



Appeal Decision

Site visit made on 2 March 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 MAY 2023

Appeal Ref: APP/L5240/W/22/3299731

5 Brighton Road, Croydon CR2 6EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Inspire Property Investments against the decision of London Borough of Croydon.
- The application Ref 22/00258/GPDO, dated 21 January 2022, was refused by notice dated 21 March 2022.
- The development proposed is the change of use of part of an existing three storey office building (Class E) to residential accommodation (C3) under Class MA of the Permitted Development Rights (England) to provide 16no. residential units with associated refuse storage, cycle storage and disabled parking.

Decision

1. The appeal is allowed and prior approval is granted for the change of use of part of an existing three storey office building (Class E) to residential accommodation (C3) under Class MA of the Permitted Development Rights (England) to provide 16no. residential units with associated refuse storage, cycle storage and disabled parking at 5 Brighton Road, Croydon, CR2 6EA in accordance with the terms of the application, Ref 22/00258/GPDO, dated 21 January 2022, subject to the following conditions:
 - 1) Prior to the commencement of development, a Construction Logistics Plan (CLP) shall be submitted to and approved in writing by the Local Planning Authority. The CLP shall include the following information for all construction phases of the development: a) Hours of construction; b) Hours of deliveries; c) Parking of vehicles associated with deliveries, site personnel, operatives and visitors; d) Facilities for the loading and unloading of plant and materials; e) Details of any site hoardings; f) Details of the precautions to guard against the deposit of mud and substances on the public highway; g) Dust control methods; h) Delivery routes for site traffic. All construction phases of the development shall be carried out strictly in accordance with the details so approved.
 - 2) Prior to first occupation of any dwelling, full details of the following shall be submitted to and approved in writing by the Local Planning Authority. a) Full details of short and long stay cycle parking provision including the number and type of cycle stands. b) A Refuse Management Plan to include full details of the refuse stores, including the size and number of bins, collection arrangements, as well as a dedicated area for the storage of bulky waste. The development shall only be implemented in accordance with the approved

details and thereafter retained for so long as the development remains in existence.

- 3) Notwithstanding the approved layout, the parking space indicated 'disabled bay is also for service vehicles' shall not be used for vehicular parking or any other installation to allow for vehicles to manoeuvre within the site. The remaining car parking spaces shall be provided as specified in the application prior to occupation of the proposed development. The parking spaces shall be permanently retained exclusively for its designated purpose.
- 4) The development hereby approved shall be carried out strictly in accordance with the recommendations contained within the Flood Risk Assessment (HLEF82384 December 2021).

Preliminary Matters

2. Class MA of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order subject to a number of requirements and conditions.
3. One of the requirements is that the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval and one of the conditions is that before beginning 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 the transport impacts of the development, particularly to ensure safe site access.
4. The Council refused prior approval as they considered that insufficient evidence had been submitted to demonstrate that the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application, and that the development would cause unacceptable transport impacts.
5. Since their original decision, following the submission of further evidence, the Council agree that the building was vacant for the 3 months prior to the date of the application. I have no reason to form a different view.
6. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
7. On the 25 July 2022 the Council revoked their Suburban Design Guide Supplementary Planning Document 2 (SPD2). This document, as referred to in the Council's decision notice, therefore has no weight in the appeal.

Main Issue

8. The main issue is therefore whether prior approval should be granted having regard to the transport impacts of the proposed development.

Reasons

9. The appeal property is a three-storey office building. It is located in Brighton Road which is a busy street made up of commercial and residential properties. The property has an undercroft access to the rear where there is an existing hardstanding area. It is proposed to utilise the land to the rear for cycle parking, disabled parking and servicing.
10. It is outlined that the site has a PTAL (Public Transport Accessibility Level) rating of 6a which indicates that it has extremely good connectivity. The site is within a Controlled Parking Zone (CPZ) and there is a single yellow line on the road in front of the property and much of Brighton Road around the appeal site with double yellow lines elsewhere. There is a bus route and cycle route in front of the property.
11. At the time of my visit, there was no on-street parking occurring on Brighton Road. There are parking bays for permit holders on Nottingham Road which is close to the appeal property.
12. The proposed development would convert most of the existing building into 16no. residential flats. A small office area would remain on the ground floor.
13. The Council refused to grant prior approval as they considered, amongst other things, that insufficient details were submitted in relation to waste management to ensure that there would not be unacceptable transport impacts arising from the proposed development.
14. The proposed site plan shows that refuse and recycling storage containers would be sited in a recessed area of the undercroft. An access to the rear of 2.8 metres in width would remain. The appellant has set out how the capacity that would be provided would be sufficient to serve the proposed development. There is no substantive evidence that the capacity that would be provided, to be stored in this location, would have unacceptable transport impacts.
15. The Council consider that the storage of containers on the highway would lead to conditions prejudicial to highway safety due to the potential conflict with road and footpath users. I agree that were this scenario to play out, there would indeed be a potential conflict. To this end, I consider that it would be reasonable and necessary to impose a planning condition requiring the submission of a refuse management plan to outline how refuse collection and storage would operate, to ensure that this does not cause unacceptable transport impacts.
16. The Council have highlighted how the swept-path manoeuvring showing how vehicles would enter and exit the site in a forward gear would only work for a larger vehicle when one of the three disabled bays is empty, of which there can be no guarantee. The Council also comment that to comply with the relevant policy 2 or 3 disabled bays should be provided on site. As three have been proposed, it would not be unreasonable to impose a condition to ensure that notwithstanding the submitted layout, the third standalone bay should not be used as parking in order to allow vehicle manoeuvring within the site.
17. The Council refused to grant prior approval for, amongst other reasons, the transport impacts due to the absence of a legal agreement to prevent increased car usage in the Controlled Parking Zone (CPZ).

18. The appellant has submitted a Unilateral Undertaking (UU) which would prevent future occupants from obtaining residential parking permits. It is necessary for me to consider in the planning balance whether or not the agreement provides the necessary mitigation measures to prevent the refusal of prior approval due to its transport impacts.
19. The Council have reviewed the UU and confirmed that they are happy with the document which has been collaboratively drafted between them and the appellant and reflects what was agreed between the parties.
20. Based on the submitted evidence, and for the reasons given above, I therefore conclude that the proposed development would not result in unacceptable transport impacts. It would comply with the requirement of the Framework that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. It would also comply with the relevant aims of Policies D6, SI7, T1, T2, T4, and T6 of the London Plan (2021) and Policies DM10, DM13, DM29 and DM30 of the Croydon Local Plan (2018) in terms of ensuring developments do not have unacceptable transport impacts.

Other Matters

21. I note representation received in relation to the access to flats and lift by disabled people due to stairs, and therefore there would be no disabled compliant units. This is not one of the matters for consideration in an application for prior approval and would be covered by other legislation. Similarly, the provision of amenity space is not a subject matter in an application for prior approval.

Conditions

22. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class MA is subject to the condition that it must be completed within a period of 3 years starting with the prior approval date and that it is carried out in accordance with the approved details. Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse. It is not necessary to repeat these conditions in this decision.
23. Paragraph W.13 allows conditions reasonably related to the subject matter of the prior approval to be imposed.
24. In the interests of transport and highway safety, conditions relating to the construction phase of the development, the site layout, refuse management and cycle parking are necessary. In the interests of protecting development from flood risk, or an increase in flood risk, a condition requiring compliance with the recommendations of the flood risk assessment is also necessary.
25. Although contamination risks in relation to the building is a relevant matter for consideration in the application for prior approval, the proposed development is for the change of use of the building from office to residential with associated external works to accommodate vehicle and cycle parking, as well as refuse storage. The appellant has highlighted that none of the proposed works will involve any intrusive groundworks or significant landscaping. On this basis a

condition relating to submission of a land contamination report is not necessary.

26. The fire safety impacts are applicable when a development meets the fire risk condition which, due to the overall building height, is not applicable in this instance. Therefore the condition suggested by the Council in relation to a fire statement is not necessary.
27. Whilst the impacts of noise from commercial premises on the intended occupiers of the development is a relevant consideration, there is no substantive evidence to suggest that this is a pertinent matter in this appeal that would warrant the imposition of the sound insulation condition specified by the Council. Furthermore, this matter would be covered by other legislation as outlined in the Council's suggested condition.
28. Other conditions suggested by the Council, or its consultees are not reasonably related to the subject matter of the prior approval and therefore I have not imposed them.

Conclusion

29. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed and prior approval should be granted.

A M Nilsson

INSPECTOR