



Appeal Decision

Site visit made on 22 March 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2023

Appeal Ref: APP/U1430/W/22/3296218

Conquest House, 32-34 Collington Avenue, Bexhill-on-Sea TN39 3LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 Paramount Land and Development against the decision of Rother District Council.
 - The application Ref RR/2021/1893/PN3, dated 29 July 2021, was refused by notice dated 28 October 2021.
 - The development proposed is change of use from offices (Class B1(a)) to 78 no. dwellinghouses (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal scheme was amended during the course of the application being considered by the Council. These amendments resulted in changes to proposed floor layouts and a reduction in the number of flats proposed from 86 to 78. I have therefore referred to the amended description of the proposal provided by the appellant in their appeal form, which aligns with the description of the proposal on the Council's decision notice. I am content that this would not cause injustice to any parties, considering the reduction in the number of flats proposed and the consultation of local residents and parties who commented on the original scheme.
3. The existing and proposed elevation plans do not include elevations within the appeal building's courtyard area. The appellant's submissions do not include details of external works or alterations which may be made to the appeal site or building separate to the proposal. During my site visit I noted various structures, plant and planting were present in the courtyard which are not shown on the relevant plans. I shall address this further below.

Background and Main Issue

4. Article 3(1) and Class O, Part 3 of Schedule 2 of the GPDO authorise 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), to a use falling within Class C3 (dwellinghouses)¹ subject to conditions and limitations. Planning permission has therefore been granted for the proposal, subject to the

¹ As defined by the Town and Country Planning (Use Classes) Order 1987 (as amended)

condition at paragraph O.2.(1) which states that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to 5 matters. Paragraph O.2.(1)(e) relates to the provision of adequate natural light in all habitable rooms of the dwellinghouses.

5. The Council's submissions explain that it considers the proposal would fail to provide adequate natural light to all habitable rooms of the dwellinghouses. The Council has not raised any concerns with regard to the other 4 matters at paragraph O.2.(1). Although interested parties have objected to the transport and highways impacts of the proposal, amongst other things, I have not been provided with convincing evidence which suggests that the proposal would raise any relevant concerns in these regards.
6. Taking the above into account, the main issue is whether adequate natural light would be provided to all habitable rooms of the dwellinghouses proposed.

Reasons

7. The appeal scheme was supported by an Internal Daylight and Sunlight Report² (IDSR) relating to the amended proposal. The IDSR explains that its analysis was based upon scheme drawings, a photogrammetric survey, and site photography. It refers to a three-dimensional accurate computer model for the existing site in the context of immediate surrounding properties being created. I have not been provided with copies of the scheme drawings, photogrammetric survey or site photography specified at Section 4 of that document, or images of the computer model on which the IDSR was based.
8. The habitable room layouts and areas relied upon as part of the IDSR do not reflect the proposed floor plans. An updated IDSR³ has been submitted as part of the appeal, which explains why that approach was previously adopted. I do not agree that notionally removing what the appellants consider to be 'non-primary living space'⁴ from habitable rooms is helpful in this case, when seeking to ascertain whether adequate natural light would be provided to all habitable rooms.
9. The updated IDSR provides additional assessments of habitable room layouts and areas which more closely reflect those shown on the proposed floor plans. I therefore prefer the approach adopted in the updated IDSR, when assessing average daylight factor (ADF) and no skyline (NSL) values of habitable rooms. Throughout this decision I have referred to proposed habitable rooms using the numbering system provided at Appendix 1 of the updated IDSR.
10. The updated IDSR relies on the advice set out in the Building Research Establishment (BRE) Guidance⁵ used in conjunction with British Standard BS8206⁶. The BRE Guidance explains that its advice is not mandatory and should be interpreted flexibly. The advice of the British Standard is not mandatory either. These documents are helpful when considering whether adequate natural light would be provided to all habitable rooms of the proposal. However, I do not consider it essential that the ADF and NSL values of all

² By Waldrams Ltd., Reference 2769, dated 22 October 2021

³ By Waldrams Ltd., dated 31 March 2022

⁴ Described by the updated IDSR as circulation spaces, parts of rooms likely to house cupboards/storage, and areas where kitchen portions are shown to be positioned

⁵ Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (2011)

⁶ Lighting for buildings – Part 2: Code of practice for daylighting (2008)

habitable rooms of the proposal should exceed the minimum values referred to by those documents to ensure the provision of adequate natural light. I agree that a flexible approach should be adopted when referring to the BRE Guidance.

11. The BRE Guidance explains that a room with an ADF below 2% will look dull and electric lighting is likely to be turned on. It refers to the minimum ADF values set out in the British Standard of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms, which it suggests can be used as targets for daylight in obstructed situations. It is agreed by the main parties that the minimum ADF for a combined living/kitchen/dining (LKD) room should be 1.5%, where the principal use of that room is as a living room.
12. The BRE Guidance advises that NSL is less important when analysing bedrooms and that areas beyond the NSL will look dark and gloomy. The BRE Guidance also states that, roughly speaking, where a clear sky angle of between 25 - 45° is proposed, it will be very difficult to provide adequate daylight unless very large windows are used.
13. I have been referred to the Cambridge dictionary definition of 'adequate', which means 'enough' or 'satisfactory for a particular purpose'. The appellant claims that as the updated IDSR concludes that the 'primary living space' of every habitable room proposed would meet or exceed the target ADF and NSL values referred to in the BRE Guidance, adequate natural light would be provided to those rooms.
14. The updated IDSR explains that the LKD room R6 to proposed flat 8 would achieve an ADF of 1.3% and an NSL of 65%, the LKD room R37 to proposed flat 10 would achieve an ADF of 0.9% and an NSL of 43%, the bedroom R38 to proposed flat 10 would achieve an ADF of 0.9% and an NSL of 81%, and the bedroom R12 to proposed flat 78 would achieve an ADF of 0.6% and an NSL of 75%.
15. The window to bedroom R12 to proposed flat 78 would be small and positioned centrally. I saw that window to be obscure glazed. I also note that a smoking shelter overhangs the window which would serve the LKD room R37 to flat 10, close to the window which would serve the bedroom R38 to flat 10. It is not clear whether the updated IDSR has taken this into account, but it found that rooms R37 and R38 to proposed flat 10 would have clear sky angles between 34.86 – 39.03°.
16. Based on everything I have read and seen, significant parts of all of the habitable rooms mentioned above would appear very dull without the use of electric lighting much of the time. I am unconvinced that these habitable rooms would be provided with adequate natural light. This is on account of the orientation, sizes and positions of the windows serving those rooms, and the sizes and layouts of those rooms.
17. In the absence of the documents specified at Section 4 of the IDSR, it is unclear whether the updated IDSR is based on accurate details of the appeal building's existing windows and immediate surroundings.
18. The windows which would serve habitable rooms R18 and R19 to proposed flat 4, R45 to proposed flat 50, R21 to proposed flat 61, R21 to proposed flat 72, and R13 to proposed flat 77 are all positioned at high levels within those rooms and appear to be fitted with a variety of obscure glazing.

19. The windows which would serve proposed flat 4 are positioned close to tall planting which overhangs the site boundary. The windows which would serve habitable rooms R45 to proposed flat 50, R21 to proposed flat 61, R21 to proposed flat 72, and R13 to proposed flat 77 are also small in size. There appear to be discrepancies between what I saw on site, the submitted plans and information relied upon by the IDSR with regard to the glazed areas of the windows to those habitable rooms of proposed flats 50, 61, 72 and 77.
20. I therefore find it surprising that habitable rooms R18 and R19 to proposed flat 4, R45 to proposed flat 50, R21 to proposed flat 61, R21 to proposed flat 72, and R13 to proposed flat 77 are shown to achieve ADF values between 3.3 – 5.4% and NSL values between 89 – 100%, and that the updated IDSR finds they would be provided with adequate natural light. Based on the orientation, sizes, positioning and glazing of the windows serving those rooms, in relation to the layouts and sizes of the rooms, I do not consider that those habitable rooms would be provided with adequate natural light.
21. I also have concerns with the provision of natural light to habitable room R35 to proposed flat 30, which would appear to be inadequate, even though the updated IDSR finds that bedroom would have an ADF of 1.7%. I note it would be a bedroom, where its low NSL⁷ would be less important. The orientation and small size of its windows, which would be positioned awkwardly in relation to the main usable area of that room, in a recessed area at one end, lead me to find that adequate natural light would not be provided to that bedroom.
22. The smoking shelter attached to the appeal building in the courtyard overhangs windows which would serve habitable rooms R15 and R17 of proposed flat 5. On account of this shelter, the orientation of windows, and the sizes and layouts of those rooms, adequate natural light would not be provided to those habitable rooms. Other obstructions close to other windows in the courtyard which may affect the provision of natural light to other habitable rooms may not have been considered in the updated IDSR.
23. I am aware that some external works and alterations may be undertaken to the appeal site and building without the need for express planning permission, such as the removal of some obstructions and the replacement of obscure glazing with clear glazing. However, there are no details of any such works/alterations before me, and it is unclear whether window sizes/positions would or could be changed. It may be the case that the transmittance values of existing obscure glazed windows are similar to those of clear glazed windows, but this has not been clarified with reference to the different types of existing obscure glazing.
24. Notwithstanding the conclusions of the updated IDSR, insufficient information has been provided to convince me that adequate natural light would be provided to all habitable rooms. Even if circulation and storage areas within habitable rooms were notionally removed to provide improved ADF and NSL values, and taking all other matters raised into account, I do not consider that the habitable rooms mentioned above would be provided with adequate natural light for the reasons I have given. This would be contrary to Paragraph 130 of the National Planning Policy Framework (the Framework) which advises that development should create places with a high standard of amenity for future users.

⁷ 42% in the updated IDSR

25. The Council has drawn my attention to other proposed habitable rooms⁸ where it is claimed adequate natural light would not be provided. However, based on the information before me, I consider those other habitable rooms would likely be provided with adequate natural light on account of the orientation, sizes and positions of their windows in relation to the sizes, layouts and useable areas of those rooms.

Other Matters

26. The Council cannot demonstrate a five-year housing land supply⁹ and I have been referred to the Framework, which sets out the Government's objective of significantly boosting the supply of homes and encourages more efficient uses of land and regeneration. I am also aware that the provisions of the GPDO make an important contribution to housing supply and that there may be a reduction in levels of demand for office space going forward.

27. I have had regard to the Framework and all matters raised by the appellant, but Paragraph W.(2A), Part 3 of Schedule 2 of the GPDO is clear in stating that where an application relates to prior approval as to adequate natural light, prior approval must be refused if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.

Conclusion

28. I have found that adequate natural light would not be provided to all habitable rooms of the dwellinghouses proposed. The appeal should therefore be dismissed.

L Douglas

INSPECTOR

⁸ Proposed Ground Floor: R13, R14, R16, R17, R30, R32, R33, R34, R35, R36, and R41; Proposed First Floor: R16, R17, R33, R34, R36, R37, R38, R39, R40, R41, R42, R51 and R53; Proposed Second Floor: R37 (as identified by the IDSR referenced at footnote 2)

⁹ The appellant has advised that the Council has a housing land supply of 2.89 years