDO states that development is not permitted if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres.
25. For these reasons, I am not satisfied that the floorspace of the existing building changing use under Class MA would not exceed 1500sqm. Consequently, I am not satisfied that this appeal proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Transport

26. With reference to Paragraph MA.2.(2)(a), Class MA, 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.
27. 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.
28. As part of their appeal, the appellant has submitted a s106 planning obligation³ 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.
29. I am satisfied that such 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 development⁴.
30. 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.'
31. 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.
32. Furthermore, I also 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.
33. 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.

³ Including provision of powers under s16 of the Greater London Council (General Powers) Act 1974

⁴ Paragraph 57 of the National Planning Policy Framework 2021 (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

34. For these reasons, the proposed development would have an unacceptable impact on Transport.

Conclusion

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

Andrew Parkin

INSPECTOR