



Appeal Decision

Site visit made on 19 May 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2023

Appeal Ref: APP/K0425/W/22/3300068

Lansdales House, Lansdales Road, High Wycombe, HP11 2PB

- 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, Schedule 2, Part 20, Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Amir Dadd against the decision of Buckinghamshire Council.
 - The application Ref 22/05716/PADTC dated 15 March 2022, was refused by notice dated 12 May 2022.
 - The development proposed is prior approval for the construction of an additional storey to the existing terraced commercial unit to create 2 x 1-bed flats and external alterations with associated operational development.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. In considering proposals for development under Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'), a determination must first take place as to whether the proposal constitutes permitted development. In the event that it does, Paragraph AB.2.(1) of the GPDO requires the local planning authority to assess the proposed development against a range of issues relating to its design, use, internal living conditions and impact on surrounding land uses & buildings.

Main issue

3. The main issue is whether the proposed development complies with the conditions, limitations and restrictions applicable to development permitted under Class AB, with particular regard to whether the existing building is used for any purpose or mixed-use falling within the range of uses specified in Paragraph AB.(2).

Reasons

Appeal site context

4. The appeal site contains a two-storey terraced building with flat roof, external front staircase to the first floor and an area of hardstanding to the front providing off-road parking for 3 vehicles. The appellant states that the ground floor of the unit comprises a B8 use and the first floor an office use (falling

within either Class B1(a) or Class E(g) of the Use Classes Order¹). The surrounding area is characterised by commercial buildings containing a variety of uses, some with separate residential apartments above.

Whether the proposed development complies with the conditions, limitations and restrictions applicable to development permitted under Class AB, with particular regard to whether the existing building is used for any purpose or mixed-use falling within the range of uses specified in Paragraph AB.(2).

5. Paragraph AB.(2) of Class AB of the GPDO states that development permitted under this class applies to a building which is;-
 - (a) used for any purpose within Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or Class B1(a) (offices), or as a betting office, pay day loan shop or launderette;
 - (b) in a mixed use combining—
 - (i) two or more uses within paragraph (a); or
 - (ii) a use falling within Class C3 (dwellinghouses), together with one or more uses within paragraph (a).
6. There is no dispute between the parties that the first floor office use of the building falls within the above range of uses and that the ground floor B8 use does not. The matter in dispute relates to whether the presence of a qualifying use in only part of the building, namely the office use in this case, is capable of enabling the terraced building to benefit from Class AB permitted development rights.
7. Section 336 of the Town and Country Planning Act 1990 (as amended) and Article 2 of the GPDO (insofar as it relates to Class AB) define 'building' as any structure or erection and any part of a building²³. However, it does not automatically follow from this that Class AB development is permitted where a single qualifying use or mixed use can be found in any part of the building. To understand the meaning of 'building' in this instance and how it is to be applied, it is necessary to read Class AB as a whole and determine the intended purpose of this permitted development right.
8. Paragraph AB.(1) clarifies that this permitted development right allows for the construction of new dwellinghouses immediately above the topmost storey on a terrace building to which Paragraph AB.(2) applies. On a plain English reading of this, it is my view that legislators intended this permitted development right to apply to those buildings that, as a whole, contained the use or mix of uses specified therein.
9. If it did not, and one took the opposite view that developers could claim Class AB permitted development rights on the basis of a use or mixed use in only

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

² Section 336 of the Town and Country Planning Act 1990 (as amended) defines 'building' as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.

³ Article 2 of the GPDO defines 'building' as:-

(a) including any structure or erection and, except in Class F of Part 2, Classes P and PA of Part 3, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16, Class T of Part 19 and Class ZA of Part 20 of Schedule 2, including any part of a building; and

(b) not including plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, not including any gate, fence, wall or other means of enclosure.

'part' of the building, it would be possible to acquire this permitted development right in terraced buildings no matter how many non-qualifying uses there were within the context of Paragraph AB.(2), so long as there was one that fell within the range of uses specified. Taking this to its logical conclusion, it would, for example, be possible for a qualifying use on the ground floor of a building, or a qualifying use occupying a very small part of the overall building, to enable new dwellinghouses to be constructed above the topmost storey, even if most of the overall floorspace and floors in-between contained non-qualifying uses.

10. This is not what I consider the legislators intended when framing this permitted development right. On my reading of this document, it would have been irrational for legislators to have intended this, particularly as it would have been much simpler for them to write that only one qualifying use or mixed use was required in any part of the building for Class AB permitted development rights to apply.
11. In any event, the matter of which uses are actually taking place and where within a terraced building is a matter of fact and degree having regard to a range of considerations and circumstances. In the appeal before me, it is my view that by reason of its compact size and scale, the office use at first floor and the B8 use at ground floor are in the same general 'part' of the building that the scheme relates to, which would be directly above both of them; - I do not therefore consider that the B8 use can be simply disregarded when assessing whether the existing building is used for any of the qualifying range of uses specified in Paragraph AB.(2).
12. As a consequence, the development would not satisfy the requirements of Paragraph AB.(2) of Schedule 2, Part 20, Class AB of the GPDO as the existing building contains a non-qualifying B8 use and is not therefore permitted by it.

Prior approval

13. Given my conclusion that the development would not be permitted under Class AB of the GPDO, there is no need for me to consider any of the prior approval matters as it would not alter the outcome of the appeal.

Conclusion

14. For the reasons given above, I have concluded that the proposal is not permitted development under Schedule 2, Part 20, Class AB of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance, and cannot be addressed through prior approval provisions set out under paragraph AB.2.(1) of Class AB the GPDO. The appeal is therefore dismissed.

Robert Fallon

INSPECTOR