



Appeal Decisions

Site visit made on 7 February 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal A Ref: APP/T5150/W/22/3290112

Unit 18, Iron Bridge Close, London NW10 0UF

- 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 Class AB of Part 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Dan Pathirana (Carlton Properties) against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/3171, dated 16 August 2021, was refused by notice dated 11 October 2021.
 - The development proposed is described as, "Prior approval for the construction of new dwellinghouse(s) on a terraced commercial / mixed use building: to extend the existing building upwards and create two additional floors of accommodation. There will be a total of four additional flats provided".
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Appeal B Ref: APP/T5150/W/22/3303086

Unit 18, Iron Bridge Close, London NW10 0UF

- 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 Class AB of Part 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Dan Pathirana (Carlton Properties) against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/0207, dated 24 January 2022, was refused by notice dated 18 March 2022.
 - The development proposed is described as, "Prior approval for the construction of new dwellinghouse(s) on a terraced commercial / mixed use building: to extend the existing building upwards and create two additional floors of accommodation. There will be a total of four additional flats provided".
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. As set out above there are 2 appeals on this site. I have considered each proposal and appeal on its individual merits. However, to avoid duplication I have dealt with the 2 schemes together, drawing distinctions between the 2 as necessary.

4. Although the application form for Appeal B is dated 20 January 2021 it is clear from the Council's decision notice and the appeal form that the application was submitted in 2022. Accordingly, the date of the application, shown in the banner header above, has been taken from that given in the appeal form.
5. Under Article 3(1) and Class AB of Part 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), planning permission is granted for new dwellinghouses on terrace buildings in commercial or mixed use. The Council's reasons for refusal for both appeals have been reflected in the main issues, below.
6. Amended plans were submitted at the appeal stage, which for both Appeal A and Appeal B show the position of the proposed bin and cycle storage to the side of the building. These plans do not substantially alter the nature of the proposals, and I am satisfied that the parties' interests would not be prejudiced by these plans being considered. Therefore, I have considered the amended plans as part of the appeals.
7. During the course of the appeals the Court of Appeal's judgment in *CAB Housing Ltd*¹ was issued. The main parties were provided with an opportunity to comment and I have taken the comments received by the appellant and the Council into account.

Main Issues

8. The main issues with respect to both appeals are:
 - whether the proposals would comply with paragraph AB.(2) of Class AB, having particular regard to whether the building is used for any purpose within Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987; and
 - whether the proposals would comply with paragraph AB.1.(o)(ii) of Class AB, having particular regard to whether development under Class AB(3)(d) would be situated on land forward of a wall forming the principal elevation of the existing building.
9. In relation to Appeal B only, the additional main issues are:
 - whether the proposal would comply with paragraph AB.1(za) of Class AB, having particular regard to whether the permission to use the building as a dwellinghouse has been granted only by virtue of Class MA of Part 3 of Schedule 2 of the GPDO;
 - whether the proposal would comply with paragraph AB.1.(o)(i) of Class AB, having particular regard to whether development under Class AB(3)(d) would extend beyond the curtilage of the existing building; and
 - whether the proposal complies with the nationally described space standard.

Reasons

AB.(2): Building use

10. Paragraph AB.(2)(a) of Class AB refers to a building which is used for any purpose within Class A1 (shops), Class A2 (financial and professional services),

¹ *CAB Housing Ltd v SSLUHC & Broxbourne BC* [2023] EWCA Civ 194

Class A3 (restaurants and cafes) or Class B1(a) (offices) of the Schedule to the 1987 Order. Paragraph AB.(4) clarifies that in relation to Class AB, "the 1987 Order" means the Use Classes Order as in force on 5 March 2018.

11. The key phrase here is, 'is used'. These words indicate that the assessment must be made on the basis of the currently prevailing circumstances. In other words, a building which is used for office purposes would fall within the ambit of paragraph AB.(2)(a), for example. Paragraph AB.(4) merely provides that the use is assessed based on the Use Classes Order as it was in March 2018.
12. I note that the application forms for both appeals contained a question which asked whether the building was in one of the uses mentioned above on 5 March 2018. However, reading Class AB as a whole, this question most likely relates to AB.1.(b), which also mentions 5 March 2018 and which contains a separate requirement from that found in paragraph AB.(2)(a).
13. I have carefully considered the correspondence submitted from the Planning Portal team. Their observations that the Use Classes are to be read from the legislation as it stood on 5 March 2018 and that some Use Classes have been revoked are correct, but, as mentioned above, paragraph AB.(4) is only referring to the version of the Use Classes Order that is applicable to the assessment to be made under paragraph AB.(2)(a).
14. As such, taking account of paragraph AB.(4), none of these matters changes the fact that paragraph AB.(2)(a) states, 'a building which is used', and accordingly relates to the current use of the building, and not to a use on a prior date (including the dates that the applications were submitted). Therefore, whilst I have noted the historical photographs of the building, submitted by the appellant, it is necessary to consider whether the building is currently in a commercial or mixed use, as per the requirements found in paragraph AB.(2).
15. I have not been referred to any case law or planning policy source which supports the proposition that unless the conversion is complete and the building is habitable the current use is the previous use before the change started. Rather, the Inspector in appeal decision Ref APP/R5510/W/20/3264423 made a fact and degree assessment, based on what they had read and seen, which I consider is the correct approach.
16. In this regard, the appellant has confirmed that the site comprises a former office building that is currently in the process of being converted to residential use. The Council have mentioned that a site visit occurred in June 2019, where it was noted that works to implement the office-to-residential conversion were clearly underway, including the erection of internal walls and pipe work.
17. I observed that, whilst the rooms within the building were not occupied, heat recovery systems, kitchen appliances, radiators, baths, and shower hoses and heads, were in place in the building. Pipework was also in evidence underneath sinks in several of the kitchens and bathrooms. It is clear then, that the conversion of the building from office use to residential use is at an advanced stage. On the basis of these facts, I consider that the building is not currently in office use, as defined by Class B1(a) of the Schedule to the 1987 Order. The proposals do not therefore comply with paragraph AB.(2)(a) of Class AB.

18. The Inspector in appeal decision Ref APP/R5510/W/20/3264423 noted that walls had been constructed and that electric wiring had been partly installed. However, considering the facts mentioned above, the appeal building is in a far more advanced stage of conversion than as described in that decision. The inclusion of kitchens and bathrooms within the building clearly indicates that the building could not be used as offices once the work is completed, in contrast to the Inspector's finding in appeal decision Ref APP/R5510/W/20/3264423.
19. Moreover, whilst mention has been made of reverting to the previous office use, few details have been provided to suggest that this would be a likely prospect in reality, particularly considering the advanced stage of conversion of the building to residential use. Hence, appeal decision Ref APP/R5510/W/20/3264423 is not directly comparable with the appeal proposals, and it does not change my findings as a result.
20. I therefore find that the proposals would not comply with paragraph AB.(2) of Class AB, having particular regard to whether the building is used for any purpose within Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987.

AB.1.(o)(ii): Position of certain construction works

21. The proposals contain works including alterations to the forecourt, the provision of bin and cycle storage, a wall with railings, a statue, and a metal entrance gate. Paragraph AB(3)(d) of Class AB does not specify that works must require foundations or the use of heavy machinery for their installation, to be classed as construction works, nor does AB(3)(d) not apply if the structures in question are essentially movable.
22. I note that the Inspector in appeal decision Ref APP/H1840/W/21/3266807 mentioned that bicycle storage would relate to a planning application rather than a prior approval but in my view these works fall within the remit of 'other ancillary facilities' provided for in paragraph AB(3)(d). Therefore, I consider that all these works fall within the ambit of paragraph AB(3)(d) of Class AB.
23. For both appeals, the statue and the bin and cycle storage areas are proposed to be situated to the side of the building. These works would therefore comply with paragraph AB.1.(o)(ii) of Class AB which provides that development is not permitted by Class AB if development under Class AB(3)(d) would be situated on land forward of a wall forming the principal elevation of the existing building.
24. However, the proposed entrance gates, wall, and alterations to the forecourt would all be situated either wholly or partly on land forward of a wall forming the principal elevation of the existing building, meaning that the proposals would not comply with paragraph AB.1.(o)(ii) of Class AB in this respect. Reference has been made to an approval for a full planning application but as the proposals must be determined in accordance with the requirements of the GPDO, that approval does not change my findings.
25. I therefore find that the proposals would not comply with paragraph AB.1.(o)(ii) of Class AB, having particular regard to whether development under Class AB(3)(d) would be situated on land forward of a wall forming the principal elevation of the existing building.

AB.1(za): Class MA (Appeal B only)

26. Prior approval was previously granted under Class O of Part 3 of Schedule 2 of the GPDO, for an office-to-residential scheme. It appears from the evidence before me (including the Council's site visit in 2019) that this development had started (but was not completed) before Class MA of Part 3 of Schedule 2 of the GPDO was introduced on 21 April 2021. As a planning permission granted by the GPDO is crystallised when the development begins, the development would continue to persist under the provisions of Class O, despite the later introduction of Class MA.
27. I therefore find that the proposal for Appeal B would comply with paragraph AB.1(za) of Class AB, having particular regard to whether the permission to use the building as a dwellinghouse has been granted only by virtue of Class MA of Part 3 of Schedule 2 of the GPDO.

AB.1.(o)(i): Curtilage (Appeal B only)

28. As mentioned above, in relation to paragraph AB.1.(o)(ii), the proposal for Appeal B contains works including alterations to the forecourt, the provision of bin and cycle storage, a wall with railings, a statue, and a metal entrance gate. Although these works are located outside of the redline boundary as shown on the submitted site location plan they would be situated close to the building and either on or within the existing walled section of the wider site. Accordingly, I consider that these works would not extend beyond the curtilage of the existing building.
29. I therefore find that the proposal for Appeal B would comply with paragraph AB.1.(o)(i) of Class AB, having particular regard to whether development under Class AB(3)(d) would extend beyond the curtilage of the existing building.

Nationally described space standard (Appeal B only)

30. Article 3(9A) of the GPDO provides that, amongst other things, Schedule 2 of the GPDO does not grant permission for, or authorise any development of, any new dwellinghouse that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27 March 2015.
31. Taking account of the size of the proposed residential units as a whole, I consider that the units would each most likely be occupied by a maximum of 5 people. Based on the figures provided by the Council, the proposal for Appeal B would comply with the minimum gross internal floor areas and storage for 3 bedrooms with 5 bed spaces, as set out in the nationally described space standard.
32. I therefore find that, in relation to Appeal B, on the basis of the evidence before me, the proposal would comply with the nationally described space standard.

Other Matters

33. I have found above that both proposals would not comply with paragraphs AB.(2) and AB.1.(o)(ii) of Class AB of Part 20 of Schedule 2 of the GPDO. It follows that the proposed developments would not be permitted development. Hence, it is not necessary to make any determination on the prior approval

matters found under Class AB, including in relation to paragraph AB.2(1)(e) of Class AB, which relates to the external appearance of the building. Therefore, whilst the parties have provided observations relating to paragraph AB.2(1)(e), I make no further comments on this matter.

34. Similarly, whilst the Council's decision notice for Appeal B mentions that the proposed plans are inconsistent, inaccurate and lacking detail, given that the proposal for Appeal B would not be permitted development, it is not necessary for these matters to be considered further.
35. The reasons for refusal given in the Council's decision notices only listed the relevant paragraphs of Class AB which the Council considered the proposals failed to comply with, without any further explanation of the meaning of those paragraphs. Nevertheless, the Council's Officer's Reports provided a comprehensive account of the Council's reasons for refusing the applications. In any event, as the GPDO sets out legal requirements, this is not a matter which could alter my assessment of the proposals against the relevant provisions of the GPDO. The conduct of the Council during the processing of the applications is not a matter that I can assess in the context of these appeals.
36. Reference has been made to a 56 day non-determination period and in this regard to application Ref 20/0636. However, Class AB does not contain a provision relating to such a period. This matter therefore does not change my findings.
37. Purported benefits have been put forward, including that the proposed residential units would be located within an area that enjoys easy access to a range of services and amenities (including public open space and leisure services), and in relation to the effect of the proposals on the character of the area and the external appearance of the building (noting that full application Ref 21/0934 was previously approved by the Council). I also note that conversions to residential use have occurred nearby, including at 1 to 5 Iron Bridge Park and at Beacon House. Additionally, I have had regard to *R (Rights: Community: Action) v SSHCLG* [2020] EWHC 3073 (Admin) and *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314, taking account of the full planning permission granted under application Ref 21/0934.
38. However, the GPDO offers no discretion where conflict is found with its requirements; its requirements are a matter of law. As such, none of these matters changes my findings on the main issues in these appeals.

Conclusions

39. I have found above that both proposals would not be permitted development, as the proposals would not comply with paragraphs AB.(2) and AB.1.(o)(ii) of Class AB of Part 20 of Schedule 2 of the GPDO.
40. Therefore, for the reasons given above, I conclude that Appeal A should be dismissed and that Appeal B should be dismissed.

Alexander O'Doherty

INSPECTOR