



Appeal Decisions

Site visit made on 17 January 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 FEBRUARY 2023

Appeal A Ref: APP/Y0435/W/21/3289784

Marlborough Court, Sunrise Parkway, Linford Wood, Milton Keynes MK14 6DY

- 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) (GPDO).
 - The appeal is made by Linford Wood Residential Ltd against the decision of Milton Keynes Council.
 - The application Ref 21/01731/PANB1C, dated 3 June 2021, was refused by notice dated 29 July 2021.
 - The development proposed is Prior approval for the change of use from B1(A) Office to C3 Residential (53 Units) on the ground & first floor.
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Appeal B Ref: APP/Y0435/W/21/3289786

Marlborough Court, Sunrise Parkway, Linford Wood, Milton Keynes MK14 6DY

- 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) (GPDO).
 - The appeal is made by Linford Wood Residential Ltd against the decision of Milton Keynes Council.
 - The application Ref 21/01736/PANB1C, dated 3 June 2021, was refused by notice dated 29 July 2021.
 - The development proposed is Prior approval for the change of use from B1(A) Office to C3 Residential (74 Units) on the ground & first floor.
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Decision

1. Appeal A and Appeal B are dismissed.

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and amended various use classes. This included use Class B1, which has been subsumed into the new Use Class E. However, the amendment included transitional arrangements for the period between 1 September 2020 and 31 July 2021. These specified that any references to uses or use classes specified in the Schedule to the UCO should be read as meaning the uses or use classes that applied on 31 August 2020 for the purposes of making a prior approval application. As such, given that the application was submitted prior to 31st July 2021, the previous classes apply.

Background and Main Issue

3. As set out above there are two appeals for development on this site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together. The evidence before me demonstrates that the main difference between the two schemes is the quantum of residential units proposed and their distribution within the building. The main issue in respect of each appeal is identical. In considering these appeals I have assessed the extent to which there are differences between the two proposals in relation to the main issue.
4. 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 (as it applied on 31st August 2020), to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted by Schedule 2, Part 3, Class O of the GPDO subject to limitations which are specified at paragraph O.1, and conditions which are set out at paragraph O.2.
5. 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, including at part (1)(e) 'the provision of adequate natural light in all habitable rooms of the dwellinghouses'. The Council considers that the proposed developments would not make provision for adequate natural light in these terms. The Council has not argued that the proposals fail to comply with Class O in other respects, and I have no compelling reasons to find otherwise.
6. The main issue is therefore whether or not prior approval should be granted under Class O, having regard to the requirement for the provision of adequate natural light in all habitable rooms.
7. The planning applications (in respect of Appeal A and B) were both submitted to the Council at the same time and both were refused by the Council on 29 July 2021. The appellant appealed both of the decisions on 23 December 2021.
8. Both main parties have also referred to a third appeal (hereafter referred to as 'the Previous Appeal')¹ which related to an application for 69 residential units at the appeal site. The Previous Appeal was dismissed on 24 June 2022. The main issue in respect of the Previous Appeal was the same as that which is relevant to Appeal A and Appeal B. As such, the conclusions reached by the Planning Inspector in that instance are of direct relevance to the current appeals, notwithstanding the differences between the three schemes.

Reasons

9. The Previous Appeal related to a proposal for 69 units on the ground and first floor of the building. The Inspector noted that a small percentage of the rooms would not meet the guidance contained within the then published BRE Guidelines². He also noted that the guidelines at that time suggested that a flexible approach is applied. Despite this he concluded that adequate natural light in all habitable rooms in the proposed dwellinghouses would not be provided.

¹ PINS reference APP/Y0435/W/21/3283517

² Building Research Establishment's Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (2011)

10. There are many similarities between the scheme considered under the Previous Appeal and those proposed under these linked appeals. All three fail to meet the previous BRE Guidelines albeit to varying degrees.
11. The Internal Daylight and Sunlight Report submitted for the Appeal B scheme confirms that in daylight terms 89% of rooms would meet Average Daylight Factor (ADF) levels and 77% would meet the daylight distribution (DD) levels set out within the BRE Guidelines (2011). These results are slightly worse than those pertaining to the Previous Appeal scheme. In terms of sunlight, the report concludes that 17 rooms in the Appeal B scheme would not meet the guidance contained within the BRE Guidelines (2011). Indeed, both the Previous Appeal scheme and the Appeal B scheme incorporate flats adjacent to the internal lightwells. During my site visit I noted that these areas have particularly poor access to natural light.
12. The Internal Daylight and Sunlight Report for the Appeal A scheme concluded that in daylight terms 93% of rooms would meet the ADF levels and 97% would meet the DD levels set out within the BRE Guidelines (2021). In terms of sunlight, the report concluded that 7 rooms in the Appeal A scheme would not meet the guidance contained within the BRE Guidelines (2011). This is a better performance when compared to the Previous Appeal and the Appeal B scheme. Indeed, the Appeal A scheme would not utilise the areas around the internal lightwells, which likely explains the better access to natural light.
13. In considering whether the kitchen areas should be required to achieve the same levels of access to natural light, the previous Inspector concluded that *'people spend long periods of time in kitchen areas and there is no reasonable justification as to why such areas should be afforded poor levels of natural light. The consequence would be the regular use of artificial lighting to combat an otherwise gloomy internal living environment'*.
14. Since the Previous Appeal was dismissed the appellant has provided final comments as well as daylight & sunlight statements for both the Appeal A and Appeal B schemes. The Appellant asserts that the previous Inspector's approach penalises open-plan living and argues for flexibility in interpreting the BRE Guidelines in considering habitable 'spaces'.
15. However, I concur with the approach taken by the Previous Inspector, not least because the GPDO deals with 'habitable rooms' as opposed to 'spaces'. Indeed, the term 'habitable rooms' is defined in Part 3, paragraph X and Part 20, paragraph C.(1) of the GPDO as meaning *'any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms'*.
16. This definition clearly differentiates between rooms solely used for cooking purposes and those which are not. The Living Room/Kitchen/Dining Rooms (LKDs) proposed under each scheme are therefore habitable rooms in their entirety.
17. The appellant has also made several representations in relation to other prior approval development in Milton Keynes. However, I do not have the precise case specific details before me. In any event, each case should be considered on its own merits.

18. I also note that prior approval was granted by the Council on 14th January 2022³ for a two-storey upwards extension at the appeal site, to accommodate 65 flats. However, I have not been provided with the plans. Nonetheless, the description on the decision notice suggests that this is a new build element rather than a conversion and as such, the conclusions reached by the Council in considering that application do not have a bearing on my conclusions in relation to this appeal.
19. In summary, the schemes proposed under both Appeal A and Appeal B would not meet the previous BRE Guidelines. Incidentally, I am aware that the guidelines were updated in June 2022, but the appellant has not referred to the new guidelines in their evidence, despite having made final comments in July 2022 (Appeal A) and August 2022 (Appeal B). I must consider this appeal on the basis of the evidence put before me. In any case, the Guidelines are not the only consideration to take into account. Based on my own observations during the site visit, many of the proposed rooms in both schemes would have particularly poor access to natural light owing to the narrow nature of some of the rooms, their significant depth and the generally low levels of observed daylight⁴.
20. The Appeal B scheme would have even worse access to natural light than that dismissed under the Previous Appeal. The Appeal A scheme only includes a small number of rooms which would not meet the previous BRE guidelines. Nonetheless, it would still fail to meet those guidelines and my observations during the site visit only re-enforce the fact that several rooms would have inadequate provision of natural light.
21. In respect of both appeal schemes, adequate natural light in all habitable rooms in the proposed dwellinghouses would not be provided. Appeal A and Appeal B are therefore dismissed.

Luke Simpson

INSPECTOR

³ Council ref: 21/03008/PNNDAC

⁴ Whilst my site visit took place during winter, the weather conditions were clear.